

Trafficked Third-Country Nationals

Detection, Identification
and Protection in Austria

Martin Stiller

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SUMMARY

Trafficking in human beings is a serious violation of human rights and human dignity, and is considered one of the worst crimes of all (Federal Ministry for European and International Affairs, n.d.). As a global phenomenon that can only be tackled at a global level and in an international context, human trafficking also affects Austria, which is both a country of destination and a country of transit due to its central location in Europe. Trafficked persons originate mainly from Eastern Europe, Africa and Asia. The phenomenon of human trafficking has intensified during the ongoing COVID-19 pandemic, especially in the area of labour exploitation, since economic hardship in particular makes people vulnerable to exploitation. Since the COVID-19 pandemic frequently has an impact on family income too, a growing number of children often have to work instead of going to school in order to support the family financially. This increases their vulnerability to exploitation.

In order to tackle trafficking in human beings, Austria established a multidisciplinary task force in 2004 that includes representatives from all relevant federal ministries and government offices, the provinces, the social partners and specialized non-governmental organizations. One of the roles of the task force is to draw up the National Action Plan on Combating Human Trafficking. The current National Action Plan 2021–2023 contains over 100 concrete goals to tackle human trafficking. At the criminal law level, the offences of “trafficking in human beings” and “cross-border trafficking in prostitution” were introduced back in 2004. In Austria, people who are the object of one of these two criminal offences are regarded as trafficked. In addition, the offence of “exploiting a foreigner” was created in 2006. The number of actual convictions for one of these criminal offences is relatively low in Austria and accounts for only a fraction of those third-country nationals identified as trafficked persons in Austria.

A fundamental requirement for protecting trafficked persons is that the precarious situation of these people is detected and that they are subsequently identified as trafficked persons. In Austria, a clear separation between “detection” and “identification” is discernible to only a limited extent, especially if the police – who are also responsible for identification – are involved right from the start. This distinction is also of only minor importance for care and support services. These services are funded by the State and are provided by victim protection organizations as soon as a presumed human trafficking situation is suspected, without any official intervention. Services can be accessed anonymously, voluntarily, free of charge and without the immediate involvement of the police, meaning that support is available unconditionally in Austria. In comparison with other countries, this seems to be a unique support service for trafficked persons. The victim protection organizations LEFÖ-IBF and MEN VIA can autonomously identify trafficked persons in order to provide these care and support services, and are thus able to offer support at a very early stage. The distinction between “detection” and “identification” appears blurred in an Austrian context, but a more concrete and formal separation of these two steps does not seem necessary for a better protection of trafficked persons – at least outside the setting of detention pending removal.

Austria employs a variety of measures to detect trafficking in human beings and identify trafficked persons. These include raising public awareness and providing training for authorities that are likely to come into contact with human trafficking. There is no provision for proactive checks in regular migration procedures in

the Austrian provinces. In asylum procedures, checks of this kind are carried out using checklists; however, the detection of vulnerable people – such as trafficked persons – appears to be fairly random and unsystematic. The mandatory review of the granting of a residence permit when an application for international protection is rejected also seems to be limited to asking the asylum seeker whether there are pending criminal proceedings related to human trafficking. No further review takes place. Of particular note in connection with detection and identification is the human trafficking hotline set up by Criminal Intelligence Service Austria, which allows callers to give information anonymously and is available round the clock on +43 677 61 34 34 34.

If trafficked persons are detected or identified, established national referral mechanisms are designed to ensure that they are protected and supported and that all relevant public authorities and civil society are involved. Austria has had a referral mechanism of this kind for trafficked children since 2016, but there is no such referral mechanism in place for trafficked adults. The Criminal Intelligence Service Austria has issued a decree that provides an important basis and governs the procedure in suspected cases with binding force for the officials of the public security service. Ultimately, however, this decree only governs the internal processes at the Federal Ministry of the Interior and is therefore not a national referral mechanism.

In Austria, (presumed) trafficked persons are granted a recovery and reflection period of 30 days. In this period, during which care and support services are also provided, actions by aliens police are suspended and trafficked persons are not expected to cooperate with the authorities. The 30-day reflection period suspends all subsequent steps, so that, for example, no interrogations have to take place during this time. This regulation is not stipulated by law, but effected in the form of a decree. In this context, a clear definition of the time at which the reflection period begins would seem to be key. In Austria, the recovery and reflection period often coincides with the time when the trafficked person has already begun to access the services of the victim protection organizations involved, without the recovery and reflection period being formally declared. This is primarily possible in cases where the trafficked person immediately contacts a victim protection organization rather than going to the police first. Particularly when trafficked persons are in detention pending removal – in Dublin procedures, for example – the formally pronounced recovery and reflection period seems to be especially important in order for the person to benefit from the associated suspension of actions by aliens police. In principle, the rules described also apply to Dublin procedures. In these cases, an assessment is also made on a case-by-case basis, and taking into account all the circumstances of the case, as to whether Austria may itself assume responsibility for the examination, in other words examine the application for international protection, although Austria is not responsible under the criteria laid down in the Dublin III Regulation. In practice, this is fairly rare, also due to the small number of individual cases.

With regard to the legitimacy of residence of trafficked persons in Austria, the “Residence Permit for Individual Protection” may also be considered – in addition to the claim for international protection – pursuant to Art. 57 para 1 subpara 2 Asylum Act 2005 if the conditions are met. This residence permit is only intended for identified trafficked persons, is valid for 12 months and may be extended if the legal requirements are met. In this case, the Red-White-Red Card Plus residence permit will be issued pursuant to Art. 41a para 3 Settlement and Residence Act.

I INTRODUCTION

Human trafficking is a complex issue with a wide variety of facets. The following chapters provide basic background information on this global phenomenon.

I.1 Outline of the topic and objectives of the study

Human trafficking is regarded as a modern form of slavery that takes different forms – from sexual exploitation to labour exploitation in households or in the construction industry. Human trafficking is a global phenomenon that affects women and men as well as children (IOM Austria, 2017:5). Due to the serious violation of human rights and human dignity, human trafficking is considered as one of the worst crimes (Federal Ministry for European and International Affairs, n.d.).

In order to be considered human trafficking, the three elements of action, unfair means and specific purpose must be present (Task Force on Combating Human Trafficking, n.d.:6). Specifically, this means that actions are taken that use unfair means for the purpose of exploiting another person. The manifestations of these three elements vary widely and may include:

Action	Unfair means	Purpose
<ul style="list-style-type: none">• Recruitment• Transportation• Transfer• Harboring• Receipt of persons	<ul style="list-style-type: none">• Threat/use of force• Other forms of coercion, abduction, fraud, deception, the abuse of power or of a position of vulnerability• Giving or receiving payments or benefits to achieve the consent of a person having control over another person	<ul style="list-style-type: none">• Exploitation – includes at a minimum:<ul style="list-style-type: none">- prostitution- other forms of sexual exploitation- forced labour or services- slavery or practices similar to slavery- servitude- removal of organs

Source: Art. 3 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

The crime of human trafficking has a massive impact, both on the persons affected and on society. It is therefore not surprising that human trafficking has been prohibited and the protection of trafficked persons has been addressed in various international and European instruments (IOM Austria, 2017:5). Despite these prohibitions and efforts, according to the latest available data more than 26,000 trafficked persons were registered in the 28 EU Member States in 2017–2018. Women and girls formed the most frequently registered trafficked persons, accounting for 58 per cent of all trafficked persons. The age distribution of trafficked persons shows that 32 per cent of all trafficked persons are children (European Commission, 2020a: 10, 17, 19). Although human trafficking has many different faces and can be committed in different ways, sexual exploitation was the most frequently

registered form of exploitation. This was followed by forced labour, criminal activities, slave-like conditions among domestic workers, and even trafficking for the removal of vital organs (ibid.:15,16).

All of these offences constitute serious violations of the fundamental rights of the persons affected, with far-reaching consequences for them. In this context, these include physical injuries resulting from dangerous workplace conditions, poor sanitation and a general lack of quality health care (Zimmerman and Borland, 2009:17, 170). In addition, affected individuals are often diagnosed with devastating mental health problems, even when they successfully exit the exploitative situation (Forschung und Lehre, 2021). However, there is also an enormous impact on society, which has to pay for more and additional costs related to human trafficking. These include additional law enforcement costs to prosecute perpetrators and prevent further trafficking. Furthermore, the State and society lose out on taxes and charges, so that labour exploitation – apart from the devastating consequences for the trafficked persons – is also detrimental to society, which has to compensate for these losses. Human trafficking is therefore ultimately detrimental to everyone, with the exception of the traffickers who reap the greatest profits from this criminal exploitation (European Commission, 2020c:20, 21). It is estimated that human trafficking generates approximately EUR 29 billion per year worldwide (European Commission, 2021b).¹ This business flourishes, among other reasons, because there is demand (also in the European Union) for e.g. persons providing sexual services or cheap labour for manual tasks (European Parliament, 2016; EUROPOL, 2015:26). This interplay of high profits on the perpetrator's side and the existing demand on the other side also explains why the phenomenon of human trafficking continues to exist.

The EMN study *Trafficked Third-Country Nationals: Detection, Identification and Protection in Austria*, to which this national report contributes, aims to examine national practices for the detection, identification and protection of trafficked third-country nationals. In this sense, the EMN study provides a statistical overview, highlights national policy and legal developments in the field of detection, identification and protection of trafficked persons, addresses cooperation mechanisms and identifies challenges as well as best practices.

1.2 Definitions

The study is based on the following definitions, which are based on entries in the European Migration Network Glossary on Asylum and Migration (European Migration Network, 2018):²

Dublin procedure: The process of determining the EU Member State responsible for examining an application for international protection lodged in one of the EU Member States by a third-country national under Regulation (EU) No 604/2013 (Dublin III Regulation).

Dublin transfer: In the context of this study, the (physical) transfer of an applicant to the EU Member State who is considered to be responsible for examining the merits of an application following a Dublin procedure.

¹ However, the U.S. State Department refers to an annual sum of about USD 150 billion (U.S. Department of State, 2021:36).

² The entries in the EMN Glossary use the term "victims of trafficking". IOM prefers to use the term "persons affected by trafficking in human beings", therefore the definitions from the EMN Glossary have been adapted accordingly.

International protection: In the EU context, protection that encompasses refugee status and subsidiary protection status.

National referral mechanism: Mechanism aimed at identifying, protecting and assisting persons affected by trafficking in human beings, through referral, and involving relevant public authorities and civil society.

Presumed victim of trafficking in human beings (Person presumably affected by trafficking in human beings): A person who has met the criteria of EU regulations and international Conventions but has not been formally identified by the relevant authorities (e.g. police) as a trafficked person or has declined to be formally or legally identified as trafficked.

Reflection period: A period of time determined according to national law granted to third-country nationals officially identified as persons affected by trafficking in human beings allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether (or not) to cooperate with the competent authorities.

Trafficking in human beings: The recruitment, transportation, transfer, harboring or reception of persons, including the exchange or transfer of control over those persons, by means of the 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, for the purpose of exploitation.

Vulnerable person: Minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of trafficking in human beings, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.

1.3 Methodology

The present study was conducted by the National Contact Point (NCP) Austria in the EMN within the framework of the EMN's 2021–2022 Work Programme. The study follows a common study template with a predefined set of questions developed by the EMN, in order to facilitate comparability of the findings across all Member States.

Legislative texts, national and international publications, press releases and websites were used as sources. The statistical data presented here were provided by Statistics Austria and the Criminal Intelligence Service Austria and appropriately structured by the IOM Country Office for Austria.

To supplement the information obtained from secondary research, qualitative semi-structured face-to-face interviews were conducted with experts in the fields of aliens police and crime prevention as well as with experts of an international organization and victim protection organizations. The experts listed below participated in personal interviews:

- Maryam Alemi, Project Coordinator, International Organization for Migration, Country Office for Austria;
- Isabella Chen, Deputy Director at LEFÖ-IBF – Intervention Center for Trafficked Women as well as an unnamed expert from LEFÖ-IBF – Intervention Center for Trafficked Women;
- Yasmina Pinjo, Aliens Police Department, Federal Ministry of the Interior;
- Gerald Tatzgern, Head of the Joint Operational Office combating Smuggling and Human Trafficking;
- Markus Zingerle, employee of the Institute for Women's and Men's Health, which operates the victim protection organization MEN VIA.

The following institutions provided a written input or responded to a written questionnaire enquiring about human trafficking in the context of regular migration:

- Isabella Chen, LEFÖ-IBF – Intervention Center for Trafficked Women;
- Barbara Drexler, Office of the Upper Austrian Provincial Government, Directorate of the Interior and Municipal Affairs;
- Andreas Grießler, Office of the Lower Austrian Provincial Government, Department of Police Affairs (IVWI) and Events (IVW7);
- Martin Plunger, Office of the Provincial Government of Tyrol, Citizenship Department;
- Province of Vienna;
- Alexandra Surer, Office of the Salzburg Provincial Government, Department of Elections and Citizenship.

The study was conducted by Martin Stiller (Legal Associate, IOM Country Office for Austria). The sections covering statistics were compiled by Saskia Heilemann (Research Associate, IOM Country Office for Austria).

The interviewees mentioned above deserve special thanks for sharing their knowledge and experience through personal interviews and written responses, as well as Saskia Heilemann for her valuable comments. The author wishes to thank Charlotte Irigoyen and Jonas Begemann (Interns, IOM Country Office for Austria) for various support services at different stages of the research work.

The study was prepared in close cooperation with the Federal Ministry of the Interior:

1.4 Trafficking in human beings in the Austrian context

Due to Austria's location at the centre of Europe, Austria is affected by trafficking in human beings as both a country of transit and a country of destination (Federal Ministry for European and International Affairs, n.d.), with trafficked persons originating mainly from Eastern Europe, Africa and Asia (GRETA, 2020:margin number 11). This was one of the reasons why, in 2004, the Austrian Federal Government at the time set up a Task Force on Combating Human Trafficking in order to coordinate and intensify Austrian measures against trafficking in human beings. This task force includes representatives from all relevant federal ministries and government offices, the provinces, the social partners and specialized non-governmental organizations (Task Force on Combating Human Trafficking, 2021c:6).³ The main role of the task force is to draw up national action plans on combating

³ This also includes the LEFÖ-IBF intervention agency and the MEN VIA victim protection organization (cf. Task Force on Combating Human Trafficking, 2021c:4).

human trafficking and to monitor their implementation (Federal Ministry for European and International Affairs, n.d.). The National Coordinator – a senior official at the Federal Ministry for European and International Affairs who heads up the task force – is also the National Rapporteur (European Commission, 2020b:29; GRETA, 2020:margin number 23).⁴ The active work carried out by the task force and the multidisciplinary approach taken by Austria in the fight against human trafficking were singled out for particular praise at international level (OSCE, 2019:margin number 24).⁵ Despite these important measures taken in the past and the progress achieved, the task force is of the view that efforts must be resolutely continued and expanded and/or adapted to changing conditions (Task Force on Combating Human Trafficking, 2021c:5). Accordingly, the National Action Plan 2021–2023 was adopted in July 2021. It contains over 100 goals to be implemented by 2023 by the various partners in the fight against human trafficking (Task Force on Combating Human Trafficking, 2021a).

Although Austria's status as a country of transit and destination was already known in the past (Criminal Intelligence Service Austria, 2015:8, 2016:7), none of the federal governments in the observation period of the present study (2015–2020) seem to have addressed human trafficking at all, or have done so to only a very limited extent, in their government programmes (Austrian Federal Government, 2017; Social Democratic Party of Austria, Austrian People's Party, 2012). Nevertheless, Austria saw itself as a global frontrunner in the fight against trafficking in human beings (Criminal Intelligence Service Austria, 2015:7). The fact that the fight against human trafficking is a domestic and foreign policy priority for the Austrian Federal Government seems to have been set out for the first time in the government programme of the current Federal Government – a coalition between the Austrian People's Party and the Austrian Green Party (The New People's Party and The Greens - The Green Alternative, 2020:27, 130, 139). The government programme also includes a number of measures that are specifically aimed at combating trafficking in human beings (ibid.), a comprehensive commitment to protect and support those affected by human trafficking and exploitation, and a clear commitment from the Federal Government that it will continue to implement the recommendations made by the Group of Experts on Action against Trafficking in Human Beings (GRETA), the body set up as a monitoring mechanism in Art. 1 para 2 of the Council of Europe Convention on Action against Trafficking in Human Beings (ibid.:140).^{6,7}

In the past, the issue was also taken up in parliamentary business. Most recently, apparently in July 2020, a motion for a resolution was approved unanimously in the National Council;⁸ this requested that the Federal Government "implement the measures included in the government programme to combat trafficking in human beings, especially women and children."⁹

4 On the one hand, the reporting requirement results from Art. 29 para 4 Council of Europe Convention on Action against Trafficking in Human Beings and includes the monitoring of the measures taken in Austria to combat trafficking in human beings. On the other hand, this requirement arises from Art. 19 Anti-trafficking Directive 2011/36/EU, which stipulates that rapporteurs shall assess trends in trafficking in human beings, measure results of anti-trafficking actions (including the gathering of statistical data in close cooperation with relevant civil society organizations active in this field) and report.

5 See for details on the Task Force on Combating Human Trafficking and its multidisciplinary approach also Federal Ministry for European and International Affairs, *Vortrag an den Ministerrat*. Available at www.bundeskanzleramt.gv.at (accessed 6 September 2021).

6 FLG III No. 10/2008, in the version of the federal law FLG III No. 92/2021.

7 See for this Council of Europe, *Action against Trafficking in Human Beings - GRETA*. Available at www.coe.int (accessed 15 September 2021).

8 Stenographic protocol, 47th session of the National Council of the Republic of Austria, XXVII Legislative Term, 9 July 2020 (vote on agenda items 11 to 13), p. 127. Available at www.parlament.gv.at.

9 Committee's report National Council - text of resolution, 247 of the supporting documentation, XXVII. Legislative Term. Available at www.parlament.gv.at.

At a legal level, the offences of “trafficking in human beings” (Art. 104a Criminal Code)¹⁰ and “crossborder trafficking in prostitution” (Art. 217 Criminal Code)¹¹ were added to the Criminal Code in 2004.¹² In Austria, people affected by Art. 104a Criminal Code and people covered by Art. 217 Criminal Code are regarded as trafficked persons (Sander, 2018:21). In addition, the Aliens Police Act¹³ has included the criminal offence of “exploiting a foreigner” since 2006 (Art. 116 Aliens Police Act).¹⁴ Art. 104a Criminal Code was adapted to the requirements of the Anti-trafficking Directive¹⁵ in 2013.¹⁶ As far as can be ascertained, no further amendments were made to these offences between 2015 and 2020.

10 FLG No. 60/1974, in the version of the federal law FLG I No. 159/2021. According to this law, anyone who recruits, harbours, or otherwise receives, transports, offers or passes on to another a person of full age with the intention that he or she will be exploited, using, for example, violence or dangerous threats, is to be punished with imprisonment from six months to five years. In aggravating circumstances, the law provides for corresponding longer custodial sentences.

11 According to this provision, essentially anyone who leads a person into prostitution in a country other than that of which he or she is a national or in which he or she has his or her habitual residence, recruits him or her for this purpose, deceives him or her or coerces him or her into prostitution by force or dangerous threat, is to be punished. The custodial sentence ranges from six months to ten years.

12 Act Amending the Criminal Code 2004, FLG. I No. 15/2004.

13 FLG I No. 100/2005, in the version of the federal law FLG I No. 54/2021.

14 This offence essentially states that anyone who, with the intention of enrichment, takes advantage of the specific dependency of a foreigner and exploits this person is to be punished. The penal framework is up to three years imprisonment; in aggravating circumstances – such as exploitation of many foreigners or if the act results in the death of a foreign person – a corresponding longer prison sentence is also possible.

15 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 and replacing Council Framework Decision 2002/629/JHA, OJ L 101, p. 1–11.

16 Sexual Offences Amendment Act 2013, FLG. I No. 116/2013.

2 STATISTICAL OVERVIEW OF HUMAN TRAFFICKING IN AUSTRIA

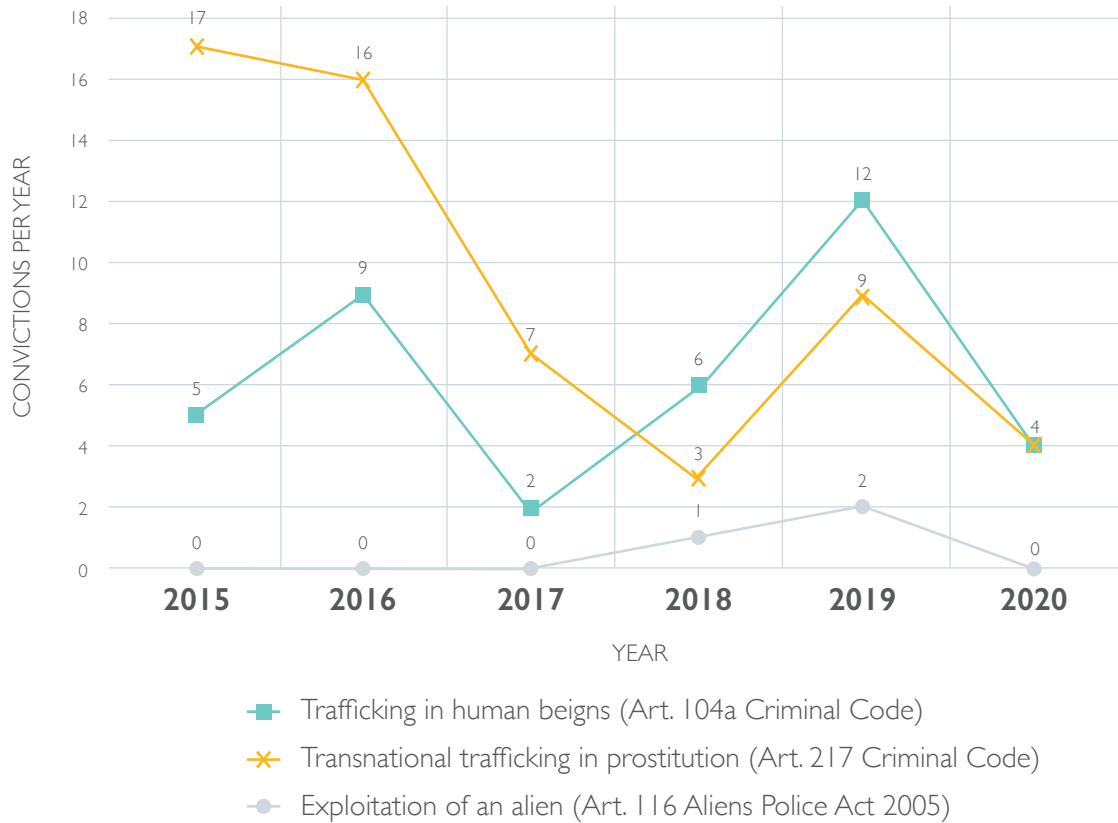
This chapter presents statistical data on trafficked persons in Austria. Although this is only statistical data, it may help to make the fate of the people behind the statistics more tangible and to illustrate the fact that human trafficking affects women, men and children of all ages all over the world.

2.1 Conviction statistics

Although the various provisions mentioned in chapter 1.4, that are criminalizing various forms of human trafficking in Austria, have been viewed positively from an international perspective, it has also been noted that the application of these legal regulations presents a challenge. The offences in Art. 104a and Art. 217 Criminal Code appear to be particularly problematic, since the offence of “crossborder trafficking in prostitution” is often used not to pursue the cases originally envisaged but as an alternative to the offence of “trafficking in human beings”. This assessment seems to be related to the fact that the elements of the offence in Art. 217 Criminal Code are easier to prove, with the result that this offence is used more frequently in practice (Sander, 2018:21). It was therefore suggested that, for example, explanatory notes on the particular features of the individual offences be provided in order to ensure that cases of human trafficking are properly evaluated (OSCE, 2019:margin number 21).

Statistics do not reveal whether the convictions under Art. 217 Criminal Code are indeed related to the offence being easier to prove. However, it can clearly be seen that the significant difference in convictions as seen at the start of the observation period has declined over the past few years. In fact Figure 1 below, which shows annual convictions, reveals that in 2020, the same number of people were convicted under Art. 104a Criminal Code as under Art. 217 Criminal Code (four convictions in each case). Moreover, a relatively low number of convictions is evident overall; regret has been expressed about this fact at international level (ibid.:margin number 51).

Figure 1: Number of annual convictions in Austria under Art. 104a and Art. 217 Criminal Code as well as Art. 116 Aliens Police Act 2005

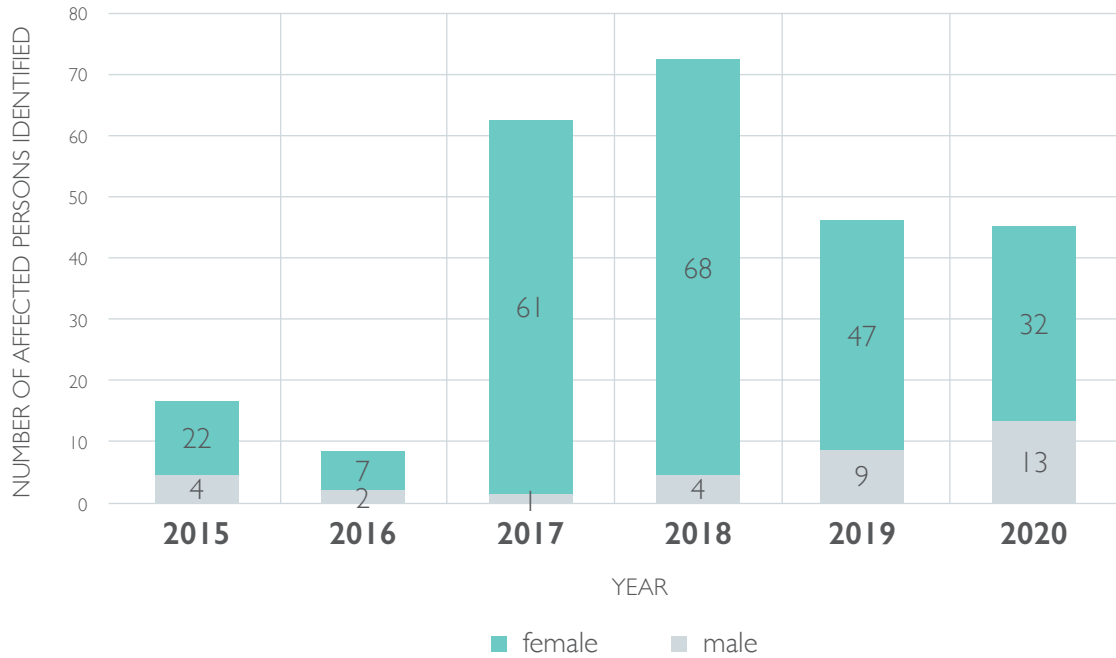


Source: Statistics Austria, n.d.

2.2 Statistics of those affected

Austrian police crime statistics on Art. 104a and Art. 217 Criminal Code show that a total of 270 third-country nationals were identified as trafficked persons in Austria over the observation period of the study (2015–2020). The number of trafficked persons identified per year varied significantly at times, with the highest number (72) recorded in 2018 and the lowest (9) in 2016. Most trafficked persons were female, with males accounting for just a fraction. Figure 2 shows that the number of identified trafficked persons decreased at the beginning of the observation period before rising again in 2017 and reaching its peak in 2018. A declining trend then set in, which continued until 2020.

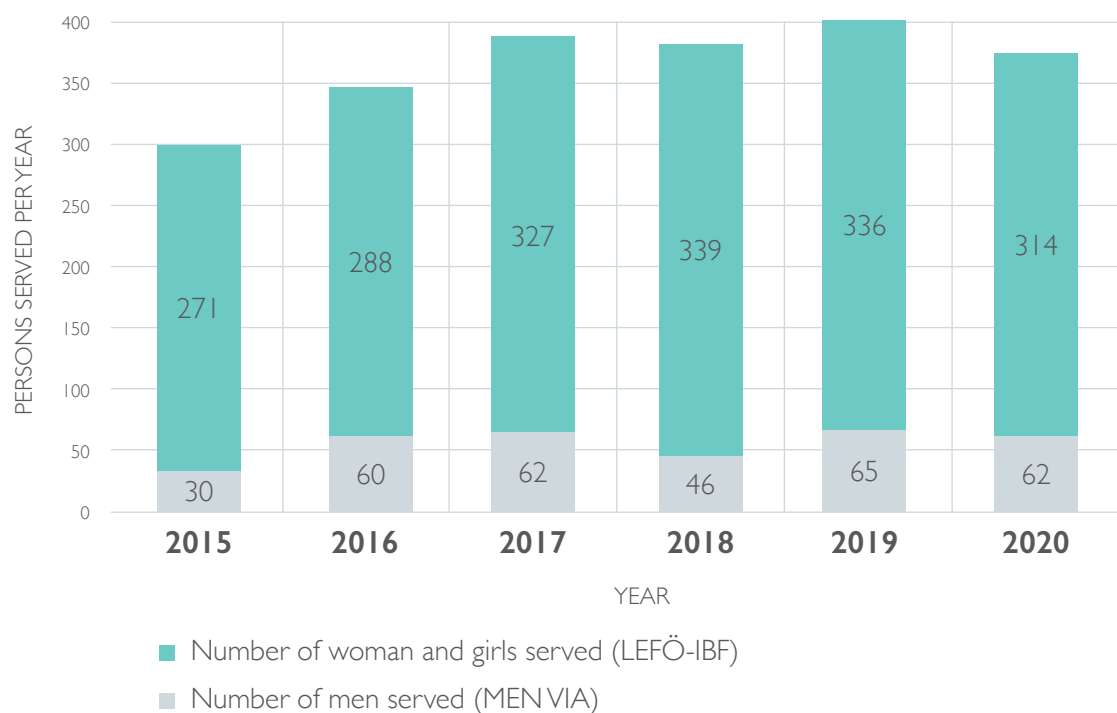
Figure 2: Number of third-country nationals identified as trafficked persons in Austria per year, disaggregated by gender (2015–2020)



Source: Data provided by the Federal Ministry of the Interior; 28 September 2021.

Looking at the number of clients of the victim protection organization MEN VIA and the intervention agency LEFÖ-IBF (Figure 3), and excluding the number from the remaining organizations, it is apparent that the number of identified trafficked persons is significantly lower than the number of clients. Among other things, this can be explained by the fact that not every client is ultimately identified as trafficked. The number of clients of MEN VIA and LEFÖ-IBF was subject to fluctuations over the observation period. Most recently however, from 2019 onwards, these numbers also fell, resulting in a similar trend to that for identified trafficked persons.

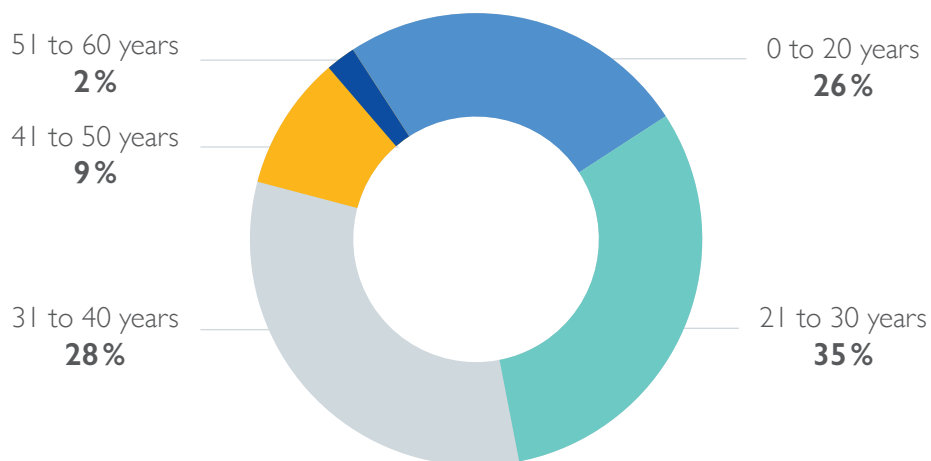
Figure 3: Number of trafficked persons served by LEFÖ-IBF and MEN VIA (2015–2020)



Source: Institute for Women’s and Men’s Health, n.d.a:60, n.d.b:47, n.d.c:70, n.d.d:74, n.d.e:78, n.d.g:113; LEFÖ – Counselling, Education and Support for Migrant Women, 2016:12, 2017:13, n.d.b:18, n.d.c:5, n.d.d:2, n.d.e:3.

The age distribution of trafficked third-country nationals (Figure 4) shows that most (35%) were between 21 and 30 years old during the observation period. The age group of 31 to 40 year olds was behind at 28 per cent, and just ahead of the under 20 age group, which accounted for 26 per cent during the observation period. The number of identified trafficked persons over 40 years old was significantly lower; in total, 11 per cent of trafficked persons identified during the observation period were over 40 years old. The youngest trafficked person identified in Austria during the observation period was 3 years old, while the oldest was 55 years old.

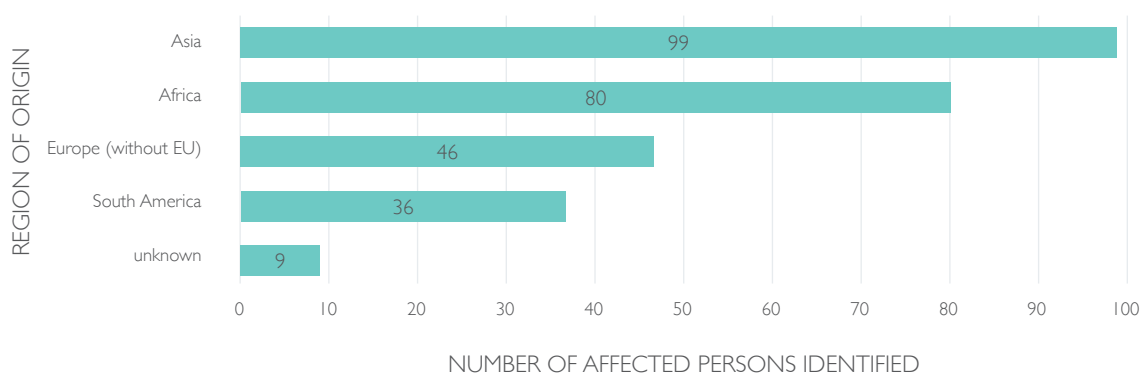
Figure 4: Age distribution of third-country nationals identified as trafficked persons in Austria (2015–2020)



Source: Data provided by the Federal Ministry of the Interior; 28 September 2021.

Statistics on the origin of trafficked persons (Figure 5) show that most of those identified in Austria during the observation period had citizenship of an Asian country – 99 people in total. A total of 80 trafficked persons had citizenship of an African country. Trafficked persons also included people with citizenship of a European country (excluding the European Union), but these were far fewer in number (46 people) than those from Asia or Africa. Finally, 36 trafficked persons originated from a South American country and the citizenship of 9 people was undetermined.

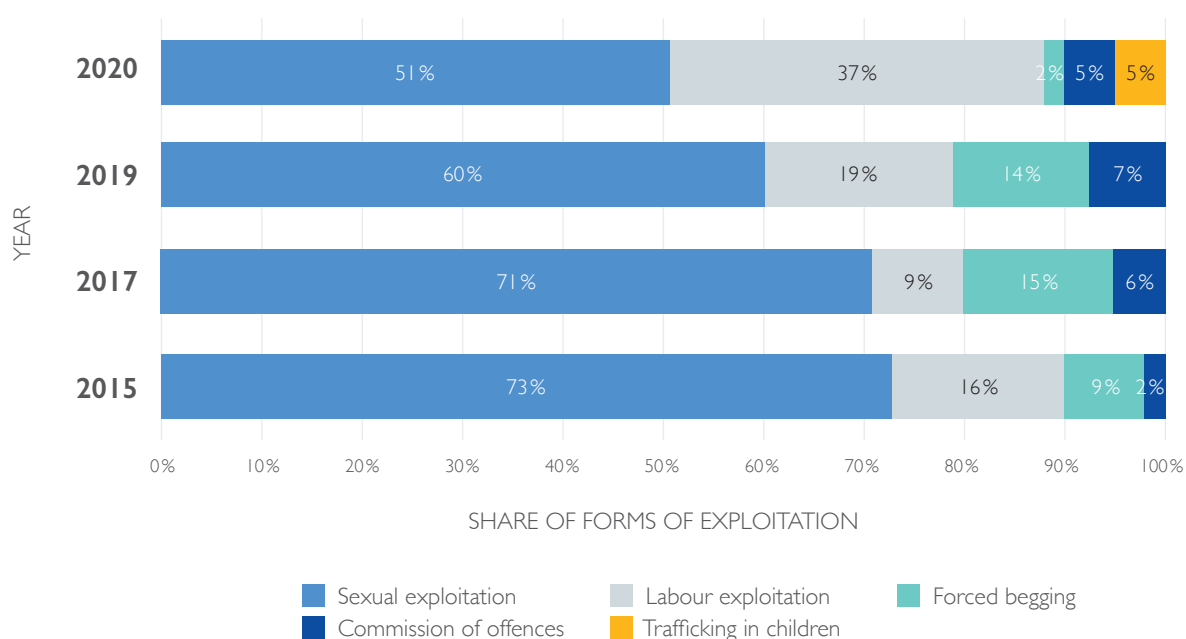
Figure 5: Regions of origin of third-country nationals identified as trafficked persons in Austria (2015–2020)



Source: Data provided by the Federal Ministry of the Interior; 28 September 2021.

The forms of exploitation pursuant to Art. 104a Criminal Code (human trafficking) are not automatically recorded in police crime statistics,¹⁷ but is manually evaluated for the status reports on the smuggling of migrants and human trafficking compiled by Criminal Intelligence Service Austria.¹⁸ As can be seen in Figure 6, sexual exploitation continued to be the most frequent form of exploitation in Austria according to the most recent figures. However, it is clearly evident that labour exploitation has increased very sharply in recent years.

Figure 6: Forms of exploitation through human trafficking in Austria based on completed police investigations (2015–2020)¹⁹



Note: From 2015 to 2019, data were published only every two years. In 2020, data on child trafficking was provided for the first time.
 Source: Criminal Intelligence Service Austria, 2016:11, 2018:11, 2020:24, 2021:29.

¹⁷ Written input: Criminal Intelligence Service Austria, 28 September 2021.

¹⁸ Among other things, the Criminal Intelligence Service Austria is responsible for the nationwide fight against crime and is the national and international contact partner for police cooperation. As the central office in Austria, it supports all criminal intelligence service in the provinces and subordinate police departments by providing assistance services, support services and controlling. See Criminal Intelligence Service Austria, Das BK im Überblick. Available at www.bundeskriminalamt.at (accessed 6 September 2021).

¹⁹ This chart is based on data that includes third-country nationals as well as all other persons exploited through human trafficking in Austria.

3 DETECTION AND IDENTIFICATION OF AFFECTED PERSONS IN AUSTRIA

A fundamental requirement for the protection of trafficked persons is that the precarious situation of these people is detected and that they are subsequently identified as trafficked persons.

It has been noted that this clear separation between “detection” and “identification” of trafficked persons exists to only a limited extent in the Austrian context. Particularly when the police, who are ultimately responsible for identification,²⁰ are also involved in detection, clear separation is often difficult²¹ but also not necessary. This distinction is also of only minor importance for care and support services (see chapter 4.3). This is because the services available – such as accommodation in shelters – are provided to trafficked persons as soon as a presumed human trafficking situation is suspected,²² with the result that identification is not necessary for receiving them. Although the distinction between “detection” and “identification” therefore appears to be slightly blurred in the Austrian context, the LEFÖ-IBF expert stated that – at least outside the setting of detention pending removal (see chapter 4.2) – it is not necessary to separate these two steps in a more concrete and formal way in order to provide better protection for trafficked persons.²³

3.1 Detection of human trafficking

The following chapters set out the responsibilities of the authorities and the measures taken to detect human trafficking situations in Austria.

3.1.1 Jurisdiction

According to the expert from the intervention agency LEFÖ-IBF, in principle, anyone can detect cases of human trafficking.²⁴ The number of institutions and their employees who are trained to actually recognize potential cases of human trafficking is significantly lower, however. As a consequence, it often seems to be a matter of luck whether authorities or, for example, social workers who come into contact with trafficked persons in a different setting²⁵ ask questions and draw the right conclusions.²⁶

In Austria, trafficking in human beings is seen as a “control offence” (*Kontrolldelikt*),²⁷ in other words an offence that is only detected by police checks and would otherwise go unnoticed.²⁸ A decisive factor in control offences is the intensity of the checks, with the result that the authority does not keep any files or conduct any investigations

20 Interview with Yasmina Pinjo, Federal Ministry of the Interior, 9 September 2021.

21 Interview with Maryam Alemi, IOM Austria, 1 September 2021.

22 Interview with Markus Zingerle, MEN VIA Support for men who are affected by human trafficking, 23 August 2021.

23 Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021.

24 Ibid.

25 In this context, individuals who turn to the relevant centre for help in another area of life – for example, medical help or help with rent – should be mentioned (Interview with Maryam Alemi, IOM Austria, 1 September 2021).

26 Interview with Maryam Alemi, IOM Austria, 1 September 2021.

27 Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021.

28 Criminal Intelligence Service Austria, *Delikte und Ermittlungen*. Available at www.bundeskriminalamt.at (accessed 3 September 2021).

if few or no checks are carried out (KOK – German NGO Network against Trafficking in Human Beings, 2011:112). This view is likely to also be related to the fact that the existing police units combating trafficking in human beings have traditionally tended to police red light districts. Accordingly, sexual exploitation related to trafficking in human beings is uncovered more often because more regular checks are carried out in this area.²⁹ There are no checks of this kind in other potential areas of human trafficking, for example among potentially trafficked au pairs. It has therefore been proposed that also other government offices should be provided with more inspection opportunities so that they can uncover human trafficking in areas that are rarely checked by the police, if at all.³⁰ With respect to labour exploitation, in particular, it is important that the Finance Police or the Labour Inspectorate, for example, detects trafficking in human beings in order to be able to involve the prosecution authorities (Ludwig Boltzmann Institute, 2021:2).³¹ In recent years, a training course has been held once a year for tax office staff, focusing in particular on indicators of labour exploitation and suspicious financial transactions in order to detect suspicious cases and persons trafficked for various purposes and to take official action in order to improve cooperation with the criminal investigation department of the police and victim protection organizations (Task Force on Combating Human Trafficking, 2021c:35). In addition, the issue of human trafficking has been a separate component of the basic training at the Labour Inspectorate in recent years (ibid.:36).

3.1.2 Detection in asylum and migration procedures

In order to detect trafficked persons, particular importance is also attached to proactive screening in asylum procedures. The basic rule is that the earlier specific needs are detected, the better they can be assessed (LEFÖ-IBF, n.d.:11). Therefore, the Federal Office for Immigration and Asylum uses checklists in order to be able to detect trafficked persons more easily (GRETA, 2020:margin number 223; Schlintl and Sorrentino, 2021:60). The opinion of victim protection organizations also plays a key role in asylum procedures. Only recently, in a case handled by LEFÖ-IBF, the Constitutional Court found that the assumed lack of credibility of the statement made by the trafficked persons combined with the failure to take proper account of the LEFÖ-IBF statement on record is to be considered an arbitrary decision (Constitutional Court, 2020). Notwithstanding Austrian efforts, the report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) concluded that the detection of people in vulnerable situations, such as trafficked persons, in Austrian asylum procedures tends to be random and unsystematic, for instance only when vulnerabilities are clearly visible (OHCHR, 2018:margin number 22). The assessment that the detection of trafficked persons in asylum procedures is limited, particularly in the early stages, (Schlintl and Sorrentino, 2021:60) is therefore not surprising. However, if an application for international protection is rejected in Austria, it is mandatory that the granting of a residence permit pursuant to Art. 57 Asylum Act 2005³² (see chapter 4.4) be reviewed before the associated return decision is issued (Art. 58 para 1 Asylum Act 2005; Filzwieser et al., 2016: § 10 AsylG K6, § 57 AsylG K1), so that trafficked persons may be identified in the course of this examination. But the review seems to be restricted

29 In this regard, the expert from MENVIA noted that in the development of the modern discourse on trafficking in human beings, the focus was predominantly on trafficking in women for the purpose of exploitation in prostitution and that “cross-border trafficking for prostitution” already existed before the criminal offence of “trafficking in human beings”. The original task of the responsible police units was therefore to control the red light milieu (Interview with Markus Zingerle, MENVIA Support for men who are affected by human trafficking, 23 August 2021).

30 Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021; Interview with Markus Zingerle, MENVIA Support for men who are affected by human trafficking, 23 August 2021.

31 See also Federal Ministry for Europe, Integration and Foreign Affairs, n.d.:41.

32 FLG I No. 100/2005, in the version of the federal law FLG I No. 110/2021.

to asking asylum seekers whether there are pending criminal proceedings related to human trafficking, which is a basic prerequisite for the granting of a residence permit and whether the legally required substantiated statement of the provincial police directorate exists.³³ Beyond the determination of this one basic prerequisite, however, no further review is carried out.³⁴ It should be noted, however, that the Federal Office for Immigration and Asylum offers comprehensive training for staff members in charge of the procedure. These trainings are organized and held in cooperation with IOM, Country Office for Austria, and LEFÖ-IBF and enable all staff members in charge of the procedure to recognize possible indicators of a trafficked person and to refer them to the relevant authorities.³⁵

In contrast to the asylum procedure, proactive screening of this kind does not seem to be carried out in regular migration procedures. In Austria, responsibility for decisions in regular migration procedures lies with the provinces, specifically with the governors of the provinces; however, they may authorize the district administrative authorities by ordinance³⁶ to decide on all or specific cases (Art. 3 para 1 Settlement and Residence Act).³⁷ The majority of provinces that answered the questionnaire created for this study indicated that there is no proactive screening in migration procedures.³⁸ However, the Office of the Provincial Government of Lower Austria stated that when cases of trafficking are suspected, the competent authorities (Federal Office for Immigration and Asylum, provincial police directorate) are contacted or clarification is sought from the relevant embassies. The competent unit at the Federal Ministry of the Interior may also be contacted.³⁹ Largely speaking, although there are awareness-raising measures in place in the provinces, no specific training is provided for employees who deal with migration procedures.⁴⁰ However, the Office of the Provincial Government of Salzburg indicated that a training course on human trafficking is currently being planned for Salzburg settlement and residence authorities.⁴¹

3.1.3 Self-reporting, human trafficking hotline and direct information-sharing

As already mentioned in chapter 3.1.1 in Austria, trafficking in human beings is seen as a control offence. However, reference should also be made in this context to a German study conducted in 2011 that examined the development of robust support structures for persons trafficked for labour exploitation. This study noted that identification is not solely attributable to the proactive approach of inspection authorities, but was also initiated by information from third parties or trafficked persons themselves, who came forward or took the initiative and asked for support from acquaintances, advice centres or authorities. Accordingly, in addition to the work carried out by inspection authorities, the support services provided by third parties are extremely important when it comes to identifying and confirming an initial suspicion of human trafficking, as is proactive self-reporting. The study also found that the initiative that led to the individual investigation proceedings developed from a variety

33 Written input: Federal Ministry of the Interior, 22 February 2022.

34 Interview with Maryam Alemi, IOM Austria, 1 September 2021.

35 Written input: Federal Ministry of the Interior, 22 February 2022.

36 See for example the province of Lower Austria, PLG No. 87/2017.

37 FLG I No. 100/2005, in the version of the federal law FLG I No. 110/2021.

38 Written input: Office of the Tyrolean Provincial Government, 8 September 2021; Written input: Office of the Upper Austrian Provincial Government, 15 September 2021.

39 Written input: Office of the Lower Austrian Provincial Government, 14 September 2021.

40 Written input: Office of the Tyrolean Provincial Government, 8 September 2021; Written input: Office of the Upper Austrian Provincial Government, 15 September 2021.

41 Written input: Office of the Salzburg Provincial Government, 21 September 2021.

of situations. Mention was made, for example, of (anonymous) reports by trafficked persons themselves or by third parties, initial suspicions following a successful check, and random events such as violent confrontations at the workplace or accidents at work. These different catalysts that trigger investigation proceedings should be taken into account when developing robust structures for trafficked persons (KOK – German NGO Network against Trafficking in Human Beings, 2011:109, 387). Against this backdrop, encouraging the self-reporting of trafficked persons seems to be an important issue not just in Austria, but throughout Europe and presumably worldwide,⁴² particularly because trafficked persons do not usually self-identify as trafficked (Burkert, 2020:13; Frei, 2014:4). It therefore seems that measures that create awareness and may ultimately also lead to trafficked persons self-reporting to the competent authorities are of essential importance. In connection with self-reporting by trafficked persons, the focus in Austria is on relevant campaigns launched, for example, by non-governmental organizations active in the fight against trafficking in human beings. An expert from the victim protection organization MEN VIA also explained in this regard that part of the funding is earmarked for networking with key players such as hospitals or organizations in the homeless sector. Campaigns of this kind may subsequently also lead to (self-)reporting by trafficked persons. In addition, flyers and information brochures are used to educate trafficked persons about human trafficking and to let them know about the organizations they can turn to for help.⁴³

In this context, reference should also be made to the human trafficking hotline⁴⁴ set up in Austria by Criminal Intelligence Service Austria, which is available to receive information round the clock on +43 677 61 34 34 34. An email address (menschenhandel@bmi.gv.at) is also available to receive reports (Criminal Intelligence Service Austria, n.d.). Both services can be contacted anonymously if there are any suspicions of human trafficking (IOM Austria, 2017:35). The human trafficking hotline facilitates self-reporting and generally makes it easier. When it comes to self-reporting, however, the problem often arises that trafficked persons are reluctant to contact the Austrian police, for example due to negative experiences with the police in their country of origin or due to fear of consequences. These circumstances make it seem fairly unlikely that trafficked persons would report themselves to the police.⁴⁵ The human trafficking hotline, in particular, is regularly publicized in the media and public relations work on human trafficking carried out by the Federal Ministry of the Interior and referenced in information folders about the issue (Task Force on Combating Human Trafficking, 2021c:30).

In connection with self-reporting, according to an expert from the intervention agency LEFÖ-IBF, it should be pointed out that trafficked persons cannot leave situations in which they are being exploited unless reliable support services are available to them, which would also require secure residence in Austria, for example.⁴⁶

Austria also relies on the direct transfer of information. Au pairs, for example, are issued with information leaflets by the Austrian embassy that specify organizations to which trafficked au pairs can turn for help.⁴⁷ In addition,

42 Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021.

43 Interview with Markus Zingerle, MEN VIA Support for men who are affected by human trafficking, 23 August 2021.

44 The aim is to have a central competence and not a separate hotline for each province. In addition, the Criminal Intelligence Service Austria has the possibility to delegate investigations in specific cases, so that, for example, a suspicious case in Lower Austria is delegated to the locally responsible Lower Austrian criminal intelligence service. The Criminal Intelligence Service Austria, which in such cases also operationally accompanies and supports the investigations of the criminal intelligence service in the provinces, is then to be reported to on the case.

45 Interview with Maryam Alemi, IOM Austria, 1 September 2021.

46 Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021.

47 Interview with Maryam Alemi, IOM Austria, 1 September 2021.

the Task Force on Combating Human Trafficking has been working on an information brochure about labour law for au pairs since 2020 (ibid.:7). No such system seems to exist for seasonal workers. In this connection, however, the possibility of visiting these people at their place of work has been mentioned.⁴⁸ For asylum seekers potentially affected by human trafficking, information material from relevant counselling organizations – such as LEFÖ-IBF or MEN VIA – is provided in several languages both in the federal reception centres as well as in all organizational units of the Federal Office for Immigration and Asylum, and adequate psychological support is offered if needed. These services have also been ensured since the Federal Agency for Reception and Support Services as a Private Limited Company took over the provision of material reception conditions on 1 December 2020.⁴⁹

3.1.4 Awareness-raising and training measures

In Austria, raising public awareness of human trafficking also plays a key role and this has been positively perceived at international level (OSCE, 2019:margin number 26). In this context, mention should be made of the National Action Plan on Combating Human Trafficking 2021–2023, for example, which proposes initiatives such as an awareness-raising poster campaign that focuses on the various forms of human trafficking (Task Force on Combating Human Trafficking, 2021a:19). In addition, an annual conference on the issue has been proposed (ibid.:17) – a measure that has already been successfully implemented in recent years (Task Force on Combating Human Trafficking, 2021c:21).

Since raising awareness and detecting signs of human trafficking are intended to apply to all types of exploitation (LEFÖ-IBF, n.d.:12), training for authorities that are likely to come into contact with human trafficking is of fundamental and crucial importance in Austria. IOM, Country Office for Austria, provides training for police officers, for example, as well as training courses for employees at the Federal Office for Immigration and Asylum, in which a trainer from the Federal Office for Immigration and Asylum is also involved,⁵⁰ and the Federal Administrative Court as part of the “Asyl-Train II”⁵¹ project with the support of external experts (Ebner, 2021:48).⁵² In addition, training on identifying trafficked persons in asylum procedures has been a focus of the training programme of the Federal Office for Immigration and Asylum (Task Force on Combating Human Trafficking, 2021c:32) as well as trainings on indicators of human trafficking. In these trainings, case studies from practice are also worked through together with the participants.⁵³ Trainings are also provided for employees in the federal reception centres (GRETA, 2020:margin number 223).⁵⁴ Furthermore, MEN VIA conducts a variety of other selective trainings and lectures.⁵⁵ LEFÖ-IBF places great importance on being involved in the process

48 Ibid.

49 Interview with Yasmina Pinjo, Federal Ministry of the Interior, 9 September 2021.

50 Ibid.

51 This IOM-led project aims to improve the quality in the Austrian asylum and migration system, specifically in the areas of recognizing and protecting persons affected by human trafficking and enhancing intercultural competences in theory and practice. The project is supported by several external experts, such as the Criminal Intelligence Service Austria, LEFÖ-IBF, MEN VIA, the Child and Youth Welfare Service “Drehscheibe” of the City of Vienna MAG ELF and the IZ (Verein zur Förderung von Vielfalt, Dialog und Bildung). See IOM Austria, n.d.; Written input: Province of Vienna, 24 September 2021.

52 Interview with Maryam Alemi, IOM Austria, 1 September 2021.

53 Interview with Yasmina Pinjo, Federal Ministry of the Interior, 9 September 2021.

54 This includes the initial reception centres and the distribution centres, from where persons seeking asylum are distributed to accommodation in the individual provinces (Art. 1 subpara 4 and 5 Federal Basic Care Act 2005, FLG No. 405/1991, in the version of the federal law FLG I No. 53/2019; oesterreich.gv.at, Living in Austria: Asylum procedure. Available at www.oesterreich.gv.at (accessed 20 September 2021).

55 Interview with Markus Zingerle, MEN VIA Support for men who are affected by human trafficking, 23 August 2021.

of developing handbooks for decision-makers since these handbooks are often used as a reference source.⁵⁶ The Province of Vienna appears to focus on child trafficking and regularly holds training courses and awareness-raising events on this issue for all child and youth welfare staff.⁵⁷ In addition, between 2015 and 2016 several representatives of the Province of Vienna were involved in drawing up the “framework for action for identifying and dealing with potential victims of child trafficking”,⁵⁸ which was developed by the working group on child trafficking set up by the then Federal Ministry of Families and Youth.⁵⁹

In addition, these trainings also address those indicators that suggest human trafficking. These indicators are collected and a corresponding list of indicators is compiled (Task Force on Combating Human Trafficking, 2021c:20). This list of indicators, which is continuously adapted as needed, is frequently presented in training courses⁶⁰ and used by various authorities, such as the Labour Inspectorate, tax authorities and the police (ibid.:40). Indicators are also collected at the level of the victim protection organizations involved.⁶¹

3.2 Identification of trafficked persons

Identification of an individual as a trafficked person is the process of confirming and characterizing a situation of trafficking in human beings for further implementation of support (European Migration Network, 2018:197).

Whereas the detection of trafficked persons is not the responsibility of the police alone, but also tends to take place in the informal sphere (see chapter 3.1), the responsibility for combating human trafficking and identifying trafficked persons lies with the police, specifically with the provincial police directorates in the individual provinces.⁶² The provincial police directorates include, among others, the criminal intelligence service in the provinces as criminal investigation institutions, which in turn are composed of specialist investigation offices, including Investigation Office 10 for Smuggling of Migrants and Human Trafficking. All police officers as well as employees of the Federal Office for Immigration and Asylum are obliged by the official principle to report suspicious cases to the competent criminal intelligence service in the provinces or to take up suspicious cases in their own area of responsibility.⁶³ The criminal intelligence service in the provinces subsequently decide whether they will take over the investigation or whether they will assist the relevant police stations in an advisory capacity. Each provincial criminal intelligence service is obliged to report to its superior body, Criminal Intelligence Service Austria, which is also responsible for international police collaboration.⁶⁴ The MEN VIA expert stated that police officers at police stations are given a general overview during their training that enables them to detect trafficking in human beings. By contrast, staff in the criminal intelligence service in the provinces receive extensive training on the various aspects of human trafficking.⁶⁵

56 Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021.

57 Written input: Province of Vienna, 24 September 2021.

58 See for this Federal Ministry of Families and Youth, n.d.

59 Written input: Province of Vienna, 24 September 2021.

60 Interview with Yasmina Pinjo, Federal Ministry of the Interior, 9 September 2021.

61 Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021; MEN - Men's Health Center, n.d.:2.

62 Interview with Maryam Alemi, IOM Austria, 1 September 2021; Interview with Yasmina Pinjo, Federal Ministry of the Interior, 9 September 2021.

63 Interview with Yasmina Pinjo, Federal Ministry of the Interior, 9 September 2021.

64 Interview with Gerald Tatzgern, Federal Ministry of the Interior, 24 September 2021.

65 Interview with Markus Zingerle, MEN VIA Support for men who are affected by human trafficking, 23 August 2021.

In respect of the provision of care and support services the identification process is done by the victim support organizations LEFÖ-IBF and MEN VIA.⁶⁶ The victim support organizations are not obliged to contact the police immediately. This step can be taken at a later point in time, for example after an initial basis of trust has been created through discussion between staff members of the victim support organizations and the presumed trafficked person.⁶⁷ In Austria, identification by the authorities as a trafficked person or collaboration with the authorities⁶⁸ is, in general, not a prerequisite for granting the recovery and reflection period⁶⁹ or care and support services.⁷⁰

66 Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021; Interview with Markus Zingerle, MEN VIA Support for men who are affected by human trafficking, 23 August 2021.

67 Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021.

68 Interview with Gerald Tatzgern, Federal Ministry of the Interior, 24 September 2021.

69 In this context, however, it was pointed out that especially during detention pending removal the suspicion must be well founded and also the police must be convinced of the existence of the trafficking situation, so that the detention pending removal is ended by granting the recovery and reflection period (Interview with Markus Zingerle, MEN VIA Support for men who are affected by human trafficking, 23 August 2021).

70 Interview with Maryam Alemi, IOM Austria, 1 September 2021; Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021.

4 PROTECTION OF (PRESUMED) TRAFFICKED PERSONS IN AUSTRIA

The following chapters provide an overview of how trafficked persons are protected in Austria and therefore also look at questions such as which support services are offered in Austria and the conditions under which trafficked persons have access to a residence permit.

4.1 (National) referral mechanism

In addition to the Council of Europe Convention on Action against Trafficking in Human Beings, the European Commission has also identified the creation of a national referral mechanism as a priority. Accordingly, Member States should ensure that they establish formal, functioning national referral mechanisms, which describe procedures to improve the identification, transfer and protection of and support for trafficked persons and involve all relevant public authorities and civil society (European Commission, n.d.:6). The EU Strategy on Combatting Trafficking in Human Beings 2021–2025 also invites Member States to improve the functioning of their national referral mechanisms. In addition, this strategy provides for a European referral mechanism (European Commission, 2021a:16,17).

There are differing views on the existence of a referral mechanism in Austria. GRETA stated that although Austria has had a national referral mechanism for trafficked children since 2016,⁷¹ there is still no such mechanism in place for trafficked adults (GRETA, 2020:margin number 221).⁷² The current National Action Plan on Combating Human Trafficking can also be interpreted along these lines; “for the first time”, this plan provides for the setting up of a dedicated working group in order to deal with, for example, “establishing national referral mechanisms and reporting models” (Task Force on Combating Human Trafficking, 2021a:7). As a result, the current National Action Plan on Combating Human Trafficking also includes the objective of “examining the development of an NRM [national referral mechanism] in the area of victim protection” (ibid.:42). In this context, the expert from the Federal Ministry of the Interior explained that the decree issued by the Criminal Intelligence Service Austria, which governs the procedure in suspected cases with binding force for the officials of the public security service, provides an important basis. Ultimately, this only affects the internal processes at the Federal Ministry of the Interior, meaning there is no comprehensive, formalized national referral mechanism as required by the GRETA Commission or the Organization for Security and Co-operation in Europe (OSCE) that would also involve other relevant actors on a mandatory basis, such as child and youth welfare in relation to child trafficking (GRETA, 2020:margin number 221, 229; OSCE, 2019:margin number 36).⁷³ According to the expert from IOM, Country Office for Austria, a national referral mechanism should provide for the involvement of a larger number of players,⁷⁴ in order to create the possibility to recognize even more trafficked persons. In Austria, the police and LEFÖ-IBF currently cooperate well through joint exchanges and referrals. However, trafficked persons in Austria are unable to have their classification as (non-)trafficked persons, which is carried out by the police

71 Federal Ministry of Families and Youth, n.d.

72 See also interview with Maryam Alemi, IOM Austria, 1 September 2021 and OSCE, 2019:36.

73 Interview with Yasmina Pinjo, Federal Ministry of the Interior, 9 September 2021.

74 In this context, the medical or educational sector; for example, should be mentioned.

or LEFÖ-IBF, reviewed by a higher authority, such as a court, as is possible in some States. In the expert's view, these facts indicate the absence of a national referral mechanism.⁷⁵

By contrast, the United States Department of State asserts that a national referral mechanism has been implemented in Austria since November 2018 (U.S. Department of State, n.d.). The LEFÖ-IBF expert holds a similar view, believing that a national referral mechanism is basically in place. A key factor for her in this regard is the fact that the decree requires the police to refer trafficked persons to victim protection organizations and that data sharing is also regulated by the Security Police Act.⁷⁶ LEFÖ-IBF is available 24 hours a day throughout Austria to receive these trafficked persons who have been referred to the agency.⁷⁷

4.2 Recovery and reflection period

According to Art. 13 para 1 Council of Europe Convention on Action against Trafficking in Human Beings, each party is obliged to make provision in its national law for the granting of a recovery and reflection period of at least 30 days where there is concrete evidence that the individual is a trafficked person. The period to be provided must be sufficiently long to allow the person concerned to recover and escape the influence of traffickers "and/or to make an informed decision as to whether to cooperate with the competent authorities."⁷⁸ During this period, no residence-terminating measures may be enforced against them.

In Austria, the non-statutory duration of the recovery and reflection period, once the police or public prosecutor's office has been made aware of the suspected case,⁷⁹ is 30 days (Task Force on Combating Human Trafficking, 2017:6 et seq.). This reflection period has been regulated in a decree by the Criminal Intelligence Service Austria (Planitzer et al., 2011:76), according to which the authorities must not take any measures to terminate the stay during this time (Austrian Ombudsman Board, 2019:143).⁸⁰ The expert from the Federal Ministry of the Interior has stated that, at least within the Federal Ministry of the Interior, the decree regulates the 30-day reflection period for all involved organizational units and is known to all involved offices.⁸¹ She was therefore firmly of the opinion that the institutional framework takes into account the rights of the affected individuals. The fact that this issue is only regulated in a decree instead of in a statutory regulation was criticized in the synthesis report on the implementation of Directive 2004/81/EC⁸² and it was suggested that this constituted a possible violation of rights by Austria (Academic Network for Legal Studies on Immigration and Asylum in Europe, n.d.:16). In addition, there have been reports that trafficked persons do not always appear to have been informed of their right to a reflection period (GRETA, 2020:margin number 249; U.S. Department of State, n.d.). Austria has therefore been called upon to establish the recovery and reflection period in law (GRETA, 2020:margin number 250; OSCE, 2019:margin number 39). The intervention agency LEFÖ-IBF, which is

75 Interview with Maryam Alemi, IOM Austria, 1 September 2021.

76 FLG No. 566/1991, in the version of the federal law FLG I No. 148/2021.

77 Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021.

78 Art. 13 para 1 Council of Europe Convention on Action against Trafficking in Human Beings.

79 Interview with Gerald Tatzgern, Federal Ministry of the Interior, 24 September 2021.

80 Since 2021, an updated version of this decree exists (Interview with Yasmina Pinjo, Federal Ministry of the Interior, 9 September 2021).

81 Interview with Yasmina Pinjo, Federal Ministry of the Interior, 9 September 2021.

82 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 cooperate with the competent authorities, OJ L 261, p. 19–23.

entrusted with the care of trafficked persons, noted that, in addition to the establishment in law, the professionals who are in contact with the presumed trafficked persons must also be aware of this provision (LEFÖ-IBF, n.d.:5).

The recovery and reflection period is granted by the police authorities, essentially to all trafficked persons, including presumed victims (Task Force on Combating Human Trafficking, 2017:6). Furthermore, trafficked persons are not expected to cooperate with the authorities during the reflection period. The 30-day reflection period suspends all subsequent steps, so that, for example, no interrogations have to take place during this time.⁸³

Although the recovery and reflection period is often not formally granted, it tends to be observed very well in practice, according to an expert from Criminal Intelligence Service Austria, because the victim protection organizations pay very close attention to its observance. In addition, the police authorities do not know the addresses of the shelters where trafficked persons are housed by the victim protection organizations, and these individuals can initially only be reached via the victim protection organizations. For this reason, the police must involve the victim protection organizations when they contact individuals and the organizations can therefore clearly ensure that the recovery and reflection period is observed.⁸⁴ The care and support services (see chapter 4.3) are provided separately from the recovery and reflection period and can thus be accessed even before the recovery and reflection period, particularly in cases where the victim goes directly to a victim protection organization rather than going to the police first.⁸⁵

With regard to this practical handling in Austria, a clear definition of the point in time at which the reflection period starts would appear to be essential. Since the reflection period is often not formally stated, a clear beginning of the reflection period as well as its end – and thus the end of the suspended aliens police measures – cannot always be clearly determined. This is particularly relevant in cases of detention pending removal. In these cases deportation – as an action by aliens police – is imminent and it should therefore be clear whether the recovery and reflection period has already expired. According to the expert from IOM, Country Office for Austria, the reflection period should be formally stated and granted from the first moment that trafficking is suspected, particularly where the individual is in detention pending removal.⁸⁶

4.3 Support services

According to Art. 11 of the Anti-trafficking Directive, Member States must ensure that trafficked persons receive assistance and support before, during and for an appropriate period after the conclusion of criminal proceedings. This directive has been transposed in Austria.⁸⁷ In Austria, there are several non-governmental organizations and institutions that offer counselling, care and support to trafficked persons (Task Force on Combating Human Trafficking, n.d.:22–25).⁸⁸ These include the child and youth welfare organizations in the individual provinces, the

83 Interview with Yasmina Pinjo, Federal Ministry of the Interior, 9 September 2021.

84 Interview with Gerald Tätzgern, Federal Ministry of the Interior, 24 September 2021.

85 Interview with Maryam Alemi, IOM Austria, 1 September 2021; Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021.

86 Interview with Maryam Alemi, IOM Austria, 1 September 2021.

87 Federal Ministry of Justice, Government Proposal Concerning the Criminal Law Amendment Act 2013 - Preamble and Explanatory Notes, (462/ME) - XXIV. Legislative Term. Available at www.parlament.gv.at.

88 Task Force on Combating Human Trafficking, Bericht - 04 Umsetzungsbericht 2015-2017, n.d., III-216 of the supporting documents, XXVI. Legislative Term. Available at www.parlament.gv.at.

trade union support centre for undocumented workers (UNDOK), the intervention agency LEFÖ-IBF and the victim protection organization MEN VIA.

The child and youth welfare services in the provinces focus on protection against violence and other forms of endangerment of the child's well-being. This task is basically the responsibility of the parents or those persons otherwise entrusted with the child's care and upbringing. However, support may be provided, if necessary, by the child and youth welfare services; alternatively, these welfare services may take over the protection of children and young persons where appropriate care and upbringing is not guaranteed (Art. 1 Child and Youth Welfare Act).⁸⁹ UNDOK supports people who work in Austria without a residence permit and/or work documents and are exploited in the labour market. The counselling includes free, multilingual information on labour and social law issues, on residence law issues and on asserting withheld claims from undocumented employment such as wages or holiday pay (OSCE, 2019:margin number 62).⁹⁰

The victim protection organization LEFÖ-IBF is recognized as an intervention agency (Art. 25 para 3 Security Police Act) that operates throughout Austria on behalf of the Ministry of the Interior and the Federal Chancellery (Division for Women and Equality) and offers support for trafficked women and girls aged 15 and older (LEFÖ – Counselling, Education and Support for Migrant Women, n.d.a; Task Force on Combating Human Trafficking, 2021c:4). This recognition as an intervention agency for trafficked women permits the security authorities to transfer personal data to the intervention agency, as far as this is necessary for the protection of persons at risk (Art. 56 para 1 subpara 3 Security Police Act). The victim protection organization MEN VIA is funded by the Federal Ministries of the Interior and of Labour, Social Affairs, Health and Consumer Protection and is an organization commissioned by the Federal Ministry of Justice that provides psychosocial and legal support during legal proceedings (Task Force on Combating Human Trafficking, 2021c:4).⁹¹ MEN VIA counsels trafficked men, supports them in a shelter if needed and provides appropriate assistance with regard to their victim's rights and for gaining perspective (Institute for Women's and Men's Health, n.d.f).⁹²

The care and support services provided to trafficked persons in Austria are State-funded and are provided by victim protection organizations (oesterreich.gv.at, 2021; Schlintl and Sorrentino, 2021:25). No official action is required to receive these services⁹³ and the services are usually not linked to any conditions. In particular, in line with Art. 11 para 3 Anti-trafficking Directive, entitlement to assistance and support is not conditional on the trafficked person's willingness to cooperate in the criminal investigation process, criminal proceedings or court proceedings (Schlintl and Sorrentino, 2021:25; Task Force on Combating Human Trafficking, 2017:4).

The State-mandated victim protection organizations LEFÖ-IBF and MEN VIA can autonomously identify trafficked persons in order to provide care and support services (see chapter 3.2), and are thus able to offer support at a

89 PLG No. 29/2013, in the version of the federal law PLG No. 50/2021.

90 Anlaufstelle zur gewerkschaftlichen Unterstützung undokumentiert Arbeitender, Angebote. Available at <https://undok.at> (accessed 2 September 2021).

91 Interview with Markus Zingerle, MEN VIA Support for men who are affected by human trafficking, 23 August 2021.

92 MEN VIA currently does not have the status of an intervention agency, but the disclosure of data in the context of process support is legally covered (Interview with Markus Zingerle, MEN VIA Support for men who are affected by human trafficking, 23 August 2021). The investigating authorities are not allowed to provide other support institutions with information on the status of the investigation (Interview with Gerald Tatzgern, Federal Ministry of the Interior, 24 September 2021).

93 Interview with Yasmina Pinjo, Federal Ministry of the Interior, 9 September 2021.

very early stage. The care and support services are offered by these victim protection organizations⁹⁴ to both presumed trafficked persons and individuals already identified as trafficked persons,⁹⁵ and are generally available in all phases of their residence in Austria.⁹⁶ The services can be accessed anonymously, voluntarily, free of charge and without the immediate involvement of the police, meaning that the victim protection organizations can offer all services regardless of the willingness of the trafficked person to cooperate with the authorities (LEFÖ-IBF, n.d.:5). In the view of the LEFÖ-IBF expert, these circumstances constitute the unconditional support that is unique in Austria compared to other countries and which the non-governmental organization has advocated in the past.⁹⁷

Among the services provided in Austria by LEFÖ-IBF and MEN VIA,^{98,99} there are for example:

- appropriate and safe accommodation (LEFÖ-IBF, MEN VIA);^{100,101}
- necessary medical treatment (LEFÖ-IBF, MEN VIA);¹⁰²
- legal assistance (LEFÖ-IBF, MEN VIA);
- translation and interpretation (LEFÖ-IBF, MEN VIA);¹⁰³
- psychological assistance (LEFÖ-IBF, MEN VIA);¹⁰⁴
- subsistence/material assistance (LEFÖ-IBF);^{105,106}
- social and economic integration (LEFÖ-IBF, MEN VIA);¹⁰⁷
- protection against re-victimization (LEFÖ-IBF, MEN VIA).¹⁰⁸

94 In addition, there are of course other non-governmental organizations that offer assistance. See Herzwirk – a diaconical initiative for people in prostitution, About us. Available at www.herzwirk-wien.at (accessed 6 October 2021); SOLWODI Austria – Solidarity with women in distress, Frauenhandel. Available at www.solwodi.at (accessed 6 October 2021).

95 Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021; Interview with Markus Zingerle, MEN VIA Support for men who are affected by human trafficking, 23 August 2021.

96 This is the special feature about unconditional support (Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021; Interview with Markus Zingerle, MEN VIA Support for men who are affected by human trafficking, 23 August 2021), whereby MEN VIA referred to the clarification of prospects.

97 Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021.

98 Unless otherwise stated, the information comes from the interview with Isabella Chen, LEFÖ-IBF, 31 August 2021 as well as the interview with Markus Zingerle, MEN VIA Support for men who are affected by human trafficking, 23 August 2021.

99 In addition, there are other organizations that offer assistance. See Herzwirk – a diaconical initiative for people in prostitution, About us. Available at www.herzwirk-wien.at (accessed 6 October 2021); SOLWODI Austria – Solidarity with women in distress, Schutz und Beratung. Available at www.solwodi.at (accessed 4 November 2021).

100 LEFÖ-IBF has 26 places for affected women in four shelters (Written input: LEFÖ-IBF, 7 September 2021).

101 MEN VIA can take care of up to 12 men in shelters. The aim is for affected men to be released back into independence as soon as possible (Interview with Markus Zingerle, MEN VIA Support for men who are affected by human trafficking, 23 August 2021).

102 Both LEFÖ-IBF and MEN VIA provide access to necessary medical care and accompany affected persons if necessary (Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021; Interview with Markus Zingerle, MEN VIA Support for men who are affected by human trafficking, 23 August 2021).

103 Regarding the possible need for translations, the LEFÖ-IBF expert explained that in 2020, women from 44 countries of origin were cared for and that the most important languages could be covered by the LEFÖ-IBF staff.

104 LEFÖ-IBF offers psychological counselling and access to psychological support (Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021).

105 Pursuant to Art. 2 para 1 subpara 4 in conjunction with Art. 6 of Agreement between the Federal State and the Provinces on Basic Care – Article 15a Federal Constitutional Act (FLG I No. 80/2004.), access to material reception conditions is granted during the period of recovery and reflection (Task Force on Combating Human Trafficking, 2017:7).

106 The expert from LEFÖ-IBF explained that the aim is generally to integrate affected persons into the regular social system to avoid stigmatization that would be associated with a special position outside the social system. In the period up to admission to the regular social system, material help will of course also be provided (Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021).

107 LEFÖ-IBF tries to work directly with the Public Employment Service (AMS) so that the relevant responsibilities are fulfilled (Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021).

108 Regarding protection against re-trafficking, the MEN VIA expert explained that many small safety measures are taken, such as replacing the trafficked person's SIM card, deactivating the GPS function on the mobile phone, or avoiding social networks. In this way, double-edged contacts should be avoided, because especially with long periods of exploitation there is often an emotional ambivalence towards the perpetrators – especially when it comes to begging and sexual exploitation, as manipulation is often used in these areas and emotional weaknesses are exploited (Interview with Markus Zingerle, MEN VIA Support for men who are affected by human trafficking, 23 August 2021).

4.4 Residence permit

With regard to the legitimacy of the residence of trafficked persons in Austria, it should first be pointed out that they are entitled to international protection in Austria – provided that the relevant conditions are met (IOM Austria, 2017:14; LEFÖ-IBF, n.d.:9).¹⁰⁹

In addition, there is a specific residence permit for trafficked persons in Austria – the “Residence Permit for Individual Protection” (Art. 57 para 1 subpara 2 Asylum Act 2005). This residence permit is to be granted to third-country nationals resident in the territory of Austria ex officio or upon substantiated application where this is necessary to ensure the prosecution of judicially punishable acts or to assert and enforce civil law claims in connection with such punishable acts.¹¹⁰ The Asylum Act 2005 specifically mentions in this context “witnesses or victims of trafficking in human beings or cross-border trafficking in prostitution.”¹¹¹

It is not absolutely necessary that the offence be committed in Austria¹¹² for a residence permit to be issued, but this circumstance considerably facilitates its issuance.¹¹³ However, the basic requirement for issuance as well as for the renewal of a residence permit is that criminal or civil proceedings have begun or are ongoing (LEFÖ-IBF, 2016:4), otherwise the application for the residence permit is to be rejected (Art. 57 para 3 Asylum Act 2005). According to Art. 1 para 2 Code of Criminal Procedure,¹¹⁴ criminal proceedings begin as soon as the criminal investigation department of the police or the public prosecutor’s office investigate an initial suspected offence. Therefore, the Federal Office for Immigration and Asylum, in accordance with Art. 57 para 2 Asylum Act 2005, has to obtain a reasoned opinion from the competent provincial police directorate on the commencement of criminal proceedings before issuing the residence permit. The law does not specify a time limit for receipt of the opinion (Schlinterl and Sorrentino, 2021:25). Until this opinion is received, the six-week period within which the Federal Office for Immigration and Asylum must decide on the application is suspended (Art. 57 para 2 and 3 Asylum Act 2005). GRETA criticizes the necessity of ongoing criminal or civil proceedings, as this requirement undermines unconditional support for trafficked persons (GRETA, 2020:margin number 254). Experts from LEFÖ-IBF and IOM, Country Office for Austria, have pointed out that in Austria residence permits are not granted on personal grounds, but only in the event of cooperation,^{115,116} even though cooperation of trafficked persons with the authorities is not a legal requirement for the granting of a residence permit (GRETA, 2015:margin number 132). It has been reported¹¹⁷ that the status of witness or victim on its own is

¹⁰⁹ See in detail Reyhani, 2014:33 et seqq.

¹¹⁰ Austrian Federal Government, Government Proposal - Preamble and Explanatory Notes, 1803 of the supporting documentation, XXIV. Legislative Term. Available at www.parlament.gv.at.

¹¹¹ See on the restrictive interpretation of this provision Schlinterl and Sorrentino, 2021:24.

¹¹² In a decree of the Federal Ministry of Justice it is argued that the place of the offence is already in Austria if one of the acts mentioned in Art. 104a para 1 Criminal Code is committed in Austria with the intent that another person would be exploited. Exploitation in Austria is therefore not necessary to establish the place of the offence in Austria. Cf. Federal Ministry of Justice, Decree of 24 July 2015 concerning Art. 104a Criminal Code Trafficking in Human Beings, 24 July 2015, BMJ-S130.007/0019-IV 1/2015. Available at www.ris.bka.gv.at (accessed 8 September 2021).

¹¹³ In practice, the Austrian public prosecutors’ offices do not open preliminary proceedings in cases where the offence took place outside of Austria due to a lack of local jurisdiction. However, in view of Art. 64 para 1 subpara 4a Criminal Code, such preliminary proceedings are not excluded. Cf. on this Birkbauer et al., 2018:§ 64 margin number 15 and the interview with Gerald Tatzgern, Federal Ministry of the Interior, 24 September 2021, who would like to see a clearer legal regulation in this context.

¹¹⁴ FLG No. 631/1975, in the version of the federal law FLG I No. 159/2021.

¹¹⁵ Interview with Maryam Alemi, IOM Austria, 1 September 2021; Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021.

¹¹⁶ But see Austrian Federal Government, State Treaty - Preamble and Explanatory Notes, 1565 of the supporting documentation, XXII. Legislative Term. Available at www.parlament.gv.at, according to which humanitarian residence permits are also granted in Austria if the persons affected decide not to cooperate with the authorities, if the personal situation of the victims makes this necessary.

¹¹⁷ Schlinterl and Sorrentino, 2021:25.

not sufficient for the granting of a residence permit; a formal statement to and effective cooperation with the authorities are required (Schlintl and Sorrentino, 2021:25). The authors therefore concluded that a discriminatory distinction is being made between persons who “deserve” a residence permit and those who do not (ibid.). This residence permit, which is limited to 12 months and can be renewed (Art. 54 para 2 Asylum Act 2005), does not give unrestricted access to the labour market, but requires a corresponding authorization under the Act Governing the Employment of Foreign Nationals (Art. 54 para 1 subpara 3 Asylum Act 2005; Art. 17 Governing the Employment of Foreign Nationals, LEFÖ-IBF, 2016:4).^{118,119}

In respect of applications for renewal of the residence permit, the Federal Office for Immigration and Asylum must check whether the conditions relating to the “Residence Permit for Individual Protection” according to Art. 57 Asylum Act 2005 continue to be met as well as the further criteria of Art. 59 para 4 Asylum Act 2005 are also fulfilled. In this case the Red-White-Red Card Plus residence permit (Art. 41a para 3 Settlement and Residence Act) is to be granted within the framework of a renewal procedure for the Residence Permit for Individual Protection in accordance with Art. 57 para 1 subpara 2 Asylum Act 2005. The further criteria of Art. 59 para 4 Asylum Act 2005 are extremely demanding and do not take account of the special situation of trafficked persons (Schlintl and Sorrentino, 2021:27). These criteria include completion of Module 1 of the Integration Agreement¹²⁰ as well as other conditions, including, for example, a proof of legal claim to accommodation considered locally customary for a family of comparable size and the existence of health insurance coverage that covers all risks and is mandatory in Austria (Art. 59 para 4 subpara 3 in conjunction with Art. 60 para 2 Asylum Act 2005). The fact that the residence permit pursuant to Art. 57 para 1 subpara 2 Asylum Act 2005 is granted for a period of 12 months means that the conditions upon which renewal of the permit depend must be met within one year. Bearing in mind that the individuals concerned are often traumatized, one year does not seem long enough to meet the extremely demanding renewal conditions. The expert from IOM, Country Office for Austria, has therefore stated that in relation to the protection of trafficked persons, it must be taken into account that rehabilitation – for example to be able to learn the language or return to employment – requires sufficient time.¹²¹

If these mentioned conditions are met, the Federal Office for Immigration and Asylum must immediately inform the responsible settlement authority. The decision of the Federal Office for Immigration and Asylum must be taken without delay, at the latest, however, within four months of submission of the application. However, this period is suspended in the case of notification by the Federal Office for Immigration and Asylum to the settlement authority (Art. 59 para 4 and 5 Asylum Act 2005).

Subsequently, the responsible settlement authority issues ex officio – without further checks¹²² – the Red-White-Red Card Plus residence permit. The residence permit must be issued by the settlement authority without delay and, at the latest, within eight weeks of notification of the Federal Office for Immigration and Asylum (Art. 41a

¹¹⁸ FLG No. 218/1975, in the version of the federal law FLG I No. 54/2021.

¹¹⁹ See on the related difficulties and limitations Schlintl and Sorrentino, 2021:26.

¹²⁰ Pursuant to Art. 7 para 1 Integration Act (FLG I No. 68/2017, in the version of the federal law FLG I No. 42/2020), Module 1 serves to acquire knowledge of the German language for in-depth elementary language use at language level A2 and to convey the basic values of the legal and social system.

¹²¹ Interview with Maryam Alemi, IOM Austria, 1 September 2021.

¹²² Austrian Federal Government, Government Proposal - Preamble and Explanatory Notes, 1803 of the supporting documentation, XXIV. Legislative Term. Available at www.parlament.gv.at.

para 3 Settlement and Residence Act). In the majority of cases, the average duration of the procedure for issuing a Red-White-Red Card Plus in the individual provinces is either not statistically recorded¹²³ or is unknown,¹²⁴ or no residence permits have previously been issued.¹²⁵ In the case of Lower Austria, three months was stated as a guideline, but it was pointed out that it may vary on a case-by-case basis.¹²⁶ The Province of Vienna indicated an average duration of 73 days for the procedures started and completed in 2020.¹²⁷

This residence permit is also initially limited to 12 months, but is valid for three years after renewal provided the relevant conditions¹²⁸ are met. This residence permit also gives unrestricted access to the labour market.¹²⁹

Apart from Art. 57 para 1 subpara 2 Asylum Act 2005 and Art. 41a para 3 Settlement and Residence Act, which regulate the conditions for issuance comprehensively and clearly,¹³⁰ no other residence permits or other protection programmes are known. In particular, there is no humanitarian – in the sense of being granted unconditionally – residence permit in Austria for trafficked persons. However, such a residence permit is demanded by victim protection organizations,¹³¹ not least with a view to Art. 14 of the Council of Europe Convention on Action against Trafficking in Human Beings, according to which the contracting States shall issue a renewable residence permit not only if the person concerned cooperates with the authorities in the course of investigations or criminal proceedings, but also if the competent authority considers that the stay of the person concerned is necessary on account of their personal situation (LEFÖ – Counselling, Education and Support for Migrant Women, n.d.e: I I).

4.5 Support during the proceedings, impunity and reparation

As mentioned in chapter 4.4 the granting of the residence permit pursuant to Art. 57 para 1 subpara 2 Asylum Act 2005 requires the initiation or continuation of criminal or civil proceedings. Trafficked persons have the right to participate in these criminal proceedings as “victims”. Various rights are associated with this victim status. For instance, people who are particularly vulnerable – such as people whose sexual integrity and self-determination may have been violated – have the right to ask to be examined by a person of the same gender during the investigation proceedings (Art. 66a para 2 subpara 1 Code of Criminal Procedure).¹³² They also have the right:¹³³

- to receive psychosocial and legal support during the proceedings (Art. 66b para 1 Code of Criminal Procedure);
- to address questions to the accused, witnesses and expert witnesses during the main hearing (Art. 66 para 1 subpara 7 Code of Criminal Procedure);

123 Written input: Office of the Tyrolean Provincial Government, 8 September 2021.

124 Written input: Office of the Upper Austrian Provincial Government, 15 September 2021.

125 Written input: Office of the Salzburg Provincial Government, 21 September 2021.

126 Written input: Office of the Lower Austrian Provincial Government, 14 September 2021.

127 Written input: Province of Vienna, 24 September 2021.

128 See Art. 20 para 1a Settlement and Residence Act.

129 Cf. Art. 17 Act Governing the Employment of Foreign Nationals.

130 Written input: Federal Ministry of the Interior, 22 February 2022.

131 Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021.

132 FLG No. 631/1975, in the version of the federal law FLG I No. 159/2021.

133 On these rights see also Schlintl and Sorrentino, 2021:71–72 as well as Task Force on Combating Human Trafficking, 2017:8–11.

- to request the continuation of proceedings terminated by the public prosecutor's office (Art. 66 para 1 subpara 8 Code of Criminal Procedure);
- to request considerate questioning – the use of technical equipment to transmit images and sound, for example, which means they do not have to be present at the hearing (Art. 66a para 2 subpara 3 Code of Criminal Procedure);
- to request that the public be excluded from the main hearing (Art. 66a para 2 subpara 4 Code of Criminal Procedure).

Moreover, under international treaties,¹³⁴ trafficked persons who are coerced into committing offences by the perpetrators cannot be punished under certain circumstances. Austria has complied with this contractual obligation through a decree of the Federal Ministry of Justice¹³⁵ (Austrian Federal Government, 2018:6).^{136,137}

Finally, it is important for trafficked persons to get back from the perpetrators the wages they are owed or the revenue they have generated. It is also vital for them to receive amends for the psychological and physical violence they have suffered in the form of compensation (Steiner et al., 2018:39). In addition, claims may be made under the Victims of Crime Act.¹³⁸

¹³⁴ See Art. 26 Council of Europe Convention on Action against Trafficking in Human Beings and Art. 8 Trafficking in Human Beings Directive.

¹³⁵ Federal Ministry of Justice, Decree of 17 February 2017 on refraining from punishing victims of human trafficking who have committed offences due to excusable necessity - Art. 10 Criminal Code, 17 February 2017, BMJ-S130.007/0007-IV 1/2017. Available at www.ris.bka.gv.at (accessed 2 September 2021).

¹³⁶ However critical Steiner et al., 2018:59.

¹³⁷ For the area of administrative criminal law, the current National Action Plan to Combat Trafficking in Human Beings plans the development of practice-oriented guidelines for the implementation of the non-punishment principle (Task Force on Combating Human Trafficking, 2021a:37).

¹³⁸ FLG No. 288/1972, in the version of the federal law FLG I No. 135/2020. The Victims of Crime Act regulates under which circumstances the Republic of Austria compensates persons who have been victims of crimes. According to Art. 1 para 7 Victims of Crime Act, assistance is also to be provided to those persons whose unlawful residence in Austria at the time of the crime was caused by a suffered trafficking in human beings. In these cases, assistance is to be provided as long as the person affected has a right of residence for individual protection (see chapter 4.4) or subsequently continues to have a right of residence and usually stays in Austria.

5 TRAFFICKING IN HUMAN BEINGS AND DUBLIN III PROCEDURES IN AUSTRIA

At European level, the Dublin III Regulation¹³⁹ lays down the criteria and procedures that determine the Member State responsible for examining applications for international protection of third-country nationals (Art. 1). Under Art. 17, also known as the sovereignty clause, any Member State can decide to examine an application for international protection that has been lodged with it, even if it is not responsible for the examination under the criteria laid down in the Regulation. The Member States are entitled to invoke this sovereignty clause for humanitarian reasons at their own discretion (Nula Frei, 2014:11).

The assessment of whether or not to invoke the clause is done on a case-by-case basis, taking into account all the circumstances of the case (IOM Austria, 2017:17). This case-by-case assessment is carried out by the Federal Office for Immigration and Asylum also within the framework of Dublin procedures, for example when a person is to be returned to a Member State in which the person was previously affected by human trafficking.¹⁴⁰ A representative of the victim protection organization MEN VIA was aware of the regulation on invoking the sovereignty clause, but so far there have been no cases related to persons cared for by MEN VIA.¹⁴¹ The LEFÖ-IBF and IOM, Country Office for Austria, experts explained that Austria almost never invokes this clause.¹⁴² This is also due to the fact that there is a small number of individual cases.¹⁴³ Reference was made to just one case in which Austria granted asylum. However, it probably did so mainly because of the person's severe physical injuries. This case is an exception.¹⁴⁴ Thus, it can be stated that also in cases of trafficking in human beings – if the corresponding criteria are met and the trafficking in human beings did not take place in Austria, but in a Member State of the EU¹⁴⁵ – transfers back to the competent State according to the Dublin III Regulation are carried out by Austria. The reasoning is that the person is transferred to another EU Member State, which is also bound by the pertinent EU provisions.¹⁴⁶ According to an expert from the Federal Ministry of the Interior, the care and support services in the country of destination therefore presumably also conform with the services to which the person would be entitled in Austria. Moreover, the country of destination is informed about the suspicion of human trafficking, which means the Austrian approach does not deviate from other cases involving the transfer of persons under the Dublin III Regulation.¹⁴⁷ Regarding Dublin transfers, it has been suggested to pay increased attention to the recognition of trafficked persons also in Dublin procedures (GRETA, 2020:margin number 230), to introduce a corresponding risk analysis and cross-border referral mechanisms to prevent revictimization during the transfer to the country of first entry into EU territory and to enable assistance and protection to be provided with all due speed in the country of destination. In addition, if

139 Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), OJ L 180, p. 31–59.

140 Interview with Yasmina Pinjo, Federal Ministry of the Interior, 9 September 2021.

141 Interview with Markus Zingerle, MEN VIA Support for men who are affected by human trafficking, 23 August 2021.

142 Interview with Maryam Alemi, IOM Austria, 1 September 2021; Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021.

143 Written input: Federal Ministry of the Interior, 22 February 2022.

144 Interview with unnamed expert, LEFÖ-IBF, 31 August 2021. It was pointed out, however, that in Austria the residence title pursuant to Art. 57 Asylum Act 2005 (see Chapter 4.4) is also granted in Dublin proceedings if the crime scene is in Austria (Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021).

145 Written input: Federal Ministry of the Interior, 22 February 2022.

146 The Trafficking in Human Beings Directive, for example, should be mentioned in this context.

147 Interview with Yasmina Pinjo, Federal Ministry of the Interior, 9 September 2021.

the suspicion so warrants, a residence permit should be granted ex officio and the principle of nonrefoulement observed (OSCE, 2019:margin number 61).

If human trafficking is suspected in Austria, the basic practice is to bring in the competent body of the police, who then proceed with identification. This also applies to the Dublin procedure.¹⁴⁸ According to an expert from LEFÖ-IBF, however, it is very difficult in Austria to identify trafficked persons in detention pending removal and in the Dublin procedure. She noted that no one has thus far been identified or referred to LEFÖ-IBF under the Dublin procedure – at least LEFÖ-IBF has not yet been contacted by the competent Dublin Unit at the Federal Office for Immigration and Asylum.¹⁴⁹ In this same context, an expert from the victim protection organization MEN VIA said that the Federal Office for Immigration and Asylum is likely to be frequently confronted with interventions involving detainees pending removal. He was therefore of the opinion that a well-founded and sufficiently strong suspicion was needed in cases of this kind to end the detention.¹⁵⁰ An expert from Criminal Intelligence Service Austria saw things similarly, explaining that at least a minimum of information on facts and circumstances must be provided. The mere assertion of human trafficking is not sufficient.¹⁵¹

In Austria, trafficked persons are also entitled to a reflection period in the Dublin procedure. According to experts, the legally established and formally declared reflection period¹⁵² (see chapter 4.2) – during which actions by aliens police are suspended – is required especially in these cases of detention pending removal (Task Force on Combating Human Trafficking, 2017:7). The expert from the Federal Ministry of the Interior underscored the general position that anyone who could potentially be deemed a trafficked person, thus also persons in the Dublin procedure, should have their rights upheld.¹⁵³

148 Ibid.

149 Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021.

150 Interview with Markus Zingerle, MEN VIA Support for men who are affected by human trafficking, 23 August 2021.

151 Interview with Gerald Tatzgern, Federal Ministry of the Interior, 24 September 2021.

152 Interview with Maryam Alemi, IOM Austria, 1 September 2021; Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021.

153 Interview with Yasmina Pinjo, Federal Ministry of the Interior, 9 September 2021.

6 THE IMPACT OF COVID-19 ON HUMAN TRAFFICKING

In Austria, the COVID-19 pandemic and the actions taken in connection with it have resulted, among other things, in severely restricting personal contact and the authorities' capacity for communicating with potential victims.¹⁵⁴ Moreover, human trafficking has become less visible and detection also all the more difficult as a result.¹⁵⁵ Prostitution is one area that should be mentioned in this regard. The actions taken to contain the pandemic prohibited entry to prostitution establishments.¹⁵⁶ As a result, illegal prostitution in hotels and apartments¹⁵⁷ increased, as did the accompanying negative consequences, such as the potential for increased violence or a lack of medical check-ups.¹⁵⁸ The possibilities for personal contact with sex workers, such as during health checks prior to the pandemic, were substantially curtailed. Moreover, cases of individuals found illegally engaging in their trade had to be reported to the police on the grounds of illegal prostitution and had negative connotations a priori. The police played a largely repressive role as a result – unlike in the checks on legal prostitution or prior to the COVID-19 measures, when even trust-building measures could be carried out. Consequently, the situation is not only disadvantageous for trafficked persons but also for the police, who have lost out on important means of information and support (Task Force on Combating Human Trafficking, 2021b:35). The detection and identification of trafficked persons was made all the more difficult by the pandemic situation and the resulting regulations, bans and closures of establishments (brothels, lafphauses, sauna clubs; Art. 12 para 1 in conjunction with Art. 12 para 2 subpara 6 COVID-19 Protective Measures Regulation; Criminal Intelligence Service Austria, 2021:30 et seq.).

An expert from LEFÖ-IBF also determined that the COVID-19 pandemic increased social inequality. This has made women in particular even more vulnerable and susceptible to exploitation. In addition, the pandemic has made it all the harder to meet the requirements for a residence permit. For instance, even though no German courses could be offered, proof of them still had to be furnished in the procedure for the residence permit.¹⁵⁹

The expert from the victim protection organization MEN VIA explained that COVID-19 may not necessarily have created any new trends but that the old ways of committing criminal offences – interrupted by the COVID-19 pandemic – will come to life again. He cited the example of human trafficking for the purpose of begging, where people are brought to Austria to beg, either lured by false promises or against their will.¹⁶⁰ A rise in labour exploitation is also discernible in Austria, because generally speaking, economic hardship in particular makes people vulnerable to exploitation. The COVID-19 pandemic multiplies this effect, as the number of people living in poverty is on the rise. Against this backdrop, it is no surprise that precarious working conditions were increasingly observed in certain areas due to the pandemic; for example, among harvest workers, seasonal labourers or caregivers (Criminal Intelligence Service Austria, 2021:23, 31). On the subject

154 Written input: Province of Vienna, 24 September 2021.

155 Interview with Gerald Tatzgern, Federal Ministry of the Interior, 24 September 2021.

156 See, for example, Art. 12 para 1 in conjunction with para 2 subpara 6 COVID-19 Protection Measures Regulation, FLG II No. 463/2020, in the version of regulation FLG II No. 476/2020.

157 For details of the impact of the COVID-19 pandemic on the legal practice of prostitution see Task Force on Combating Human Trafficking, 2021b:32 et seqq.

158 Written input: Province of Vienna, 24 September 2021.

159 Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021.

160 Interview with Markus Zingerle, MEN VIA Support for men who are affected by human trafficking, 23 August 2021.

of economic hardship, the expert from IOM, Country Office for Austria, also pointed out that the COVID-19 pandemic often impacted family income. Increasing numbers of children therefore have to work more frequently to support the family financially instead of going to school. From the moment children stop going to school, they become more vulnerable to exploitation.¹⁶¹ The exploitation of children is also facilitated by social media and the Internet in particular. Both are increasingly used for purposes of human trafficking (UNODC, 2021:119 et seq.),¹⁶² especially in connection with the COVID-19 pandemic. This new practice also affects children in particular, who are easier to reach online. This raises the following question: how can trafficked persons be reached if they are doing their work at unknown places in front of a laptop? The detection of cases of this sort will presumably depend increasingly on feedback from other areas of life, for instance medical treatments.¹⁶³ However, this shift to the Internet also provides a way of securing data, which can then be used to identify trafficked persons and perpetrators.¹⁶⁴

161 Interview with Maryam Alemi, IOM Austria, 1 September 2021.

162 Interview with Maryam Alemi, IOM Austria, 1 September 2021; Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021.

163 Interview with Maryam Alemi, IOM Austria, 1 September 2021.

164 Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021.

7 AUSTRIA IN THE INTERNATIONAL FIGHT AGAINST HUMAN TRAFFICKING

In combating human trafficking, Austria also relies on cross-border cooperation. Examples that can be cited in the EU context include Austria's cooperation with EUROPOL and its active participation in EUROPOL projects, for instance EMPACT THB (EUROPOL, n.d.). In this collaboration, Austria also served as (co-)chair in the areas of smuggling of migrants and human trafficking.¹⁶⁵ As part of the implementation of the annual operational action plan, Austria has also supported and participated in recent years in bilateral and multilateral operational measures and actively advanced projects with other EU Member States.¹⁶⁶ In 2018 and 2019, Europe-wide priority actions (Joint Action Days) for combating human trafficking were implemented under the direction of Criminal Intelligence Service Austria (Task Force on Combating Human Trafficking, 2021c:13). In addition, preventive measures were emphasized and EUROPOL information posters against human trafficking were jointly created and used multiple times (Ebner and Humer, 2020:57). In the context of cooperation with non-EU Member States, for example, the Federal Ministry for European and International Affairs is in contact with the representative authorities that are accredited in Austria and informs about current developments in combating human trafficking, especially about measures to protect the rights of private domestic staff of diplomats in Austria. Moreover, Austria relies on the active and continuous participation and presence of members of the Task Force on Combating Human Trafficking in pertinent national and international bodies and at such conferences (Task Force on Combating Human Trafficking, 2021c:9).

Austria also relies on the Joint Operational Office, founded in 2016, as a central body for combating human trafficking and the smuggling of migrants. The office has achieved success, too, thanks to a constant interchange and ongoing networking with investigative authorities in other (EU Member) States. Collaboration with third countries also happens at provincial level. For instance, in suspected cases, clarification is also sought with the pertinent embassies.¹⁶⁷

¹⁶⁵ Interview with Gerald Tatzgern, Federal Ministry of the Interior, 24 September 2021.

¹⁶⁶ Ibid.

¹⁶⁷ Written input: Office of the Lower Austrian Provincial Government, 14 September 2021.

8 CONCLUSIONS

The information gathered in this national report shows that Austria is committed to tackling trafficking in human beings and has demonstrated initiative in the fight against human trafficking, especially in the EU context. However, there are also challenges that indicate potential for development. The following chapters examine these challenges as well as good practices in Austria.

8.1 Challenges and development potential

It should be noted that human trafficking takes many different forms, so that many different possibilities exist for establishing contact with trafficked persons. A multitude of actions are therefore needed to heighten awareness among all players in the areas of detection, identification and protection. The responsibility for these matters lies with the competent authorities.¹⁶⁸

Individuals identified in Austria as trafficked persons often have less than native command of German, so this communication barrier was cited as a challenge (Federal Ministry of Families and Youth, n.d.:5; Federal Ministry of the Interior, 2012:55).¹⁶⁹ This challenge can be partially mitigated, given, for example, that LEFÖ-IBF is able to cover a majority of the required languages from its own staff. In addition, Criminal Intelligence Service Austria is also planning to hire intercultural mediators hailing from countries that Austria views as being of special significance in combating human trafficking. The goal is to have migrants from these countries become involved in investigative work. This step is intended, on the one hand, to contribute to the migrants' own integration and, on the other hand, to facilitate communication with the trafficked persons and, if need be, to alleviate existing concerns by getting the migrants involved.¹⁷⁰

Another challenge seems to be the rather random and unsystematic as well as hampered or limited detection and identification of trafficked persons in the asylum procedure and in detention pending removal.¹⁷¹ Based on statements submitted by the expert from the Federal Ministry of the Interior and the written input by the provinces, according to which screenings are predominantly not carried out in migration processes, there appears to be development potential for the more comprehensive detection of exploitative situations in the asylum and migration area. However, in the judgment of the expert from the Federal Ministry of the Interior, this is related not to any failings on the part of Austria but rather to the situation being in a state of flux. Time is therefore required to come up with a response to these changing circumstances.¹⁷²

In relation to the protection of trafficked persons and with regard to Dublin procedures, the LEFÖ-IBF expert stated that the migration events of 2015/2016 highlighted the lack of protection for trafficked persons. Accordingly, they are often not afforded constant protection unless the non-governmental organizations in the

168 Interview with Markus Zingerle, MEN VIA Support for men who are affected by human trafficking, 23 August 2021.

169 It should also be noted, however, that communication in English is often difficult as well (Steiner et al., 2018:55).

170 Interview with Gerald Tatzgern, Federal Ministry of the Interior, 24 September 2021.

171 Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021; Interview with Markus Zingerle, MEN VIA Support for men who are affected by human trafficking, 23 August 2021.

172 Interview with Yasmina Pinjo, Federal Ministry of the Interior, 9 September 2021.

individual Member States cooperate with each other. This cooperation is frequently the only factor that results in the factual protection of victims. The expert puts the responsibility for victim protection with the Member States, as this task is also part of the common migration policy.¹⁷³

Austria already has a national reporting position, which coincides with the position of coordinator of the Task Force on Combating Human Trafficking. The active work of the national rapporteur has been praised at the international level (OSCE, 2019:margin number 25). Although the existing national reporting position basically meets the requirements under Art. 19 Anti-trafficking Directive, reference should be made to the relevant recommendations (GRETA, 2020:margin number 23; OSCE, 2019:margin number 25) and to the expert's¹⁷⁴ assessment that an independent national reporting position should be created and the previous linkage with the position of coordinator of the Task Force on Combating Human Trafficking should be eliminated. This independent position has a special significance in several respects, for instance in evaluating and monitoring the effectiveness of actions by Austria to combat human trafficking and in drawing up recommendations based on these findings (OSCE, 2019:margin number 25). A corresponding goal has already been incorporated in the current National Action Plan on Combating Human Trafficking (Task Force on Combating Human Trafficking, 2021a:7), the implementation of which will be addressed by the Task Force on Combating Human Trafficking.¹⁷⁵

Finally, the issue of residence permits presents a notable challenge, especially as there is no humanitarian residence permit for trafficked persons in Austria. Although Austria provides a Residence Permit for Individual Protection and, when this permit is renewed, the Red-White-Red Card Plus residence permit, there appear to be major obstacles to obtaining these residence permits. For instance, there has been criticism of the need for ongoing criminal or civil proceedings in order for a Residence Permit for Individual Protection to be obtained, since this requirement undermines the unconditional support for trafficked persons. In addition, the personal situation of trafficked persons seems to be given insufficient consideration when residence permits are renewed.

8.2 Good practices

In Austria there are a number of approaches deemed good practices by different players.

In this regard, the legal framework devised by and for the Federal Ministry of the Interior is viewed as positive.¹⁷⁶ However, possible improvements could be made in this area, too, for instance in assuring the actual implementation of guidelines or in expanding the existing system towards becoming a national referral mechanism. This would allow the phenomenon of human trafficking to be addressed at different levels. Minor changes can also be made effectively with training courses and adapted processes.¹⁷⁷ In combating human trafficking, the already existing and competent Central Office for Combating Smuggling of Migrants and Trafficking in Human Beings at Criminal Intelligence Service Austria is viewed as highly competent and professional.¹⁷⁸ It

173 Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021.

174 Interview with Maryam Alemi, IOM Austria, 1 September 2021.

175 Interview with Yasmina Pinjo, Federal Ministry of the Interior, 9 September 2021.

176 Interview with Yasmina Pinjo, Federal Ministry of the Interior, 9 September 2021.

177 Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021.

178 Interview with Maryam Alemi, IOM Austria, 1 September 2021.

is superbly networked at international level in an operational sense, too, for example with EUROPOL or in the context of partnerships, for example, to conduct Joint Action Days or joint investigations.¹⁷⁹ This office is now also recognized as the professional certification body for expert investigators in the fields of smuggling of migrants and human trafficking and is allowed to certify further investigators as needed. Consequently, certified investigators will also be working within the criminal intelligence service in the provinces as multipliers in the near future.¹⁸⁰

In the area of prevention, i.e. before a human trafficking situation is even there to detect and identify, the existing system appears to have proven effective in protecting private domestic staff (referred to below as “PDS” or simply as the “employee”) working for diplomatic personnel in Austria. When the diplomatic representation authority or the international organization submits an application, the Federal Ministry for European and International Affairs examines, among other things, the employee's contract of employment, insurance coverage and lease. The employee must pick up the picture ID card for PDS at diplomatic missions and international organizations personally and without being accompanied by anyone. On this occasion, a check is conducted to determine, among other things, whether the employee has opened a personal bank account, and the employee is given detailed information about his or her rights as PDS. In addition, these employees are invited to an interview and to information events (Task Force on Combating Human Trafficking, 2021 c:37). This procedure appears to be a suitable way of reducing the number of PDS who become trafficked persons.

In connection with protecting trafficked persons, police and victim protection organizations cooperate effectively together and on equal terms. This is considered good practice by the experts from the victim protection organizations MEN VIA and LEFÖ-IBF and by the expert from Criminal Intelligence Service Austria.¹⁸¹ Two factors highlighted as positive on the police side were the clear-cut responsibility of the special units for the investigation of existing criminal offences and the simple interchange with the asylum authorities.¹⁸² Moreover, two best practices mentioned by the LEFÖ-IBF expert were the anchoring of LEFÖ-IBF as an intervention agency (Art. 25 para 3 Security Police Act) and the support from the Federal State and the provinces.¹⁸³ The provision of care and support services should also be highlighted as good practice. Care and support services are offered by the victim protection organizations to presumed trafficked persons as well as to persons who have been identified as trafficked, and are generally available at an early stage and in all phases of their stay in Austria. Services can be accessed anonymously, voluntarily, free of charge and without the immediate involvement of the police, meaning that the victim protection organization is able to offer all services, regardless of the willingness of trafficked persons to cooperate with the authorities. These circumstances are a hallmark of the unconditional support that is unique in Austria compared to other countries. Within the framework of these care and support services, support during legal proceedings has been identified as a proven measure since it aims to minimize the impact of the proceedings and possible retraumatization through the provision of legal and psychological support.¹⁸⁴

¹⁷⁹ Interview with Yasmina Pinjo, Federal Ministry of the Interior, 9 September 2021.

¹⁸⁰ Interview with Gerald Tatzgern, Federal Ministry of the Interior, 24 September 2021.

¹⁸¹ Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021; Interview with Gerald Tatzgern, Federal Ministry of the Interior, 24 September 2021; Interview with Markus Zingerle, MEN VIA Support for men who are affected by human trafficking, 23 August 2021.

¹⁸² Interview with Gerald Tatzgern, Federal Ministry of the Interior, 24 September 2021.

¹⁸³ Interview with Isabella Chen, LEFÖ-IBF, 31 August 2021.

¹⁸⁴ Interview with Markus Zingerle, MEN VIA Support for men who are affected by human trafficking, 23 August 2021.

ANNEX

A.1 List of translations and abbreviations

English term	English abbreviation	German term	German abbreviation
Act Governing the Employment of Foreign Nationals	–	Ausländerbeschäftigungsgesetz	AuslBG
Aliens Police Act 2005	–	Fremdenpolizeigesetz 2005	FPG
Asylum Act 2005	–	Asylgesetz 2005	AsylG 2005
Austrian People's Party	–	Österreichische Volkspartei	ÖVP
Code of Criminal Procedure 1975	–	Strafprozessordnung 1975	StPO
Coronavirus disease 2019	COVID-19	Coronavirus-Krankheit-2019	COVID-19
Criminal Code	–	Strafgesetzbuch	StGB
Criminal Intelligence Service Austria	–	Bundeskriminalamt	BK
European Commission	EC	Europäische Kommission	–
European Migration Network	EMN	Europäisches Migrationsnetzwerk	EMN
European Multidisciplinary Platform Against Criminal Threats	EMPACT	European Multidisciplinary Platform Against Criminal Threats	EMPACT
European Union	EU	Europäische Union	EU
Federal Chancellery	–	Bundeskanzleramt	BKA
Federal Constitutional Act	–	Bundes-Verfassungsgesetz	B-VG
Federal Law Gazette	FLG	Bundesgesetzblatt	BGBI.
Federal Ministry for European and International Affairs	–	Bundesministerium für europäische und internationale Angelegenheiten	BMEIA
Federal Office for Immigration and Asylum	–	Bundesamt für Fremdenwesen und Asyl	BFA

Federal Ministry of Justice	–	Bundesministerium für Jusitz	BMJ
Federal Ministry of the Interior	Mol	Bundesministerium für Inneres	BMI
German NGO Network against Trafficking in Human Beings	KOK	Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess e.V.	KOK
Government proposal	–	Ministerialentwurf	ME
Group of Expert on Action against Trafficking in Human Beings	GRETA	Expertengruppe für die Bekämpfung des Menschenhandels	–
in conjunction with	–	in Verbindung mit	iVm
International Organization for Migration	IOM	International Organisation für Migration	IOM
IZ Non-profit organization committed to diversity, dialogue and education	IZ	IZ Verein zur Förderung von Vielfalt, Dialog und Bildung	IZ
legislative term	–	Gesetzgebungsperiode	GP
Lower Austria	–	Niederösterreich	Nö.
margin number	–	Randziffer	Rz
National Contact Point	NCP	Nationaler Kontaktpunkt	NKP
National Referral Mechanism	NRM	Nationaler Verweisungsmechanismus	–
Note	–	Anmerkung	Anm.
Office of the United Nations High Commissioner for Human Rights	OHCHR	Büro des Hochkommissars der Vereinten Nationen für Menschenrechte	OHCHR
Organization for Security and Co-operation in Europe	OSCE	Organisation für Sicherheit und Zusammenarbeit in Europa	OSZE
Paragraph	para	Absatz	Abs.
private domestic staff	PDS	Private Hausangestellten	–
Protection Measures Regulation	–	Schutzmaßnahmenverordnung	SchuMaV
Provincial Law Gazette	PLG	Landesgesetzblatt	LGBl.

Public Employment Service	–	Arbeitsmarktservice	AMS
Security Police Act	–	Sicherheitspolizeigesetz	SPG
Settlement and Residence Act	–	Niederlassungs- und Aufenthaltsgesetz	NAG
Solidarity with women in distress	SOLWODI	Solidarität mit Frauen in Not	SOLWODI
subparagraph	subpara	Ziffer	Z
Trade union support center for undocumented workers	UNDOK	Anlaufstelle zur gewerkschaftlichen Unterstützung UNDOkumentiert Arbeitender	UNDOK
United Nations Office on Drugs and Crime	UNODC	Büro der Vereinten Nationen für Drogen und Verbrechensbekämpfung	UNODC
Upper Austria	–	Oberösterreich	Oö.
Victims of Crime Act	–	Verbrechensopfergesetz	VOG

A.2 References*

Academic Network for Legal Studies on Immigration and Asylum in Europe

n.d. *Directive 2004/81 Victims of Trafficking Synthesis Report*. Available at <https://documentation.lastradainternational.org>.

Austrian Federal Government

2017 *Für Österreich: Arbeitsprogramm der Bundesregierung 2017/2018*. Available at www.wienerzeitung.at.

2018 *Nationaler Aktionsplan zur Bekämpfung des Menschenhandels für die Jahre 2018–2020*. Vienna. Available at www.bmeia.gv.at.

Austrian Ombudsman Board

2019 *Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat - 2018 - Kontrolle der öffentlichen Verwaltung*. Vienna. Available at <https://volksanwaltschaft.gv.at>.

Birkbauer, A., M. J. Hilf, C. Konopatsch, F. Messner, K. Schwaighofer, S. Seiler and A. Tipold

2018 *StGB - Strafgesetzbuch - Praxiskommentar*. First Edition. Facultas, Vienna.

Burkert, G.

2020 *Wenn der Mensch zur Ware wird. ÖFFENTLICHE SICHERHEIT 7-8/20*. Vienna. Available at www.bmi.gv.at.

Constitutional Court

2020 *Decision of the Constitutional Court, E2875/2019, 25 February 2020*.

Criminal Intelligence Service Austria

2015 *Trafficking in Human Beings 2014*. Vienna. Available at <https://bundeskriminalamt.at>.

2016 *Menschenhandel Österreich - Trafficking in Human Beings Austria 2015*. Vienna. Available at <https://bundeskriminalamt.at>.

2018 *Lagebericht Menschenhandel und grenzüberschreitender Prostitutionshandel 2017*. Vienna. Available at <https://bundeskriminalamt.at>.

2020 *Lagebericht Schlepperei und Menschenhandel 2019*. Vienna. Available at <https://bundeskriminalamt.at>.

2021 *Lagebericht Schlepperei und Menschenhandel 2020*. Vienna. Available at <https://bundeskriminalamt.at>.

n.d. *Delikte und Ermittlungen*. Available at www.bundeskriminalamt.at (accessed 3 September 2021).

Ebner, P.

2021 *Austria – 2020 Annual Policy Report*. International Organization for Migration (IOM), Vienna. Available at www.emn.at.

Ebner, P. and L. Humer

2020 *Austria – 2019 Annual Policy Report*. International Organization for Migration (IOM), Vienna. Available at www.emn.at.

European Commission

2020a *Data collection on trafficking in human beings in the EU*. Luxembourg. Available at <https://op.europa.eu> (accessed 23 September 2021).

2020b *Study on reviewing the functioning of Member States' National and Transnational Referral Mechanisms*. Luxembourg. Available at <https://op.europa.eu> (accessed 15 September 2021).

2020c *Study on the economic, social and human costs of trafficking in human beings within the EU*. Luxembourg. Available at <https://op.europa.eu> (accessed 23 September 2021).

* All hyperlinks provided were operating at the time of publication.

2021a Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy on Combatting Trafficking in Human Beings 2021–2025, COM(2021) 171 final. Brussels. Available at <https://ec.europa.eu>.

2021b Fighting trafficking in human beings: New strategy to prevent trafficking, break criminal business models, protect and empower victims. Press Release, 14 April. Available at <https://ec.europa.eu> (accessed 23. September 2021).

n.d. *The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016*. Available at <https://ec.europa.eu>.

European Migration Network

2018 *Asylum and Migration Glossary 6.0: a tool for better comparability produced by the European Migration Network*. European Commission. Available at www.emn.at.

European Parliament

2016 Human trafficking: "Like any market, there must be a demand that drives it". Available at www.europarl.europa.eu (accessed 13 October 2021).

EUROPOL

2015 *Exploring tomorrow's organised crime*. The Hague. Available at www.europol.europa.eu.

n.d. EU POLICY CYCLE - EMPACT. Available at www.europol.europa.eu (accessed 14 September 2021).

Federal Ministry for Europe, Integration and Foreign Affairs

n.d. 3. *Österreichischer Bericht zur Bekämpfung des Menschenhandels 2012–2014*. Available at www.parlament.gv.at.

Federal Ministry for European and International Affairs

n.d. Combating Trafficking in Human Beings. Available at www.bmeia.gv.at (accessed 5 August 2021).

Federal Ministry of Families and Youth

n.d. *Handlungsorientierungen zur Identifizierung von und zum Umgang mit potenziellen Opfern von Kinderhandel*. Vienna. Available at www.bmeia.gv.at.

Federal Ministry of the Interior

2012 *Bericht des Menschenrechtsbeirates zu Identifizierung und Schutz von Opfern des Menschenhandels*. Vienna. Available at www.bmi.gv.at.

2021 Data provided by the Federal Ministry of the Interior; 28 September 2021.

Filzwieser, C., M. Frank, M. Kloibmüller and J.R. Raschhofer

2016 *Asyl- und Fremdenrecht*. Neuer Wissenschaftlicher Verlag, Vienna.

Forschung und Lehre

2021 „Die Folgen sind für die Opfer dramatisch“, 30 July. Available at www.forschung-und-lehre.de (accessed 13 October 2021).

Frei, N.

2014 *Menschenhandelsopfer in Dublin-Verfahren*. Migration and Integration Research in Austria, Third Annual Conference, 22–23 September 2014. Available at www.researchgate.net (accessed 5 August 2021).

Group of Experts on Action against Trafficking in Human Beings (GRETA)

2015 *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria*. Available at <https://rm.coe.int>.

2020 *Evaluation Report - Austria*. Available at <https://rm.coe.int>.

Institute for Women's and Men's Health

n.d.a *Jahresbericht 2016*. Available at <https://fem-men.at>.

n.d.b *Jahresbericht 2017*. Available at <https://fem-men.at>.

n.d.c *Jahresbericht 2018*. Available at <https://fem-men.at>.

- n.d.d *Jahresbericht 2019*. Available at <https://fem-men.at>.
- n.d.e *Jahresbericht 2020*. Available at <https://fem-men.at>.
- n.d.f MEN VIA - Opferschutz für Männer, die von Menschenhandel betroffen sind. Available at <https://men-center.at> (accessed 24 August 2021).
- n.d.g *Tätigkeitsbericht 2015*. Available at <https://fem-men.at>.

International Organization for Migration, Country Office for Austria (IOM Austria)

- 2017 *Menschenhandel. Erkennung von Betroffenen im Asylverfahren*. Vienna. Available at www.bfa.gv.at.
- n.d. *Trainings for identifying trafficked persons and acquiring intercultural competences in the Austrian asylum procedure*. Available at <https://austria.iom.int> (accessed 2 September 2021).

KOK – German NGO Network against Trafficking in Human Beings

- 2011 *STUDIE - Entwicklung tragfähiger Unterstützungsstrukturen für die Betroffenen von Menschenhandel zur Arbeitsausbeutung*. Available at www.bmas.de.

LEFÖ – Counselling, Education and Support for Migrant Women

- 2016 *Tätigkeitsbericht 2015*. Available at <https://lefoe.at>.
- 2017 *Tätigkeitsbericht 2016*. Available at <https://lefoe.at>.
- n.d.a IBF – Intervention Center for Trafficked Women. Available at <https://lefoe.at> (accessed 24 August 2021).
- n.d.b *Tätigkeitsbericht 2017*. Available at <https://lefoe.at>.
- n.d.c *Tätigkeitsbericht 2018*. Available at <https://lefoe.at>.
- n.d.d *Tätigkeitsbericht 2019*. Available at <https://lefoe.at>.
- n.d.e *Tätigkeitsbericht 2020*. Available at <https://lefoe.at>.

LEFÖ-IBF

- 2016 *Gesundheit Sicherheit Rechte Arbeit Geld*. Available at <https://lefoe.at>.
- n.d. *Leitfaden für vielversprechende Praktiken / Langfristiger Schutz für Betroffene von Menschenhandel*. Available at <https://lefoe.at>.

Ludwig Boltzmann Institute

- 2021 *Menschenhandel in Europa: Interview zum Kommentar zum Übereinkommen des Europarats zur Bekämpfung des Menschenhandels mit Julia Planitzer und Helmut Sax*. Available at <https://bim.lbg.ac.at>.

MEN – Männergesundheitszentrum

- n.d. *Men Via Unterstützung für Männer als Betroffene von Menschenhandel*. Available at <https://men-center.at>.

oesterreich.gv.at

- 2021 *Allgemeines zu Unterstützungen für Verbrechenopfer*. Available at www.oesterreich.gv.at (accessed 24 August 2021).
- n.d. *Living in Austria: Asylum procedure*. Available at www.oesterreich.gv.at (accessed 20 September 2021).

Office of the United Nations High Commissioner for Human Rights (OHCHR)

- 2018 *Report of mission to Austria focusing on the human rights of migrants, particularly in the context of return*. Available at www.ohchr.org.

Organization for Security and Co-operation in Europe (OSCE)

- 2019 *Report by the OSCE Acting Co-ordinator for Combating Trafficking in Human Beings following the official visit to Austria 19–23 November 2018 and 14 January 2019*. Available at www.osce.org.

Planitzer, J., E. Probst, B. Steiner and B. Unterlechner

2011 *Entschädigungsmöglichkeiten für Betroffene des Menschenhandels in Österreich: Comp.act Österreich; Comp.act Europe; European Action for Compensation for Trafficked Persons*. Global Compact Network Austria, Vienna.

Reyhani, A.-N.

2014 *Trafficked Persons as Asylum Seekers - The Process of Identification and Access to Residence Rights in Austria*. International Organization for Migration (IOM), Vienna. Available at www.emn.at.

Sander, C.

2018 *Best practices In tackling trafficking Nigerian Route (BINIs): National Report Austria*. Herzwerk (Heart Work) – a diaconical initiative for people in prostitution, Vienna. Available at www.herzwerk-wien.at.

Schlintl, J. and L. Sorrentino

2021 *Residence permits, international protection and victims of human trafficking: Durable Solutions Grounded in International Law*. LEFÖ-IBF. Available at <https://lefoe.at>.

Social Democratic Party of Austria, Austrian People's Party

2012 *Erfolgreich. Österreich. Arbeitsprogramm der österreichischen Bundesregierung für die Jahre 2013 bis 2018*. Available at <https://images.derstandard.at>.

Statistics Austria

n.d. *Conviction Statistics: all offences*. Available at <http://statcube.at>.

Steiner, B., E. Probst and M. Buchner

2018 *Kompaktwissen für die Praxis: Strafverfahren, Entschädigung und Opferschutz*. Vienna. Available at <https://men-center.at>.

Task Force on Combating Human Trafficking

2017 *Rights of Victims of Human Trafficking in Austria*. Vienna. Available at www.bmeia.gv.at.

2021a *Nationaler Aktionsplan zur Bekämpfung des Menschenhandels für die Jahre 2021–2023*. Available at www.bmeia.gv.at.

2021b *Regelung der Prostitution in Österreich: Empfehlungen der Arbeitsgruppe „Prostitution“ im Rahmen der Task Force Menschenhandel*. Available at www.bmeia.gv.at.

2021c *Umsetzung des Nationalen Aktionsplans zur Bekämpfung des Menschenhandels 2018–2020*. Available at www.bmeia.gv.at.

n.d. *Brochure on Human Trafficking*. Vienna. Available at www.bmeia.gv.at.

The New People's Party and The Greens - The Green Alternative

2020 *Aus Verantwortung für Österreich. Regierungsprogramm 2020–2024*. Vienna. Available at www.bundestkanzleramt.gv.at.

United Nations Office on Drugs and Crime (UNODC)

2021 *Global Report on Trafficking in Persons 2020*. Available at www.unodc.org.

U.S. Department of State

2021 *Trafficking in persons report*. Available at www.state.gov.

n.d. *2020 Trafficking in Persons Report: Austria*. Available at www.state.gov (accessed 10 August 2021).

Zimmerman, C. and R. Borland

2009 *Caring for Trafficked Persons: Guidelines for Health Providers*. International Organization for Migration.

EUROPEAN MIGRATION NETWORK

The European Migration Network (EMN) was launched in 2003, by the European Commission and by order of the European Council, in order to satisfy the need for a regular exchange of reliable information in the field of migration and asylum at European level. Since 2008 Council Decision 2008/381/EC has constituted the legal basis of the EMN, and National Contact Points (NCPs) have been established in the EU Member States (with the exception of Denmark, which has observer status) and in Norway.

The EMN's role is to provide up-to-date, objective, reliable and comparable information on migration and asylum to European Union (EU) institutions and Member States' authorities and institutions with a view to supporting policymaking in the EU in these areas. The EMN is also tasked with providing such information to the general public.

The NCP Austria – based on an agreement with the Federal Ministry of the Interior – is located in the Research and Migration Law Department of the country office for Austria of the International Organization for Migration (IOM). The IOM office was established in 1952 when Austria became one of the first Member States of the Organization. The main responsibility of the IOM country office is to analyse national migration issues and emerging trends and to develop and implement corresponding national projects and programmes.

The main tasks of the NCPs in implementing the work programme of the EMN include drafting the annual policy reports and studies covering specific topics, responding to Ad-Hoc Queries launched by other NCPs or the European Commission, carrying out activities to increase the EMN visibility, and networking within several fora. In addition, the NCPs in each country also set up national networks of organizations, institutions and individuals working in the field of migration and asylum.

In general, the NCPs do not conduct primary research but collect and analyse existing data and information, which are supplemented where necessary through additional information collected directly. EMN studies are prepared in accordance with common study templates in order to achieve comparable results within the EU and Norway. Since comparing results frequently proves challenging, the EMN has produced a Glossary, which ensures that similar definitions and terminology are used in all national reports.

On completion of national reports, the European Commission with the support of a service provider drafts a synthesis report, which summarizes the most significant results from the individual national reports. In addition, topic-based policy briefs, referred to as EMN Informs, are prepared as succinct summaries and comparisons of national findings on key selected topics. All national studies, synthesis reports, Informs and the Glossary are available on the website of the European Commission Directorate-General for Migration and Home Affairs.

