

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



**Recommendation CP(2011)1
on the implementation of the Council of Europe Convention
on Action against Trafficking in Human Beings
by Austria**

*adopted at the 6th meeting of the Committee of the Parties
on 26 September 2011*

The Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings (hereinafter referred to as 'the Convention'), acting under the terms of Article 38(7) of the Convention,

Having regard to the purposes of the Convention to prevent and combat trafficking in human beings, while guaranteeing gender equality, protect the human rights of victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, ensure the effective investigation and prosecution of the offences related to trafficking in human beings, and promote international co-operation;

Bearing in mind the provisions of Article 36(1) of the Convention concerning the monitoring role of the Group of Experts on Action against Trafficking in Human Beings (GRETA) in the implementation of the Convention;

Having regard to the Rules of Procedure of the Committee of the Parties;

Having regard to the instrument of ratification submitted by the Austria on 12 October 2006;

Having examined the Report concerning the implementation of the Convention by Austria, adopted by GRETA at its 10th meeting (21-24 June 2011) in the framework of the first evaluation round;

Having examined the comments of the Austrian Government on the GRETA Report, submitted on 5 August 2011;

Welcoming the measures to combat trafficking in human beings taken by the Austrian authorities, and in particular:

- the setting up of the Task Force on Combating Human Trafficking which co-ordinates the efforts of all relevant actors and the appointment of a National Co-ordinator on Combating Human Trafficking;
- the adoption of multiannual National Action Plans aimed at covering all aspects of the fight against trafficking in human beings;
- the introduction in 2009 of special procedures to prevent trafficking for the purpose of domestic servitude in diplomatic households;

- the efforts to raise awareness on trafficking in human beings among the general public and to train relevant professionals, in co-operation with non-governmental and intergovernmental organisations;
- the agreement concluded with a NGO to provide assistance to migrant women victims of trafficking and the setting up of an accommodation centre for child victims of trafficking by the municipality of Vienna;

Taking note of the areas where further action is required in order to improve the implementation of the Convention by Austria, in particular:

- reinforcing the co-ordination and co-operation between the Federal Government and the governments of the *Länder* with a view to addressing the geographical differences in the approach to the fight against trafficking in human beings;
- developing a nationwide system for the identification of and assistance to child victims of trafficking by establishing co-ordination and contacts between all the relevant authorities and in particular the authorities of the *Länder*;
- ensuring that foreign victims of trafficking residing illegally in Austria are properly identified in order to benefit from the assistance and protection measures provided for in the Convention, in particular a recovery and reflection period and granting of a residence permit;
- stepping up the proactive identification of victims of trafficking for the purpose of labour exploitation and creating an assistance system adapted to the specific needs of men victims of trafficking;
- developing a clear institutional and procedural framework for the repatriation and return of victims of trafficking, with due regard to their safety, dignity and protection and, in the case of children, by fully respecting the principle of the best interest of the child;
- strengthening the effectiveness and dissuasiveness of the criminal law provisions prohibiting trafficking in human beings in order to fully reflect the fact that trafficking in human beings constitutes a serious violation of human rights;

1. Recommends that the Government of Austria implement the proposals of GRETA listed in Appendix I to the Report concerning the implementation of the Convention by the Austria (see addendum);

2. Requests the Government of Austria to inform the Committee of the Parties of the measures taken to comply with this recommendation by 26 September 2013;

3. Invites the Government of Austria to continue the ongoing dialogue and co-operation with GRETA and to keep GRETA informed of the measures taken in response to its proposals.

Addendum

List of GRETA's proposals concerning the implementation of the Convention by Austria

Comprehensive approach and co-ordination in the fight against THB

1. GRETA considers that the Austrian authorities should take measures to reinforce the comprehensive approach to the fight against THB, by ensuring that the action undertaken encompasses all categories of victims (in particular that it is extended to children and men) and all forms of THB (including for the purpose of labour exploitation).
2. Further, GRETA considers that the Austrian authorities should reinforce co-ordination and co-operation between the federal government and the governments of the *Länder* with a view to ensuring that all aspects of THB and all regions of Austria are integrated in the efforts undertaken to combat THB.
3. GRETA also encourages the Austrian authorities to take measures to allocate and secure appropriate funds in the federal budget and the budgets of the *Länder* dedicated to action against THB, in consultation with all relevant actors, and reflecting the actual needs.

International co-operation

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

Data collection

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

Research

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

Awareness raising and education

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

Identification of victims of THB

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

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

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

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

Assistance measures

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

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

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

Recovery and reflection period

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

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

Residence permits

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

Compensation and legal remedies

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

Protection of witnesses and victims

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

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

Repatriation and return of victims

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

Substantive criminal law

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

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

Investigation, prosecution and convictions

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

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

Non-punishment of victims of THB

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