

## 4. AUSTRIAN IMPLEMENTATION OF POSITIVE OBLIGATIONS

The ECHR has constitutional status in Austria, and thus, the minimum standard under article 4 of the ECHR, established in the previous chapter, is of particular significance regarding the protection of individuals from human trafficking in Austria. Therefore, the following chapter examines Austrian compliance with the positive obligations under article 4 of the ECHR. However, due to the fact that compliance with both the obligation for protective operational measures and effective investigation ultimately depends on the circumstances of a particular case, it is not possible to make a definite and final assessment on the matter. Nonetheless, the aim is to highlight possible issues and identify trends.

First, an overview of the current situation of human trafficking in Austria is given, presenting the main types of exploitation connected to human trafficking in Austria. Second, pursuant Austrian criminal law is scrutinised to determine compliance with the minimum standard set out under article 4 of the ECHR. Finally, prevalent practical protection measures and investigation routines are evaluated by analysing GRETA reports<sup>380</sup>, pursuant state reports and NGO reports as well as relevant literature.

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380 It should be noted that the expert group of GRETA extensively commented on the Austrian anti-trafficking policies in its country reports. However, this thesis does not include a comprehensive summary of its findings but only considered those

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The issue of human trafficking is twofold in Austria: It is not only a destination country but due to its geographical location, it is also a transit country for traffickers.<sup>381</sup> Therefore, most victims are foreigners. The share of EU-citizens or third country nationals varies considerably every year. Victims from third countries are often from Nigeria or the Balkan states, such as Serbia and Bosnia-Herzegovina.<sup>382</sup> EU-citizens mainly come from Romania, Hungary, and Bulgaria.<sup>383</sup> The number of identified victims fluctuates from year to year, but overall, it has slightly increased in the past 10 years. According to official statistics of the Federal Office of Criminal Investigation (BAK), 130 people were identified as victims of trafficking in the past year.<sup>384</sup> However, this number only includes victims who have given an official statement to the police about their trafficking experience.<sup>385</sup> The vast majority of those were men who were primarily trafficked for the purpose of labour

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aspects that were relevant with a view to the positive obligations under article 4 of the ECHR as discussed in the previous chapter.

- 381 Bundeskriminalamt, 'Lagebericht 2022: Schlepperei, Menschenhandel und illegales Glückspiel' (Wien, 2023), 21.
- 382 Bundeskriminalamt, 'Lagebericht Schlepperei und Menschenhandel 2021' (Wien, 2022), 27; Bundeskriminalamt, 'Lagebericht Schlepperei und Menschenhandel 2020' (Wien, 2021), 26; Council of Europe: Group of Experts on Action against Trafficking in Human Beings, 'Evaluation Report Austria: Third Evaluation Round' (10 June 2020), para 13.
- 383 Bundeskriminalamt, 'Lagebericht Schlepperei und Menschenhandel 2020' (Wien, 2021), 26; Council of Europe: Group of Experts on Action against Trafficking in Human Beings, 'Evaluation Report Austria: Third Evaluation Round' (10 June 2020), para 13; Council of Europe: Group of Experts on Action against Trafficking in Human Beings, 'Evaluation Report Austria: Second Evaluation Round' (12 October 2015), para 14.
- 384 Bundeskriminalamt, 'Lagebericht 2022: Schlepperei, Menschenhandel und illegales Glückspiel' (Wien, 2023), 24.
- 385 Sander claims that the statistics of documented victims of the BAK only include victims who have given an official statement to the police. See: Caroline Sander, 'Sexuelle Ausbeutung nigerianischer und chinesischer Betroffener des Menschenhandels – (k)ein österreichisches Problem?' in Christian Grafl and others (eds), *"Sag, wie hast du's mit der Kriminologie?": Die Kriminologie im Gespräch mit ihren Nachbardisziplinen* (Neue Kriminologische Schriftenreihe der Kriminologischen Gesellschaft eV vol 118. Forum Verlag Godesberg GmbH 2020), 210.

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exploitation.<sup>386</sup> This presents a new development that is connected to the detection of more labour exploitation cases.<sup>387</sup> Usually, there are more female victims who are mainly trafficked for the purpose of sexual exploitation. Considering that all three GRETA evaluation reports stressed that victim identification in cases of labour exploitation needs to improve, this could indicate a new trend of better identification.<sup>388</sup> The main types of exploitation in Austria are labour exploitation and sexual exploitation. Exploitation for the purpose of forced begging and exploitation for the purpose of criminal activities are detected to a significantly lesser degree.<sup>389</sup>

In Austria, labour exploitation mainly occurs in the agricultural, construction, and domestic work sector.<sup>390</sup> In the agricultural sector, victims often work 60–70 hours per week; costs for food and accommodation are deducted from their wages; and wages are being paid in cash 95% of the time.<sup>391</sup> Workers often remain quiet about these exploitative conditions due to the fear of possible exclusion from future placement opportunities by the agency that organised their work placement.<sup>392</sup> Besides, some seasonal worker do not even know about

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386 Bundeskriminalamt, 'Lagebericht 2022: Schlepperei, Menschenhandel und illegales Glückspiel' (Wien, 2023), 24.

387 Ibid.

388 Council of Europe: Group of Experts on Action against Trafficking in Human Beings, 'Evaluation Report Austria: Third Evaluation Round' (10 June 2020), para 129 f; Council of Europe: Group of Experts on Action against Trafficking in Human Beings, 'Evaluation Report Austria: Second Evaluation Round' (12 October 2015), para 97, 104; Council of Europe: Group of Experts on Action against Trafficking in Human Beings, 'Evaluation Report Austria: First Evaluation Round' (15 September 2011), para 44, 48, 92.

389 Bundeskriminalamt, 'Lagebericht 2022: Schlepperei, Menschenhandel und illegales Glückspiel' (Wien, 2023), 26; Bundeskriminalamt, 'Lagebericht Schlepperei und Menschenhandel 2020' (Wien, 2021), 29; Council of Europe: Group of Experts on Action against Trafficking in Human Beings, 'Evaluation Report Austria: First Evaluation Round' (15 September 2011), para 9.

390 Bundeskriminalamt, 'Lagebericht 2022: Schlepperei, Menschenhandel und illegales Glückspiel' (Wien, 2023), 22.

391 Arbeitsgruppe gegen Menschenhandel zum Zweck der Arbeitsausbeutung, 'Bericht für die Jahre 2018–2020', 8.

392 Ibid.

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their rights.<sup>393</sup> Workers are also often instructed on what to say to authorities during work inspections.<sup>394</sup> Consequently, reaching out to agricultural seasonal workers is proving difficult.<sup>395</sup> However, the competent authorities have improved their cooperation, resulting in more reports of possible human trafficking cases for the purpose of labour exploitation being registered.<sup>396</sup> In the construction sector, public authorities struggle to check and verify relevant documents concerning construction workers due to high employee turnover and non-transparent subcontracts.<sup>397</sup> A particular vulnerable group are domestic workers of diplomats. For one, they work in private homes, which is why it is difficult to inspect their working conditions.<sup>398</sup> Furthermore, they often do not speak German or understand their rights under Austrian law.<sup>399</sup> Given the immunity status of the employers, it is also impossible to properly investigate such cases.<sup>400</sup> The fact that temporary residence permits for victims without a valid visa are depending on ongoing criminal or civil procedures, then deters victims, who are undocumented domestic workers, from reporting their employers as they would risk even faster deportation.<sup>401</sup> However, to address these issues and

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393 Katja Klaffenböck and Nadja Schuster, 'Arbeitsbedingungen in der Ernte – Zunahme von Ausbeutung und Menschenhandel im Zeichen von Corona?' (Konferenz „Menschenhandel im Zeichen von Corona“, Österreichische Taskforce zur Bekämpfung von Menschenhandel, 14 and 15 October 2020) <[https://www.vidc.org/fileadmin/nadja/bericht\\_ws\\_3\\_ernte\\_vidc-iom\\_langfassung.pdf](https://www.vidc.org/fileadmin/nadja/bericht_ws_3_ernte_vidc-iom_langfassung.pdf)> accessed 13 July 2023.

394 Arbeitsgruppe gegen Menschenhandel zum Zweck der Arbeitsausbeutung, 'Bericht für die Jahre 2018–2020', 8.

395 Arbeitsgruppe gegen Menschenhandel zum Zweck der Arbeitsausbeutung, 'Bericht für die Jahre 2015–2017', 9.

396 Arbeitsgruppe gegen Menschenhandel zum Zweck der Arbeitsausbeutung, 'Bericht für die Jahre 2018–2020', 8.

397 Ibid.

398 Arbeitsgruppe gegen Menschenhandel zum Zweck der Arbeitsausbeutung, 'Bericht für die Jahre 2015–2017', 14.

399 Ibid.

400 Irene Zöch, 'Ausbeutung: Die Sklaven der Diplomaten' *Die Presse* (28 April 2011) <<https://www.diepresse.com/653613/ausbeutung-die-sklaven-der-diplomaten>> accessed 13 July 2023.

401 Ibid.

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to ensure protection of domestic workers in diplomatic households, Austria has a number of measures in place: the diplomat must hand in a number of documents, for example, a verification of health insurance and a copy of the worker's passport; the worker then has to apply for the work visa in person at an Austrian embassy; after arrival in Austria, the worker has to register at the embassy of his home country; the salary needs to be transferred to an Austrian bank account in the name of the worker; and finally, the worker is provided with information about his rights and contact details of relevant NGOs.<sup>402</sup> This set of preventative measures is considered to be exemplary.<sup>403</sup>

Human trafficking for the purpose of sexual exploitation mostly concerns women and girls.<sup>404</sup> A common practice of traffickers, to recruit victims, is the so called 'lover-boy' method.<sup>405</sup> Traffickers fake love and a relationship to secure the victim's trust and create dependency in order to eventually exploit the victim for sexual purposes, using force if necessary.<sup>406</sup> Furthermore, trafficking victims of sexual exploitation from Nigeria and China are often asylum seekers.<sup>407</sup> In the case of Chinese women, it is suspected that initially undocumented Chinese women who had originally been exploited for a different purpose, are eventually pushed to apply for asylum and subsequently end up being exploited for prostitution.<sup>408</sup> These women often do not

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402 Arbeitsgruppe gegen Menschenhandel zum Zweck der Arbeitsausbeutung, 'Bericht für die Jahre 2015–2017', 14.

403 Ibid. see also: Irene Zöch, 'Ausbeutung: Die Sklaven der Diplomaten' *Die Presse* (28 April 2011) <<https://www.diepresse.com/653613/ausbeutung-die-sklaven-der-diplomaten>> accessed 13 July 2023.

404 Plattform gegen Ausbeutung und Menschenhandel, 'Menschenhandel zum Zweck sexueller Ausbeutung: Positionspapier' (2017), 1.

405 Bundeskriminalamt, 'Lagebericht 2022: Schlepperei, Menschenhandel und illegales Glückspiel' (Wien, 2023), 25 f.

406 Ibid.

407 Caroline Sander, 'Sexuelle Ausbeutung nigerianischer und chinesischer Betroffener des Menschenhandels – (k)ein österreichisches Problem?' in Christian Grafl and others (eds), *"Sag, wie hast du's mit der Kriminologie?": Die Kriminologie im Gespräch mit ihren Nachbardisziplinen* (Neue Kriminologische Schriftenreihe der Kriminologischen Gesellschaft e.V vol 118. Forum Verlag Godesberg GmbH 2020), 205 ff.

408 Ibid, 207.

want to give an official statement to the police due to a lack of trust in law-enforcement.<sup>409</sup> Nigerian women are also often afraid to report their trafficking due to a religious oath made back in Nigeria.<sup>410</sup>

#### 4.2. Criminal legal framework of Austria

There are 4 different criminal provisions that deal with human trafficking: sections 104, 104a and 217(2) of the Austrian Criminal Code (CC)<sup>411</sup> and section 116 of the Aliens Police Act (FPG)<sup>412</sup>.

Section 217 of the CC was the original ‘human trafficking’ offence and encompasses, *inter alia*, situations of transborder recruitment and transport into prostitution by means of deception, force, and coercion.<sup>413</sup> Due to the prevalence of trafficking for the purpose of sexual exploitation, this offence is still extremely relevant, constituting aggravating circumstances that result in more severe penalties than the basic offence of human trafficking. Section 104a of the CC presents the current basic ‘human trafficking’ offence, and in addition, includes various aggravating factors. Regarding the elements of actions and means, it essentially corresponds with the international definition of human trafficking, punishing anyone who recruits, harbours, receives, transports, or passes someone on to somebody else by means of force, threat, deception, exploitation of a position of power, exploitation of a position of vulnerability, intimidation, giving or receiving benefits for achieving the transfer of control over a person with the intention of exploiting them. However, section 104a(3) of the CC defines ‘intention to exploit’ and only refers to sexual exploitation, organ removal, labour exploitation, forced begging, and exploitation for the purpose of criminal activities. Since this list of exploitation purposes is exhaustive,

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409 Ibid, 212.

410 Ibid.

411 Strafgesetzbuch BGBl Nr 60/1974, CC.

412 Fremdenpolizeigesetz 2005 BGBl I Nr 100/2005.

413 Section 216 (2) of the CC; Julia Planitzer and Helmut Sax, ‘Combating Trafficking in Human Beings for Labour Exploitation in Austria’ in Conny Rijken (ed), *Combating Trafficking in Human Beings for Labour Exploitation* (2011), 3.

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exploitation types of slavery and servitude are thus not covered by section 104a of the CC.<sup>414</sup> Slave trade, enslaving an individual, and keeping someone in slavery or practices similar to slavery, such as servitude, are covered by section 104 of the CC. Therefore, *Planitzer* and *Sax* argue that human trafficking for the purpose of slavery or servitude is covered by section 104 of the CC.<sup>415</sup> Yet, section 104 of the CC does not include situations, where actions have been taken via one of the stipulated means for the purpose of slavery or servitude, if actual exploitation has not taken place yet.<sup>416</sup> Consequently, if someone takes action via one of the stipulated means for the purpose of slavery or servitude without success, this person is not punishable under criminal law with none of the two offences being applicable to such a situation. It is worth mentioning, that there is neither a criminal offence that covers forced labour independently from any preceding trafficking process. While section 116 of the FPG covers labour exploitation itself, it is only applicable to foreigners without a work or residence permit, and thus, does not provide an adequate level of protection.

The penalty for trafficking offences depends on the particular circumstances. The basic offence of trafficking stipulates a penalty of 6 months up to 5 years in prison.<sup>417</sup> Aggravating factors, such as the victim being a child, the crime being committed within the framework of a criminal organisation, cases of severe violence, and cases of serious danger to safety of life, increase the penalty from a minimum of 1 year and up to 10 years in prison.<sup>418</sup> The same penalties apply to cases of transborder trafficking for the purpose of forced prostitution.<sup>419</sup>

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414 Klaus Schwaighofer, 'Section 104a' in Frank Höpfel and Eckart Ratz (eds), *Wiener Kommentar zum Strafgesetzbuch* (2nd edn. Manz), 9.

415 Julia Planitzer and Helmut Sax, 'Combating Trafficking in Human Beings for Labour Exploitation in Austria' in Conny Rijken (ed), *Combating Trafficking in Human Beings for Labour Exploitation* (2011), 1.

416 Kurt Schmoller, 'Section 104' in Otto Triffterer, Christian Rosbaud and Hubert Hinterhofer (eds), *Salzburger Kommentar zum Strafgesetzbuch* (44th edn. Lexis-Nexis ARD ORAC), 13.

417 Section 104a (1) of the CC.

418 Section 104a (4–5) of the CC.

419 Section 217 (2) of the CC.

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Considering that even the minimum penalty of the basic trafficking offence consists of a prison sentence of 6 months, with the duration of imprisonment being doubled in cases of aggravating circumstances, it can be concluded that penalties are dissuasive and proportionate, and thus, in compliance with article 4 of the ECHR.

Austrian limitation periods for criminal prosecution depend upon the maximum penalty of the particular offence.<sup>420</sup> Therefore, cases of the basic trafficking offence are time-barred after 5 years and with cases complicated by aggravating circumstances being time-barred after 10 years; though there are various factors that interrupt and suspend the limitation period.<sup>421</sup> In light of the Court's reasoning in *T.I. and Others v Greece*, where it stated that the Greek legal framework was inadequate due to time-barring, the question arises, whether the limitation periods of the CC are in compliance with article 4 of the ECHR.<sup>422</sup> Whereas, the applicable Greek offence only constituted a misdemeanour, even the basic offence of trafficking of the CC already qualifies as a serious crime. Based on this, the time limitation periods of the CC would conform with the protection level mandated by article 4 of the ECHR. Ultimately, further clarification by the Court on the matter is needed.

Overall, Austrian criminal law generally fulfils the requirement of criminalisation set out in article 4 of the ECHR. However, there is a legislative gap regarding trafficking for the purpose of slavery and servitude that needs to be closed. Additionally, the appropriateness of the limitation periods of the offences remains to be reviewed by the Court.

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420 Section 57 of the CC.

421 Section 57 (3) and section 58 of the CC.

422 See chapter 3.3.2.1.



### 4.3. Victim protective measures

In Austria, the police are responsible for officially identifying and recognizing a person as a victim of human trafficking.<sup>423</sup> Because asylum authorities and labour inspectors cannot officially identify victims, they are obliged to refer any case, which raises suspicion, to the police.<sup>424</sup> However, for victims to receive official status as such, they have to give an official statement to the police about their trafficking experience, which links the identification process to criminal proceedings.<sup>425</sup> Consequently, victims who are too afraid to report their trafficking experience to the police are not included in the official statistics of trafficking victims and often they do not receive a temporary residence permit.<sup>426</sup>

423 GRETA, 'Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria: First evaluation round' (Strasbourg, 15 September 2011), para 77.

424 Council of Europe: Group of Experts on Action against Trafficking in Human Beings, 'Evaluation Report Austria: Third Evaluation Round' (10 June 2020), para 223; Arbeitsgruppe gegen Menschenhandel zum Zweck der Arbeitsausbeutung, 'Bericht für die Jahre 2018-2020', 19.

425 Anna Mayhofer, 'Fehlende Rechte von nicht offiziell identifizierten Betroffenen von Menschenhandel' (Plattform gegen Ausbeutung und Menschenhandel, 19 January 2017) <[https://www.gegenmensenhandel.at/wp-content/media/SOLWODI-Presskonferenz-viell-final\\_pdf.pdf](https://www.gegenmensenhandel.at/wp-content/media/SOLWODI-Presskonferenz-viell-final_pdf.pdf)> accessed 16 July 2023; Sabine Kallauch, 'Forderung der Anerkennung der Identifizierung von Betroffenen von Menschenhandel durch spezialisierte NGOs insbesondere im Asylverfahren' (Plattform gegen Ausbeutung und Menschenhandel, 19 January 2017) <<https://www.gegenmensenhandel.at/wp-content/media/2017-01-19-Presskonferenz-He rzwerk-final.pdf>> accessed 16 July 2023; Katharina Beclin, 'Die Aussagepflicht von Opfern von Menschenhandel als Verstoß gegen die Schutzpflichten des Staates und als Hindernis der Strafverfolgung?: Ein Plädoyer für Ermächtigung statt Instrumentalisierung von Opfern' in Christian Graf and others (eds), "Sag, wie hast du's mit der Kriminologie?": Die Kriminologie im Gespräch mit ihren Nachbardisziplinen (Neue Kriminologische Schriftenreihe der Kriminologischen Gesellschaft e.V vol 118. Forum Verlag Godesberg GmbH 2020), 177 f.

426 Caroline Sander, 'Sexuelle Ausbeutung nigerianischer und chinesischer Betroffener des Menschenhandels – (k)ein österreichisches Problem?' in Christian Graf and others (eds), "Sag, wie hast du's mit der Kriminologie?": Die Kriminologie im Gespräch mit ihren Nachbardisziplinen (Neue Kriminologische Schriftenreihe der Kriminologischen Gesellschaft e.V vol 118. Forum Verlag Godesberg GmbH 2020), 211, 217; Katharina Beclin, 'Die Aussagepflicht von Opfern von Menschenhandel als Verstoß gegen die Schutzpflichten des Staates und als Hindernis der Strafver-

Further, there are reports of possible victims, who were not officially identified and therefore, were not afforded a 30-day reflection period before being deported.<sup>427</sup> Such course of action would contradict the principle of early victim identification that requires identification before further decisions are made that directly affect the victim.<sup>428</sup> For this reason, GRETA has recommended in its last evaluation report to establish the 30-day reflection period in law.<sup>429</sup>

Victim assistance measures are mainly provided by the state funded NGOs 'LEFÖ – Interventionsstelle für Betroffene des Frauenhandel', aiding female victims, and 'MEN VIA', helping male victims irrespective of an official victim status.<sup>430</sup> Therefore, either the police or other institutions refer identified victims to these NGOs, or victims may willingly seek their assistance of their own accord.<sup>431</sup> They provide the following services: temporary housing, basic necessities, support for psychological recovery, legal advice, access to medical care, assistance with administrative tasks and appointments, help with integration, and

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folgung?: Ein Plädoyer für Ermächtigung statt Instrumentalisierung von Opfern' in Christian Grafl and others (eds), *"Sag, wie hast du's mit der Kriminologie?": Die Kriminologie im Gespräch mit ihren Nachbardisziplinen* (Neue Kriminologische Schriftenreihe der Kriminologischen Gesellschaft e.V vol 118. Forum Verlag Godesberg GmbH 2020), 177.

427 Council of Europe: Group of Experts on Action against Trafficking in Human Beings, 'Evaluation Report Austria: Third Evaluation Round' (10 June 2020), para 249. see also: Katharina Beclin, 'Die Aussagepflicht von Opfern von Menschenhandel als Verstoß gegen die Schutzpflichten des Staates und als Hindernis der Strafverfolgung?: Ein Plädoyer für Ermächtigung statt Instrumentalisierung von Opfern' in Christian Grafl and others (eds), *"Sag, wie hast du's mit der Kriminologie?": Die Kriminologie im Gespräch mit ihren Nachbardisziplinen* (Neue Kriminologische Schriftenreihe der Kriminologischen Gesellschaft e.V vol 118. Forum Verlag Godesberg GmbH 2020), 177 f.

428 See chapter 3.3.3.3.

429 Council of Europe: Group of Experts on Action against Trafficking in Human Beings, 'Evaluation Report Austria: Third Evaluation Round' (10 June 2020), para 250.

430 Task Force zur Bekämpfung des Menschenhandels, 'Rechte der Opfer von Menschenhandel in Österreich' (2017), 4.

431 LEFÖ- Interventionsstelle für Betroffene des Frauenhandels, 'Tätigkeitsbericht 2021', 9.

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support for victims in detention awaiting deportation.<sup>432</sup> Additionally, victims have the right to a special temporary residence permit for the duration of any criminal or civil proceedings connected to their trafficking.<sup>433</sup> Finally, an internal decree calls for prosecutors and judges to examine the option of non-punishment in cases where there are indications that the crime was committed by a victim of trafficking.<sup>434</sup> In such cases, section 10 of the CC, which exculpates victims, who have acted under duress, from culpability, is applicable.<sup>435</sup>

Notably, in *J. and Others v Austria*, the Court considered assistance provided for by LEFÖ as sufficient, which indicates that the aforementioned measures are fulfilling the obligation of assisting victims under article 4 of the ECHR, provided they are actually offered to a victim in a specific case.

#### 4.4. Investigations in practice

There are 10 special investigation units in place that investigate cases of human trafficking; one in each of the 9 provinces and the remaining one on the federal level.<sup>436</sup> Though the police and prosecutors must conduct a thorough investigation into any suspicion of human trafficking, the opening of such investigations oftentimes depends on the full cooperation of a possible victim.<sup>437</sup> Furthermore, the only evi-

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432 Task Force zur Bekämpfung des Menschenhandels, 'Rechte der Opfer von Menschenhandel in Österreich' (2017), 5 f.

433 Section 57 §1(1) Asylgesetz 2005 BGBl I Nr 100/2005.

434 Council of Europe: Group of Experts on Action against Trafficking in Human Beings, 'Evaluation Report Austria: Third Evaluation Round' (10 June 2020), para 134.

435 Ibid.

436 Council of Europe: Group of Experts on Action against Trafficking in Human Beings, 'Evaluation Report Austria: Second Evaluation Round' (12 October 2015), para 27.

437 Katharina Beclin, 'Die Aussagepflicht von Opfern von Menschenhandel als Verstoß gegen die Schutzpflichten des Staates und als Hindernis der Strafverfolgung?: Ein Plädoyer für Ermächtigung statt Instrumentalisierung von Opfern' in Christian Grafl and others (eds), *"Sag, wie hast du's mit der Kriminologie?": Die Kriminologie im Gespräch mit ihren Nachbardisziplinen* (Neue Kriminologis-

dence gathered are usually simply the testimonies of the victim and the alleged trafficker.<sup>438</sup> This creates a situation where it is effectively the victim's word against the word of the trafficker and as a result, criminal proceedings are frequently terminated by the prosecutors.<sup>439</sup> GRETA has criticised this in its last evaluation report, recommending that the police should investigate more proactively and deploy special investigation techniques in order to avoid complete reliance on the victim's testimony.<sup>440</sup> Such investigative deficits do not automatically result in a breach of the obligation for an effective investigation under article 4 of the ECHR, but they are clearly contradicting the requirement for investigators to take additional steps to resolve any inconsistencies that may arise during the investigation and to avoid complete reliance on victims' testimonies.<sup>441</sup>

#### 4.5. Conclusion

Human trafficking for the purpose of sexual exploitation and labour exploitation are the most prevalent reasons for trafficking in Austria. Although, a majority of human trafficking victims are usually women, more male victims have been detected in the recent year which is due to an increased detection of labour exploitation cases. Human trafficking victims are usually foreigners from EU member states, such as Bulgaria, Hungary and Romania, and third countries such as Balkan states and Nigeria. Austria has criminalised human trafficking and it also has higher penalties in place for aggravating circumstances. However, there is a possible legislative gap concerning human trafficking for the purpose of slavery or servitude in situations where no exploitation has

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che Schriftenreihe der Kriminologischen Gesellschaft eV vol 118. Forum Verlag Godesberg GmbH 2020), 172 ff.

438 Ibid, 174.

439 Ibid.

440 Council of Europe: Group of Experts on Action against Trafficking in Human Beings, 'Evaluation Report Austria: Third Evaluation Round' (10 June 2020), para 130 f.

441 See chapter 3.3.4.2.

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actually taken place. Limitation periods of 5 and 10 years appear to be coherent with article 4 of the ECHR, though further clarification by the Court could be necessary. Austria has a comprehensive set of assistance measures in place, which the Court has already found to be sufficient in *J. and Others v Austria*, though there are reports of the necessary 30-day reflection period not being observed and timely identification before deportation not taking place. There are specially trained police units in place to investigate human trafficking cases. Yet, investigations often lack the required thoroughness which results in many cases relying upon the victim's testimony alone. Overall, the Austrian administrative and legal framework seems to fulfil most of the requirements under article 4 of the ECHR. However, in certain aspects there appears to be room for improvement regarding the application of the framework in practice.

