International Organization for Migration (IOM)

EMN European Migration Network

TRAFFICKED PERSONS AS ASYLUM-SEEKERS

The Process of Identification and Access to Residence Rights in Austria

Adel-Naim Reyhani

Co-funded by the European Union

BM.I REPUBLIC OF AUSTRIA FEDERAL MINISTRY OF THE INTERIOR

The European Migration Network (EMN) is co-ordinated by the European Commission with National Contact Points (EMN NCPs) established in each EU Member State plus Norway. The National Contact Point Austria in the EMN is financially supported by the European Commission and the Austrian Federal Ministry of the Interior.

TRAFFICKED PERSONS AS ASYLUM-SEEKERS – THE PROCESS OF IDENTIFICATION AND ACCESS TO RESIDENCE RIGHTS IN AUSTRIA

Adel-Naim Reyhani

International Organization for Migration (IOM)

The opinions expressed in the report are those of the author and do not necessarily reflect the views of the Austrian Federal Ministry of the Interior, the European Commission and/or the International Organization for Migration (IOM). The designations employed and the presentation of material throughout the report do not imply the expression of any opinion whatsoever on the part of IOM concerning the legal status of any country, territory, city or area, or of its authorities, or concerning its frontiers or boundaries.

IOM is committed to the principle that humane and orderly migration benefits migrants and society. As an intergovernmental organization, IOM acts with its partners in the international community to: assist in meeting the operational challenges of migration; advance understanding of migration issues; encourage social and economic development through migration; and uphold the human dignity and well-being of migrants.

Cover design: Mandelbaum Verlag
Print: Primerate, Budapest

Publisher:
International Organization for Migration, Country Office Vienna
National Contact Point Austria in the European Migration Network
Nibelungengasse 13/4, 1010 Vienna
iomvienna@iom.int, ncpaustria@iom.int
www.iomvienna.at, www.emn.at

TABLE OF CONTENTS

INTRODUCTION 5

METHODOLOGY 8

1. THE AUSTRIAN CONTEXT 10
- 1.1 Legal framework 10
  - *1.1.1 Criminal law* 10
  - *1.1.2 Protection, residence rights, and return* 12
- 1.2 Policy framework 14
- 1.3 Institutional framework 15
- 1.4 Extent and characteristics 16
  - *1.4.1 General statistics* 17
  - *1.4.2 The number of asylum-seeking trafficked persons* 20

2. THE PROCESS OF IDENTIFICATION 23
- 2.1 Detection 24
  - *2.1.1 In the asylum procedure* 24
  - *2.1.2 In the forced return procedure* 25
  - *2.1.3 The role of non-governmental actors* 27
- 2.2 Identification 28
- 2.3 Referral mechanism 29

3. ACCESS TO RESIDENCE RIGHTS 33
3.1 International protection 33
3.1.1 The qualification as a refugee 34
3.1.2 Subsidiary protection 35
3.1.3 Austrian practice and case law 38
3.1.4 The Dublin procedure 42
3.2 The residence permit 44
3.2.1 The Trafficking Convention 45
3.2.2 The Residence Permit Directive 46
3.2.3 The Austrian residence permit 47
3.2.4 The reflection period 50
3.3 Comparing the schemes to obtain residence rights 51

4. KEY FINDINGS 54

ANNEX 58
Abbreviations and translations 58
Bibliography 60

INTRODUCTION

Today it is recognized that Austria is a destination and transit country for the crime of trafficking in human beings[1] – the trade in humans for the purpose of exploitation[2] – due to its geographical location at the centre of Europe. In Austria, known forms of the phenomenon include sex trafficking, labour exploitation and forced labour in the domestic area, as well as in the agricultural, construction, and catering sectors.[3] Against this background, efforts to combat trafficking in Austria have gained a certain momentum in recent years.[4]

This study aims to shed light on the Austrian approach towards combatting trafficking in relation to a specific group: trafficked persons[5] seeking international protection[6]. Despite a lack of attention by policy or

1 Hereinafter referred to as "trafficking".

2 According to Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011 (Trafficking Directive), which is based on Article 3(a) of the Palermo (or Trafficking) Protocol, trafficking in human beings can be defined as: "the recruitment, transportation, transfer, harbouring 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"; according to the Palermo Protocol, "exploitation" shall include, "at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".

3 Furthermore, forced labour in restaurants and massage parlours, as well as forced begging is found in Austria; see U.S. Government, Trafficking in Persons Report 2013, Austria, available at www.state.gov/j/tip/rls/tiprpt (accessed on 3 January 2014).

4 For the report on the implementation of the Austrian National Action Plan on Trafficking for 2012-2014, see www.entwicklung.at/fileadmin/media/2013/Themen/Friedenssicherung/Bericht_NAP_Umsetzung_2012.pdf (accessed on 17 January 2014).

5 This study prefers to use the term "trafficked persons" over "victims of trafficking"; the term "victim" is used in reference to the term in the respective source.

6 The term "asylum-seeking trafficked persons" and related terms are used to describe individuals who have claimed asylum in Austria at a certain point, also if their application is not pending.

research on this group, stakeholders consider them relevant for Austria as a country of destination.[7]

In essence, the study addresses two issues, namely the process of identification of asylum-seeking trafficked persons (chapter 2) and their access to residence rights (chapter 3) in Austria.

The process of identification of trafficked persons is a cornerstone of counter-trafficking strategies. The effective implementation of identification measures ensures that the phenomenon of trafficking becomes visible; they are necessary both for prosecuting traffickers and for the trafficked persons' access to adequate protection (Gallagher, 2010: 278). This study addresses the Austrian approach towards the identification of asylum-seeking trafficked persons.

The access of trafficked persons to residence rights is another key element of national systems. It similarly serves both the aims of protecting trafficked persons and of effective prosecution.[8] This study elaborates on the options provided in Austria for this purpose, *inter alia* analysing case law and providing a comparison of the available schemes.

Although the focus of this study is on asylum procedures, it also covers forced return procedures, mainly due to two reasons: asylum-seeking trafficked persons can be subject to return measures, particularly but not exclusively if their asylum application is rejected; and the authority deciding on asylum matters, the *Bundesamt für Fremdenwesen und Asyl*[9] (BFA), also holds administrative responsibility for forced return procedures. As regards forced return measures, a focus of this study is detention pending deportation.

Diverse actors can play crucial roles in the process of identifying trafficked persons. Certainly, the role of trafficked persons themselves and their relationship with institutions such as the BFA is decisive for the success of identification and protection efforts. In addition to these

7 The relevance of addressing trafficking and identification of trafficked persons in the context of asylum procedures was confirmed by all the interview partners.

8 This twofold aim is also recognized by the Council of Europe, *Explanatory Report on the Council of Europe Convention on Action against Trafficking in Human Beings*, available at conventions.coe.int/Treaty/EN/Reports/Html/197.htm (accessed on 3 January 2014).

9 Federal Office for Immigration and Asylum; for the website of this authority, see www.bfa.gv.at (accessed on 9 January 2014).

individuals, a number of further actors are to be mentioned: e.g. the communities to which trafficked persons feel connected, personnel of victim support institutions, or legal advisors, providers of reception facilities, legal guardians for unaccompanied minors, and health staff. However, the focus of this study is on the institutional tasks of Austrian governmental actors, and particularly on the BFA. The role of Austrian courts dealing with residence rights of trafficked persons is only addressed in the context of a case law analysis.

This study was drafted by Adel-Naim Reyhani with the appreciated support of the team of the IOM Country Office in Vienna, in particular the Department for Research and Migration Law. Special thanks go to Philipp Freudenthaler and Thomas Tophof for the transcription of interviews and their support in drafting the study, to Katie Klaffenböck for her comments, to Saskia Koppenberg for her support with statistics, to Marco Funk for proofreading the text, and to Katerina Kratzmann, Mária Temesvári, and Julia Rutz for their comments and supervision.

METHODOLOGY

This study is the Austrian contribution to a European Migration Network[10] (EMN) Focused Study. It was conducted within the National Contact Point (NCP) Austria[11] within the EMN in the framework of the EMN's Annual Work Program 2013.

The study is primarily based on desk research on the latest information available, including international, regional, EU and Austrian legislation and case law, publications, statistics, media documents as well as internet resources. With regard to the legal and institutional framework in Austria, the text takes into consideration relevant amendments as of 1 January 2014. For the purpose of an analysis of case law of the Austrian Asylum Court, the Constitutional Court and the Administrative High Court, decisions available from the *Rechtsinformationssystem des Bundes* (RIS) were consulted. An overview of the sources of information used is provided in the bibliography.

In the course of the research, it became apparent that only limited literature is available covering the Austrian approach towards asylum-seeking trafficked persons. Thus, in order to complement the information gained through desk research, qualitative semi-structured interviews were carried out with the experts listed below. Georg Zingerle (Men's Health Centre) provided information via E-mail.

- Birgit Einzenberger (UNHCR Austria, Head of Legal Department)
- Christian Fellner (Federal Ministry for European and International Affairs, Unit IV.4.b)
- Elisabeth Tichy-Fisslberger (Federal Ministry for European and International Affairs, Head of Section IV)
- Evelyn Probst (Director, NGO LEFÖ-IBF)
- Gerald Dreveny (Federal Ministry of the Interior, Deputy Head of Department III/5)

10 For the website of the EMN, also containing the Synthesis Report to this study, see www.emn.europa.eu (accessed on 13 February 2014).

11 For the website of the Austrian EMN NCP, see www.emn.at (accessed on 13 February 2014).

- Gerald Tatzgern (Federal Criminal Intelligence Service, Head of the CentreonSmuggling and Human Trafficking)
- Gernot Resinger (Federal Ministry of the Interior, Head of Unit II/3/c)
- Joana Adesuwa Reiterer (Director, NGO Exit)
- Margareta Ploder (Federal Ministry for European and International Affairs, Head of Unit IV.4.b)
- Norbert Ceipek (Head of Vienna Municipal Department 11, Drehscheibe)

1. THE AUSTRIAN CONTEXT

This chapter outlines the specific context in which the Austrian counter-trafficking approach towards asylum-seeking trafficked persons is embedded: the legal, policy, and institutional framework, as well as available general statistics and indications of the number of asylum-seeking trafficked persons in Austria.

1.1 Legal framework

In the Austrian trafficking context, a variety of legal documents at international, European, EU, and national levels must be taken into account. For the purpose of this study, the legal framework can be categorized as dealing with the issue from the perspectives of trafficking as a criminal act, and the protection of trafficked persons or the access to residence rights; while some of the documents address both perspectives. It is not the aim of this study to analyse these interlinked and complex instruments in detail. In addition to the brief (and not exhaustive) reference to the documents in this chapter to gain an understanding of the Austrian contexts, aspects of the legal framework particularly relevant to this study, such as access to residence rights, are analysed in more detail in chapter 3.

1.1.1 Criminal law

At the international and regional levels, Austria has ratified the relevant documents targeting the criminalization of trafficking. Among them are the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime[12], and the Council of Europe Convention on Action against Trafficking in Human Beings[13], which both *inter alia* seek to prevent and combat trafficking in persons and to promote cooperation among states.

12 Hereinafter referred to as "Trafficking Protocol", also known as the "Palermo Protocol".
13 Hereinafter referred to as "Trafficking Convention".

At the EU level, the issue of trafficking as a crime is addressed by Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011[14]. This Directive primarily touches upon "minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings" (Article 1 of the Directive). Furthermore, it provides the most comprehensive legal definition of trafficking that is relevant for Austrian criminal law: Article 2 of the Directive obliges Member States to "take the necessary measures to ensure that the following intentional acts are punishable: the recruitment, transportation, transfer, harbouring 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."

In Austria's national legislation, Art. 104a of the Criminal Code (CC) is the provision that was specifically designed for the crime of trafficking.[15] It was amended in August 2013 to transpose the Trafficking Directive.[16] Art. 104a defines trafficking as the recruitment, harbouring (or other forms of reception), transportation, or offering or passing on to others, while employing unfair practices, and with the intention of exploiting the person. The sentence foreseen for the basic offense in Art. 104a is six months to five years. An extended sentence of one to ten years applies in cases such as acts in the framework of a criminal organization, or against minors (Art. 104a para 4 and 5CC).[17]

In addition to Art. 104a CC, Art. 217 CC on cross-border trafficking in prostitution is applied in criminal proceedings related to trafficking.[18]

14 Hereinafter referred to as "Trafficking Directive".

15 Since September 2011, a special responsibility for cases of adults regarding Art. 104a CC was introduced for the Regional Criminal Court Vienna (see Geschäftsverteilung 2014 des Landesgerichtes für Strafsachen Wien, available at www.rakwien.at/userfiles/file/Gesch%C3%A4ftsverteilung/2014/G_LG_Strafs_Wien_2014_01_01.pdf (accessed on 17 February 2014).

16 Prior to August 2013, the definition contained in Article 3(a) of the Trafficking Protocol was used.

17 For the full text of this provision, see www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR40152319/NOR40152319.html (accessed on 24 January 2014).

18 As shown under 1.4.1, Art. 217 CC is statistically more relevant.

While Art. 104a requires a *dolus coloratus*, a direct intention to commit criminal acts, this is not the case for Art. 217, which, in turn, tackles cases that involve a transborder element.

Art. 217 CC sanctions the recruitment or procurement of a person into prostitution in another country (than the country of origin). For the basic act (para 1), a sanction of six months to five years applies. When the perpetrator seeks regular profits (para 1), the punishment is between one and ten years imprisonment. One to ten years imprisonment is also foreseen when the trafficker uses force or deceit (para 2).[19]

Further provisions that sanction acts related to trafficking are: slavery Art. 104 CC (on slavery), Art. 216 CC (on procurement), Art. 116 APA (on the exploitation of a foreign national), and Art. 28c of the Act Governing the Employment of Foreign Nationals, AGEFN (on the employment of irregular foreign nationals).

1.1.2 Protection, residence rights, and return

When addressing the link between trafficking and protection or residence rights, and also the issue of return, a number of additional international, regional, EU, and national legal documents need to be consulted.

At international, regional, and EU levels, the legal texts relevant in the Austrian context include:

- the Convention and Protocol Relating to the Status of Refugees[20], which defines who is a refugee, addresses the rights of refugees, and also contains the legal obligations of states towards them;
- the Trafficking Protocol, which, besides tackling the crime of trafficking, also contains regulations on assisting trafficked persons and requires that the return of individuals concerned should preferably be voluntary;
- the Trafficking Convention, which, among other things, deals with repatriation and return, and requests states to provide for a residence permit for trafficked persons;

19 For the full text of this provision, see www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR40050397/NOR40050397.html (accessed on 24 January 2014).

20 Hereinafter referred to as "Refugee Convention".

- the Charter of Fundamental Rights of the European Union (FRC), which explicitly prohibits trafficking, and the European Convention on Human Rights (ECHR)[21] as regards the fundamental rights of trafficked persons;
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[22], which covers cases where trafficking amounts to torture or other forms of ill-treatment;
- the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination;
- the Trafficking Directive, which, besides targeting trafficking as a crime, also addresses the protection and assistance needs of trafficked persons;
- Council Directive 2004/81/EC of 29 April 2004[23], on the "residence permit issued" to third-country national trafficked persons;
- Council Directive 2005/85/EC of 1 December 2005[24], on "minimum standards on procedures for granting and withdrawing refugee status";
- Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011[25], on "standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection";
- Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013[26], on the "criteria and mechanisms for determining the Member State responsible for examining an application for international protection"; and
- Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008[27], on "common standards and procedures in Member States for returning illegally staying third-country nationals".

21 Please note that the ECHR is part of the Austrian constitution.
22 Hereinafter referred to as "Torture Convention".
23 Hereinafter referred to as "Residence Permit Directive"
24 Hereinafter referred to as "Asylum Procedures Directive"; the recast of the Directive, titled Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013, and most of its provisions will enter into force as of 20 July 2015.
25 Hereinafter referred to as "Qualifications Directive".
26 Hereinafter referred to as "Dublin Regulation".
27 Hereinafter referred to as "Returns Directive".

The Austrian legislation covering residence rights or the protection provided for trafficked persons, as well as the issue of return, mostly aims to transpose European and EU law. It can be outlined, in a generalized form, as follows: the Asylum Act (AA) contains substantive provisions for the assessment of international protection needs of trafficked persons. Furthermore, the Asylum Act provides for a residence permit designed for trafficked persons in conjunction with the provisions of the Settlement and Residence Act (SRA). The Aliens Police Act (APA), together with the Federal Office for Aliens Affairs and Asylum Procedure Act (FOAA-PA), applies to the forced return procedure of trafficked persons, including their detention pending deportation.

1.2 Policy framework

In recent years, the fight against trafficking has received increased attention of Austrian policy makers, and also of civil society and academia. The Austrian policy on combatting trafficking is guided and coordinated by the Task Force on Human Trafficking. The Task Force was introduced in 2004 and was established under the direction of the Federal Ministry for European and International Affairs. It is chaired by a National Coordinator on Combating Human Trafficking,[28] and is composed of representatives of all competent ministries, including outsourced agencies, the Federal Provinces and NGOs. Three thematic working groups have been established within the Task Force: on child trafficking, trafficking in prostitution, and labour exploitation. One of the main tasks of the Task Force is the development and supervision of the National Action Plan (NAP).[29]

Since March 2007, counter-trafficking activities in Austria are based on a NAP. The current NAP covers the period 2012-2014 and sets the identification of trafficked persons as one of the priority goals.[30]

28 Currently, this position is held by Ambassador Elisabeth Tichy-Fisslberger from the Federal Ministry for European and International Affairs.

29 For further information, see Federal Ministry for European and International Affairs, *Combatting Human Trafficking*, available at www.bmeia.gv.at/en/foreign-ministry/foreign-policy/human-rights/main-human-rights-issues/combatting-human-trafficking.html (accessed on 17 January 2014).

30 Republic of Austria, *National Action Plan on Combatting Human Trafficking (2012-2014)*, 17, available at www.bmask.gv.at/cms/site/attachments/5/8/3/CH2288/

Furthermore, it mentions developing the Task Force, strengthening cooperation with Federal Provinces, participation and collaboration in programs and projects at the international level, raising awareness within the Austrian population, ensuring the provision of comprehensive counselling, care and support, improving the social integration of trafficked persons, enhanced cooperation between law enforcement authorities and NGOs, implementing provisions of the Trafficking Directive, and evaluating and monitoring of existing measures and actions.[31] The Task Force regularly drafts reports on the *status quo* of the implementation of the NAP.[32]

1.3 Institutional framework

For the purposes of this study, the institutional set-up of Austrian authorities dealing with asylum-seeking trafficked persons may best be looked at from two perspectives: the residence status of trafficked persons, including the issue of return, and the fight against the crime of trafficking.

The newly introduced BFA is, in first instance, responsible for various tasks related to the access of trafficked persons to residence rights and their forced return.[33] It administers the asylum procedure, the procedure to obtain a residence permit for trafficked persons, and, in major parts, the forced return procedure[34]. Thus, the most relevant official tasks related to the residence status of asylum-seeking trafficked persons and their forced return procedures are combined under the responsibility of one administrative authority. Within the BFA, a single "case owner" is

CMS1314878545824/3__nationaler_aktionsplan_2012-2014.pdf (accessed on 3 January 2014).

31 The full text of the NAP can be accessed at Republic of Austria, *National Action Plan on Combatting Human Trafficking (2012-2014)*, available at www.bmask.gv.at/cms/site/attachments/5/8/3/CH2288/CMS1314878545824/3__nationaler_aktionsplan_2012-2014.pdf (accessed on 3 January 2014).

32 For the report 2012, see www.bmeia.gv.at/fileadmin/user_upload/bmeia/media/2-Aussenpolitik_Zentrale/Menschenrechte/taskforce_menschenhandel_2012.pdf (accessed on 17 February 2014).

33 The area of responsibility of the BFA is provided in Art. 3 Federal Office for Aliens Affairs and Asylum Establishment Act.

34 As regards forced return proceedings, the BFA is responsible for return decision and entry bans, detention pending deportation, alternatives to detention, documents and cards, cost notifications, return certificates, voluntary returns, and forced return measures.

responsible for every step of the procedure of a trafficked person, from the application for asylum to the return decision.[35] Decisions of the BFA can be contested before the Federal Administrative Court (Art. 7 para 1(1) FOAA-PA)

As regards combatting trafficking as a crime, the main actor, besides public prosecutors and courts, is criminal police. In Austria, the anti-trafficking efforts of police are coordinated and led by the Centre on Smuggling and Human Trafficking within the Federal Criminal Intelligence Service.[36] The task of investigating cases of trafficking at the level of the Federal Provinces is carried out by the offices of the criminal police in every province.[37]

1.4 Extent and characteristics

Before looking at available statistics on trafficking in Austria, it must be stressed that the illegal or clandestine nature of the phenomenon renders attempts to measure its extent and define its exact characteristics largely vain; in any case, a certain number of cases can remain undetected.

The statistics presented below, then, such as the number of trafficked persons identified, traffickers convicted, or residence permits issued to trafficked persons, do not provide a complete understanding of trafficking in Austria.

Statistics specifically relating to asylum-seekers who are trafficked persons are not available. Thus, this study draws on other sources of information to provide for an understanding of the possible number of this particular group and its characteristics in Austria.

35 For further information on this principle, see the BFA's website, www.bfa.gv.at/presse/thema/thema2.aspx (accessed on 20 January 2014).

36 For the website of the Federal Criminal Intelligence Service, see www.bmi.gv.at/cms/bk/_news/start.aspx (accessed on 16 January 2014).

37 The offices at the level of Federal Provinces are listed here www.bmi.gv.at/cms/BK/praevention_neu/links/AB04.aspx (accessed on 16 January 2014).

1.4.1 General statistics

The sources of general statistics on trafficking that are available in Austria are:

- Police crime statistics[38] (Federal Criminal Intelligence Service): number of reported offences, number and characteristics of victims involved;
- Judicial crime statistics[39] (Federal Ministry of Justice): number of traffickers convicted;
- Residence permit statistics[40] (Federal Ministry of the Interior): number of residence permits issued to (potential) trafficked persons;
- Trafficked persons supported[41] (LEFÖ-IBF[42]): number and characteristics of individuals supported by the NGO.[43]

Table 1: Number of reported offences related to trafficking in human beings

	Art. 104a CC	Art. 217 CC	Art. 104 CC	Art. 216 CC	Art. 116 APA	Art. 28c AGEFN
2008	4	46	0	54	3	N/A
2009	32	43	0	50	8	N/A
2010	18	47	1	47	6	N/A
2011	20	52	1	51	7	N/A
2012	22	48	0	42	12	10

38 Federal Criminal Intelligence Service, *Police Crime Statistics*, www.bmi.gv.at/cms/BK/publikationen/krim_statistik/start.aspx (accessed on 3 January 2014).

39 Statistics Austria, *Judicial Crime Statistics*, available at www.statistik.at/web_de/statistiken/soziales/kriminalitaet/verurteilungen_gerichtliche_kriminalstatistik/index.html (accessed on 3 January 2014).

40 Federal Ministry of the Interior, *Residence Permit Statistics*, www.bmi.gv.at/cms/BMI_Niederlassung/statistiken (accessed on 3 January 2014).

41 LEFÖ-IBF, *Yearly Activity Reports 2008-2012*, available at www.lefoe.at/index.php/ibf.html (accessed on 3 January 2013).

42 For the website of the NGO, see www.lefoe.at/index.php/ibf.html (accessed on 16 January 2014).

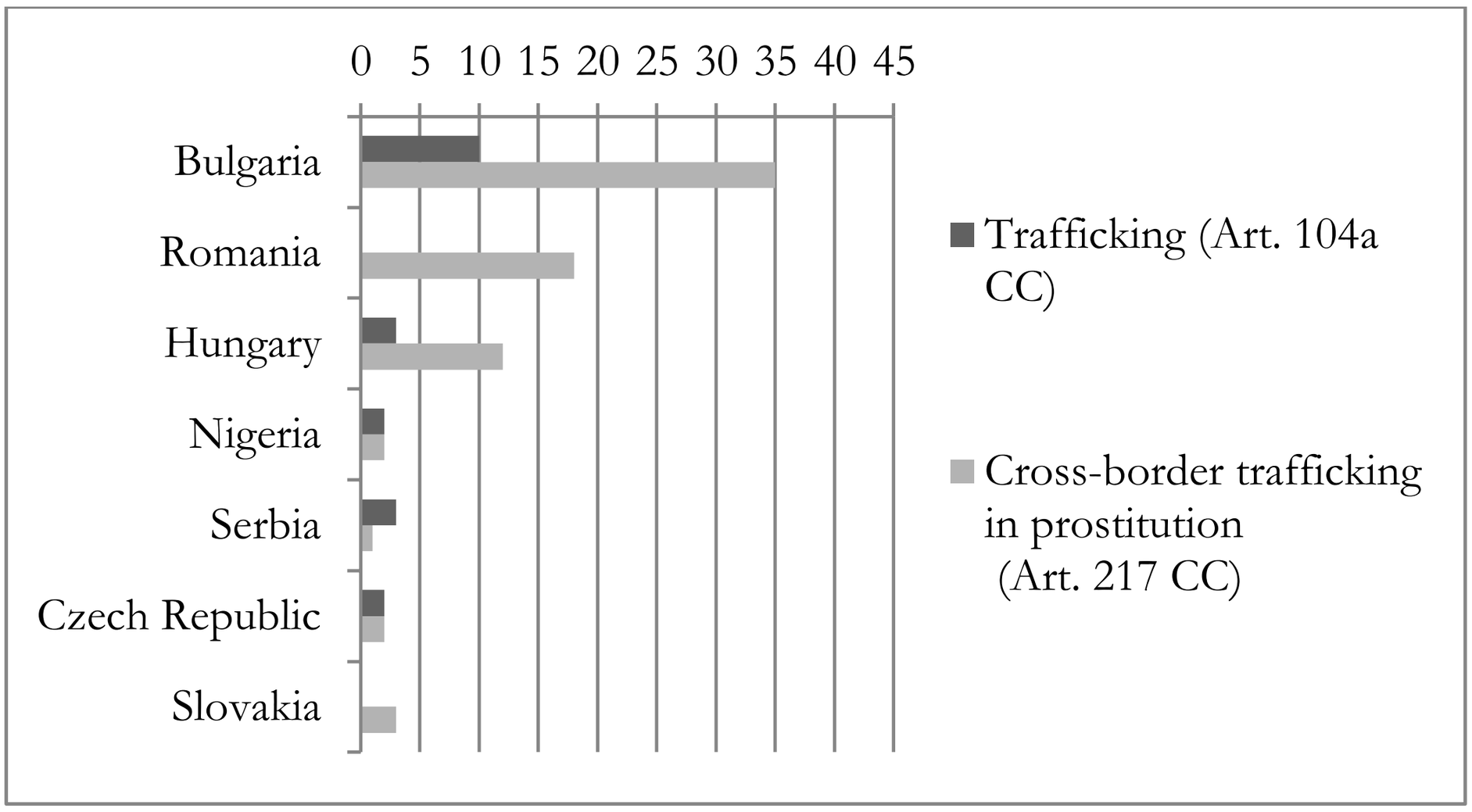
43 In their annual reports, the organization *inter alia* states that, in 2012, the number of women who were supported has decreased from 251 in 2011 to 242. In 2012, 74 per cent of these women were between 19 and 35 years old. The share of women from EU Member States increased to 47 per cent, compared to 40 per cent in 2011.

The police crime statistics provide numbers of reported offences as regards the various trafficking-related provisions in criminal law, such as Art. 104a and 217 CC. Although Art. 104a CC was specifically designed for the crime of trafficking in human beings, the table above shows that Art. 217 CC on cross-border trafficking in prostitution is statistically more relevant. As for cases of Art. 104a CC, the number of reported offences increased during the last five years from 4 in 2008 to 22 in 2012, with a peak of 32 in 2009. The numbers on reported offences according to Art. 217 CC have remained at a similar level: 46 in 2008, and 48 in 2012.

Regarding the further provisions that sanction acts related to trafficking, the table *inter alia* shows that the number of offences according to Art. 116 APA, exploitation, has increased from 3 to 12 between 2008 and 2012.

In addition to the data depict in the table, the statistics of the Federal Criminal Intelligence Service counted a total of 103 individuals who were involved as victims in procedures according to the offences of Art. 104a and Art. 217 CC in 2012.

Figure 1: Nationality of individuals involved as "victims" in proceedings according to Art. 104a and 217 CC in 2012 (top 7 countries of origin)



According to the police crime statistics, 85 out of 103 individuals who were involved in criminal proceedings according to the trafficking provisions in Austria were EU citizens.[44] The largest group was Bulgarian citizens, with 45 individuals, and Romanian citizens, with 18 individuals. Citizens of Nigeria were the largest group (4) of third-country national victims in criminal proceedings.

Furthermore, the statistics of the Federal Criminal Intelligence Service, in addition to the data outlined in the figure, show that approximately 90 per cent of trafficked persons were female, and almost all of them were between 18 and 36 years old.

Table 2: Number of convictions related to trafficking in human beings

	Art. 104a CC	Art. 217 CC	Art. 104 CC	Art. 216 CC	Art. 116 APA	Art. 28c AGEFN
2008	0	18	0	18	0	N/A
2009	2	30	0	5	0	N/A
2010	2	12	0	8	1	N/A
2011	1	8	0	9	2	N/A
2012	0	17	0	4	0	10

The judicial crime statistics show that, from 2008 to 2012, there were only 5 convictions on Art. 104a CC. On Art. 217, 18 individuals were convicted in 2008, with a peak of 30 in 2009, and there were 17 convictions in 2012.

Table 3: Residence permits for trafficked persons issued

	2009	2010	2011	2012	2013[46]
Men	0	0	3	2	3
Women	12	8	15	10	3
Total	12	8	18	12	6

44 The author believes that a reason for the high proportion of EU citizens may be that these have a right to stay in Austria based on EU law.

45 Please note that these numbers are based on a monthly statistical evaluation; the total numbers for 2013 were not yet available when finalizing the study.

The statistics on residence permits for trafficked persons, as listed in the table above, tell that the number of permits issued decreased from 12 in 2009 to 8 in 2010, increased again to 18 in 2011, and then dropped to 12 permits in 2012 and only six in 2013. From the 56 permits that were issued since 2008, 14 per cent (8) were issued to men.

1.4.2 The number of asylum-seeking trafficked persons

As mentioned above, there are no official statistics available that address the number of trafficked persons who seek asylum in Austria. However, as outlined below, other available information indicates a certain quantitative relevance of the issue.

A valuable source of information is the experience of NGOs that support trafficked persons. The NGO representatives who were interviewed over the course of this study expressed the view that the asylum procedure is particularly relevant for the detection of trafficked persons.[46] Joana Adesuwa Reiterer from the NGO Exit[47], which provides support to African trafficked women, reported that traffickers, who have an interest in controlling the individuals concerned, use the Austrian asylum system to "protect" trafficked persons from deportation.[48] In this regard, a body of experts on prostitution within the Task Force on Combating Human Trafficking (2008: 47) reported that Austrian experts would agree that "many asylum-seekers who work in prostitution seem to be victims of trafficking".[49]

46 Joana Adesuwa Reiterer, Verein Exit, 18 October 2013; Evelyn Probst, LEFÖ-IBF, 19 September 2013.

47 For the website of the NGO, see www.ngoexit.org (accessed on 16 January 2014).

48 Joana Adesuwa Reiterer, Exit, 18 October 2013; this practice is also documented in Frontex, *Situational Overview on Trafficking in Human Beings*, 17, available at frontex.europa.eu/assets/Publications/Risk_Analysis/Situational_Overview_on_Trafficking_in_Human_Beings.pdf (accessed on 3 January 2013), where it is stated that "the modus operandi used to enter a European country through an asylum claim is similar to that reported by national rapporteurs of THB as well as by international organisations dealing with trafficking. For instance, the Frontex 2010 Tailored Risk Analysis on unaccompanied minors indicates that Nigerian minors claim for asylum at the border checks and, after being accommodated at special shelters, usually call a previously given number and wait to be collected from the reception centre."

49 For the full text of the report, see *Prostitution in Österreich*, available at www.frauen.bka.gv.at/DocView.axd?CobId=31425 (accessed on 22 January 2014).

Gerald Tatzgern from the Federal Criminal Intelligence Service estimates that women from Nigeria who are forced into prostitution[50] are the largest group of third-country nationals trafficked in Austria, and number around 150-200.[51] According to him, all of these women have filed an asylum application at some point.[52] The U.S. Trafficking in Persons Report 2013 on Austria presents numbers that point the same direction. It reports that, in 2012, there were approximately 200 registered asylum-seeking Nigerian women who were possible trafficked persons, referring to a victim support NGO.[53] In this context, it is interesting to note that, in 2012, 400 Nigerians filed asylum applications in Austria, amongst whom 80 were women.[54]

Further insight can be gained from the analysis of asylum decisions in Austria which was carried out for the purposes of this study (3.1.4). In total, 129 decisions of the Asylum Court, which decided on appeals against decisions of the first instance authority, could be identified that had an explicit reference to trafficking in the assessment of grounds for international protection.

To gain a better understanding of the phenomenon in Austria, it can be useful to look at the situation in other Member States, as these insights can serve as an indication for the possible number of trafficked persons in the Austrian asylum system.

50 Austrian media also reported on cases of Nigerian asylum-seekers who are forced into prostitution; according to the reports, the Austrian asylum system is counter-productive and rather helps the traffickers. Although the chances of being granted asylum are very small, the reports indicate, the women are told to apply for asylum right after their arrival, as asylum-seekers can legally work as prostitutes in Vienna. This leads to increased trafficking of young Nigerian women to Austria under false pretenses, who then have to pay off "travel costs" of up to 100,000€, as media reports; see Falter, *Nigerianerinnen auf dem Straßenstrich: Das Geschäft mit der Ware Frau*, 5 September 2009; News, *Verraten, verkauft – und abgeschoben*, 14 October 2010; Die Presse, *Die Unsichtbaren: Opfer von Menschenhandel – auch in Österreich*, 15 October 2010, available at diepresse.com/home/blogs/rohrer/660087/Die-Unsichtbaren_Opfer-von-Menschenhandel-auch-in-Oesterreich (accessed on 5 November 2013).

51 Gerald Tatzgern, Federal Criminal Intelligence Service, 17 September 2013.

52 Ibid.

53 For the full report, see U.S. Government, *Trafficking in Persons Report 2013*, Austria, available at www.state.gov/j/tip/rls/tiprpt (accessed on 3 January 2014).

54 Eurostat, *Asylum Applications 2012*, available at epp.eurostat.ec.europa.eu/portal/page/portal/statistics (accessed on 3 January 2013); within the same period, five Nigerian women received subsidiary protection according to Eurostat statistics.

A German study by the IOM and UNHCR[55] analysed asylum decisions of the German Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*) on Nigerian applicants, based on general and country-specific indicators. The study concluded that almost a third of all decisions contained hints of trafficking.[56]

Also the numbers from the Poppy Project[57] in the UK, which supported 418 third-country women with trafficking claims from 1 April 2009 to 31 March 2011, show a statistical relevance of the subject. Of the 181 women who were able to provide information on their legal status, 175 (96 per cent) were still within the asylum procedure, intended to claim asylum, or had received a negative decision on their application (Stepnitz, 2012: 3).

In sum, it can be concluded that it is not possible to know the exact number of asylum-seeking trafficked persons in Austria. However, when taking into consideration the estimates and experience of relevant actors, the number of relevant asylum cases, and results of studies conducted in other Member States, it is reasonable to assume statistical relevance of the issue. The information available suggests that a large portion of trafficked persons within the asylum system are Nigerian women.

55 For the full text of the study in German language, see www.iom.int/germany/de/downloads/CT%20Asyl/12_06_05_IOM_Endpublikation_ansicht_GESAMT_FINAL.pdf (accessed on 3 January 2014).

56 This study was carried out in the framework of a project of the International Organization for Migration (IOM), the UN High Commissioner for Refugees (UNHCR), and the German Federal Office for Migration and Refugees (BAMF) on "Identification and Protection of Trafficked persons in the Asylum System"; for a summary of the project in English language, see www.iom.int/germany/en/downloads/CT%20Asyl/120606%20Projektbeschreibung%20eng%20LANG_2.pdf (accessed on 24 July 2013).

57 The Poppy Project was set up in 2003 to provide support, advocacy and accommodation to trafficked women; for more information, see www.eavesforwomen.org.uk/about-eaves/our-projects/the-poppy-project (accessed on 9 January 2014).

2. THE PROCESS OF IDENTIFICATION

The obligation of states to provide for the identification of trafficked persons is already stipulated by Article 10 of the Trafficking Convention and Article 11(4) of the Trafficking Directive. Identification is a prerequisite for trafficked persons' access to specialized support and protection. Furthermore, it can lead to criminal investigations against offenders. Without appropriate identification, the phenomenon in general, the trafficked persons, as well as the traffickers, remain invisible (Gallagher, 2010: 278).

In the process of identification, different and subsequent stages are relevant. For the purposes of this study, it appears to be useful to distinguish these stages as explained below.

As a first step, a person is *detected* as a potential trafficked person. This can be made by police or asylum officers, a legal advisor, or even a private individual. Such detection can be defined as the process of "identifying" trafficking, or the suspicion of possible situations of trafficking.[58]

After a person is detected, an authority competent to undertake an assessment or examination of the trafficked person's situation is involved, which may include or lead to *informal and formal identification*. Informal identification can be understood as the process of assessing any potential situation of trafficking for further implementation of criminal investigations, and for providing protection and support.[59] Formal identification is the "classification" of a trafficked person by the competent authority according to a formalized national system. While informal identification may have direct or indirect consequences for the assessment process or the support and protection a trafficked person receives in practice, formal identification has a binding character for other authorities in the respective state or region.[60] What is described here as

58 This definition is based on and adapted from Varandas/Martins (2007: 17), who use the term "signalling" instead of detecting for the purpose of their guide, defining it as "identifying possible situations of trafficking".

59 Ibid; Varandas/Martins define term identification as "confirm[ing] and characteris[ing] any situations of trafficking for further implementation of support".

60 This definition was formulated for the purpose of the common specifications of the EMN for this study.

detection, as well as informal and formal identification, can be labelled with the general term identification or process of identification.

2.1 Detection

The moment of detection is often the first step that leads to protecting a trafficked person and prosecuting the trafficker. When looking at the institutional set-up in Austria (1.3), it can be seen that the BFA and its personnel can occupy a central role in detecting trafficked persons in both the asylum and forced return procedures.

2.1.1 In the asylum procedure

Within the asylum procedure, the interviews with case workers of the BFA are one possibility to identify the presence of trafficking indicators.[61] The detection of trafficked persons here can contribute to the proper assessment of international protection needs and lead to referral to support and to the competent authorities.

According to Gerald Dreveny from the Federal Ministry of the Interior, it is not the primary aim of interviews within the asylum procedure to detect trafficked persons.[62] However, since the BFA is now responsible for issuing residence permits for trafficked persons as well as for the forced return procedure, the detection of trafficked persons has become more relevant. The decision to issue a residence permit mainly depends on the presence of a criminal or civil proceeding and not on the question whether an individual is a trafficked person or not. Yet, the authority will, in the framework of its duty to investigate all factors relevant to the case (Art. 18 para 1 AA), have an interest to identify any indications that could lead to the detection of a trafficked person.

Austria has recognized the specific need for the asylum authority's personnel to be sensitized on the phenomenon, and has provided training to a number of officers. However, in the current anti-trafficking approach, asylum-seekers are not addressed in the framework of a particular strategy.[63] The aim of providing training to case workers of the BFA is

61 Gerald Dreveny, Federal Ministry of the Interior, 25 September 2013.
62 Ibid.
63 Gerald Tatzgern, Federal Criminal Intelligence Service, 17 September 2013; NGO representatives have criticized, in this respect, that case workers in the asylum procedure are not sufficiently trained, and that there is a significant lack of awareness

reflected in the project "IBEMA", which will be implemented as of April 2014.[64] Gerald Tatzgern from the Federal Criminal Intelligence Service noted, in this regard, that it would be useful to implement a contact point for trafficking issues within every branch office of the BFA, which could receive adequate training and then serve as a multiplier as regards awareness raising and knowledge transfer.[65]

2.1.2 In the forced return procedure

Asylum-seeking trafficked persons can be subject to forced return measures in various scenarios. If the asylum claim is rejected, and the individual concerned is requested to leave the country, the Austrian authorities may take action to return the individual to the country of origin. However, even before the asylum application is rejected, the Austrian system allows for (potential) trafficked persons to be subject to return measures, and they can be detained pending deportation under specific circumstances.[66]

The Austrian approach towards detecting trafficked persons in the forced return procedure focusses on detention pending deportation. There, (possible) trafficked persons are in direct contact with Austrian officials for a certain period of time. In 2012, the Human Rights Advisory Board (*Menschenrechtsbeirat*)[67] published a report on the identification of trafficked persons in Austria, in which, among other areas, the Board addressed the issue of detection[68] within detention centres for migrants

among this group (Joana Adesuwa Reiterer, Exit, 18 October 2013; Evelyn Probst, LEFÖ-IBF, 19 September 2013). This conclusion was also drawn by the CEDAW Committee in its 2013 report on Austria. The Committee stated that it"is concerned at reports that officers who are in charge of asylum applications in the State party are not sufficiently trained to identify victims of trafficking". The report is available at www.bka.gv.at/DocView.axd?CobId=51417 (accessed on 10 February 2014).

64 In cooperation with relevant actors in Austria, such as NGOs, the UNHCR, and the Federal Criminal Intelligence Service, IOM Vienna envisages to provide 2 one-day trainings to case workers of the BFA, the directors of the Federal Care Facilities, and personnel of the private company ORS Service GmbH.

65 Gerald Tatzgern, Federal Criminal Intelligence Service, 17 September 2013.

66 Art. 76 et seq. APA.

67 Since 1 July 2012, the Human Rights Advisory Board's tasks are embedded in the structures of the Austrian Ombudsmann Board *(Volksanwaltschaft)*.

68 In the text of the Board, the German term "*Identifizierung*" is used; however, following the definitions of concepts provided in this study, what the Board addressed is the detection of trafficked persons, rather than their identification.

pending deportation. The Board highlighted the particular relevance of detection at this specific stage of proceedings in Austria. Among other things, it was suggested that detection in detention centres should protect trafficked persons from further victimization.[69]

Already in 2011, the GRETA[70] evaluation report on Austria, which looks at the implementation of the Trafficking Convention in the State Parties, stated "that possible trafficked persons residing illegally in Austria and placed in police detention centres pending deportation run the risk of being deported before they have been identified."[71] However, the Human Rights Advisory Board (2012: 111) in 2012 observed a remarkably low detection rate in Austrian detention centres.[72] Evelyn Probst from the NGO LEFÖ-IBF noted in this respect that this rate has increased since the Board's report.[73]

In general, the Austrian approach towards effective detection of trafficked persons within the forced return procedure focuses on training for relevant groups. Among those who received training on the topic of trafficking were law enforcement officers, also in detention centres, and employees of representation authorities. This training was, *inter alia*, organized and implemented by the Austrian Security Academy, in cooperation with specialized NGOs and the Federal Criminal Intelligence Service.[74]

69 For the full text of the report, see Human Rights Advisory Board, *Bericht des Menschenrechtsbeirates zu Identifizierung und Schutz von Opfern des Menschenhandels*, available at www.bmi.gv.at/cms/BMI_MRB/mrb/berichte/files/Bericht_der_AG_Menschenhandel_Endversion.pdf (accessed on 6 January 2014).

70 GRETA is the monitoring mechanism established by the Trafficking Convention (Article 1(2)); for the website of GRETA, see www.coe.int/t/dghl/monitoring/trafficking/docs/monitoring/GRETA_en.asp (accessed on 17 January 2014).

71 GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria*, available at www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA_2011_10_FGR_AUT_en.pdf (accessed on 5 January 2014).

72 This was also mentioned by GRETA in their *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria*. Amongst other issues, the Human Rights Advisory Board assessed in their report a lack of awareness among personnel of detention centres in Austria.

73 Evelyn Probst, LEFÖ-IBF, 19 September 2013.

74 Gerald Tatzgern, Federal Criminal Intelligence Service, 17 September 2013; Evelyn Probst, LEFÖ-IBF, 19 September 2013; see also Human Rights Advisory Board, *Bericht des Menschenrechtsbeirates zu Identifizierung und Schutz von Opfern des*

2.1.3 The role of non-governmental actors

Besides governmental actors such as the BFA and criminal police and specialized support NGOs, there are various other actors who are involved in the asylum and forced return procedure or who are in direct contact with asylum-seeking trafficked persons. Thus, they can play an important role in the detection of asylum-seekers as trafficked persons. Among them are legal advisors for asylum and forced return procedures, counsellors on voluntary return, personnel of reception centres and other reception facilities including medical and care staff, as well as interpreters for asylum or return procedures.

According to Elisabeth Tichy-Fisslberger, the Austrian National Coordinator on Combating Human Trafficking from the Federal Ministry of European and International Affairs, trafficked persons often have a relationship of trust with physicians and medical staff, as these are bound to the principle of medical confidentiality. Moreover, the very personal nature of medical examinations gives this group a particular role in the detection of trafficked persons.[75] Evelyn Probst accentuated the importance of training legal advisors, observing that the NGO LEFÖ-IBF has had a number of referrals through them in the past.[76] According to Gerald Tatzgern, the personnel of ORS Service GmbH, a private company contracted with the care of asylum-seekers in Austrian reception centres, may play a role in detecting trafficked persons. Tatzgern argues that the company has personnel with migration background who speak the asylum-seekers' languages. Furthermore, the role of interpreters within the process was mentioned by him as well, as they may spot patterns in the statements of trafficked persons which can lead to their detection.[77]

Menschenhandels, available at www.bmi.gv.at/cms/BMI_MRB/mrb/berichte/files/Bericht_der_AG_Menschenhandel_Endversion.pdf (accessed on 6 January 2014); and the website of the Austrian Security Academy, www.bmi.gv.at/cms/BMI_SIAK/fortbildung/Seminarkatalog.aspx (accessed on 6 January 2014).

75 Elisabeth Tichy-Fisslberger, Federal Ministry for European and International Affairs, 20 August 2013.

76 Evelyn Probst, LEFÖ-IBF, 19 September 2013.

77 Gerald Tatzgern, Federal Criminal Intelligence Service, 17 September 2013.

2.2 Identification

In the Austrian system, there is no centralized formal identification as such, defined as a decision by a competent authority which is binding for other authorities. However, an Austrian authority's assessment of an individual as a (potential) trafficked person has concrete consequences in the process of protection and prosecution.

A type of formal classification of an individual as a "victim" is foreseen in the criminal procedure. There, the procedural role of trafficked persons as victims is provided for by the Austrian Code of Criminal Procedure (CCP).[78] Thus, the initiation of criminal proceedings may be understood as constituting the establishment of an individual as a victim of the crime of trafficking.[79] However, the determination of victim status at this stage only regards criminal proceedings. As such, it is not binding for other procedures or authorities, e.g. the asylum procedure or the BFA.

In practice, if an Austrian official, such as a case worker of the BFA, perceives that an individual may be a trafficked person, the official is requested to contact the criminal police office of the respective Federal Province. If the specialized unit of the police office confirms that the suspicion or detection is justified, criminal investigations will be initiated, the individual concerned as well as a specialized NGO will be contacted and informed, a reflection period (see 3.2.4) may be granted, and certain victims' rights[80] in criminal proceedings are provided.[81] This can be understood as the moment of informal identification. However, although such an assessment, which may have direct consequences for the individual concerned, was made, the public prosecutor may still come to the conclusion that the procedure should not be continued, e.g. caused by a lack of evidence.[82] In such a case, the individual concerned is no longer "officially" regarded as a victim, although he or she may, in reality, be a trafficked person. Furthermore, identification by the police or a

78 Art. 65 et seq. CCP.

79 Gerald Tatzgern, Federal Criminal Intelligence Service, 17 September 2013; Evelyn Probst, LEFÖ-IBF, 19 September 2013.

80 The rights of victims in criminal proceedings are listed in Art. 66 para 1 CCP, and *inter alia* include the right to legal representation, translation, and information; the access of victims to specialized support is provided by Art. 66 para 2 CCP.

81 Gerald Tatzgern, Federal Criminal Intelligence Service, 17 September 2013; see also Planitzer 2013.

82 Gerald Tatzgern, Federal Criminal Intelligence Service, 17 September 2013.

prosecutor in the context of criminal procedures would not bind the BFA in assessing the asylum case or an application for the residence permit for trafficked persons (see chapter 3).

In this respect, the informal identification of trafficked persons in Austria follows the presets of criminal proceedings. However, as Gerald Tatzgern observed, if the strict legal conditions to protect an individual who is considered a trafficked person by police are not met, other arrangements are used to ensure the protection of a trafficked person from irregular status or deportation.[83] Access to specialized care and support through NGOs is not necessarily dependent on informal identification by police or the presence of criminal or civil proceedings.[84]

In the identification process, a central role is thus given to the Federal Criminal Intelligence Service. Together with its offices in the Federal Provinces, it is responsible for investigating trafficking cases in Austria. In this regard, this authority mainly cooperates with the NGO "LEFÖ-IBF", which is formally assigned by the Austrian Federal Ministry of the Interior and the Women's Department of the Federal Chancellery with the task of protecting and caring for trafficked persons on a nation-wide basis.[85] The NGO's office is situated in Vienna, and support is provided to trafficked women older than 16.[86] Thus, the main current institutional arrangement in the Austrian counter-trafficking framework regarding identification is the cooperation between the Federal Criminal Intelligence Service and the NGO LEFÖ-IBF.[87]

2.3 Referral mechanism

For the purpose of this study, referral can be understood as the process through which a trafficked person shall arrive at adequate support and protection.[88] Referral can include the transfer of individuals to and from support organizations and authorities, as well as movement from

83 Ibid.
84 Ibid.
85 Art. 25 para 3, Art. 38a para 4, and Art. 56 para 1 Security Police Act; see also LEFÖ-IBF, *Yearly Activity Report 2012*, available at www.lefoe.at/index.php/ibf.html (accessed on 3 January 2013).
86 Ibid.
87 Gerald Tatzgern, Federal Criminal Intelligence Service, 17 September 2013.
88 Ibid.

the asylum procedure to the procedure to obtain a residence permit, movement from both of these procedures to the police and public prosecution, and vice versa. Thus, referral can take place both after detection and (informal and formal) identification.

Article 11(4) of the Trafficking Directive states that "Member States shall take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for trafficked persons, in cooperation with relevant support organisations". Thus, besides the obligation to implement measures for the identification of trafficked persons, Member States are requested to ensure assistance and support to trafficked persons. Similar provisions can also be found in Article 10 of the Trafficking Convention.

The OSCE (2004: 15) defines a national referral mechanism as "a co-operative framework through which state actors fulfill their obligations to protect and promote the human rights of trafficked persons, co-ordinating their efforts in a strategic partnership with civil society." The OSCE notes that the structure of mechanisms will vary in each state. However, it suggests that mechanisms should be designed to "formalize co-operation among government agencies and non-governmental groups dealing with trafficked persons".[89]

A close cooperation between the police – a crucial actor in combatting trafficking – and asylum authorities, the OSCE argues, is an integral element of functioning referral mechanisms.[90] The UN commentary on the Trafficking Directive (2013: 52) argues that this will ensure that "anti-trafficking measures do not adversely affect the human rights of refugees or asylum-seekers." The commentary goes on to analyse that the asylum system remains the weak link in the identification, referral, and protection process.[91]

89 For the full text of the handbook, see OSCE, National Referral Mechanisms, available at www.osce.org/node/13967 (accessed on 6 January 2014).

90 Ibid, 49.

91 In this regard, the UN commentary on the Trafficking Directive holds that the examination of asylum claims of individuals who are referred to the anti-trafficking system should continue after referral; for the full text of the commentary, see OHCHR, UNHCR, UNICEF, UNODC, UN Women and ILO, *Joint UN Commentary on the EU Directive – A Human Rights-Based Approach*, available at www.unodc.org/documents/human-trafficking/2011/UN_Commentary_EU_Trafficking_Directive_2011.pdf (accessed on 6 January 2014).In 2009, a UNHCR

Decrees

Two decrees of the Federal Minister of the Interior Currently inter alia formalize and specify the general Austrian approach as regards the referral of trafficked persons.[92] The first decree[93] addresses the implications of the relevant provisions of the Residence Permit Directive and the Trafficking Convention for the aliens police authorities. They are requested to inform potential trafficked persons of the possibility of obtaining a residence permit for trafficked persons, and, in this respect, also the conditions that are not explicitly mentioned in legislation. The decree mentions breaking off all contacts with traffickers and cooperation with authorities as "important guiding standards". Authorities are encouraged to inform trafficked persons of the application procedure and the access to a specialized support organization. The decree also explains that forced return measures shall not be implemented prior to the decision on the residence permit, and at least not for 30 days (reflection period). The decree further mentions that, in the forced return procedure, offences against public order and security need to be considered. A further decree[94], which was issued by the Federal Minister of the Interior in July 2011, elaborates on the general and specific conditions of the residence permit for trafficked persons, as outlined in the following chapter.

More specifically, regarding referral after detection, the general obligation of Austrian authorities to disclose a suspicion of a criminal act to police (Art. 78 CCP) also comes into play. This obligation also encompasses trafficking as a criminal act (Art. 104a and 217 CC). Thus, if case workers dealing with asylum or forced return procedures conclude

study also pointed at gaps in practices to ensure complementarity between the international protection scheme and procedures for the protection of trafficked persons (Bhaba/Alfiref 2009).

92 This approach was criticized by the Human Rights Advisory Board in its report as regards clarity and scope. According to Gerald Tatzgern, case workers of the BFA were given an internal instruction detailing more comprehensive provisions on identification and referral of trafficked persons at the beginning of 2014. This instruction is intended to serve as a model for further decrees addressing other authorities in Austria, such as the police (Gerald Tatzgern, Federal Criminal Intelligence Service, 17 September 2013).

93 Federal Ministry of the Interior, *Handbuch zum FPG*, 262-264.

94 Federal Ministry of the Interior, Department III/4, BMI-FW1710/0029-III/4/2011, 21 July 2011.

that an individual (rejected) asylum-seeker may be affected by a trafficking crime, they must inform the police.

In the current practice of referral following informal identification, particularly if the police suspect that a certain individual may have been trafficked, the person is referred to LEFÖ-IBF (if it is a woman or girl 16 or older). Potentially trafficked persons are also referred to LEFÖ-IBF by the provincial police in other parts of Austria.[95] In general, youth welfare authorities are responsible in cases of unaccompanied minor trafficked persons. In Vienna, the youth welfare authority has established a specialized department for trafficked children, named Drehscheibe.[96] As regards trafficked men, a cooperation of criminal police with the Men's Health Centre (Männergesundheitszentrum) is planned in the course of 2014.[97]

It is important to note that LEFÖ-IBF and Drehscheibe are not the only organizations that provide shelters for (potentially) trafficked persons in Austria. Individuals who do not fall within the scope of these institutions' range of tasks are currently not covered by the formal Austrian support system. In this respect, it has to be noted that a specialized centre for male trafficked persons is being developed by the Men's Health Centre.[98] Furthermore, stakeholders mention a gap regarding protection and care between Vienna and the rest of Austria.[99]

95 LEFÖ-IBF, *Yearly Activity Report 2011*, available at www.lefoe.at/index.php/ibf.html (accessed on 3 January 2013).

96 For the website of Drehscheibe, see www.wien.gv.at/menschen/magelf/kinder/drehscheibe.html (accessed on 6 January 2014).

97 Markus Zingerle, Men's Health Centre, 9 January 2014.

98 Markus Zingerle, Men's Health Centre, 9 January 2014; for information on the Austrian approach towards male trafficked persons, see Men's Health Centre, *Male victims of human trafficking in Austria*, available at www.oiip.ac.at/fileadmin/Unterlagen/Dateien/Publikationen/TIP_MEN_Male_victims_of_human_trafficking_in_Austria.pdf (accessed on 16 January 2014).

99 Evelyn Probst, LEFÖ-IBF, 19 September 2013; in this context, Tatzgern stated that more additional resources also in Western Austria could be helpful (Gerald Tatzgern, Federal Criminal Intelligence Service, 17 September 2013).

3. ACCESS TO RESIDENCE RIGHTS

Effective access of trafficked persons to residence status is of vital importance, not only for the individual concerned but also to enable the prosecution of traffickers. Thus, access to residence rights and the prosecution of traffickers go hand in hand; they are complementary and interdependent aspects of strategies to combat trafficking (KSMM, 2005: 18).[100]

The most relevant options for trafficked persons from third countries to obtain residence rights in Austria are international protection and the residence permit designed for trafficked persons.

3.1 International protection

There are various scenarios in which a trafficked person will be subject to the procedure for international protection. The trafficked person may get "advice" from the trafficker to apply for asylum so that the risk of deportation is averted for a certain time. An individual may be trafficked after the asylum application was issued.[101] To reach a safe haven, refugees may become trafficked persons or be at risk of trafficking when resorting to smugglers, whose networks may be linked to those of traffickers.[102] The trafficked person may apply for asylum after escaping the trafficking situation in Austria or the country of origin to claim a risk of re-trafficking when being returned to the country of origin.

100 A similar conclusion is also drawn by the Council of Europe, which states in its Explanatory Report to the Trafficking Convention (Council of Europe, 2009: 51) that "immediate return of the victims to their countries is unsatisfactory both for the victims and for the law-enforcement authorities endeavouring to combat the traffic".

101 For these cases, it is important to note that international protection is only granted in relation to a situation experienced or anticipated in the country of origin and not in the country of destination.

102 This scenario is also mentioned in OHCHR, UNHCR, UNICEF, UNODC, UN Women and ILO, *Joint UN Commentary on the EU Directive – A Human Rights-Based Approach*, available at www.unodc.org/documents/human-trafficking/ 2011/ UN_Commentary_EU_Trafficking_Directive_2011.pdf (accessed on 6 January 2014).

Against this backdrop, the following paragraphs seek to address the question of why individuals who have been trafficked or who are at risk of being trafficked may fall within the definition of a refugee provided by the Refugee Convention or qualify for subsidiary protection.

To provide the context for the Austrian practice for asylum cases of trafficked persons (4.1.3), the paragraphs below outline the following relevant aspects related to the assessment of the international protection needs of these individuals. In addition, this chapter addresses the link between trafficking and the Dublin procedure in brief.

3.1.1 The qualification as a refugee

Trafficked persons have the right to seek asylum[103] (see also Gallagher, 2010: 198) and have their applications "properly" processed[104]. The explanations to Article 40 of the Trafficking Convention[105] confirm that "the fact of being a victim of trafficking in human beings cannot preclude the right to seek and enjoy asylum and Parties shall ensure that victims of trafficking have appropriate access to fair and efficient asylum procedures".

In general, however, it is contested whether the right to asylum is a means that should be promoted to ensure victim protection in a destination country (see Juss, 2013: 297 and Schlapkohl, 2006: 51 et seq.). Juss (2013: 297 et seq.) argues in favor of the "asylum approach" towards trafficking and states that trafficked persons should be treated "more like conventional refugees," since, amongst other reasons, the circumstances that lead to trafficking may be the same as those creating refugees.

In its guidelines of 7 April 2006 on the "application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to trafficked persons and persons at risk of being trafficked"[106],

103 At the EU level, this follows from Article 18 FRC, and, as regards the concrete implementation, the provisions of the Asylum Procedure Directive.

104 At the EU level, this follows from Article 6 ECHR and Articles 41 and 47 FRC, and again, as regards the concrete implementation, the provisions of the Asylum Procedure Directive.

105 See also Article 14 of the Trafficking Protocol.

106 For the full text of the guidelines, see www.unhcr.org/443b626b2.html (accessed on 6 January 2014).

the UNHCR emphasizes that, in certain circumstances, individuals should be granted asylum based on the fact that they are trafficked persons. The UNHCR observes that the severe forms of exploitation experienced by trafficked persons may constitute serious violations of human rights that (or their anticipation) amount to persecution within the meaning of the Refugee Convention. Traumatic psychological effects of a trafficking situation can render return to the country of origin intolerable; trafficked persons may face reprisals and/or possible re-trafficking should they be returned; and the trafficked person may fear ostracism, discrimination or punishment by the family and/or the local community or, in some instances, by the authorities upon return (UNHCR, 2006: 6 et seq.).

Furthermore, the discourse of asylum and trafficking focuses on the qualification of trafficked persons as members "of a particular social group" within the meaning of the Refugee Convention (see Knight 2007). According to Gallagher (2010: 205), this is the most common reason used by national case law to grant asylum to trafficked persons.[107]

In most situations involving (potential) trafficked persons, the persecutory acts emanate from individuals without the direct involvement of state authorities (see Piotrowicz, 2012). Under these circumstances, the question whether the authorities of the country of origin are able and willing to protect the (potential) trafficked person upon return becomes particularly relevant.[108]

3.1.2 Subsidiary protection

The prospect of a threat to life or freedom can lead to a need for subsidiary protection if other conditions for refugee status, such as the causal link to Convention grounds, are not present. For example, trafficked persons may face a risk of re-trafficking in case of return, but they may not be a member of a particular social group in their country of origin. In this respect, the link between trafficking and Articles 2 and 3 of the ECHR, the right to life and the prohibition of torture is of particular relevance (Art. 8 AA).

107 For a detailed analysis of the link between "a particular social group" and trafficking, see also Frei, 2013, 19, and Knight, 2007, 10.

108 See also the UNHCR guidelines, 8 et seq., available at www.unhcr.org/443b626b2.html (accessed on 16 January 2014).

In recent literature, this issue was explored in relation to the link between trafficking and torture and the principle of *non-refoulment*, which lies at the heart of international protection (see Kneebone, 2013; Nowak/Planitzer, 2013; Frei, 2013). Nowak and Planitzer, for example, argue that trafficking may be defined as an act of torture in particular situations. Thus, they state, "the principle of non-refoulement offers trafficked persons a further possibility of protection in specific situations." They stress, however, that in practice only few trafficked persons have received such forms of complementary protection (Nowak/Planitzer, 2013: 39).

For the purposes of this study, it is thus helpful to briefly address the European Court of Human Rights' (ECtHR) case law related to trafficking.

Decisions of the European Court of Human Rights

Trafficking in human beings is not specifically referred to in the ECHR. However, the ECtHR has decided on several trafficking cases since 2005.

The decision in Siliadin vs. France of 25 July 2005 was the first in which the Court dealt with forms of trafficking. It ruled that France's criminal law did not afford Siliadin, a 15 year old girl of Togolese origin, with practical and effective protection against the offender. The Court held that Siliadin had been subjected to forced labour and held in servitude within the meaning of Article 4 ECHR.

In its landmark case of Rantsev vs. Cyprus and Russia of 7 January 2010, the Court decided on a complaint against the Republic of Cyprus and Russia in relation to the death of the 20 year old daughter of the applicant. The ECtHR found a violation of Article 4, and it clarified the obligations of High Contracting Parties to investigate allegations of trafficking, and to implement measures to prevent and protect individuals from human trafficking. The Court unanimously found that trafficking falls within the scope of Article 4 ECHR. Furthermore, it found that Cyprus was responsible under Article 5(1) ECHR for Ms Rantseva's deprivation of liberty. In this respect, the Court noted that trafficked persons suffer "severe physical and psychological consequences which render them too traumatized to present themselves as victims". The Court concluded that "[...] any inhuman or degrading treatment suffered by Ms Rantseva [...] was inherently linked to the alleged trafficking

and exploitation". Thus, it was "not necessary to consider separately the applicant's Article 3 complaint."

The obligations of States, to which the Court referred in the Rantsev case, can also be found in Article 10 of the Trafficking Convention. Thus, the Court's reasoning paved the way for strengthening the victim-protection provisions of the Convention. It was suggested that most or even all of the provisions in the Trafficking Convention aiming at the protection of victims are covered by the positive obligations of States towards trafficked persons under Article 4 ECHR (The Aire Centre 2010). The Rantsev decision was reinforced by the Court in several cases since 2010.[109] Although trafficking of human beings is primarily a criminal act and may not always, as such, be a violation of human rights, the state's answer to this act can qualify as a violation of a state's human rights obligations (see for example Piotrowicz 2012).

In short, for the assessment of subsidiary protection needs, one must pay particular attention to the link between trafficking and torture within the meaning of Article 3 ECHR. Decisions of the ECtHR on trafficking and violations of the rights provided in the ECHR should also be considered, although the Rantsev decision refers to Article 4 and not Article 3. The ECtHR' case law has established a link with and strengthened the provisions of the Trafficking Convention on the protection of trafficked persons.

3.1.3 Austrian practice and case law

In Austria, there are no predetermined scenarios in place in which refugee status or subsidiary protection is granted to an applicant based on a trafficking situation. It is the task of case workers and judges to assess every situation according to its own specific set of facts and circumstances.[110]

A trafficking situation can become the subject of an individual assessment within the asylum procedure in various ways, e.g. if the

109 See for example C.N vs. the UK, 13 November 2012 and C.N. and V. vs. France, 11 October 2012, where a violation of Article 4 ECHR was found by the Court.

110 This approach is related to the principle of "free consideration of evidence", see Art. 45 para 2 General Administrative Procedure Act.

applicant claims that there is a risk of re-trafficking after return or if a case worker identifies trafficking indicators during an interview. For an assessment of international protection needs, the overall facts of the case, including a trafficking situation, must be addressed to decide whether they justify international protection. The analysis of Austrian case law provided here should, then, also be looked at in this light.

An accurate assessment of the international protection needs of trafficked persons is a challenging task, which is additionally aggravated when there is a lack of verifiable information on trafficking (see Gallagher, 2010: 206). The trafficked persons' reluctance to state the true reasons for the threat of persecution may be seen as a further challenge to proper assessments.[111] The reluctance can be, amongst other reasons, grounded in the traumatization of the individual[112], or a lack of trust towards the authority.

In the following paragraphs, decisions of the Asylum Court, the Constitutional Court, and the Administrative High Court concerning the international protection needs of trafficked persons are analysed.

Asylum Court

The Asylum Court decided on appeals against decisions of the Federal Asylum Office, the predecessor of the BFA, from July 2008 to December 2013[113]. Within this period, a total of 129 decisions were identified that had an explicit reference to trafficking (including references to forced prostitution) as a ground for international protection. In seven of these cases, refugee status was granted, and in three cases, the applicant was

111 Furthermore, a lack of awareness of the links between trafficking and the principle of *non-refoulment* was suggested to be of relevance (Nowak/Planitzer, 2013: 39).

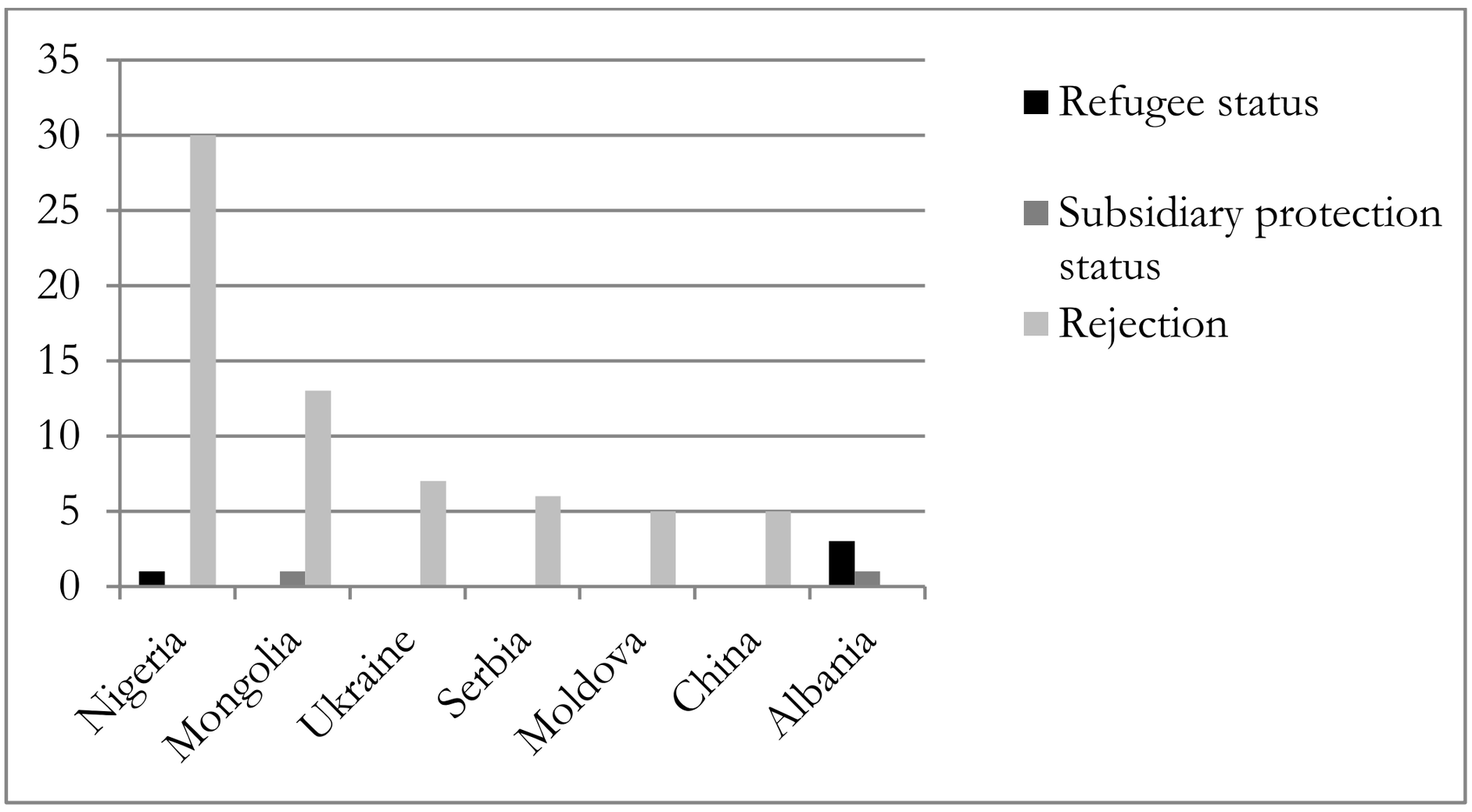
112 In this respect, the ECtHR noted, in the Rantsev case, that trafficked persons suffer "severe physical and psychological consequences which render them too traumatized to present themselves as victims".

113 In 2014, institutional amendments to the Austrian asylum procedure were introduced. The Federal Administrative Court was installed as the second instance in the proceedings and deciding on appeals against decisions of the BFA, thus replacing the Asylum Court in this function. Decisions of the Federal Administrative Court can be contested before the Constitutional Court and the Administrative High Court. Decisions of the Federal Administrative Court were not yet available when finalizing this study.

granted subsidiary protection. Thus, in 7.8 per cent (10) of all decisions the applicant received a form of international protection.

Out of these ten cases, four were decided by the same senate of the Asylum Court (B13/B14). The other decisions either rejected the application (including Dublin cases), or ruled that return is inadmissible due to considerations related to the right to private and family life (Article 8 ECHR), or instructed the first instance to reassess the case.

Figure 2: Decisions of the Asylum Court (July 2008-2013) on appeals of (possible) trafficked persons from the top seven countries of origin



The most common countries of origin were Nigeria (41 cases), Mongolia (22), and Serbia and Ukraine (each 10). From the 41 cases of Nigerian applicants, who were all women, only one applicant was granted international protection. Furthermore, the statistics show that in all four cases concerning Albanian citizens the applicants were granted refugee status or subsidiary protection.[114]

In most of its decisions (five out of seven) that granted refugee status to trafficked persons, the Court held that the applicants are to be considered members of a particular social group within the meaning

114 The decisions that were analysed for the purpose of this text are listed in the bibliography.

of the Refugee Convention. In the case of an Albanian woman[115], for example, the Asylum Court held that the applicant must be regarded a member of the social group of trafficked women in Albania. The Court argued that, as she had testified against traffickers, it cannot be ruled out that she will be subject to assaults in case of return, and that the Albanian authorities are not able to protect her. The Court did not share the view of the Federal Asylum Office in this case, which had rejected her asylum application based on the assessment that the Albanian authorities would (formally) not tolerate the crime of trafficking. Rather, the Court stated, such an assessment would need to take into consideration the factual ability and willingness of the authorities to protect a trafficked person.

As regards subsidiary protection, the Asylum Court's case law is more cautious. However, e. g. in the case[116] of a traumatized Mongolian woman who was forced into prostitution in China, the Asylum Court granted subsidiary protection. The Court held that returning the applicant would likely lead to re-traumatization, as her ordeal had started in her country of origin.

Nigerian women are the largest group of asylum-seekers in whose cases a reference to a trafficking was found. Against this background, the Asylum Court's case law on these individuals is particularly relevant.[117] The Court regularly states that the Nigerian state is able and willing to protect individuals from traffickers if they return to Nigeria.[118] In one of the cases[119] of a Nigerian woman who was forced into prostitution, the Court did grant refugee status, arguing that protection from the Nigerian state is not to be assumed in this particular case, based on evidence that police officers were directly cooperating with traffickers.

115 Asylum Court, B13 419.566-1/2011/7E, 17 April 2012.
116 Asylum Court, B13 225.163-0/2008/19E, 30 April 2009.
117 Their number is estimated at around 150-200 (Gerald Tatzgern, Federal Criminal Intelligence Service, 17 September 2013), while, in 2012, only five women from Nigeria received subsidiary protection (Eurostat).
118 See for example A14 428.731-1/2012/3E, 16 October 2013, or A13 404.420-1/2009/5E, 29 November 2010; this view was challenged by an NGO representative working with trafficked women from Africa, who stressed that the sources that are used by the Court to justify a rejection of the application are not balanced (Joana Adesuwa Reiterer, Exit, 18 October 2013).
119 Asylum Court, C15 263.728-0/2008/25E, 14 May 2009.

Constitutional Court

Decisions of the Asylum Court can be challenged at the Constitutional Court on their compatibility with the Austrian Constitution. Two decisions of the Austrian Constitutional Court were identified that specifically deal with trafficking in the context of the asylum procedure. In the first case[120], which concerned the protection needs of a Moldovan woman who had claimed that she was trafficked to Austria, the Constitutional Court blamed the Asylum Court for its insufficient investigations into trafficking in the Republic of Moldova. The second case[121] concerned a Chinese woman who had stated that she was subject to forced prostitution. In this case, the Constitutional Court held that the Asylum Court's assessment of the applicant's credibility was insufficient.

Administrative High Court

In the Austrian Administrative High Court's case law, three decisions related to trafficking were found. Two of these overruled decisions of the Independent Federal Asylum Senate[122], which had, according to the High Court's ruling, neglected to investigate the trafficking situation[123], and which had not provided sufficient reasoning regarding the provision of effective protection by authorities in the country of origin[124].

3.1.4 The Dublin procedure

The Dublin Regulation, which establishes "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", is directly applicable to the applications of third-country nationals for international protection in Austria.

120 Constitutional Court, U882/12, 10 October 2010.

121 Constitutional Court, U 76/2013-15, 21 November 2013.

122 The Administrative High Court decided on appeals against decisions of the Independent Federal Asylum Senate; this Senate was replaced by the Asylum Court in July 2008. Decisions of the Asylum Court could not be challenged at the Administrative High Court.

123 Administrative High Court, 2011/23/0064, 23 February 2011.

124 Administrative High Court, 2008/21/0423, 18 September 2008.

Although not directly related to the assessment of international protection needs, the Dublin procedure plays a decisive role in the access of trafficked persons to residence rights provided through the asylum procedure. The chances of asylum-seekers to receive protection vary depending on the Member State in which the claim is assessed.[125] In this respect, the European Council on Refugees and Exiles (ECRE) has identified the need for research on the application of the Dublin Regulation with respect to trafficked persons (ECRE, 2013: 78).

The text of the Dublin Regulation does not mention trafficking as a criterion for the assessment of the responsible Member State.[126] However, the fact that an applicant may be a trafficked person is still relevant for addressing the question of responsibility, as shown below.[127]

Article 17 of the Dublin Regulation provides that, by way of derogation from the criteria of the Regulation, "each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under the criteria laid down in this Regulation." Thus, a Member State may decide to examine the application of a trafficked person based on its own discretion in order to protect the individual concerned or enable criminal prosecution.

The Court of Justice of the EU's (CJEU) case law, beginning with NS vs SSHD[128] and MEea[129], and particularly the ECtHR' decision in M.S.S v. Belgium and Greece[130], suggest that Member States need to assess whether the trafficked person may face a possible human rights violation in the Member State responsible. In such a case, the Member

125 See for example ECRE, *Dublin II Regulation: Lives on hold*, Executive Summary, 5, available at ecre.org/component/downloads/downloads/702.html (accessed on 16 January 2014). According to Eurostat statistics, 60 out of 440 final decisions in asylum cases of Nigerian women in the United Kingdom provided refugee status to the applicants. In Austria, refugee status was granted in zero out of 45 cases.

126 In the Regulation, trafficking is (only) referred to in the context of assessing the best interests of a child (see Article 6(3) of the Regulation).

127 In this regard, it is important to note that Art. 58 AA – which obliges the asylum authority to examine, in case the application for international protection is rejected, whether a residence permit for trafficked persons is to be issued – does not mention rejections within the Dublin procedure.

128 CJEU, C-411/10, 21 December 2011.

129 CJEU, C-493/10, 21 December 2011

130 ECtHR, 30696/09, 21 January 2011.

State concerned shall refrain from transferring the individual concerned to the other Member State.

The transfer of a trafficked person to another Member State can, in certain circumstances, constitute a breach of Articles 2, 3 or 4 of the ECHR (Articles 2, 4 and 5 of the FRC).[131] The risk that an individual may be subject to a further trafficking situation in the Member State deemed responsible according to the Regulation may justify such an assessment. When taking into consideration the Rantsev decision of the ECtHR, the decision to refrain from a transfer may also be based on lacking protection schemes for trafficked persons in the Member State deemed responsible, amongst other things.

However, this does not oblige Member States to apply Article 17 of the Regulation if it finds substantial grounds for believing that the trafficked person would face a real risk in case of transfer. Instead, as confirmed by the CJEU in the case of Puid[132], the Member State may continue to examine the criteria in order to establish whether another Member State can be identified as responsible. If no other Member State can be identified according to the criteria of the Regulation, Article 3(2) of the Regulation applies: "the first Member State in which the application for international protection was lodged shall be responsible for examining it".[133]

The case law of the Asylum Court

Applicants can appeal against Dublin decisions. In the Asylum Court's case law, 12 "Dublin cases"[134] were identified that contained a reference to a (possible) trafficking situation in the Member States deemed responsible according to the Regulation. A risk of ill-treatment was not established in any of these cases, which involved Italy, Spain, Germany, and the Czech Republic as the Member States deemed responsible.

131 See ECtHR case of M.S.S. v. Belgium and Greece, 21 January 2011. It is also to be mentioned that Article 5 FRC directly refers to trafficking in human beings.

132 CJEU, C−4/11, 13 December 2013.

133 For a detailed analysis of the link between the Dublin Regulation and trafficking, see also Frei, 2013.

134 These cases are S16 414.161-1/2010-7E, S20 412.132-1/2010-4E, S18 410.900-1/2010-12E, S13 409.528-1/2009/3E, S7 317.933-2/2009/2E, S17 407.366-1/2009-2E, S17 407.367-1/2009-2E, S4 406.400-1/2009/2E, S18 421440-1/2011/5E, S18 421441-1/2011/5E, S7 410.699-2/2010/2E, S6 437.742-1/2013/3E.

Furthermore, the Court did not yet rule on the applicability of the Rantsev decision. In two cases, however, the Asylum Court remanded the case to the first instance.[135] One of these cases concerned a minor Nigerian girl who claimed that she was forced into prostitution in Italy. Here, the Court held that the Federal Asylum Office had neglected to investigate all relevant facts of the case; this applicant was later admitted to the ordinary procedure.[136]

3.2 The residence permit

In addition to the international protection scheme, the most relevant option to access residence rights is provided through a residence permit that is specifically designed for this particular group.

The current Austrian legislation on such permit is directed towards the respective provisions of the Trafficking Convention and the Residence Permit Directive. Thus, before outlining the conditions pertaining to the permit in Austria, the aims and contexts of these documents are briefly outlined here.

3.2.1 The Trafficking Convention

Austria ratified the Convention in October 2006, and it entered into force on 1 February 2008.[137] As stipulated in Article 1(1) of the Convention, its aims as a regional human rights document are: "to prevent and combat trafficking in human beings, while guaranteeing gender equality; to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution; to promote international cooperation on action against trafficking in human beings."

Article 14 of the Convention states that a renewable residence permit shall be issued to "victims" of trafficking if their stay is necessary owing to their personal situation, and/or for the purpose of their co-operation

135 See 414.161-1/2010-7E, 29 July 2010; and S7 317.933-2/2009/2E, 24 September 2009.

136 See A6 414.161-2/2011/4E, 25 July 2011.

137 For the German text of the Convention as ratified by Austria, see www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20005704 (accessed on 3 January 2014).

with the competent authorities in investigation or criminal proceedings. This is understood as serving both trafficked persons' needs and the requirements of combating the traffic as "immediate return of the victims to their countries is unsatisfactory both for the victims and for the law-enforcement authorities endeavouring to combat the traffic". The Explanatory Report to the Convention continues that, for "victims", return "means having to start again from scratch […] with the result that nothing will be done to prevent other victims from falling into the same trap." For law enforcement, it is assumed that if the trafficked persons remain to be hidden from authorities or are returned they cannot give information for effectively combating the crime. "The greater victims' confidence that their rights and interests are protected, the better the information they will give." In this respect, the "availability of residence permits is a measure calculated to encourage them to cooperate." (Council of Europe, 2005: 51).[138]

As mentioned above, the ECtHR' case law has paved the way for strengthening the victim-protection provisions of the Trafficking Convention. Thus, the provisions concerning the residence permit can also be covered by the positive obligations of States towards trafficked persons under Article 4 ECHR.

138 For the full text of the explanations, see Council of Europe, *Explanatory Report on the Council of Europe Convention on Action against Trafficking in Human Beings*, available at conventions.coe.int/Treaty/EN/Reports/Html/197.htm (accessed on 3 January 2014).

3.2.2 The Residence Permit Directive

In EU legislation, the Residence Permit Directive[139] is the primary instrument that addresses the access of trafficked persons to residence rights. The Directive, adopted under Article 63(3) of the Treaty establishing the European Community (TEC), applies to adult third-country national[140] trafficked persons.[141]

Chapter II of the Directive deals with the procedure for issuing the residence permit. Here, the Directive foresees the provision of information, the introduction of a reflection period, the granting of standards of living, the provision of translation and interpreting services, as well as free legal aid. Article 8 deals with the conditions for the issuance and renewal of the permit.

The concept of the Directive as regards the permit is that the issuance of it to a third-country national who is a trafficked person must depend, amongst other criteria, on the "opportunity presented […] for the investigations or the judicial proceedings", and on the cooperation with authorities (Article 8(1) a, and b). In this perspective, it was noted that the Directive is primarily based on the aims of prosecution, rather than guaranteeing access to residence rights for the individuals concerned or protecting their human rights (see Scarpa, 2008: 188).[142]

139 Council Directive 2004/81/EC of 29 April 2004 on residence permits 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.

140 Thus, the Directive does not apply to Union citizens. This is considered to be a considerable gap (Scarpa, 2008: 185); an EMN Ad-Hoc Query has addressed the question of how Member States deal with this gap (see Ad-Hoc Query on EEA citizens as trafficked persons, available at ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/ad-hoc-queries/trafficking/468_emn_ad-hoc_query_on_eea_citizens_as_victims_of_trafficking(wider_dissemination).pdf (accessed on 3 January 2014).

141 Member States may decide to apply the Directive also to minors. Furthermore, the Directive leaves it up to Member States to decide whether it should apply to third-country nationals who have been the subject of an action to facilitate irregular migration (Article 3 of the Directive).

142 This negation or lack of a human-rights based approach of the Directive was also criticized by GRETA, the Group of Experts on Action against Trafficking in Human Beings (GRETA, 2009: 4).

3.2.3 The Austrian residence permit

A residence permit for trafficked persons was at first introduced in the Austrian Aliens Act 1997 (Fremdengesetz 1997).[143] The conditions pertaining to the permit and the specific Acts that included it were repeatedly amended since 1997. The statistics mentioned under 1.4.1 show that since 2009 only 56 individuals have obtained the residence title.

Before 2014, the residence title specifically designed for trafficked persons in Austria was issued by the settlement and residence authorities according to the conditions set out in Art. 69a para 1(2) SRA. As of 1 January 2014, along with the restructuring of the Austrian aliens law system, this provision was transferred to the Asylum Act.[144] Hence, the newly established BFA is the authority responsible for issuing the title.

The substantive conditions for obtaining the permit, as stipulated in Art. 57 AA: "*Aufenthaltsberechtigung besonderer Schutz*" (residence permit for individual protection), have remained unchanged as compared to the old Art. 69a SRA. Art. 57 AA is placed under Chapter VII of the Asylum Act on residence titles for extenuating circumstances. Para 1provides that a permit "*shall* be issued to third-country nationals[145] who are residing in Austria", especially to "witnesses or victims of trafficking in human beings and transnational trafficking in prostitution" (para 1(2)). The title is issued either following an application[146] (Art. 58 para 5-10 AA) or *ex officio* (Art. 58 para 1-4 AA). The purpose and main condition of the title is "to ensure the prosecution of criminal acts or to enforce civil action

143 The full text of the Aliens Act 1997 is available at www.ris.bka.gv.at/Dokumente/BgblPdf/1997_75_1/1997_75_1.pdf (accessed on 17 July 2013).

144 Through the transfer of the residence title to the Asylum Act, holders of the title currently cannot access family benefits, namely child benefits (*Familienbeihilfe*) and child-raising allowance (*Kinderbetreuungsgeld*) (Art. 3 para 1 Families' Compensation Act, Art. 2 para 5 Child-raising Allowance Act).

145 As mentioned, the majority of trafficked persons in Austria are EU citizens; if EU citizens fail to fulfill the conditions required by EU law for residence exceeding three months, such as sufficient resources and sickness insurance, they may be subject to expulsion to their country of origin. The residence permit for trafficked persons in Austria does not provide an alternative path to regular status in such cases. In this respect, the Austrian residence permit follows the Trafficking Directive – Article 14 the Trafficking Convention is applicable to all individuals.

146 According to Art. 58 para 13 AA, applications for a residence permit for trafficked persons do not implicate a right to stay.

in connection with these offences"[147] (Art. 57 para 1(2) AA). Thus, the title is only issued if criminal or civil proceedings related to the trafficking crime are being carried on. Cooperation with the competent authorities is not explicitly mentioned as a condition to obtain the title.[148] In this respect, the Austrian version of the residence permit for trafficked persons deviates from the idea of the Residence Permit Directive (see Article 1 of the Directive).

Since 2014, the BFA must decide, *ex officio*, on the issuance of the residence permit if the asylum application is rejected. It is foreseen that this decision is issued together with the decision on the application for international protection (Art. 58 para 3 AA).

However, the residence permit cannot be obtained by asylum-seekers as long as the application is pending (Art. 58 para 9 AA). Thus, the Austrian system does not allow for a parallel processing of the asylum application and applications for a residence permit for trafficked persons. If a trafficked person whose asylum procedure is still open wants to obtain the residence permit, he or she would need to await the conclusion of the asylum procedure.

The residence permit is valid for 12 months (Art. 54 para 2 AA) and can be renewed if the initial conditions are satisfied (Art. 59 AA).In such cases, holders of the permit can (also) switch to the Red-White-Red Card plus, which provides unrestricted access to the Austrian labour market. For this purpose, they must meet the general requirements for residence titles, such as adequate means of subsistence and accommodation according to local standards, and prove German language skills at A2 level of the Common European Framework of Reference for Languages (CEFR) (Art. 59 para 4 AA in conjunction with Art. 41a para 3 SRA).

The above-mentioned limitations that are imposed on the access to the residence permit are regarded as a barrier, both from the perspective of protecting the trafficked person and when seeking to prosecute traffickers. As regards the barrier for criminal prosecution, the Council of Europe has observed a direct correlation between a trafficked person's confidence

147 In this respect, the Austrian residence permit follows the aims of the Trafficking Directive; the Trafficking Convention also foresees that the permit can be issued if "the competent authority considers that their stay is necessary owing to their personal situation" (Article 14(1) of the Convention).

148 Federal Ministry of the Interior, *Handbuch zum NAG*, 252.

that their rights and interests are protected, and the information provided in criminal proceedings (Council of Europe, 2005: 51).[149] That the residence permit can only be obtained or renewed if the criminal or civil proceedings are pending can discourage trafficked persons to testify against the trafficker, according to NGO representatives. This, in turn, leads to fewer criminal cases against traffickers. Several factors that a trafficked person can't influence, such as a lack of adequate evidence, can contribute to the termination of proceedings. Thus, trafficked persons who do not have the right to stay in Austria must live with uncertainty about their residence status.[150] The NGO LEFÖ-IBF further argues that the connection between testimony and residence rights is used to undermine the credibility of trafficked persons in criminal proceedings.[151] Asylum-seeking trafficked persons are in a similar situation, as they must await the end of their asylum procedure before they can obtain the permit. If their asylum application is rejected, they can be issued a return decision and be subject to forced return measures.[152]

149 This view is *inter alia* shared by the Women's Section in the Federal Chancellary in *Stellungnahme zum Entwurf eines Bundesgesetzes, mit dem das Niederlassungs- und Aufenthaltsgesetz, das Fremdenpolizeigesetz 2005, das Asylgesetz 2005 und das Staatsbürgerschaftsgesetz 1985 geändert werden*, available at www.parlament.gv.at/PAKT/VHG/XXIV/SNME/SNME_05800/imfname_205688.pdf (accessed on 3 January 2014); and the Human Rights Advisory Board, *Bericht des Menschenrechtsbeirates zu Identifizierung und Schutz von Opfern des Menschenhandels*, available at www.bmi.gv.at/cms/BMI_MRB/mrb/berichte/files/Bericht_der_AG_Menschenhandel_Endversion.pdf (accessed on 6 January 2014).

150 Joana Adesuwa Reiterer, Exit, 18 October 2013; Evelyn Probst, LEFÖ-IBF, 19 September 2013; see also Planitzer 2013.

151 See LEFÖ-IBF, *Stellungnahme zum Bundesgesetz, mit dem ein BFA-Einrichtungsgesetz und ein BFA-Verfahrensgesetz erlassen sowie das Asylgesetz 2005, das Fremdenpolizeigesetz 2005, das Niederlassungs- und Aufenthaltsgesetz, das Staatsbürgerschaftsgesetz1985, das Grundversorgungsgesetz – Bund 2005 und das Einführungsgesetz zu den Verwaltungsverfahrensgesetzen 2008 geändert werden*, available at www.parlament.gv.at/PAKT/VHG/XXIV/SNME/SNME_09060/fname_253130.pdf (accessed on 6 January 2014).

152 Joana Adesuwa Reiterer, Exit, 18 October 2013; Evelyn Probst, LEFÖ-IBF, 19 September 2013; Gerald Tatzgern, Federal Criminal Intelligence Service, 17 September 2013; See also Federal Ministry of Justice, Response to a parliamentary request, BMJ-Pr7000/0047-Pr 1/2013, available at www.parlament.gv.at/PAKT/VHG/XXIV/AB/AB_13719/fnameorig_299462.html (accessed on 6 January 2014).

3.2.4 The reflection period

The reflection (and recovery) period allows trafficked persons to seriously consider and make an informed decision about whether they wish to cooperate with authorities in exchange for being granted a residence title.[153] This period also serves as a first step to escape the influence of traffickers. During the reflection period, trafficked persons are not to be removed from the state's territory (Kau, 2010: 474). Thus, the reflection period can be understood as a complementing measure that facilitates trafficked persons' access to a residence permit.

The Austrian approach towards the granting of a reflection period is outlined in a decree by the Federal Ministry of the Interior of 4 July 2005 that was issued to transpose Article 13 of the Trafficking Convention and Article 16 of the Residence Permit Directive (see also European Commission, 2002: 71).[154] The decree states that authorities shall make potential trafficked persons aware of the fact that the issuance of a residence permit can be requested, and that a reflection period of at least 30 days shall be granted. During the reflection period, trafficked persons may, however, be interrogated by the police.[155] The decree does not state whether the reflection period is applicable to asylum-seekers.

3.3 Comparing the schemes to obtain residence rights

As shown above (4.2.3), asylum-seeking trafficked persons are required to decide between one of the two protection options, as the Austrian system does not allow for the procedures for international protection and the residence permit for trafficked persons to be conducted

153 See also Article 13 of the Trafficking Convention.

154 For a further analysis of the decree, see Human Rights Advisory Board, *Bericht des Menschenrechtsbeirates zu Identifizierung und Schutz von Opfern des Menschenhandels*, available at www.bmi.gv.at/cms/BMI_MRB/mrb/berichte/files/Bericht_der_AG_Menschenhandel_Endversion.pdf (accessed on 6 January 2014).

155 Federal Ministry of the Interior, Response to a parliamentary request, 3427/J, available at www.parlament.gv.at/PAKT/VHG/XXII/AB/AB_03393/fnameorig_052360.html (accessed on 6 January 2014); Explanatory remarks to the implementation of the Trafficking Convention, available at www.parlament.gv.at/PAKT/VHG/XXII/I/I_01565/imfname_065440.pdf (accessed on 6 January 2014); Evelyn Probst (LEFÖ-IBF, 19 September 2013) argued that 30 days are not an adequate period for a trafficked person to be able to recover and come to an informed decision.

in parallel. Thus, it can prove useful to provide a brief comparison of these two schemes.

In general, it can be said that the two options have partly different purposes, when deriving from the conditions required to access them: while the asylum procedure has the inherent goal of assessing the protection needs of applicants, the residence permit for trafficked persons, although containing protection-based elements, follows the interests of criminal or civil proceedings.

Elisabeth Tichy-Fisslberger stressed that asylum-seeking trafficked persons should be allowed to access both protection schemes, and, in any case, benefit from the specialized support provided to trafficked persons.[156] This view was also shared by relevant victims' support NGOs.[157] Furthermore, also the UN commentary on the Trafficking Directive (2013: 52) suggests that "persons in the asylum systems who show 'reasonable-ground indications' that they may have been trafficked or be at risk of being trafficked should be referred to the anti-trafficking systems while their claim for international protection continues to be examined."

When comparing the two schemes, several aspects are of relevance. Trafficked persons who are recognized as refugees in Austria are granted permanent residence rights. Their access to work, education, as well as social security is not restricted. Individuals who are granted subsidiary protection have, in general, fewer rights and entitlements than refugees. Their access to integration measures is limited, but they have similar rights as regards access to labour market and social rights. They receive temporary residence permits that must be prolonged after one year[158], (only) depending on the continued presence of the grounds for subsidiary protection.[159]

156 Elisabeth Tichy-Fisslberger, Federal Ministry for European and International Affairs, 20 August 2013.

157 Joana Adesuwa Reiterer, Exit, 18 October 2013; Evelyn Probst, LEFÖ-IBF, 19 September 2013.

158 Two years after first prolongation.

159 For an analysis of the integration prospect for refugees in Austria, see UNHCR, *A New Beginning*, available at www.unhcr.at/fileadmin/user_upload/dokumente/ 03_profil_begriffe/dauerhafte_loesungen/RICE_overall_report_final.pdf (accessed on 6 January 2014).

Holders of the residence permit for trafficked persons have access to the labour market, but they are requested to hold a separate work permit which can be issued without being subject to a labour market test.[160] However, as the title and its prolongation depend on the criminal or civil proceedings connected to the trafficking crime, this status is rather insecure. Switching to other titles is only possible to a limited extent, depending *inter alia* on whether the person has sufficient resources and has acquired language knowledge.[161]

Another relevant aspect for consideration is the rather low success rate of asylum applications from trafficked persons in Austria, and the fact that access to the labour market during the asylum procedure is limited.[162] It is assumed that women from Nigeria who are forced into prostitution constitute the largest group of third-country national trafficked persons in Austria; their number is estimated at around 200. From the 42 cases of Nigerian women that were found in the case law of the Asylum Court on trafficking situations, only one was granted international protection.[163]

160 An NGO representative has argued that this provision contradicts EU law, as the permit would fall within the scope of the Single Permit Directive (2011/98/EU) (Evelyn Probst, LEFÖ-IBF, 19 September 2013).

161 Art. 59 para 4 AA; Evelyn Probst, LEFÖ-IBF, 19 September 2013.

162 A body of experts on prostitution within the Task Force on Combating Human Trafficking stated in a report in 2008 that, since asylum-seekers are allowed to work in prostitution, the number of Nigerian women who work in brothels has increased, see *Prostitution in Austria*, 48, available at www.frauen.bka.gv.at/DocView.axd?CobId=31425 (accessed on 22 January 2014);
Austrian media has also addressed the issues of access to the labour market for trafficked persons in relation to combatting trafficking; several articles quote an interview with a representative of a women's organization who stated that access to the (ordinary) labour market for asylum-seekers is an important step in combatting the exploitation of Nigerian women in prostitution, as this would provide the possibility of alternative means of income; see Der Sonntag, *Was Burjan tun würde…*, 30 October 2013, available at www.dersonntag.at/glaube/themen/0/articles/2013/10/29/a7657/detailinfo (accessed on 5 November 2013); Die Standard, *Welche Familie verkauft die eigene Tochter?*, 17 October 2013, available at diestandard.at/1381368867198/Welche-Familie-verkauft-die-eigene-Tochter (accessed on 5 November 2013); see also Asylkoordination in Men's Health Centre, *Male victims of human trafficking in Austria*, 41, available at www.oiip.ac.at/fileadmin/Unterlagen/Dateien/Publikationen/TIP_MEN_Male_victims_of_human_trafficking_in_Austria.pdf (accessed on 16 January 2014).

163 In total, five women from Nigeria were granted subsidiary protection in 2012.

Victims' support NGOs consider testimony against the trafficker to be the crucial barrier for access to the residence permit. According to them, this obstacle, as well as the fact that the procedure may not be continued due to other reasons beyond the trafficked persons' control, significantly limits the effectiveness of this scheme.[164]

Since January 2014, the BFA decides on the issuance of the residence permit if the asylum application is rejected. This provides trafficked persons with the possibility to await the outcome of the asylum procedure before they opt to testify against the trafficker. The concrete impact of this provision on the access of trafficked persons to residence rights remains to be seen. Questions that arise, among others, are: If the procedure against the trafficker is not yet initiated when the asylum application is rejected, will the trafficked person find him or herself in an irregular situation? How is the reflection period applied to asylum-seekers?

164 Joana Adesuwa Reiterer, Exit, 18 October 2013; Evelyn Probst, LEFÖ-IBF, 19 September 2013; these NGO representatives hold different views on the question of which option is preferable for trafficked persons. While one of the NGO representatives who was interviewed for this study believes that each case should be assessed individually with the help of legal advisors with expertise in asylum law, , a representative of another NGO expressed that the residence permit for trafficked persons does not offer appropriate protection, and that the asylum procedure is the preferred option, even though many trafficked persons will not receive protection.

4. KEY FINDINGS

The study shows that in Austria, asylum-seekers and trafficked persons are overlapping groups. Addressing the identification and protection of trafficked persons who apply for international protection can therefore be a "piece of the puzzle" in the fight against trafficking in Austria.

Although the number and characteristics of asylum-seeking trafficked persons in Austria is not fully known, the information collected in this study provides a better understanding of the phenomenon. The experiences of NGOs and criminal police, studies conducted in other Member States, as well as an analysis of Austrian asylum case law, suggest a quantitative relevance of the issue.

The institutional set-up in Austria on asylum and return was recently revised, which brought relevant amendments for the identification of asylum-seeking trafficked persons and their access to residence rights. The new set-up provides a single authority that is responsible for the asylum procedure, the procedure for the issuance of residence permits for trafficked persons, as well as major parts of the forced return procedure: the *Bundesamt für Fremdenwesen und Asyl* (BFA).

Austrian stakeholders have identified the need for an increased sensitization of officers who come into contact with asylum-seeking trafficked persons. A focus of training efforts is currently on sensitizing police officers who work in detention pending deportation facilities. The extent of efforts so far to provide training also to case workers of asylum authorities was criticized as being too small by a number of stakeholders. In light of the new responsibilities that were given to the officers of the BFA in 2014, and against the backdrop of the newly introduced "case-owner" principle, training addressing this group can become a future priority.

Currently, the identification and referral of trafficked persons in Austria is largely based on informal arrangements. In practice, close cooperation between the police and specialized victim support institutions exists mainly for minor and female trafficked persons in Vienna. For trafficked persons who live outside of Vienna, similar institutionalized

support is currently not yet available. For trafficked men, Austria has recognized the need to act, and institutional arrangements in this regard are currently being developed.

The transfer of responsibility to the newly established BFA for the procedure to obtain a residence permit for trafficked persons in Austria can improve these individuals' access to residence rights. However, one of the major barriers remains in place: asylum-seekers cannot apply for or obtain a residence permit for trafficked persons as long as their application for asylum is pending. Thus, the options available to asylum-seeking trafficked persons for accessing residence rights in Austria, the asylum procedure and the residence permit for trafficked persons, remain separate.

Trafficked persons can qualify as refugees under certain circumstances. In this respect, the classification of trafficked persons as members of a "particular social group" and the question of whether the authorities of the country of origin are able and willing to protect an individual upon return need to be addressed, amongst other things. A trafficking situation can also be a reason for subsidiary protection if refugee status is not granted. Here, particularly the link between trafficking and torture within the meaning of the ECHR, but also the Rantsev decision of the ECtHR, need to be considered.

As for the effectiveness of the international protection scheme in protecting trafficked persons, several aspects must be considered. If the asylum authority comes to the conclusion that a specific trafficking situation fulfills the criteria for international protection, the status offered as a result provides a secure residence status. However, when looking at Austrian asylum case law on trafficking, it is clear that the majority of those who apply for asylum claiming that they have been or will be trafficked are very unlikely to be granted protection. Moreover, during the asylum procedure, applicants are confronted with restrictions, such as a lack of effective access to the labour market.

When compared to refugee or subsidiary protection status, the residence permit for trafficked persons provides a rather weak legal status.

The permit is limited to one year and depends upon conditions that to a significant degree cannot be influenced by the individual concerned. First and foremost, the issuance and the prolongation of the title are dependent on criminal or civil proceedings connected to the trafficking crime. Furthermore, although holders of the title have access to the Austrian labour market, theoretically allowing them to secure their livelihood, switching to other residence titles later is a considerable challenge for trafficked persons.

Further clarification and developments regarding the Austrian approach towards the identification of asylum-seeking trafficked persons and their access to residence rights is to be expected in the course of 2014, particularly in relation to the work of the BFA. The activities of this newly established authority will certainly play a crucial role in Austria's further efforts to combat trafficking in Austria.

ANNEX

Abbreviations and translations

English term	English abbreviation	German term	German abbreviation
Act Governing the Employment of Foreign Nationals	AGEFN	Ausländerbeschäftigungsgesetz	AuslBG
Administrative High Court	-	Verwaltungsgerichtshof	VwGH
Asylum Act	AA	Asylgesetz	AsylG
Asylum Court	-	Asylgerichtshof	AsylGH
Austrian Ombudsman Board	-	Volksanwaltschaft	-
Charter of Fundamental Rights of the European Union	FRC	Charta der Grundrechte der Europäischen Union	GRC
Child-raising Allowance Act	CAA	Kinderbetreuungsgeldgesetz	KBGG
European Commission	EC	Europäische Kommission	EK
European Convention on Human Rights	ECHR	Europäische Menschenrechtskonvention	EMRK
European Court of Human Rights	ECtHR	Europäischer Gerichtshof für Menschenrechte	EGMR
European Migration Network	EMN	Europäisches Migrationsnetzwerk	EMN
European Union	EU	Europäische Union	EU
Families' Compensation Act	FCA	Familienlastenausgleichsgesetz	FLAG
Federal Administrative Court	-	Bundesverwaltungsgericht	BVwG
Federal Asylum Office	-	Bundesasylamt	BAA
Federal Chancellery	-	Bundeskanzleramt	BKA
Federal Constitutional Act	-	Bundesverfassungsgesetz	B-VG
Federal Government	-	Bund	-
Federal Law Gazette	FLG	Bundesgesetzblatt	BGBl.
Federal Ministry for European and International Affairs	FMEIA	Bundesministerium für europäische und internationale Angelegenheiten	BMeiA
Federal Ministry of Labour, Social Affairs and Consumer Protection	FMLSC	Bundesministerium für Arbeit, Soziales und Konsumentenschutz	BMASK
Federal Ministry of the Interior	FMI	Bundesministerium für Inneres	BMI
Federal Office for Aliens Affairs and Asylum Procedure Act	FOAA-PA	Bundesamt für Fremdenwesen und Asyl Verfahrensgesetz	BFA-VG
Federal Office for Immigration and Asylum	-	Bundesamt für Fremdenwesen und Asyl	BFA

Federal Office for Migration and Refugees	-	Bundesamt für Migration und Flüchtlinge	BAMF
Human Rights Advisory Board	-	Menschenrechtsbeirat	-
Independent Administrative Senate	-	Unabhängiger Verwaltungssenat	UVS
Initial Reception Centre	-	Erstaufnahmestelle	EAST
International Organization for Migration	IOM	Internationale Organisation für Migration	IOM
National Contact Point	NCP	Nationaler Kontaktpunkt	NKP
Non-Governmental Organization	NGO	Nichtregierungsorganisation	NRO
Province	-	Bundesland	-
Settlement and Residence Act	SRA	Niederlassungs- und Aufenthaltsgesetz	NAG
United Nations High Commissioner for Refugees	UNHCR	Hoher Flüchtlingskommissar der Vereinten Nationen	-

Bibliography

Books, journals, and articles

Frei, N.
2013 Der Schutz von Menschenhandelsopfern im Asylsystem, in *Asyl – Bern*, 14-23.

Gallagher, A.
2010 *The International Law of Human Trafficking*, Cambridge University Press, New York.

Juss, S.S.
2013 Human trafficking, asylum and the problem of protection, in *The Ashgate Research Companion to Migration Law, Theory and Policy*, edited by Juss S., 281-321.

Kau, M.
2010 Commentary on the Council Directive 2004/81 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, in *EU Immigration and Asylum Law*, edited by Hailbronner, K., p. 429 –531.

Kneebone, S.Y.
2013 Protecting trafficked persons from refoulement: re-examining the nexus, in *Contemporary Issues in Refugee Law*, edited by Juss, S. and Harvey, C., 138-164.

Knight, S.
2007 Asylum from trafficking: a failure of protection, in *Immigration Briefings*, available at lastradainternational.org/lsidocs/knight_immi gration_tra_0708.pdf (accessed on 3 February 2014).

Martins, J. and Varandas, I.
2007 *Signalling Identification Integration of Victims of Trafficking for Sexual Exploitation: Construction of a Guide*, available at cortaarede.umarfeminismos.org/images/documentos/infos%20e%20docs/Signalling-Identification-Integration.pdf (accessed on 15 January 2014).

Nowak, M. and Planitzer J.
2013 Trafficking in human beings amounting to torture and other forms of ill-treatment – legal analysis, in *Occasional Paper Series*, 9 – 44, available at www.osce.org/cthb/103085 (accessed on 3 January 2014).

Piotrowicz, R.
2012 States' obligations under human rights law towards victims of trafficking in human beings: positive developments in positive obligations, in *International Journal of Refugee Law*, 181-201, available at ijrl.oxfordjournals.org/content/early/2012/04/04/ijrl.ees023.full (accessed on 3 January 2013).

Planitzer, J.
2013 Der schmale Grat zwischen Aufenthalt und Abschiebung, in *Vom Umgang mit den „Anderen" – Historische und menschenrechtliche Perspektiven der Abschiebung,* edited by Nowak, M. and Saurer, E., 97-131.

Scarpa, S.
2008 *Trafficking in Human Beings: Modern Slavery*, Oxford University Press, Oxford.

Schlapkohl, L.
2006 *Human Trafficking and the Common European Asylum System: Victim Protection and Assistance in the European Union*, available at dl.tufts.edu/file_assets/tufts:UA015.012.DO.00138 (accessed on 8 January 2014).

Stepnitz, A.
2012 Human trafficking and asylum: problematic overlap, in *Asylum Aid – Protection from Persecution*, available at www.refworld.org/pdfid/5021497a2.pdf (accessed on 8 January 2014).

Studies and reports

ECRE
2013 *Dublin II Regulation: Lives on hold*, available at ecre.org/component/downloads/downloads/701.html (accessed on 17 January 2014).

EMN
2013 *Ad-hoc Query on EEA citizens as trafficked persons*, available at ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/ad-hoc-queries/trafficking/468_emn_ad-hoc_query_on_eea_citizens_as_victims_of_trafficking(wider_dissemination).pdf (accessed on 3 January 2014).

Frontex
2012 *Situational Overview on Trafficking in Human Beings*, available at frontex.europa.eu/assets/Publications/Risk_Analysis/Situational_Overview_on_Trafficking_in_Human_Beings.pdf (accessed on 3 January 2013).

GRETA
2009 *Opinion No. 4/2009*, 16 June.

IOM, UNHCR, BAMF
2012 *Identification and Protection of Victims of Human Trafficking within the Asylum System*, available at www.iom.int/germany/de/downloads/CT%20Asyl/12_06_05_IOM_Endpublikation_ansicht_GESAMT_FINAL.pdf (accessed on 3 January 2014).

KSMM
2005 *Co-operation Mechanisms for Combating Trafficking in Human Beings*, Guidelines, available at legislationline.org/download/action/download/id/1267/file/4ce646082b2ae8033a4deb150a54.pdf (accessed on 3 February 2014).

LEFÖ-IBF
2009 *Stellungnahme zum Bundesgesetz, mit dem ein BFA-Einrichtungsgesetz und ein BFA –Verfahrensgesetz erlassen sowie das Asylgesetz 2005, das Fremdenpolizeigesetz 2005, das Niederlassungs- und Aufenthaltsgesetz, das Staatsbürgerschaftsgesetz 1985, das Grundversorgungsgesetz – Bund 2005 und das Einführungsgesetz zu den Verwaltungsverfahrensgesetzen 2008 geändert werden*, available at www.parlament.gv.at/PAKT/VHG/XXIV/SNME/SNME_09060/fname_253130.pdf (accessed on 6 January 2014).
2012 *Yearly Activity Report 2011*, available at www.lefoe.at/index.php/ibf.html (accessed on 3 January 2013).
2013 *Yearly Activity Report 2012*, available at www.lefoe.at/index.php/ibf.html (accessed on 3 January 2013).

Men's Health Centre
2013 *Male Victims of Human Trafficking in* Austria, available at www.oiip.ac.at/fileadmin/Unterlagen/Dateien/Publikationen/TIP_MEN_Male_victims_of_human_trafficking_in_Austria.pdf (accessed on 16 January 2014).

OHCHR, UNHCR, UNICEF, UNODC, UN Women and ILO
2013 *Joint UN Commentary on the EU Directive – A Human Rights-Based Approach*, available at www.unodc.org/documents/human-trafficking/2011/UN_Commentary_EU_Trafficking_Directive_2011.pdf (accessed on 6 January 2014).

OSCE
2004 *National Referral Mechanisms*, available at www.osce.org/node/13967 (accessed on 6 January 2014).

The Aire Centre
2011 *Guide to the Judgment in Rantsev v Cyprus and Russia*, available at www.atlep.org.uk/courses-and-events/training-papers-immigration/guide-to-the-judgment-in-rantsev-v-cyprus-and-russia (accessed on 3 January 2014).

UNHCR
2013 *A New Beginning – Refugee Integration in Europe*, available at www.unhcr.at/fileadmin/user_upload/dokumente/03_profil_begriffe/dauerhafte_loesungen/RICE_overall_report_final.pdf (accessed on 6 January 2014).

United States Government
2013 *Trafficking in Persons Report 2013*, Austria, available at www.state.gov/j/tip/rls/tiprpt (accessed on 3 January 2014).

Women's Section in the Federal Chancellary
2013 *Stellungnahme zum Entwurf eines Bundesgesetzes, mit dem das Niederlassungs- und Aufenthaltsgesetz, das Fremdenpolizeigesetz 2005, das Asylgesetz 2005 und das Staatsbürgerschaftsgesetz 1985 geändert werden*, available at www.parlament.gv.at/PAKT/VHG/XXIV/SNME/SNME_05800/imfname_205688.pdf (accessed on 3 January 2014).

Policy documents

Austrian Parliament
2013 *Explanatory remarks to the implementation of the Trafficking Convention*, available at www.parlament.gv.at/PAKT/VHG/XXII/I/I_01565/imfname_065440.pdf (accessed on 6 January 2014).

Committee on the Elimination of Discrimination against Women
2013 *Concluding observations on the seventh and eighth periodic reports of Austria adopted by the Committee at its fifty fourth session (11 February – 1 March 2013)*, available at www.frauen.bka.gv.at/DocView.axd?CobId=51417 (accessed on 10 February 2014).

Council of Europe

2013 *Explanatory Report on the Council of Europe Convention on Action against Trafficking in Human Beings*, available at conventions.coe.int/Treaty/EN/Reports/Html/197.htm (accessed on 3 January 2014).

European Commission

2002 *Proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities*, COM (2002) 71, available at eur_lex.europa.eu/smartapi/cgi/sga_celexplus!prod!CELEXnumdoc&lg=en&numdoc=52002PC0071 (accessed on 8 January 2014).

Federal Ministry of Justice

2013 *Response to a Parliamentary Request*, *BMJ-Pr7000/0047-Pr 1/2013*, available at www.parlament.gv.at/PAKT/VHG/XXIV/AB/AB_13719/fnameorig_299462.html (accessed on 6 January 2014).

Federal Ministry of the Interior

2005 *Response to a Parliamentary Request*, available at www.parlament.gv.at/PAKT/VHG/XXII/AB/AB_03393/fnameorig_052360.html (accessed on 6 January 2014).

2007 *Handbuch zum NAG*, BMI-FW1440/0016-II/3/2011, available at www.parlament.gv.at/PAKT/VHG/XXIV/AB/AB_09381/imfname_239200.pdf (accessed on 8 January 2014).

2011 *Handbuch zum FPG*, BMI-FW1440/0016-II/3/2011, available at www.parlament.gv.at/PAKT/VHG/XXIV/AB/AB_09381/imfname_239200.pdf (accessed on 10 February 2014).

GRETA

2013 *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria*, available at www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA_2011_10_FGR_AUT_en.pdf (accessed on 5 January 2014).

Human Rights Advisory Board
2011 *Bericht des Menschenrechtsbeirates zu Identifizierung und Schutz von Opfern des Menschenhandels*, available at www.bmi.gv.at/cms/BMI_MRB/mrb/berichte/files/Bericht_der_AG_Menschenhandel_Endversion.pdf (accessed on 6 January 2014).

Republic of Austria
2013 *National Action Plan on Combatting Human Trafficking (2012-2014)*, available at www.bmask.gv.at/cms/site/attachments/5/8/3/CH2288/CMS1314878545824/3__nationaler_aktionsplan_2012-2014.pdf (accessed on 3 January 2014).

UNHCR
2006 *Guidelines on International Protection – The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked*, available at www.unhcr.org/443b626b2.html (accessed on 6 January 2014).

Austrian legislation

Aliens Police Act, BGBl. I Nr. 100/2005 in the version of BGBl. I Nr. 68/2013.
Asylum Act, BGBl. I Nr. 100/2005 in the version of BGBl. I Nr. 87/2012.
Code of Criminal Procedure, BGBl. Nr. 631/1975 in the version of BGBl. I Nr. 33/2011.
Criminal Code, BGBl. Nr. 60/1974.
Settlement and Residence Act, BGBl. I Nr. 100/2005 in the version of BGBl. I Nr. 68/2013.
Federal Office for Aliens Affairs and Asylum Procedures Act, BGBl. I Nr. 87/2012 in the version of BGBl. I Nr. 68/2013.
General Administrative Procedures Act, BGBl. Nr. 51/1991.
Families' Compensation Act, BGBl. Nr. 376/1967.
Child-raising Allowance Act, BGBl. I Nr. 103/2001.

International treaties

United Nations

Convention and Protocol Relating to the Status of Refugees, available at www.unhcr.org/3b66c2aa10.html (accessed on 8 January 2014).

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, available at www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx (accessed on 8 January 2014).

Convention on the Elimination of All Forms of Discrimination against Women, available at www.un.org/womenwatch/daw/cedaw/cedaw.htm (accessed on 10 February 2014).

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, available at www.unodc.org/unodc/treaties/CTOC (accessed on 8 January 2014).

European and EU legislation

The European Parliament, The Council of the European Union and the European Commission

2000 *Charter of Fundamental Rights of the European Union*, available at www.europarl.europa.eu/charter/pdf/text_en.pdf (accessed on 8 January 2014).

The European Parliament and the Council of the European Union

2008 *Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals,* available at eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:01:EN:HTML (accessed on 8 January 2014).

2011a *Directive 2011/36/EU on preventing and combating trafficking in human being and protecting its victims and replacing Council Framework Decision 2002/629/JHA*, available at eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:01:EN:HTML (accessed on 8 January 2014).

2011b *Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted*, available at eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:01:EN:HTML (accessed on 8 January 2014).

2011c *Directive 2011/98/EU on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State*, available at eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:343:0001:01:EN:HTML (accessed on 8 January 2014).

2013 *Regulation No. 604/2013 on establishing the criteria and mechanisms for determining the Member State responsibility for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person*, available at eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:01:EN:HTML (accessed on 8 January 2014).

The Council of the European Union

2005 *Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status*, available at eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:01:EN:HTML (accessed on 8 January 2014).

2004 *Directive 2004/81/EC 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*, available at eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0081:EN:HTML (accessed on 8 January 2014).

The Council of Europe

2005 *Convention on Action against Trafficking in Human Beings*, available at conventions.coe.int/Treaty/en/Treaties/Html/197.htm (accessed on 8 January 2014).

2010 *European Convention on Human Rights*, available at www.echr.coe.int/Documents/Convention_ENG.pdf (accessed on 8 January 2014).

European and EU case law

European Court of Human Rights

Siliadin v. France, 26 July 2005, Application no. 73316/01.

Rantsev v. Cyprus and Russia, 7 January 2010, Application no. 25965/04.
M.S.S. v. Belgium and Greece, 21 January 2011, Application no. 30696/09.
C.N. vs. the UK, 13 November 2012, Application no. 4239/08.
C.N. and V. vs. France, 11 October2012, Application no.67724/09.

Court of Justice of the European Union
NS vs SSHD, 21 December 2011, C-411/10,
MEea, 21 December 2011, C-493/10.

Media documents

Der Sonntag
2013 *Was Burjan tun würde…*, 30 October, available at www.dersonntag.at/glaube/themen/0/articles/2013/10/29/a7657/detailinfo (accessed on 5 November 2013).

Der Standard
2013a *Sklaverei hinter Botschaftsmauern*, 13 April, available at derstandard.at/1363707819201/Sklaverei-hinter-Botschaftsmauern (accessed on 5 November 2013).
2013b *Vielfach unerkannte moderne Sklaverei*, 20 October, available at derstandard.at/1381369204634/Vielfach-unerkannte-moderne-Sklaverei (accessed on 5 November 2013).

Die Presse
2010 *Die Unsichtbaren: Opfer von Menschenhandel – auch in Österreich*, 15 October, available at diepresse.com/home/blogs/rohrer/660087/Die-Unsichtbaren_Opfer-von-Menschenhandel-auch-in-Oesterreich (accessed on 5 November 2013).

2011 *Ausbeutung: Die Sklaven der Diplomaten*, 27 April, available at diepresse.com/home/panorama/welt/653613/Ausbeutung_Die-Sklaven-der-Diplomaten (accessed on 5 November 2013).

Die Standard
2013 *Welche Familie verkauft die eigene Tochter?*, 17 October, available at diestandard.at/1381368867198/Welche-Familie-verkauft-die-eigene-Tochter (accessed on 5 November 2013).

Falter
2009 *Nigerianerinnen auf dem Straßenstrich: Das Geschäft mit der Ware Frau*, 5 September.

Kleine Zeitung
2013 *Prostitution in illegalen Massagestudios*, 20 November.

Kronen Zeitung
2013 *Sex-Sklaverei in Massagesalons*, 20 November.

Kurier
2013 *Razzia in Massage-Studios*, 20 November.

News
2010 *Verraten, verkauft – und abgeschoben*, 14 October.

ORF
2013 *Zuflucht für Zwangsprostituierte in Wien*, 18 October, available at wien.orf.at/news/stories/2609787 (accessed on 5 November 2013).

Österreich
2013 *Chinesen-Mafia hielt Frauen als Sex-Sklavinnen*, 20 November.

Statistics

Eurostat
2012 *Asylum Applications*, available at epp.eurostat.ec.europa.eu/portal/page/portal/statistics (accessed on 3 January 2013).

Federal Criminal Intelligence Service
2013 *Police Crime Statistics*, available at www.bmi.gv.at/cms/BK/publikationen/krim_statistik/start.aspx (accessed on 3 January 2014).

Federal Ministry of the Interior
2013a *Residence Permit Statistics*, available at www.bmi.gv.at/cms/BMI_Niederlassung/statistiken (accessed on 3 January 2014).

2013b *Asylum Statistics*, available at www.bmi.gv.at/cms/BMI_Asylwesen/statistik/files/2013/Asylstatistik_Jahr_2012.pdf (accessed on 3 January 2013).

Statistics Austria
2013 *Judicial Crime Statistics*, available at www.statistik.at/web_de/statistiken/soziales/kriminalitaet/verurteilungen_gerichtliche_kriminalstatistik/index.html (accessed on 3 January 2014).

Case law of the Asylum Court

Albania
B13 308.657-1/2008/15E, B13 419.566-1/2011/7E, B13 421.367-1/2011/10E, B13 436.213-1/2013/10E, B14 310.688-1/2008/10E

Armenia
D18 417.220-1/2011/14E, D18 417.222-1/2011/19E, E12 308.901-1/2008-11E

Belarus
D17 223.411-2/2008/15E

Bulgaria
B15 259.484-2/2008/4E

China
C1 426.624-1/2012/5E, C3 230.247-0/2008/6E, C3 319.385-1/2008/5E, C3 415.123-1/2010/6E, C4 402.811-1/2008/7E, C7 409.659-1/2009/3E

Ecuador
S13 409.528-1/2009/3E

Georgia
D8 310.844-2/2008/2E, D16 408.498-2/2010/10E, E3 312.852-2/2008-19E, E5 314.716-1/2008-14E

India
C16 419.234-2/2012/2E

Indonesia
C1 405.596-1/2009/2E
Iran
E3 401.105-1/2008-5E

Kazakhstan
S7 410.699-2/2010/2E

Kenya
A6 425.185-1/2012/5E, D9 315422-1/2008/11E

Kyrgyzstan
D4 262.366-0/2008/18E

Kosovo/UNSC 1244
B1 409.791-1/2009/6E, B8 316.685-1/2008/2E

Republic of Moldova
D14 224.276-2/2011/2E, D14 252.654-0/2008/10E, D15 242.222-18/2008/37E, D15 252.655-0/2008/35E, D15 267.091-0/2008/1E, D15 407.393-1/2009/2E

Mongolia
B13 225.163-0/2008/19E, C13 414.537-1/2010/2E, C13 416.821-1/2010/2E, C14 400.047-1/2008/3E, C14 413.542-1/2010/19E, C14 415.840-1/2010/2E, C16 256.899-2/2008/12E, C16 261.613-0/2008/33E, C16 268.402-0/2008/11E, C16 300.199-1/2008/12E, C16 313.237-2/2012/5E, C16 315.268-1/2008/6E, C16 315.787-1/2008/13E, C16 319.323-1/2008/17E, C16 412.026-1/2010/5E, C16 414.468-1/2010/13E, C16 417.298-1/2011/6E, C16 420.259-1/2011/3E, C16 420.261-1/2011/3E, S17 407.366-1/2009-2E

Nepal
C9 317190-2/2009/3E

Nigeria
A3 252.767-2/2010/4E, A3 267.177-2/2008/11E, A5 302.716-2/2010/2E, A5 307.904-2/2010/2E, A5 316.595-2/2010/2E, A5 319.290-1/2008/5E, A5 416.618-1/2010/5E, A6 239.056-0/2008/15E, A6 254.626-2/2010/2E, A6 412.282-1/2010/3E, A6 414.161-2/2011/4E, A6 422.265-1/2011/4E, A8 248.862-3/2011/2E, A11 318.721-2/2010/2E, A13 400.356-2/2010/2E, A13 402.051-2/2010/3E, A13 404.420-1/2009/5E, A13 407.985-2/2011/2E, A13 420.864-2/2013/3E, A13 420.864-1/2011/2E, A13 420.864-1/2011/2E, A13 420.863-1/2011/2E, A14 253.200-0/2008/17E, A14 405.416-2/2010/2E, A14 408.512-3/2012/3E, A14 428.731-1/2012/3E, C1 250.813-0/2008/8E, C15 263.728-0/2008/25E, D18 254.486-2/2009/11E, D18 423.342-1/2011/10E, S4 406.400-1/2009/2E, S6 437.742-1/2013/3E, S7 317.933-2/2009/2E, S16 414.161-1/2010-7E, S18 410.900-1/2010-12E, S18 421.440-1/2011/5E, S20 412.132-1/2010-4E

Romania
E17 300.806-1/2008/21E

Rwanda
A14 418.644-1/2011/2E

Russian Federation
D17 240.172-0/2010/31E

Serbia
B2 301.636-3/2012/9E, B3 230.189-3/2011/4E, B5 416.911-1/2010/2E, B9 417.308-1/2011/2E

Sierra Leone
A6 433.737-1/2013/4E

Stateless

D16 414.311-1/2010/13E

United Republic of Tanzania
A6 425.182-1/2012/5E

Unresolved
A14 313.619-1/2008/11E

Ukraine
D7 235.721-0/2008/22E, D7 300.168-2/2009/2E, D7 304.578-3/2010 /2E, D7 304.578-2/2010/2E, D7 402.613-1/2008/18E, D7 429.124-2/ 2012/6E, D8 244.313-2/2008/18E, D8 246.063-2/2008/20E, D12 304.725-1/2008/8E

Viet Nam
C16 304.281-1/2008/7E

Case law of the Constitutional Court

U882/12, 10 October 2010
U 76/2013-15, 21 November 2013

Case law of the Administrative High Court

2011/23/0064, 23 February 2011
2008/21/0423, 18 September 2008