



AUSTRIA

Legal System	Constitution	Bill of Rights	Country Structure	Form of Government
Civil Law	Written	Yes	Federation	Republic

1. INTRODUCTION

1.1. Modern Slavery and Human Trafficking

Austria is a democratic federal state and a member of the European Union. It consists of nine federal states. The federal state has the primary responsibility and competence for human trafficking.

Because of its location at the center of Europe, Austria is both a transit and destination country for human trafficking.¹ Victims of trafficking originate mainly from Eastern Europe, Africa, and Asia.² The most frequent form of exploitation is sexual exploitation, followed by labor exploitation, domestic servitude, and forced begging.³ Over 95 percent of victims are foreign women subjected to sex trafficking, and approximately 65 percent of trafficking victims come from EU Member States.⁴

Austrian institutions that monitor and support the fight against human trafficking include the National Task Force on Combating Trafficking in Human Beings (coordinated by the Federal Ministry for European and International Affairs (**MFA**)), the Ludwig Boltzmann Institute for Fundamental and Human Rights (*Ludwig Boltzmann Institut; LBM*),⁵ LEFÖ-IBF,⁶ ECPAT Austria,⁷ and MEN VIA.⁸

1.2. Austria's Policy and Legal Position

Austria has signed international treaties and conventions as part of its fight against human trafficking.⁹ Austria was one of the first countries to be evaluated thrice by the Group of Experts on Action against Trafficking in Human Beings (**GRETA**). GRETA's third country evaluation report, published in 2020,

¹ Report about fight against human trafficking, available at: <https://www.bmeia.gv.at/en/european-foreign-policy/human-rights/combating-trafficking-in-human-beings> (last accessed 2 October 2023).

² Cf. Jürgs, Globule Menschenhandel – Prostitution als „exorbitantes“ Geschäftsmodell, abrufbar unter, available at: <https://www.welt.de/politik/deutschland/article155810700/Prostitution-als-exorbitantes-Geschaeftsmodell.html> (last accessed 2 October 2023).

³ Evaluation Report Austria of GRETA dated 10 June 2020, available at: <https://rm.coe.int/greta-2020-03-fgr-aut-en/16809eb4fd> (last accessed 2 October 2023).

⁴ U.S. Dep't of State, Trafficking in Persons Report 98 (2022), available at: <https://www.state.gov/reports/2022-trafficking-in-persons-report/austria/> (last accessed 2 October 2023); see also Evaluation Report Austria of GRETA dated 10 June 2020, available at: <https://rm.coe.int/greta-2020-03-fgr-aut-en/16809eb4fd> (last accessed 2 October 2023).

⁵ Website of LBM available at: <https://gmr.lbg.ac.at/abgeschlossene-projekte/gewaltschutz-fuer-jugendliche-in-haft> (last accessed 2 October 2023).

⁶ Website of LEFÖ-IBF available at: <https://lefoe.at> (last accessed 2 October 2023).

⁷ Website of ECPAT Austria available at: <https://www.ecpat.at> (last accessed 2 October 2023).

⁸ Website of MEN Via available at: <https://men-center.at> (last accessed 2 October 2023).

⁹ Cf. Report about fight against human trafficking, available at: <https://www.bmeia.gv.at/en/european-foreign-policy/human-rights/combating-trafficking-in-human-beings> (last accessed 2 October 2023).

acknowledges several positive developments in Austria. GRETA noted Austria's recent expanded victim assistance initiatives, national action plan (**NAP**) and public awareness campaign for those affected by Russia's war on Ukraine, and development of comprehensive guidelines for identifying and referring trafficking victims.¹⁰

On the other hand, the recent decrease in the prosecution of traffickers, and persistent gap t in identifying victims highlight areas for improvement. The absence of a standardized law enforcement database also has created enforcement hurdles.¹¹

2. OVERVIEW OF AUSTRIA'S LEGAL APPROACH TO COMBATING MODERN SLAVERY AND HUMAN TRAFFICKING

2.1. Austria's Regional and International Law Obligations

2.1.1. Fundamental human rights

The Constitution of Austria is comprised of the centerpiece Federal Constitutional Law (*Bundes-Verfassungsgesetz* or **B-VG**), constitutional acts passed by the legislature, and provisions in statutes and treaties which are designated as constitutional. Although the B-VG does not have a bill of rights, various civil liberties have constitutional status. The State Basic Law of 1867 (*Staatsgrundgesetz*), which was granted constitutional status in 1920, is analogous to a bill of rights. The European Convention on Human Rights also enjoys constitutional status in Austria.¹² In Austria, fundamental human rights and thus basic rights are not regulated in one act, as is the case in many jurisdictions, but in numerous acts.

The European Convention on Human Rights (**ECHR**) of 1951, which entered into force in Austria on 3 September 1958, has a special status. As a treaty under international law, this law was generally transformed and is directly applicable as self-executing.¹³ The ECHR contains a number of fundamental rights such as the right to life and physical integrity, right to a judicial decision in civil and criminal matters, and right to a fair trial.

2.1.2. Modern slavery and trafficking

The Charter of Fundamental Rights of the European Union binds Austrian authorities as they implement EU law. Moreover, European and international human rights treaties complement the fundamental rights mandated by both Austrian and EU law. These treaties include those adopted within the Council of Europe's

¹⁰ Task Force Menschenhandel, Nationaler Aktionsplan zur Bekämpfung des Menschenhandels für die Jahre 2021–2023, available at: https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Menschenrechte/Beilage_1_VI_Nationaler_Aktionsplan_zur_Bekaempfung_des_Menschenhandels_NAP_2021-2023.pdf (last accessed 2 October 2023).

¹¹ U.S. Dep't of State, Trafficking in Persons Report (2022), available at: <https://www.state.gov/reports/2022-trafficking-in-persons-report/austria/> (last accessed 2 October 2023).

¹² See the Chancellor's Office comments on this, available at: [https://www.bundeskanzleramt.gv.at/agenda/verfassung/grund-und-menschenrechte/europaeische-menschenrechtskonvention-europaratsuebereinkommen/schutz-menschrechte-grundfreiheiten-europa.html#:~:text=%C3%96sterreich%20trat%20der%20\(Europ%C3%A4ischen\)%20Konvention,zwischen%20den%20Mitgliedstaaten%20des%20Europarates](https://www.bundeskanzleramt.gv.at/agenda/verfassung/grund-und-menschenrechte/europaeische-menschenrechtskonvention-europaratsuebereinkommen/schutz-menschrechte-grundfreiheiten-europa.html#:~:text=%C3%96sterreich%20trat%20der%20(Europ%C3%A4ischen)%20Konvention,zwischen%20den%20Mitgliedstaaten%20des%20Europarates) (last accessed 2 October 2023).

¹³ Sommermann, Völkerrechtlich garantierte Menschenrechte als Maßstab der Verfassungskonkretisierung – Die Menschenfreundlichkeit des Grundgesetzes, Archiv des öffentlichen Rechts, Vol. 114, No. 3 (1989), 391 (420).

framework, like the European Convention on Human Rights and the Council of Europe Convention on Action against Trafficking in Human Beings.

Austria has signed and constitutionalized numerous United Nations and Council of Europe treaties and conventions relevant to human trafficking. Article 4 of the ECHR prohibits forced labor. The European Court of Human Rights has interpreted that article to allow claims against the state for inadequate protection against human trafficking.¹⁴

Austria has ratified the International Covenant on Civil and Political Rights (1978),¹⁵ the International Convention on the Elimination of All Forms of Discrimination against Women (1982),¹⁶ the Convention on the Rights of the Child (1992),¹⁷ and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2005).¹⁸ Austria has also ratified several treaties from the Council of Europe, including the Convention on Action against Trafficking in Human Beings (2006),¹⁹ the Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (2011),²⁰ and the Convention on preventing and combating violence against women and domestic violence (2013).²¹ Moreover, Austria has ratified the International Labour Organization's Worst Forms of Child Labour Convention Number 182 (2001).²²

¹⁴ ECtHR, Judgment of 26 July 2005 Application no. 73316/01, *Siliadin v. France*, available at: <https://archive.crin.org/en/library/legal-database/siliadin-v-france.html> (last accessed 2 October 2023).

¹⁵ United Nations Treaty Collection regarding International Covenant on Civil and Political Rights, chart of signatures and ratifications, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=en (last accessed 2 October 2023).

¹⁶ United Nations Treaty Collection regarding Convention on the Elimination of All Forms of Discrimination against Women, chart of signatures and ratifications, available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en (last accessed 2 October 2023).

¹⁷ United Nations Treaty Collection regarding Convention on the Rights of the Child, chart of signatures and ratifications, available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=en (last accessed 2 October 2023).

¹⁸ United Nations Treaty Collection regarding a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, chart of signatures and ratifications, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=ind&mtdsg_no=XVIII-12-a&chapter=18&clang=en (last accessed 2 October 2023).

¹⁹ United Nations Treaty Collection regarding Council of Europe Convention on Action against Trafficking in Human Beings, chart of signatures and ratifications, available at: <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=197> (last accessed 2 October 2023).

²⁰ United Nations Treaty Collection regarding Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, chart of signatures and ratifications, available at: <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=201> (last accessed 2 October 2023).

²¹ United Nations Treaty Collection regarding Council of Europe Convention on preventing and combating violence against women and domestic violence, chart of signatures and ratifications, available at: <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=210> (last accessed 2 October 2023).

²² International Labour Organization regarding Worst Forms of Child Labour Convention, chart of signatures and ratifications, available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327 (last accessed 2 October 2023).

2.1.3. Effect under Austria’s law

Article 9 of the Federal Constitution (**B-VG**) provides that “[t]he generally recognized rules of international law are regarded as integral parts of federal law.” Since Austria’s accession to the European Union in 1995, the legal system has been based on constitutional dualism; that is, the legal system will enforce Austrian law as well as EU law.²³ The prevailing view is that EU law takes precedence over Austrian law, but not over the guiding principles of the Austrian Constitution.

Beyond EU law, international treaties can fill various roles in the Austrian legal system. The Austrian legislature can amend its constitution to include treaty provisions under the normal constitutional amendment process. It can also implement treaties by amending federal statutes. Additionally, for categories of international treaties that are considered political and do not amend legislation, the President or specific members of the federal government can enter treaties on behalf of the government.

2.2. Human Rights Protections Under Austria’s Law

The Federal Constitution (**B-VG**) does not contain a bill of rights, because at the time it was passed in 1920 there was disagreement over what rights to protect. However, the B-VG did constitutionalize the State Basic Act of 1867 (*Staatsgrundgesetz*). Most civil rights protections in Austrian constitutional law are citizen rights, meaning they protect only Austrians and EU citizens.²⁴ However, some rights are granted to everyone in Austria, including the rights enumerated in the European Convention on Human Rights and its first additional protocol. The convention and first protocol were granted constitutional status in Austria in 1964. The fundamental rights most relevant to human trafficking are included in the European Convention on Human Rights.

2.3. Criminalization of Modern Slavery

Austria classifies slavery not as a misdemeanor (*Vergehen*) but as a felony (*Verbrechen*) within the meaning of Section 17 of the Austrian Criminal Code (*Strafgesetzbuch, StGB*) because, under Section 104 of the Austrian Criminal Code, slavery is punishable by imprisonment for more than three years. Whoever engages in slave trade or otherwise deprives another person of their personal freedom in the form of slavery or a situation similar to slavery is punishable by imprisonment from 10 to 20 years under Section 104 of the Austrian Criminal Code. The classification of slavery as felony and the threat of punishment with a prison sentence of at least 10 years is an expression of the fact that slavery is deeply socially outlawed in Austria.

2.4. Supply Chain Reporting

Austria does not currently have a supply chain reporting law. However, the European Union is currently in negotiations over the European Commission’s proposal for a Directive on Corporate Sustainability Due Diligence.²⁵ Observers anticipate that the directive will enter into force during 2024, and Member States

²³ Available at: https://e-justice.europa.eu/6/EN/national_legislation?AUSTRIA&member=1#:~:text=The%20Austrian%20Constitution%20declares%20that,with%20or%20without%20specific%20legislation (last accessed 2 October 2023).

²⁴ Available at: <https://blogs.loc.gov/law/2020/10/100-year-anniversary-of-the-austrian-constitution/> (last accessed 2 October 2023).

²⁵ The ultimate guide to Human Rights Due Diligence laws – who’s affected and how to comply, available at: <https://blog.worldfavor.com/the-complete-list-of-national-human-rights-due-diligence-laws-whos-affected-and-how-to-comply> (last accessed 2 October 2023).

will likely have two years to implement the directive into national law.²⁶ The proposed EU directive has drawn considerable opposition in Austria.²⁷ It is expected that Austria will pass its own supply chain law.²⁸ A motion for an Austrian Supply Chain Act was presented to the Austrian parliament in 2021.²⁹

2.5. Investigation, Prosecution, and Enforcement

2.5.1. Investigation and prosecution of criminal offenses

In principle, criminal prosecution is carried out by the respective competent authorities (public prosecutor's offices and police).

Most criminal offenses, such as slavery under Section 104 of the Criminal Code and human trafficking under Section 104a of the Austrian Criminal Code (so-called official offenses), are prosecuted not only at the request of the aggrieved party but also *ex officio* by the competent prosecution authorities. This means that as soon as sufficient factual indications are available for the existence of a prosecutable offense (initial suspicion), the public prosecutor's office must initiate investigative measures. For this purpose, the public prosecutor's office uses the police within the meaning of Section 18 of the Code of Criminal Procedure (*Strafprozessordnung*; **StPO**). The criminal investigation department performs tasks in the service of the administration of criminal justice, which consists of the investigation and prosecution of criminal offences in accordance with the provisions of the Code of Criminal Procedure. In this respect, the public prosecutor cooperates with the police.³⁰

2.5.2. Mutual assistance/international cooperation

The Council of Europe Convention on Action against Trafficking in Human Beings (**Convention**), applicable in Austria, promotes international cooperation on action against trafficking in human beings, essentially through the exchange of information among signatories of the Convention. The Convention also obliges parties to coordinate national policies and actions against human trafficking, including establishing coordinating bodies. GRETA evaluates the implementation of the Convention.

GRETA commented favorably on Austria's multidisciplinary approach to victim assistance and the prosecution of traffickers. GRETA also suggested improvements in terms of access to compensation and the labor market. In its Report, it stated that Austrian authorities should strengthen the economic and social inclusion of victims through vocational training, language courses, and the promotion of micro-enterprises, social enterprises, and public-private partnerships.³¹

²⁶ *Jäkle*, Lieferkettengesetz: Supply-Chains auf dem Prüfstand der Nachhaltigkeit, available at: <https://www.trend.at/business-management/lieferkettengesetz> (last accessed 2 October 2023).

²⁷ *Kurmayer*, New EU supply chain law makes waves in Austria, available at: <https://www.euractiv.com/section/politics/news/new-eu-supply-chain-law-makes-waves-in-austria/> (last accessed 2 October 2023).

²⁸ *Jäkle*, Lieferkettengesetz: Supply-Chains auf dem Prüfstand der Nachhaltigkeit, available at: <https://www.trend.at/business-management/lieferkettengesetz> (last accessed 2 October 2023).

²⁹ The ultimate guide to Human Rights Due Diligence laws – who's affected and how to comply, available at: <https://blog.worldfavor.com/the-complete-list-of-national-human-rights-due-diligence-laws-whos-affected-and-how-to-comply> (last accessed 2 October 2023).

³⁰ See the explanations of the Austrian Judiciary on the scope of duties of the Public Prosecutor's Office, available at: <https://www.justiz.gv.at/staatsanwaltschaften/recht-einfach-erklaert/was-macht-die-staatsanwaltschaft.afc.de.html> (last accessed 2 October 2023).

³¹ Available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://rm.coe.int/greta-2020-03-fgr-aut-en/16809eb4fd>, (last accessed 28 September 2023); see also

Austria continues to cooperate with the European Union, the Council of Europe, the United Nations, and the International Labour Organization (ILO),³² as well as other bodies of the Organization for Security and Co-operation in Europe (OSCE)³³ and indirectly due to its membership in the European Union with the Council of the Baltic Sea States (CBSS).³⁴

3. AUSTRIA’S FEDERAL CRIMINAL OFFENSES RELATING TO MODERN SLAVERY, MODERN SLAVERY-LIKE CONDITIONS, AND HUMAN TRAFFICKING

3.1. Overview of Criminal Offenses

The Austrian Criminal Code contains offenses related to modern slavery, modern slavery-like conditions, and human trafficking. The central norm concerning human trafficking is Section 104a of the Austrian Criminal Code, which targets different, but not all, forms of human trafficking and provides for a prison sentence of up to 10 years. Certain forms of human trafficking may also infringe other provisions of the Austrian Criminal Code (such as slavery, Section 104 Austrian Criminal Code) or the Austrian Aliens Police Act (such as exploitation of an alien, Section 116 Austrian Aliens Police Act). The individual offenses target different forms of human trafficking and provide for prison sentences of up to 20 years.

https://search.coe.int/directorate_of_communications/Pages/result_details.aspx?ObjectId=09000016809ea2f7, (last accessed 2 October 2023).

³² Available at: https://www.bmk.gv.at/themen/klima_umwelt/nachhaltigkeit/unternehmen/standards/ilo.html, (last accessed 2 October 2023).

³³ Available at: <https://www.osce.org/de/participating-states>, (last accessed 2 October 2023).

³⁴ Available at: <https://cbss.org/about-us/council/#:~:text=The%20Member%20States%20of%20the,Norway%2C%20Poland%20and%20Sweden> (last accessed 2 October 2023).



*Sections without a reference to an Act refer to the Austrian Criminal Code.

3.2. Modern Slavery Offenses Under the Criminal Code

3.2.1. General

Article 18 of the Convention on Action against Trafficking in Human Beings contains an obligation to treat human trafficking as a crime. To comply with this requirement and also with the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, the EU Framework Decision 2002/629/JHA and the Council of Europe Convention on Action against Human Trafficking, the offense of human trafficking according to Section 104a of the Austrian Criminal Code was adopted into Austrian law. This offense was introduced in the course of the 2004 Criminal Law Amendment Act and adapted the broad definition of human trafficking as defined in Article 3 of the United Nations Convention against Transnational Organized Crime. Section 104 Austrian Criminal Code outlaws slavery and slavery-like conditions.

Section 104a Austrian Criminal Code states:

(1) Any person who recruits, harbors or otherwise takes in, transports or offers or passes on to another person a person of full age with the intention that he or she will be exploited (para 3), using unfair means (para 2) against that person, shall be punished by imprisonment from six months to five years.

(2) Unfair means are the use of force or dangerous threat, deception about facts, taking advantage of a position of authority, a predicament, a mental illness or a condition rendering the person defenseless, intimidation and giving or accepting an advantage for handing over dominion over the person.

(3) Exploitation includes sexual exploitation, exploitation by removal of organs, exploitation of labor, exploitation for begging, and exploitation for committing punishable acts.

(4) Whoever commits the act within the framework of a criminal organization, with the use of serious violence or in such a way that the life of the person is endangered by the act intentionally or through gross negligence (Section 6, para 3) or the act results in a particularly serious disadvantage for the person, shall be punished by imprisonment from one to ten years.

(5) Any person who recruits, harbors or otherwise takes in, transports or offers or passes on to another a person who is a minor with the intention that he or she will be exploited (para 3) shall also be punished by imprisonment for a term of one to ten years.³⁵

Due to obligations under international law, especially the Geneva Convention on Slavery of 1926, Austria has criminalized the slave trade as well as institutions and practices similar to slavery through Section 104 of the Austrian Criminal Code. According to the Geneva Slavery Convention, the term “slavery” means the treatment of a human being as if it were an owned thing, which can be disposed of arbitrarily and at will. The protected legal interest of this offense is primarily the freedom of movement, but also the victim’s freedom to form and exercise his will, due to the domination exercised over the victim.

Under Section 104 Austrian Criminal Code:

(1) Whoever engages in slave trade or otherwise deprives another person of personal freedom in the form of slavery or a slavery-like situation shall be punished by imprisonment for a term of ten to twenty years.

(2) A person who causes another to be enslaved or placed in a position similar to slavery, or who causes another to be placed in slavery or a position similar to slavery, shall also be punished.³⁶

HUMAN TRAFFICKING PENALTIES IN AUSTRIA	Duration of imprisonment
Human trafficking offense without aggravating circumstances	6 months to 5 years
Attempt	6 months to 5 years
The perpetrator committed the offense within a criminal organization, with severe violence or if the act results in a particularly serious disadvantage for the victim	1 to 10 years
The offense was committed against a minor	1 to 10 years
Engaging in slave trade or otherwise depriving another person of personal liberty in the form of slavery or a situation similar to slavery	10 to 20 years

3.2.2. Extraterritorial application

The Austrian criminal laws on human trafficking and slavery apply to acts committed abroad, irrespective of the criminal laws of the place where the act was committed, if

³⁵ Unofficial translation. See Sec. 104a Austrian Criminal Code.

³⁶ Unofficial translation. See Sec. 104 Austrian Criminal Code.

- the perpetrator or the victim is Austrian or has their residence in Austria,
- other Austrian interests have been harmed by the act, or
- the perpetrator was a foreigner at the time of the offense, is in Austria, and cannot be extradited.

The same applies to the Austrian laws on forced marriage (Section 106a of the Austrian Criminal Code), sexual abuse of minors (Section 207 of the Austrian Criminal Code), and child pornography (Section 207a of the Austrian Criminal Code) described below. Other crimes follow the standard rule under Austrian criminal law, i.e., they can usually be prosecuted in Austria only if the crime was committed in Austria or damages occur in Austria.

3.3. Modern Slavery-Like Offenses in Austria’s Legal Order

3.3.1. *Servitude*

Article 4(1) of the ECHR establishes an absolute prohibition of slavery without defining the term itself. Other instruments of international law must therefore be used to interpret it, such as the Slavery Convention (1926).³⁷ The scope of the term “slavery” is not entirely clear. However, the ECHR interprets Article 4 broadly. Thus, human trafficking, at least under certain conditions, constitutes a practice against which Article 4 protects.³⁸ This concerns not only the negative (duty to respect) but also the positive (duty to protect) human rights dimension. The ECHR held that Article 4 of the ECHR requires Member States (including Austria) to ensure that, in addition to provisions on the criminalization of trafficking in human beings, they take appropriate measures to regulate commercial activities that are often used as a cover for trafficking in human beings.³⁹ This section addresses mainly the criminal law sanctions applicable in Austria to combat human trafficking and related offenses. The other sections below will look at other areas of law (e.g., tort, labour, or procurement) which intend to regulate commercial activities in a manner to combat these crimes.

Both human trafficking (Section 104a Austrian Criminal Code) and slavery (Section 104 Austrian Criminal Code) described above under Section 3.2. include servitude.

Engaging in slave trade or otherwise depriving another person of personal liberty in the form of slavery or a situation similar to slavery carries a prison sentence of 10 to 20 years. Other forms of human trafficking are punished with imprisonment for six months to five years or one year to 10 years for severe cases.

3.3.2. *Forced labor*

Forced labor is one of the exploitation acts punished under the prohibition on human trafficking, Section 104a Austrian Criminal Code (see Section 3.2.). According to case law, exploitation requires a gross disproportion between the “performance” of the victim and the “consideration” of the perpetrator. In addition, a far-reaching and lasting suppression of the central interests of life is required. In the case of minors, this line must be drawn earlier due to their greater need for protection. If the victim is an adult, the perpetrator needs to use one of the “unfair means” as defined by Section 104a, para. 2, of the Austrian Criminal Code, i.e., use of force or dangerous threat, deception about facts, taking advantage of a position

³⁷ Judgment of the European Court of Human Rights, 31 July 2012 – Application no 40020/03, *M. and others v. Italy and Bulgaria*, para 149; *Karpenstein/Mayer/Aichele*, EMRK, 3rd edition 2022, Art. 4 para 7.

³⁸ *Karpenstein/Mayer/Aichele*, EMRK, 3rd edition 2022, Art. 4 para 21–23; *Mayer-Ladewig/Nettesheim/von Raumer/Huber*, EMRK, 5. Aufl. 2023, Art. 4 para 6.

³⁹ Judgment of European Court of Human Rights, 7 January 2010 – Application no. 25965/04, *Rantsev v. Cyprus and Russia*, para 284; *Karpenstein/Mayer/Aichele*, EMRK, 3rd edition 2022, Art. 4 para 25–35 with further references.

of authority, coercion, mental illness or a condition that renders the person defenseless, intimidation, and giving or accepting an advantage for handing over dominion over the person. Infringement of Section 104a of the Austrian Criminal Code carries a prison sentence of up to 10 years.

The exploitation of non-Austrians (including forced labor) is prohibited by Section 116 Austrian Aliens Police Act – exploitation of an alien.

Section 116 Austrian Aliens Police Act states:

- (1) Any person who exploits an alien with the intention of obtaining continuous income for themselves or a third party by exploiting the special dependency of an alien who is residing unlawfully in the territory of the Federal Republic of Austria, who does not have a work permit or who is otherwise in a special dependency relationship, shall be punished with imprisonment for up to three years.
- (2) Whoever, by the act, puts an alien in distress or exploits a larger number of aliens, shall be punished by imprisonment from six months to five years.
- (3) If the act results in the death of an alien, the offender shall be punished by imprisonment for a term of one to ten years.⁴⁰

Compared to the human trafficking offenses according to Section 104a of the Austrian Criminal Code, exploitation of an alien does not require the use of “unfair acts” by the perpetrator but requires only that the alien is residing unlawfully in Austria, has no work permit, or is otherwise in a special dependency relationship.

For forced labor that amounts to modern slavery or modern slavery-like conditions, refer to Section 3.3.1.

3.3.3. Deceptive recruiting for labor or services

Deceptive recruiting for labor or services is punishable under Section 104a of the Austrian Criminal Code (refer to Section 3.2.1.). Recruiting for exploitation is one of the punishable acts (Section 104a, para 1, of the Austrian Criminal Code). “Deception” is one of the “unfair means” (Section 104a, para 2, of the Austrian Criminal Code). Thus, deceptive recruiting for labor or services is punishable under Section 104a of the Austrian Criminal Code, if the labor or services are exploitative.

Additionally, recruiting a victim to be “used” in another crime can be understood as participation under Austrian criminal law (Section 12, case 3, of the Austrian Criminal Code). In this case, the recruiter can be punished for the same crimes as the direct perpetrator.

3.3.4. Early and forced marriage

Forced marriage is punishable under Section 106a of the Austrian Criminal Code. It is a forced marriage if at least one of the spouses is brought to the marriage by force (which includes, *inter alia*, threat of breaking off or withdrawing family contacts). This crime is punished with imprisonment for six months to five years.

Section 106a of the Austrian Criminal Code is applicable only for officially recognized marriages and registered partnerships. Forced marriages of other forms (religious marriages that are not state-recognized) can amount to “grave coercion” under Section 106 of the Austrian Criminal Code, which carries a prison sentence of six months to five years.

⁴⁰ Unofficial translation. See Section 116 Austrian Aliens Police Act.

3.3.5. *Debt bondage*

The term “debt bondage” under Section I, Article 1 (a) of the Supplementary Convention of 7 September 1956 is a

legal status or situation that arises from the fact that a debtor pledges his personal services or those of a person under his control as security for a debt if the reasonably determined value of these services does not serve to repay the debt, or if these services are not limited and determined both by their duration and by their nature.⁴¹

Under Austrian criminal law, debt bondage qualifies as a “slavery-like condition”⁴² and is therefore punishable subject to Section 104 of the Austrian Criminal Code.

Thus, victims of debt bondage qualify as “slaves” within the meaning of Section 104 of the Austrian Criminal Code. This norm prohibits any trade with slaves or transport of slaves and carries a prison sentence of 10 to 20 years. Compared to the human trafficking provision under Section 104a of the Austrian Criminal Code, no additional “unfair means” are required for debt bondage to be punishable.

3.3.6. *Any other relevant offenses*

Serious coercion to prostitution or child pornography

Any person who commits coercion to engage in prostitution or to participate in child pornography, within the framework of a criminal organization, using serious violence, or in such a way that the act intentionally or through gross negligence endangers the life of the person or the act results in a particularly serious disadvantage for the person, shall be punished by imprisonment for a term of six months to five years according to Section 106, para. 3, of the Austrian Criminal Code.

Crimes against humanity

If human trafficking according Section 104a of the Austrian Criminal Code or serious coercion to prostitution according to Section 106, para. 3, of the Austrian Criminal Code is performed as part of a widespread or systematic attack against a civilian population, it is an offense of crimes against humanity under Section 321a, para. 3, of the Austrian Criminal Code. Offenders are punished with imprisonment for five to 15 years.

3.3.7. *Extraterritorial application of the offenses*

Refer to Section 3.2.2.

3.4. Human Trafficking/Smuggling-Related Criminal Offenses

3.4.1. *International and domestic trafficking/smuggling of people*

Given its geographic location in Europe and the European Union, Austria is not only a destination but also a “transit state” when it comes to the smuggling of people. On human trafficking, refer to Section 3.2.1.

⁴¹ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery dated 7 September 1956.

⁴² *Schwaighofer*, in: Höpfel/Ratz, WK² StGB, Section 104.

The Austrian Federal Criminal Police Office identifies three smuggling routes over the continent that pass or end in Austria:⁴³

Eastern Mediterranean Route/Western Balkan Route: This route is mainly used to traffic migrants from the Middle East. This route runs from Pakistan and Afghanistan through Iran to Turkey and on through various countries along the Balkans towards Central and Northern Europe.

Western Mediterranean Route: Starting in Morocco, this route primarily traffics migrants from western African countries such as Morocco, Senegal, and Côte d’Ivoire to Spain.

Central Mediterranean Route: The starting points of this route are the states of North Africa, especially Libya. Most of the migrants are from Nigeria, Algeria, and Tunisia, who try to reach Western Europe by sea via Italy.

International smuggling is prohibited under Section 114 of the Austrian Aliens Police Act, which was introduced in 2005 and most recently amended in 2017. It punishes promoting the unlawful entry into or transit through an EU Member State or a neighboring state of Austria of an alien with the intent to unlawfully enrich the promoter or a third party through payment for entry or transit. Without qualification, Section 114 Austrian Aliens Police Act carries a prison sentence of up to two years, or three years for repeated offenders. There are qualifications if the offense is committed “commercially” or within a criminal organization but also if it is done in a manner by which the alien is put in an agonizing condition for a prolonged period of time, especially during transportation or if the transport endangers the life of the alien. The people being smuggled are not to be punished under this law.

There are no laws against “domestic smuggling” in Austria. However, if the domestic smuggler works with the international smuggler, this can qualify as “assisting” the international smuggler, in which case the same punishment ranges apply as for the international smuggler.

3.4.2. International and domestic trafficking in children

Refer to Section 3.3.2. for the special treatment of minors in cases of human trafficking.

For smuggling, no special rules for children apply.

3.4.3. Victim harboring

Section 104a, para. 1, case 2 and 3, of the Austrian Criminal Code also penalizes harboring, which means giving someone a kind of accommodation (e.g., apartment, hotel room, caravan) for purposes of human trafficking.

3.4.4. Extraterritorial application of human trafficking and smuggling offenses

Refer to Section 3.2.2. for human trafficking.

The criminal offense of smuggling under Section 114 Austrian Aliens Police Act is punishable in Austria, if the site of the crime is (partly) in Austria or “if Austrian interests have been harmed by the act” (Section 114, para 7, Austrian Aliens Police Act).

⁴³ Federal Ministry of the Interior, Federal Criminal Police Office, Lagebericht Schlepperei und Menschenhandel 2021, p. 11.

3.5. Online Exploitation of Children Offenses

3.5.1. Overview

The Austrian Criminal Code contains several offenses dealing with the online exploitation of children. The respective norms mainly refer to illegal content, which is defined broadly to cover online-related exploitation. It is therefore irrelevant whether illegal content (*e.g.*, child pornography) is, for example, stored on data storage devices or transmitted via electronic communication services as real-time transmissions on the Internet.

3.5.2. Child pornography

Section 207a of the Austrian Criminal Code punishes the production, offer, provision, transfer, demonstration, or making available in any other form pornography showing a minor (under 18 years of age). Offenders are subject to imprisonment for up to three years. If these acts are committed commercially or with the intent to distribute child pornography, the sentence is imprisonment for six months to five years. Anyone who commits the act as a member of a criminal organization, in such a way that it results in a particularly serious disadvantage to the child, using serious violence, or endangers the life of a child intentionally or through gross negligence, shall be punished with imprisonment for one to 10 years.

The acquisition, possession, or intentional online access of child pornography is punished with imprisonment for up to two years (if the minor is under the age of 14) or up to one year or a monetary fine (if the minor is at least 14 but under the age of 18).

3.5.3. Grooming

Grooming is a special form of sexual harassment that can range from viewing pornographic performances of minors live via webcam to actual sexual abuse. Since January 2012, grooming has been an act punishable by law in Austria. Section 208a of the Austrian Criminal Code (“initiation of sexual contact with minors”) prohibits cybergrooming as well as making contact solely with sexual intentions in real space with persons under the age of 14. Under certain circumstances, the offender may be sentenced up to two years in prison.

3.6. Child Sex Tourism Offenses

Sex tourism in itself is not a criminal offense, but it may constitute other offenses. These include the promotion of sexual acts by minors (Section 214 of the Austrian Criminal Code) or the sexual abuse of minors (Section 207 of the Austrian Criminal Code). Austrian child sex tourism, *i.e.*, when an Austrian citizen travels abroad and has sex with children, is – irrespective of the local laws – a crime prosecuted in Austria (Section 64, para. 4a, of the Austrian Criminal Code, refer to Section 3.2.2.).

4. AUSTRIA’S SUPPLY CHAIN REPORTING LEGISLATION

Austria does not currently have a supply chain reporting law. However, the European Union is currently in negotiations on the European Commission’s proposal for a Directive on Corporate Sustainability Due Diligence.⁴⁴ The European Commission’s proposal was submitted on 23 February 2022.⁴⁵ The Council of the

⁴⁴ The ultimate guide to Human Rights Due Diligence laws – who’s affected and how to comply, *available at*: <https://blog.worldfavor.com/the-complete-list-of-national-human-rights-due-diligence-laws-whos-affected-and-how-to-comply> (last accessed 2 October 2023).

⁴⁵ *Jäkle*, Lieferkettengesetz: Supply-Chains auf dem Prüfstand der Nachhaltigkeit, *available at*: <https://www.trend.at/business-management/lieferkettengesetz> (last accessed 2 October 2023).

European Union presented its proposal in November 2022. In June 2023, the European Parliament presented its position on the proposal. These proposals differ in details, but they typically apply to companies based in the EU as well as those based abroad, with higher thresholds (number of employees, and worldwide turnover) for companies based abroad.⁴⁶ The proposals focus on human rights abuses, but the European Parliament’s June 2023 proposal also adds climate change mitigation measures to the list of obligations.

Observers anticipate that, after further negotiations, the directive will enter into force during 2024, and Member States will likely have two years to implement the directive into national law. However, the proposed EU directive has drawn considerable opposition in Austria. In 2022, Austria abstained from voting on the law.⁴⁷ It is expected that Austria will pass its own supply chain law. A motion for an Austrian Supply Chain Act was presented to the Austrian parliament in 2021.⁴⁸ The act would require companies of an as-yet-unspecified size to publish annual due diligence reports, conduct risk analyses, and set up an early warning system appropriate to the company’s size.⁴⁹

5. FORCED LABOR: OVERVIEW OF AUSTRIA’S APPLICABLE EMPLOYMENT AND MIGRATION LAWS

5.1. Employment Law Rights for Victims of Human Trafficking and Forced Labor

Victims of forced labor also have rights under labor law against their “employer” if an employment exists. An employment does not require an employment agreement in written form. An employment may also be established verbally or by conclusive conduct.⁵⁰

Victims who are classified as employees can bring compensation claims against traffickers or those who have benefited from their forced labor. Statutory law provides benefits and protection during the performance of work in an employment relationship, such as mandatory free time, vacation, insurance, and financial redress (including claims for adequate compensation and damages, both for financial or physical damages, as well for pain and suffering (*Schmerzensgeld*)). For more information on individual employment law rights, refer to Section 5.3.

Social security registration or the victim’s residence status is irrelevant for bringing a civil claim.⁵¹ If no agreement of the wage amount exists, the competent court determines the wage on the basis of the

⁴⁶ Cf. The ultimate guide to Human Rights Due Diligence laws – who’s affected and how to comply, *available at*: <https://blog.worldfavor.com/the-complete-list-of-national-human-rights-due-diligence-laws-whos-affected-and-how-to-comply> (last accessed 2 October 2023).

⁴⁷ *Kurmayer*, New EU supply chain law makes waves in Austria, *available at*: <https://www.euractiv.com/section/politics/news/new-eu-supply-chain-law-makes-waves-in-austria/> (last accessed 2 October 2023).

⁴⁸ The ultimate guide to Human Rights Due Diligence laws – who’s affected and how to comply, *available at*: <https://blog.worldfavor.com/the-complete-list-of-national-human-rights-due-diligence-laws-whos-affected-and-how-to-comply> (last accessed 2 October 2023).

⁴⁹ The ultimate guide to Human Rights Due Diligence laws – who’s affected and how to comply, *available at*: <https://blog.worldfavor.com/the-complete-list-of-national-human-rights-due-diligence-laws-whos-affected-and-how-to-comply> (last accessed 2 October 2023).

⁵⁰ *Löschnigg*, *Arbeitsrecht*, 12th edition 2015, 4/001; *Steiner/Probst/Buchner*, *Kompaktwissen für die Praxis: Strafverfahren, Entschädigung und Opferschutz* (2018), p. 21.

⁵¹ *Steiner/Probst/Buchner*, *Kompaktwissen für die Praxis: Strafverfahren, Entschädigung und Opferschutz* (2018), p. 21.

relevant collective bargaining agreements or, in the absence of such an agreement, by looking at comparable positions in the relevant sector or other collective agreements.

5.2. Applicability of Employment Legislation in the Context of Forced Labor or Trafficking

An employment contract, which is a subcategory of the service contract under Section 1153 of the Austrian Civil Code, can be established in writing, verbally, or by conclusive conduct, for example by the performance and acceptance of work. Employees who are not allowed to work for reasons relating to residence or employment laws have the same claims from their employment contract as “legally” working people, in particular with regard to their wage claims.

Typical characteristics of an employment relationship are:

- Personal dependence of the employee (employer’s right to issue instructions);
- Economic dependence of the employee;
- Continuous obligation between the employee and the employer;
- Employee’s personal duty to work (no right to be represented in the performance of work); and
- Integration of the employee into the organization of the company.⁵²

Not all of these characteristics need to be present to establish an employment relationship. Rather, it is decisive that these characteristics are predominantly present.⁵³

5.3. Statutory Rights

Austrian labor and employment law is not consolidated into a single labor code; there are separate laws for particular issues.⁵⁴ Any person who is classified as an employee (refer to Section 5.2.) has certain statutory rights.

5.3.1. Rights to minimum wages, entitlements, and other applicable minimum standards

The amount of the wage depends on the terms agreed between the employer and employee. There is no general minimum wage in Austria. Nevertheless, mandatory minimum wage levels are stipulated in collective bargaining agreements⁵⁵ for almost all sectors.⁵⁶ In total, a collective bargaining agreement covers about 98% of all salaried employment relationships in Austria.⁵⁷

⁵² Brodil/Gruber-Risak, *Grundzüge des Arbeitsrecht*, 11th edition (2022), para 41

⁵³ Steiner/Probst/Buchner, *Kompaktwissen für die Praxis: Strafverfahren, Entschädigung und Opferschutz* (2018), p. 21.

⁵⁴ Löschnigg, *Arbeitsrecht*, 12th edition (2015), para 3/001.

⁵⁵ Collective agreements are written agreements between bodies of employees and employers capable of concluding collective agreements (Section 2 Para. 1 of the Labour Constitution Act (*Arbeitsverfassungsgesetz; ArbVG*)).

⁵⁶ An overview of the respective collective agreements is available at www.kollektivvertrag.at, last accessed 2 October 2023.

⁵⁷ Steiner/Probst/Buchner, *Kompaktwissen für die Praxis: Strafverfahren, Entschädigung und Opferschutz* (2018), p. 22.

Additionally, the Wage and Social Dumping Prevention Act (*Lohn- und Sozialdumping-Bekämpfungsgesetz*; LSD-BG) came into force on January 1, 2017.⁵⁸ This law provides for provisions to combat underpaid work. It applies to workers employed in Austria and to workers posted or hired out to Austria. If workers temporarily carry out assignments for their company in Austria, but the employment relationship continues with the employer in the country of posting, workers are posted. To determine whether an employment relationship, a cross-border posting, or secondment exists, the true economic content and not the external appearance of the facts is decisive.⁵⁹

According to this law, if employers do not pay their employees at least the remuneration to which they are entitled by law, regulation, or collective agreement, employers are liable for prosecution under Section 29, para. 1, of the Social Dumping Prevention Act. Failure to comply with this requirement may result in a fine on the employer of up to EUR 50,000.

The minimum wage provided for by collective agreement for the respective activity is in principle due to all those employees – even without a contractual agreement – who de facto perform the specified activity, even if the employee agreed to a lower wage or to perform a different activity, and regardless of the employee's citizenship, residence title, lack of work permit, or similar.

In addition to the minimum wage, collective agreements also regulate special payments (13th or 14th month salary, vacation, and Christmas bonuses) and supplements for overtime. The general conditions and the amount depend on the applicable collective agreement. As a rule, remuneration must be paid no later than the end of each calendar month.⁶⁰

5.3.2. *Claims available in relation to misrepresentations and “sham” arrangements*

A sham transaction is void pursuant to Section 916 of the Austrian Civil Code (**ABGB**) and is replaced by the parties' intended agreement. For example, employers may have formal employment agreements that provide for a smaller amount of weekly work hours than actually intended to be worked, so that the remuneration falls below the thresholds of full social security contributions. The additional work is then paid “under the counter.” If such cases get reported, the employer might be charged under criminal law and must retroactively pay all social security contributions (including a fine for late payment), while the employee enjoys full social security services.

5.3.3. *Claims available in relation to unlawful deductions, loans, and debt bondage*

If an employer makes unlawful deductions from an employee's wages, the employee can take the matter to the relevant labor or civil court. The same applies to loans and debt bondage.

5.3.4. *Remedies*

Victims of forced labor and trafficking can bring regular claims under Austrian civil law to enforce their rights. Refer to Section 7.

⁵⁸ More detailed information can be found at: <https://www.iv.at/-TopApp-/Hintergrundinfo/lohn-und-sozialdumping-bekämpfungsgesetz-isd-.html> (last accessed 2 October 2023), and <https://www.wko.at/service/arbeitsrecht-sozialrecht/Lohn-und-Sozialdumping-Begriff-und-Ueberpruefung.html#:~:text=Durch%20das%20Lohn-%20und%20Sozialdumping-Bek%C3%A4mpfungsgesetz%20%28LSD-BG%29%20wird%20Unterentlohnung,und%20einen%20fairen%20Wettbewerb%20zwischen%20den%20Unternehmen%20erm%C3%B6glichen>, (last accessed 2 October 2023).

⁵⁹ Section 2, para. 1, of the Social Dumping Prevention Act.

⁶⁰ *Steiner/Probst/Buchner*, *Kompaktwissen für die Praxis: Strafverfahren, Entschädigung und Opferschutz* (2018), p. 22.

5.4. Rights to a Safe Workplace and Compensation Associated with Injuries or Illness

Employers have a broad duty of care to protect the personal rights of their employees. Employee protection issues include, but are not limited to, temperature, humidity, noise, lifting, working with hazardous materials or machinery/tools, providing work/protective clothing, and providing sanitary facilities.⁶¹

The employer is obliged to regulate the work processes to protect the employees' life and health as far as possible according to the nature of the service (Section 1157 Austrian Civil Code; Section 18 of the Salaried Employees Act (*Angestelltengesetz*); comprehensive specifications of the technical employee protection above all in the Employee Protection Act (*Arbeitnehmerschutzgesetz*)). In the event of an accident at work, including accidents on the way to and from work (Section 175 General Social Security Act (*Allgemeines Sozialversicherungsgesetz*)), the employer must immediately notify the competent insurance institution.

In the event of serious injury or death, the labor inspectorate must also be notified according to Section 364 General Social Security Act (*Allgemeines Sozialversicherungsgesetz*), and the employer must keep a record of these occupational accidents for five years.⁶² In the case of occupational accidents, the employer is liable only for damages caused intentionally; other damages are covered by accident insurance, but regardless, a breach of the duty of care may exist that is relevant under criminal law. The duty of care also requires the employer to organize the necessary assistance for employees injured in the course of an occupational accident.⁶³

5.5. Access to Justice and Practical Issues Associated with Enforcing Social Legislation

Victims of forced labor may seek unpaid wages or financial compensation for other breaches of contract by their employers in labor courts or during criminal proceedings. Refer to Section 7. Legal aid is available to claimants who are not in a financial position to pursue their claims with their own means.

In Austria, there are a number of relevant actors who support victims in asserting their rights. LEFÖ-IBF is an intervention center for trafficked women. It opened in 1998. It functions as the only protection provider for victims of trafficking in Austria and provides nationwide support for female victims on behalf of the state. LEFÖ-IBF defines its target group as migrant women who have been trafficked into exploitative labor or living conditions within Austria. The trafficked women have been exploited in prostitution, domestic work, services (e.g., cleaning, tourism, agriculture), or marriage. LEFÖ-IBF also works with girls over the age of 15 who are victims of sexual exploitation, in cooperation with youth welfare services. For younger victims, there is the Kinder- und Jugendhilfe, for which there are several points of contact with the respective state government.⁶⁴ Through its activities, LEFÖ-IBF aims, among other things, to prevent trafficking in women, to protect trafficked women from further violence and exploitation, and to support them in their efforts to free themselves from dependency, violence, and exploitation.

In addition, nongovernmental organizations (NGOs) and institutions in Austria (e.g., EXIT, SOLWODI, Herzwirk) offer various forms of support for victims of trafficking.

⁶¹ Detailed regulations can be found in the Employee Protection Act (ASchG), in various ordinances and in some cases in the applicable collective agreements.

⁶² Section 16 Employee Protection Act.

⁶³ *Steiner/Probst/Buchner*, *Kompaktwissen für die Praxis: Strafverfahren, Entschädigung und Opferschutz* (2018), p. 24.

⁶⁴ Available at: <https://www.bundeskanzleramt.gv.at/agenda/familie/begleitung-beratung-hilfe/kinder-und-jugendhilfe/traeger-kinder-jugendhilfe.html> (last accessed 2 October 2023).

5.6. Interaction Between Employment Law and Migration

5.6.1. *Employment rights affected where employment is unlawful under migration law*

As discussed in Section 5.2., employees who have violated the migration law or visa regulations can, in general, claim the same rights as employees who have not violated the migration law or visa regulations.

5.6.2. *Rights/remedies available under applicable migration law and regulations*

Refer to Section 7.

5.7. Employment Laws and Child Labor

The Austrian labor law provides extensive protection for children and adolescents. Children and adolescents are prohibited from certain occupations or employment in certain enterprises. Employers that employ young people also must provide special protection for their health.

The Federal Law on the Employment of Children and Adolescents guarantees the enhanced protection of children.

Under Sections 2 and 5 of the Child and Youth Employment Act (*Kinder- und Jugendlichen-Beschäftigungsgesetz*; KJBG), child labor is generally prohibited. The employment of children is possible only in certain circumstances. These include musical, theatrical, and other performances, as well as photography, film, television, and sound recording, where employment is permitted only with official authorization. Children who have reached the age of 13 may be employed in isolated light work in purely family-run businesses.⁶⁵ Upon completion of compulsory schooling, they may begin an apprenticeship or be employed in enterprises under other specified conditions.

In addition, the Child and Youth Employment Act contains special protective provisions regarding rest periods, night work, Sundays, and holidays.

The monitoring of compliance with the prohibition of child labor is the responsibility of the district administrative authorities in cooperation with labor inspectorates, municipal authorities, and school administrations.

6. GOVERNMENT PROCUREMENT RULES

The Austrian Federal Government must exclude any companies that were convicted of slavery⁶⁶ or human trafficking⁶⁷ in public procurement proceedings.⁶⁸ It also must terminate all ongoing agreements with those companies.⁶⁹

⁶⁵ Sections 6 and 7 of the Child and Youth Employment Act.

⁶⁶ Section 104 of the Austrian Criminal Code.

⁶⁷ Section 104a of the Austrian Criminal Code.

⁶⁸ Section 78, para 1, no. 1, of the Federal Procurement Act.

⁶⁹ Section 366 no. 1 of the Federal Procurement Act.

7. RESTITUTION AND VICTIM COMPENSATION

7.1. Overview

Trafficking survivors seek the wages or other assets they earned from the perpetrators. Compensation for psychological and physical violence in the form of pain and suffering is also essential.⁷⁰).

7.2. Types of damages

7.2.1. Compensation for pain and suffering

Both mental (*i.e.*, “an impairment of mental health”) and physical pain are evaluated for damages. For the assessment of a mental impairment as a health impairment, the decisive factor is whether the mental impairment requires treatment or can at least be diagnosed by a physician and is thus medically tangible.⁷¹

Current guidance for the calculation of compensation for pain and suffering is based on the time periods and severity of the pain:

- EUR 110,00 for one day of slight pain,
- EUR 220,00 for moderate pain, and
- EUR 330.00 for severe pain.

Mild pain exists if the affected person can dominate their state of suffering, they can distract themselves, and they can even pursue a reasonable work corresponding to the situation even though the affected person is not free of pain and feelings of displeasure.

Moderate pain is when the pain-suffering state is balanced with the ability to abstract from it and when the affected person is ready and able to enjoy certain activities.

Severe pain is present when a person is so dominated by the feeling of pain and illness that, despite treatment or precisely because of it, they are unable to abstract themselves from the pain, cannot distract themselves, and cannot take pleasure in anything.⁷²

7.2.2. Compensation for (lost) wages

A victim of human trafficking may be entitled to two different kinds of “wage damages.” As described in Section 5.3., statutory employment law (including applicable collective bargaining agreements) is applicable if work is performed by a trafficking victim. On the other hand, a trafficking victim might also have incurred losses because they could not collect their usual income during the act of trafficking.

⁷⁰ Steiner/Probst/Buchner, *Kompaktwissen für die Praxis: Strafverfahren, Entschädigung und Opferschutz* (2018), p. 39. The Austrian legal system does not permit putative damages; thus, compensation for psychological and physical violence must be quantified on an objective level.

⁷¹ *Id.*

⁷² Danzl, *Schmerzensgeld*, p. 107.

7.3. Compensation Claims Against Offenders

7.3.1. Compensation in criminal court proceedings

Victims can claim compensation in criminal court proceedings. Consequently, in a criminal trial, victims can claim compensation with a private party joinder (*Privatbeteiligtenanschluss*⁷³). The victim can (orally) submit a claim for damages to the court of the criminal proceedings. If the court finds the offender guilty, it can also directly remit the claimed amount (or parts thereof) to the victim. The criminal court may also confiscate all assets that were acquired through the crime— which can serve as a contingency fund for the victim if the offender does not provide full restitution.⁷⁴

In criminal proceedings, a victim of violent or sexual crimes has certain victim rights, which, *inter alia*, provide for the possibility to partake in the proceedings without being in the same room as the offender.⁷⁵

It is possible to initiate civil proceedings (see below) against the offender prior to the criminal proceedings, or at any stage during or after the criminal proceedings. For procedural and cost reasons, it is advisable to claim damages as a private party joinder in the criminal proceedings and initiate civil proceedings only if the criminal court does not remit damages to the victim (or does not remit them in the full amount).

7.3.2. Compensation in civil proceedings

Damages can be claimed in civil proceedings before Austrian courts following the Austrian Act on Civil Procedure (*Zivilprozessordnung*). A victim can claim damages either with the court competent for the place where the harm was done (*Jurisdiktionsnorm*)⁷⁶ or with the court competent for the (last) Austrian residence of the offender.⁷⁷

Victims are entitled to legal aid (in whole or in part) for the costs of the court, their legal representation, and other necessary expenses (*e.g.*, for translators) to the extent that they are unable to meet the costs of the proceedings without impairment of their minimum level of income.⁷⁸

7.4. Compensation claims against the government

Victims of human trafficking are also included in the Austrian Victims of Crime Act (*Verbrechensopfergesetz*) and can receive state financial assistance under the conditions specified in that Act. Claims must be submitted to the Social Ministry Service. Decisions on claims are made within the framework of an administrative procedure and can be appealed. Possible assistance benefits include compensation for loss of earnings or alimony; an income-related supplementary benefit; medical care (psychotherapy); orthopedic care; medical, occupational, and social rehabilitation; nursing and blindness allowances; compensation for funeral costs; and a lump-sum compensation for pain and suffering. Victims of human

⁷³ See Section 67, para 3, of the Code on Criminal Procedure (**StPO**).

⁷⁴ Steiner/Probst/Buchner, *Kompaktwissen für die Praxis: Strafverfahren, Entschädigung und Opferschutz* (2018), p. 40; Section 67 of the Code of Criminal Procedure.

⁷⁵ Section 165 of the Code of Criminal Procedure.

⁷⁶ Section 92a of the Court Jurisdiction Act.

⁷⁷ Section 65 of the Court Jurisdiction Act.

⁷⁸ Section 63 of the Austrian Act on Civil Procedure.

trafficking who are unlawfully present in Austria at the time of the crime are also included in these provisions if they have a residence permit for special protection.⁷⁹

Applications under the Victims of Crime Act can be filed during the police investigation or criminal proceedings. It is not necessary for the perpetrator to have been prosecuted under civil law.⁸⁰

8. AUSTRIA'S MULTIDISCIPLINARY/INTERAGENCY COOPERATION APPROACH

Austrian government agencies work closely with a large number of national organizations, especially intervention agencies, to combat human trafficking and to provide assistance to trafficking victims. That assistance includes, for example, general counseling, support in criminal proceedings, psychosocial support, and help in finding accommodations.

8.1. Task Force on Combating Human Trafficking

In the fight against human trafficking, the Federal Ministry for European and International Affairs established a task force in 2004.⁸¹

The task force is entrusted with coordinating and intensifying Austrian anti-trafficking measures. Meetings are held in which all ministries responsible for the subject matter participate, as well as outsourced departments, representatives of the federal provinces, and NGOs.⁸²

In the course of these meetings, an action plan is drafted, usually for a period of two years, for the federal government to adopt. In these action plans, goals are set and efforts are formulated, such as strengthening national and international cooperation, expanding training measures for selected professional groups, promoting cooperation between law enforcement agencies and NGOs, and evaluating previously implemented measures. An important component of the action plan is the support of trafficked persons through counseling, care, or social integration.⁸³

Since 2004, the task force's range of duties has expanded. In particular, working groups have been established to address the issues of child trafficking, prostitution, and labor exploitation.⁸⁴

⁷⁹ See website of the Ministry of Social Affairs, available at: https://www.sozialministeriumservice.at/Finanzielles/Sozialentschaedigungen/Verbrechensopfer-victims_of_crime/Verbrechensopfer-victims_of_crime.de.html (last accessed 2 October 2023).

⁸⁰ Id.

⁸¹ Report about fight against human trafficking, available at: <https://www.bmeia.gv.at/en/european-foreign-policy/human-rights/combating-trafficking-in-human-beings> (last accessed 2 October 2023).

⁸² Report about fight against human trafficking, available at: <https://www.bmeia.gv.at/en/european-foreign-policy/human-rights/combating-trafficking-in-human-beings> (last accessed 2 October 2023).

⁸³ Task Force Menschenhandel, Nationaler Aktionsplan zur Bekämpfung des Menschenhandels für die Jahre 2021–2023, available at: https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Menschenrechte/Beilage_1_VI_Nationaler_Aktionsplan_zur_Bekaempfung_des_Menschenhandels_NAP_2021-2023.pdf (last accessed 2 October 2023).

⁸⁴ Report about fight against human trafficking, available at: <https://www.bmeia.gv.at/en/european-foreign-policy/human-rights/combating-trafficking-in-human-beings> (last accessed 2 October 2023).

In addition, the task force prepares reports on the measures implemented under an action plan. The Federal Government publishes these reports.⁸⁵

8.2. Victim Support Services

Pursuant to Section 25 para. 3 of the Security Police Act, the Federal Ministry of the Interior is authorized to commission victim protection institutions to provide counseling and support as intervention agencies for individuals at risk of violence. According to Section 38a para. 4 of the Security Police Act, the organs of the public security service are even obliged to inform trafficked persons about the competent victim protection institutions.

8.2.1. LEFÖ-IFB / MEN VIA

LEFÖ-IFB, which has existed in Austria since 1998, is probably the most renowned victim protection organization. It is the only victim protection agency that provides nationwide support for female victims of human trafficking who are older than 15 years.⁸⁶ The primary target group is female migrants who have been trafficked to or within Austria into an exploitative working or living relationship.⁸⁷ There is a joint cooperation agreement between the Federal Ministry of the Interior, the Women’s Section in the Federal Chancellery, and LEFÖ-IBF.⁸⁸

The counterpart to LEFÖ-IFB is the MEN VIA victim protection facility. MEN VIA looks after male victims of human trafficking and also works closely with state authorities.

8.2.2. Drehscheibe

The Viennese Crisis Center “Drehscheibe Augarten” supports unaccompanied minors and refugees, including child trafficking victims.⁸⁹ The hub cooperates with authorities of different countries so that a quick repatriation to the victims’ home countries can occur.⁹⁰ It actively supports the establishment of service centers and crisis centers in countries such as Romania, Bulgaria, Slovakia, and Hungary.⁹¹

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⁸⁵ Parliamentary Correspondence No. 90, February 4, 2019, available at: https://www.parlament.gv.at/aktuelles/pk/jahr_2019/pk0090 (last accessed 2 October 2023).

⁸⁶ Available at: <https://lefoe.at/ibf/> (last accessed 2 October 2023).

⁸⁷ See the comments on the website of LEFÖ-IBF, available at: <https://lefoe.at/ibf/> (last accessed 2 October 2023).

⁸⁸ See the comments on the website of LEFÖ-IBF, available at: <https://lefoe.at/foerderungen/> (last accessed 2 October 2023).

⁸⁹ Available at: <https://kurier.at/chronik/wien/die-zwei-welten-der-roma-wenn-die-armut-in-den-westen-schwappt/14.867.628> (last accessed 2 October); see also Strobl, *Schnelligkeit als Waffe gegen den Kinderhandel* (2013), available at: <https://www.tt.com/artikel/6584906/schnelligkeit-als-waffe-gegen-den-kinderhandel> (last accessed 2 October 2023).

⁹⁰ See the report, available at: https://www.bmi.gv.at/magazinfiles/2006/09_10/files/drehscheibe_augarten.pdf (last accessed 2 October 2023).

⁹¹ *Assisting and Reintegrating Child Victims of Trafficking (2013): Assisting and Re-integrating Child Victims of Trafficking. Improving Policy and Practice in the EU Member States.* Sofia: Center of the Study of Democracy, available at: https://csd.bg/fileadmin/user_upload/publications_library/files/21295.pdf (last accessed 2 October 2023).

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