

Questionnaire addressed to Governments, non-governmental and international organisations, including United Nations agencies, research institutions, the private sector and other interested parties for the preparation of the report of the Special Rapporteur on the sale of children, child prostitution and child pornography

1. Information on activities, programs and facilities run by the public sector designed with a specific focus to children and minors victims of sexual commercial exploitation and trafficking.

Regarding the implementation of provisions concerning direct support services for children the Austrian government follows a twofold strategy: on the one hand support services for children in terms of counselling, shelter etc. are offered by the youth welfare institutions of the regional governments. On the other hand there is a range of child protection organisations run by non-governmental organizations which are mostly financed by the government for each person given shelter to.

The Federal Ministry of the Interior is funding an NGO which runs an experts' centre and shelter for adult female victims (in exceptional cases for girls above 16) of human trafficking (NGO "Lefö"). The social workers and counsellors involved in the whole procedure closely cooperate with the investigation officers. It is possible that victims who are able and willing to testify as witnesses obtain a new identity. Most of the provisions such as the residence permit for humanitarian reasons are "discretionary provisions".

The Federal province of Vienna – where most cases have been reported – has established an effective support service including a repatriation mechanism in 2001. "Drehscheibe" is a centre administered by the Vienna Youth Welfare authority which was established for taking care of unaccompanied foreign minors. The institution is based on the Youth Welfare Law 1990 (LGBI Vienna No 36/1990 idgF.) which commits the Viennese youth welfare system to provide shelter and protection also for non-residents if the well-being of the child is in danger. This is in accordance with the Hague Convention of 15 April 1958.

The institution is financed by regular youth welfare budgets of the city of Vienna.

Eight socio-pedagogues take care of the children brought to the shelter by the police because they are suspected of having committed theft. Special (psycho-) therapy is also provided if needed.

In the year 2004 the institution harboured 315 children, 2005: 701, and 2006: 319.

Besides the function of a safe shelter where victims of child trafficking can recover and reflect, the purposes of the institution are to find out the identity of each child and to investigate the circumstances under which the child came to Austria. In order achieve a reintegration of the child in his or her best interest the institution strives towards bringing the child to a special youth welfare institution of the home country as soon as possible. Due to ad-hoc agreements with the receiving youth welfare systems, they submit reports about the wellbeing of the child to "Drehscheibe" for a period of six months after the handover.

"Drehscheibe" established a well functioning cooperation with the (youth welfare) authorities in Rumania and Bulgaria and helped to establish a sound system for the reintegration of children that were sent back home. Personnel was trained and shelters have been established (14 in Rumania, 3 in Bulgaria). Because of this cooperation hardly any children are found being trafficked from Bulgaria and Rumania. This year only 40 children - from Moldova and Serbia - were brought to "Drehscheibe". The repatriation is organised in close cooperation with the embassy of the respective country and IOM.

"Drehscheibe" is well-known among the Viennese police and immigration authorities, hence, they usually refer minors below 14 years of age to this institution (14 years is the age of criminal responsibility in Austria).

Problems: "Traders" usually force children to change their identity, modify their age and send them to work at different places. This makes it difficult to identify and repatriate them quickly.

International commitments of the Austrian Development Cooperation (ADC)

In the field of fighting child prostitution, Austria supports the international NGO ECPAT/Respect and their mobile exhibition which runs since 2005 and promotes sensitisation in a number of tourist destination countries.

In detail: Two projects aim at fighting child prostitution in tourism through lobbying for a "code of conduct" in Kenya and in Romania/Bulgaria (Black Sea region); Kenya: ADC support of € 73.000 (out of 146.060); Black Sea project: ADC support of € 61.000 (out of €123.295).

In the field of fighting trafficking in human beings (with a focus on women and girls), Austria supports a number of projects of international organisations, NGOs and the Austrian Ministry of the Interior in the areas of victim protection, prosecution and prevention of trafficking in South Eastern Europe.

In detail: "Call for Proposals" for fighting trafficking in human beings in South Eastern Europe (€ 2.5 mio) has been addressed to local and international NGOs who work in the thematic area (including trafficking in children). The projects are starting now; Project of police cooperation between Austria and a number of countries in South Eastern Europe on fighting trafficking in human beings (€ 1.9 mio): trainings and capacity building.

Child protection programme in Moldova: Vocational training including one component on the prevention of child trafficking. The full programme aims at protection of vulnerable children and youth in the Republic of Moldova (fighting institutionalization, abuse and neglect of children and youth, human trafficking, poverty and lack of education).

Children's rights in other ADC documents: Development Cooperation Act, Policy documents on good governance, human rights and peace-building and conflict prevention, instruments and methods (for further details see www.ada.gv.at):

- Three year programme of the Austrian Development Cooperation 2006-2008
- Focus on children as partners of ADC
- Applying quality criteria which are sensitive to children throughout project cycle management.

Sensitisation measures: training for staff; supporting the revision and the development of the second edition of the ETC's (European Training Centre)

human rights manual – “Understanding Human Rights” initiated by the Human Security Network framework.

2. *Information on activities, programs and facilities run by the civil society (non-governmental organisation, private individuals) and other private actors designed with a specific focus to children and minors victims of sexual commercial exploitation and trafficking.*

See 1)

3. *In case such activities, programs and facilities do exist, please specify:*

a) *What are the legal bases for these activities, programs and facilities? How are these financed, on a regular and ensured basis or on an ad-hoc basis?*

In general, the Austrian youth welfare authorities are responsible for providing child care and child protection services to all children living in Austria, irrespective of their nationality (§3 Federal Youth Welfare Act 1989). Such services include, for instance, parental assistance, foster parenting and institutional support for children without parental care, including emergency assistance for separated/unaccompanied children. In principle these services are accessible also for victims of sexual exploitation and child trafficking.

In the federal structure of Austria, the issue of youth welfare mainly falls under the regions' legislative competences. Therefore, varying "Youth Welfare Legislations" are in force in the nine provinces ("Bundesland") under the umbrella of the Federal Youth Welfare Act which provides general principles and structures,.

The responsibility lies with the province which a case is linked to (in most cases this is the place where the child has his or her ordinary residence or where he or she is found - §215a ABGB/Austrian Civil Code). Basically the youth welfare authorities ("Jugendwohlfahrtsträger") must get involved whenever the well-being of a child (minor below the age of 18 years) is concerned, is in danger, or when the child is found unaccompanied. In the case of unaccompanied minors, the youth welfare needs to appoint a guardian (§211 ABGB), who has then the obligation to function as a "parental substitute" offering full custody over the child, including educational care and legal representation (see ABGB §146 on the scope).

b) *How do these programs operate? Are these programs and activities specifically for children/minors victims of sexual commercial exploitation and trafficking or do these also encompass children victims of domestic violence?*

The concept of the crisis centre is the early assessment of immediate needs and further actions that need to be taken. A stay there is not intended to last longer than six weeks. Other solutions are sought after this period – an available option might be for example foster families. The main objective is to return the children

to their families, which is thought to be the best solution, if it is possible. This procedure is the same for all children in crisis centres in Vienna.

Most services provided are not specialized on victims of commercial sexual exploitation in particular, but on 'child victims' of (sexual) violence in general. "Drehscheibe", however, is specialised on children being victims of trafficking.

The shelter of the NGO "Lefö" is a specialized centre and shelter for adult female victims (and in exceptional cases for girls above 16) of human trafficking.

c) What activities are realised? What have been the main difficulties for these programs and facilities to implement/to develop further?

The services provided are not specialized on victims of commercial sexual exploitation but are designed for 'child victims' in general. The procedure for child victims of domestic violence is initiated by an extensive assessment, so as to check if it is possible to keep the child in the family. In many cases, the family may undergo a family therapy; in cases where this is not possible, there are two options of support and shelter services: children homes of the youth welfare authorities and foster care system. Moreover, NGOs (SOS-Kinderdorf e.g.) also offer shelter for victimized children. The decision whether the child should be separated from the family at all or not and where to accommodate the child, is settled by the family courts upon application by the youth welfare authority.

As far as victims of child trafficking (mostly not holding Austrian citizenship) are concerned, only the City of Vienna has a crisis centre ("Drehscheibe").

The main problem is though, that an institutionalized referral mechanism, involving different stakeholders who carry out a professional case assessment, which is guided by the "best interest of the child" approach, is lacking.

Capacity Building: The Ministry of the Interior supports two seminars initiated, developed and organized by ECPAT-AUSTRIA (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes; NGO). The seminars aim at creating awareness and capacity building of the personnel of child welfare organisations, the police and of NGOs. They are also intended to improve the co-operation among these organisations and at identifying problems. The participants of these seminars from all three areas get an insight into each other's fields of responsibility and thereby learn to avoid sources of friction.

d) Please describe the objectives and the methodologies applied in these programs and activities.

The following legal provisions are the basis for the protection of victims of violence:

- The right to be treated with dignity and compassion

All authorities involved in the course of criminal proceedings are obliged to take adequate care of the rights and interests of victims and to treat victims during all stages of the proceedings with respect of their personal dignity (Section 47a para 1 subpara 1 and 3 Austrian Code of Criminal Procedure-CCP ["Strafprozessordnung"]).

Victims have the right to translation and interpretation services to the extent that this is necessary in order to enable the victim to exercise his or her rights during criminal proceedings (Section 47a para 3 CCP).

- The right to be protected from discrimination

Victims who are strongly affected emotionally, which includes persons who, in the course of a criminal offence, might have been exposed to violence, dangerous threat or infringement of their sexual integrity, have a special standing in the proceedings which has to be respected by the prosecuting authorities ex officio. They are entitled to assistance during the proceedings which shall be granted upon request if and to the extent that psychosocial and legal assistance [“Prozessbegleitung”] during the proceedings is required in order to keep the stress and strains of the proceedings bearable for the victim and to guarantee that he or she can exercise his or her procedural rights (Section 49a para 1 CCP).

Such victims should be informed about their essential rights, the prerequisites for assistance (mentioned above) and about victim support organisations available at the latest prior to their first interrogation (Section 47a para 1 subpara 2 CCP). The Austrian Ministry of Justice has concluded several contracts with victim protection services to provide psychosocial and legal assistance throughout the country (Section 49a para 3 CCP). Some of these contracts have been concluded with NGOs that are specialized on child victims.

- The right to be informed

All authorities active in criminal proceedings are obliged to inform victims about their rights in criminal proceedings and about the possibility of receiving compensation or assistance as far as this appears necessary (Section 47a para 1 subpara 1 CCP).

They have to be informed about every discontinuation of criminal proceedings as well as about every breaking-off of proceedings against a known perpetrator and their resumption (Section 47a para 3 CCP).

Victims who are strongly affected emotionally should be informed about their essential rights, the prerequisites for psychosocial and legal assistance and about victim support organisations at the latest prior to their first interrogation (Section 47a para 1 subpara 2 CCP). Additionally, they have the right to be informed without delay and ex officio when the accused is released from pre-trial detention before the first instance verdict is passed (Section 195 CCP).

- The right to be heard and to express views and concerns

Where criminal proceedings are instituted, there is a general duty ex officio to consider the damages resulting from the criminal offence and to advise the injured party of the proceedings so that he or she can avail him- or herself of his or her right to join the proceedings as a “private party” [Privatbeteiligte/r]. In this capacity, he or she has, for example, the right to ask questions, the right to inspect the files and the right to hand over to the public prosecutor and the investigating judge evidence supporting the conviction of the accused or to justify the claim for compensation. He or she shall be invited to the trial, and may put questions to the accused, witnesses and experts or make statements during the trial (§ 47 CCP).

For the sake of completeness it is to be mentioned that the Criminal Procedure Re-form Act (Strafprozessreformgesetz - abbreviated StPRG) published in the

Federal Law Gazette (Bundesgesetzblatt; abbreviated BGBl) on 23rd March 2004 (BGBl I Nr. 19/2004), which will enter into force by 1st January 2008, contains a comprehensive reform of the pre-trial phase of criminal proceedings and a further extension of victims' rights. However, the above mentioned provisions will remain and some additional rights, inter alia regarding information, will enter into force.

- The right to privacy

All officials in authorities active in criminal proceedings are obliged to consider the well-founded interests of victims to have their intimate personal sphere of life protected during proceedings as well as when disseminating information to third persons. This particularly applies to the dissemination of photos and the communication of personal data of victims, which could potentially lead to the disclosure of their identity to a larger circle of persons, when such disclosure is not required by purposes of the criminal proceedings (Section 47a para 1 subpara 3 CCP).

Taking into account the need to strike a fair balance between the protection of the rights of the defence and the protection of the life and safety of witnesses and their relatives, a graduated protection of witnesses is provided by sections 166 para 1 and 166a CCP.

Pursuant to section 166 para 1 CCP the personal data of a witness, with the exception of his or her name and an eventual kinship with the accused, must be recorded in the minutes in such a way that it does not become known to third persons. This protection of the personal sphere of witnesses must be observed in particular in the trial upon indictment (section 248 para 1 CCP).

Beyond that, at the first interrogation on his or her personal data, a witness is allowed to declare another address instead of his or her permanent residence, if it is an address where the witness can be summoned. These provisions are designed to meet the reasonable fear of witnesses of exposing themselves or their relatives to danger because of declaring their personal data and whereabouts in public.

Before the discussion of circumstances from the personal life or the confidential sphere of a witness or before the hearing of a witness, whose personal data are omitted (Section 166a CCP; see Chapter XII), the court has to exclude the public ex officio or upon request in the case of prevailing interests of the victim (Section 229 para 2 CCP).

- The right to be protected from hardship during the process

The Austrian Code of Criminal Procedure -CCP ("Strafprozessordnung") contains several provisions allowing or requiring the recording of testimony given in court-rooms by video (or other visual media). In particular Sections 162a and 271a CCP provide for this instrument during the pre-trial and the trial phase of criminal proceedings.

With the purpose to avoid "secondary victimization" of victimized children and other victims of violent or sexual offences, Section 162a CCP provides for the possibility for victims to testify under specific circumstances which give the prosecution and the defendant the opportunity to ask questions indirectly. When specific circumstances lead to the expectation or make it possible that the testimony of a witness at trial will not be possible due to factual or legal reasons, the investigating judge has to ensure that the prosecutor and the defendant (and his/her attorney) can participate in interrogations of witnesses and can put

forward their questions during pre-trial proceedings (otherwise excluded in pre-trial interrogations). In this case the investigating judge can arrange the video recording of the testimony (Section 162a para 1 CCP).

In the interest of the witness, especially in consideration of his/her youth or his/her mental or health condition, or in the interest of ascertaining the truth, the investigating judge can limit the participation of the prosecutor and the defendant (and his/her counsel). In this case the witness is not interrogated in the presence of the parties, but the prosecutor and the defendant and his/her counsel can follow the testimony and ask questions by means of visual media (Section 162a para 2 CCP). Especially in order not to bother the witness by confronting him/her with the suspected perpetrator, the hearing is in practice arranged in a way that the witness is interviewed in a separate room from which the interrogation is transmitted by video into the room, where the parties can follow the testimony in full length and ask questions to the witness through the judge or an interrogating expert (often a psychologist; Section 162a para 2 last sentence CCP).

Pursuant to Section 162a para 3 CCP, minors under the age of 14 who may be victims of sexual abuse always have to be interrogated in the above mentioned way. Other witnesses (adult victims of sexual abuse, members of the family of the defendant and other minors under 14) have the right to request such a procedure. The video recording of the testimony during the pre-trial phase offers the interrogated victim the so called "privilege (of witness) to refuse to testify" at the trial ("Entschlagungsrecht" - Section 152 para 1 and 5 CCP). The investigating judge has to instruct the witness that in case the witness refuses to testify during the trial, the video recording can be shown during the trial (sec 162a para 4 CCP).

In general the principle of immediacy obliges the court to admit – as far as possible – only primary evidence (and not hearsay etc.) during the trial. Therefore witnesses interviewed in the presence of the prosecution and the defendant (and his/her lawyer) during the pre-trial proceedings must be asked by the presiding judge, whether they want to testify once again or exercise their "privilege (of witness) to refuse to testify" and remain silent. In the latter case the video recordings have to be viewed by the court, in order to obtain a comprehensive impression of the testimony and of the credibility of the witness` statements.

Interrogation of witnesses in such a careful way pursuant to Section 162a CCP is also foreseen for the trial: According to Section 250 para 3 CCP and in the interest of the witness (especially concerning victimized children and other victims of violent or sexual offences), the presiding judge has to apply the aforementioned provisions concerning the interrogation of witnesses in a separate room and the recording of his/her testimony by video during the trial. Nevertheless, the presiding judge has to ensure that other members of the bench (lay-judges), the prosecutor, the accused and his/her attorney can follow the testimony and put forward their questions.

Apart from the described provisions, pursuant to Section 271a CCP the trial-proceedings can be as well video-recorded, if the presiding judge decides so. In this case it is not necessary – but nevertheless admissible – to keep the minutes of the proceedings. The parties have the right to require the recording of the tape, the transmission on an electronic data medium and the transcription of the recordings (Section 271a para 2 CCP). The investigating judge and the trial judge have access to the recordings, which are part of the file. The prosecutor and the

defendant (and his/her lawyer) have the right to inspect the files and to view the recordings.

In Austria the provisions on video recording are adequately applied in criminal proceedings. In practice, the interrogation in such a careful way provided by Section 162a CCP (and Section 250 para 3 CCP) is one of the most valuable and effective provisions to protect the interests of the witness before the court at the pre-trial and trial stage. In civil cases, the above described possibility of video recordings of testimony in courtroom does not exist; it is only provided for in criminal proceedings.

- The right to safety

If there is a risk because of certain facts that the witness would expose himself/herself or another person to a grave danger for life, health or personal liberty, section 166a CCP entitles judges to grant an exemption from the disclosure of the personal identity or from answering other questions allowing conclusions for the identity of the witness. This provision also permits a witness to remain anonymous for the court that conducts the proceedings.

According to the Austrian Constitution (principle of fair trial subject to article 6 paragraph 3d ECHR), section 166a CCP as well as a ministerial decree of the Federal Ministry of Justice, it is code of practice that under the above mentioned conditions witnesses are allowed to disguise themselves, for example by wigs, sunglasses etc.

- The right to reparation

Where criminal proceedings are instituted, there is a general duty to ex officio assess the damages resulting from the criminal offence and to advise the injured party of the proceedings so that he or she can avail him- or herself of his or her right to join in the proceedings as a "private party". In theory, any party whose rights have been infringed by a crime or by an offence against which proceedings are to be taken ex officio, may join in the criminal proceedings on account of his or her statements of claim until the start of the trial and, as a result, becomes a private party concerned [Privatbeteiligte/r]. As such, he or she has, for example, the right to ask questions, the right to inspect the files and the right to hand over to the public prosecutor and the investigating judge evidence supporting the conviction of the accused or the claim for compensation. He or she shall be invited to the trial, and may put questions to the accused, witnesses and experts or make statements during the trial (§ 47 CCP).

The damage arising from the punishable act and the ancillary circumstances otherwise relevant under private law shall be taken into consideration ex officio. If there are doubts whether the harmed person knows of the criminal proceedings taking place, he/she shall be informed thereof so that he/she can make use of his/her right to join the criminal proceedings. In case the harmed person joins the proceedings, the private party shall be free to put forward claims and to explain them sufficiently. The defendant shall be heard with regard thereto; the investigations which are necessary to identify the damage shall also be carried out. The private party may at any time give up the pursuit of his/her claims, even during the trial (Section 365 CCP).

If the accused is convicted, the court, as a rule, shall take a decision on the statements of claim of the injured party, if the need for further explanations does not make transfer to the civil courts appear imperative. In this case, the private party concerned and his/her heirs may appeal against referral to the civil courts.

If the accused is not convicted, the private party concerned shall at any time be referred to the civil courts with his claims for compensation (Section 366 CCP).

e) Which therapeutic activities are being implemented?

Psychological support to (child) victims of any crime under the Austrian Penal Code is being guaranteed through different legal provisions;

see d)

f) How do children and minors integrate these programs and facilities? Which authorities refer them or place them there?

As far as "Drehscheibe" is concerned, children are referred to the centre by police, specialized NGOs such as LEFÖ, or Youth Welfare Social workers from other federal provinces.

Most identified victims of trafficking (and unaccompanied children in general) in Vienna are referred to the crisis centre of the youth welfare ("Drehscheibe") by the police. Further placement, as outlined above, is then decided by this crisis centre. The focus lies on a quick return of the child to the country of origin, relying on specialized partner shelters in those countries who arrange their repatriation and placement in these shelters. If possible the children are brought to their families.

g) What measures are being implemented to ensure security of the participants and beneficiaries of these programs? What are these standards applicable to ensure integrity of these programs and activities?

"Drehscheibe" managed to sign agreements with Youth Welfare authorities in Bulgaria and Romania and also carried out trainings there for youth welfare staff working in shelters in order to guarantee certain standards.

Besides, the law allows a foreign victim of trafficking to apply for a resident permit, which may be granted for "humanitarian reasons" upon discretion of the authority (no formal right). The Ministry of the Interior recommended that the police provide at least a one-month reflection period for trafficking victims to decide whether they want to testify against the perpetrator or not.

h) How is the daily life for children and minors organised under these programs? What is being done to maintain contacts between the child/minor and his/her family throughout the program?

See c)

i) Please describe the main activities accomplished in order to ensure successful reintegration of the participants and beneficiaries of these programs. Have studies been undertaken on how these participants/beneficiaries reintegrate into their families/society? If so, please describe.

“Drehscheibe” managed to come to agreements with Bulgaria and Romania during the past years which intend to guarantee the proper reintegration of Bulgarian and Romanian children repatriated to their countries. The responsible authorities in Vienna (MA11) signed agreements with the centres, where the children are first sent to in their countries of origin to follow up on their cases through reports for at least half a year, in the case of victims of sexual abuse for one year.

“Lefö” reported problems with the cooperation with parents of the child and difficulties in the decision if it is in the best interest of the child to send her/him back to her parents or not.

j) What specific initiatives are being implemented in these programs in order for the child victim to overcome post-traumatic stress and related syndromes after the situation experienced?

See e)

4. In case there are no such activities, programs and facilities, please indicate what other type of assistance is available for children and minors victims of sexual commercial exploitation and trafficking.

Task Force Trafficking in Human Beings:

The Austrian government adopted a National Plan of Action on Trafficking in Human Beings. Within the framework of the National Task Force on Combating Trafficking in Human Beings, a working group on trafficking of children was established in mid 2007. This working group is constituted of representatives of the Government and Federal Governments as well as from NGOs. Its task is to provide a survey of the situation of children as victims of trafficking and sexual exploitation in Austria and to discuss possibilities of victim protection. “Recommendations” worked out by UNICEF and IOM, Drehscheibe, Lefö and ECPAT are a substantial input for the discussions. A report will be presented by working group to the Task Force in March 2008.

Capacity Building:

The Ministry of the Interior supports two seminars initiated, developed and organized by ECPAT-AUSTRIA (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes; NGO). The seminars aim at creating awareness and capacity building of the personal of child welfare organisations, police staff and of NGO employees. They also intend to improve the co-operation of these organisations and to point out problems. The participants of these seminars from all three areas get an insight into each other's fields of responsibility and thereby learn to avoid sources of friction.