

## LEFÖ-IBF Legal information

### **Criminal Code (StGB)**

Trafficking in women is covered by the Austrian Criminal Code under trafficking (§ 104a StGB), transnational prostitution trade (§ 217 StGB) as well as exploitation of a stranger (§ 116 FPG). An attempt to apply illegitimate means through exploitation towards a person of age or minors is defined as human trafficking. Exploitation covers inter alia violation of sexual integrity, exploitation of labour, exploitation for the purpose of committing criminal offenses. Illegitimate means convey use of force or dangerous threats, deception, intimidation or abuse of authority, a predicament of a condition which makes a person vulnerable.

„Trans-border prostitution trade“ is applied when a person is forced to sex work outside of her country of origin.

### **Law on residency and settlement rights in Austria**

Victims and witnesses of human trafficking and transnational prostitution trade, who are third-country nationals, have a right to be granted a temporary residency permit (Article 57 Asylum Act) for the period of ongoing criminal and/or civil procedures. In conjunction with an employment permit victims obtain access to the Austrian labour market. EU citizens can obtain a registration certificate under similar circumstances.

### **Victims' rights in the criminal procedure**

Victims and their rights of criminal proceedings are defined and regulated in the Criminal Procedure Code. A victim is a person who might have been exposed to violence or dangerous threat by intentional criminal act, or whose sexual integrity and personal dependency could have been exploited by such a crime. Victims have in particular a right to psychological and legal assistance, as well as translation and earliest possible assessment of their vulnerability. These include the right to psycho-social and legal victim assistance service (Article 66 (2) StPO). Psycho-social assistance services cover comprehensive preparation of

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emotionally distressed victims for court procedures, accompaniment for investigation and trial. Legal assistance services include legal counselling and representation by a lawyer. Victims, who have been injured in their sexual integrity and self-determination, and minors belong to particularly vulnerable groups. They have a right to remain silent and to be interrogated in a sensitive way during the main trial.

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**Sensitive Interrogation Procedures:** The separate sensitive interview procedures (“adversary examination”) according to Article 165 StPO, embodies a preceding part of the main trial. Aim of these procedures is to reduce strains by conducting them in a separate room under the presence of a trusted third party. The procedures are video and sound recorded and simultaneously transmitted to the court room.

**Translation Assistance:** Article 56 StPO ensures those affected by trafficking, the right to translation assistance, regardless of the situation.

**Information:** Article 65 and Article 172 StPO guarantee the right to immediate information upon the release of one’s perpetrator and specific information about warrants issued, for example, a warrant that the perpetrator is not to come near the victim.

### **Security Police Law (SPG)**

The provisions of Article 25 enable the minister of the interior to commission victim support organizations to counsel and support – in a preventive attempt to avoid (further) violent acts (intervention centres) - (potential) victims of violence. Building upon these provisions, Article 38a obligates organs of the public security service to inform persons threatened by violence of such intervention centres. Article 56, § 1 of the Security Police Law extends the right to police authorities to convey information about the victim to institutions with victim protection programs, particularly in the case that protection is deemed necessary.

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### **Civil Law**

Victims who received psychosocial counselling during the criminal procedures have the right to continue this counselling during civil court cases (the victim he-/herself files charges against the perpetrator), provided the court case is related to the criminal procedures.

### **Labor Legislation**

It is possible to bring cases where payment and/or wages for work have been withheld to the Labour and Social Court (ASG). This can be done on a variety of grounds, depending on the activity (wage agreements, employment laws etc.). After an assessment of the probability of the case's outcome (and if it is highly probable that the plaintiff will win the case), the official representation of employees in Austria (Arbeiterkammer) will provide legal counsel for the court case. Also here, the victim is entitled to free psychosocial counselling provided the court case is related to the criminal procedures.

### **Compensation for Damages / Compensation for Pain and Suffering**

The right to compensation for damages / pain and suffering is regulated by a variety of different laws: Victims of crimes may take the perpetrators to court as a private party if the disadvantages they experienced are considered applicable under Civil Law. If the perpetrator is found guilty, she/he will be required to pay compensation for damages / compensation for pain and suffering. It is also possible to receive the right to payment through a trial in the Civil Court. (see above) According to Article 373a of the Criminal Procedure Code the state may also administer an advance payment of the full sum. State compensation is regulated under the Victims of Crime Law. A problem that arises here, however, is that according to penal law, the victim must have been in possession of a valid permit to stay in Austria at the time of the crime.

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