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Advocacy and support for migrant women and victims of trafficking

ALTERNATIVE REPORT ON THE IMPLEMENTATION OF THE COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS IN SWITZERLAND

2ND EVALUATION ROUND

TO THE ATTENTION OF **GRETA**, JUNE 4TH 2018

ASTREE
Association de soutien aux victimes de traite et d'exploitation

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AUTHORSHIP

This second alternative report on the implementation of the Council Of Europe Convention On Action Against Trafficking In Human Beings in Switzerland has been drafted by **FIZ Advocacy and support for migrant women and victims of trafficking** in collaboration with a **working group established within the NGO Platform Human Rights** consisting of (alphabetic order) **Antenna MayDay**, **Amnesty International, ASTREE, CSP Genève, NGO Coalition Post Beijing Switzerland, Protection de l'enfance Suisse, Swiss Refugee Council and TERRE DES FEMMES Suisse.**

Thanks to the composition of the working group, this alternative report to the attention of GRETA does not only highlight the challenges, gaps and recommendations from the perspective of organisations that work with survivors and respective public authorities on a daily basis (ASTREE, CSP Genève and FIZ), but also allows for a solid human rights perspective that is guaranteed through the inclusion of several other human rights organizations in Switzerland.

This alternative report is being supported by 85 organisations of the **NGO-platform human rights**.

ACKNOWLEDGEMENTS

We would like to thank the members of the working group, consisting of (alphabetical order): Anne Ansermet Pagot/ Angela Oriti (ASTREE), Leila Boussemacer (CSP GE), Barbara Gysel (Protection de l'enfance Suisse), Eva Kaeser (Swiss Refugee Council), Regula Kolar (NGO Coordination post Beijing Switzerland), Salome Lienert (Terre des Femmes Suisse), Monica Marcionetti (Antenna MayDay) and Chantal Zimmermann (Amnesty International).

We would like to thank Dr jur Nula Frei, author of the book „Die Umsetzung der völkerrechtlichen Verpflichtungen zum Opferschutz im schweizerischen Asylverfahren" (2018), for her feedback on chapter 1 "*Asylum*."

We would like to thank lic. Iur. Franziska Schnyder for the updating of chapters 7 *"Compensation and Legal Redress"* and 8 *"Protection of victims, witnesses and collaborators with the judicial authorities"* and lic. Iur. Claudia Erbini for revising these two chapters.

We would like to thank FIZ, particularly Géraldine Merz and Eva Andonie for the coordination of the working group and the drafting of the report.

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0. General Remarks

The challenges in providing adequate assistance to victims remain a great concern also four years after the first evaluation round. Cantonal disparities persist and it is foreseen to remedy these shortcomings by the elaboration of a National Victim Protection Program (Action No. 18 of the National Action Plan to Fight Human Trafficking NAP) which will be a compendium that provides information on protection procedures and tools. It will not be legally binding.

It is with great concern that it must be observed that due to the lack of binding standards, a backlash is currently taking place in some cantons: Despite the great progress made in the last 10-15 years in establishing a high standard of victim support through comprehensive programs for victims of THB that combine adequate housing, counseling and integration, there is now a tendency to split these back into separate (non-specialized) entities due to cantonal financial restrictions.

There is a need for comprehensive, specialized, human rights centered victim support. Therefore, legally binding minimal standards must be implemented by all cantons.

1. Asylum

Question 31. What measures are taken in your country to identify victims of THB during the examination of asylum applications and during return of persons whose applications are rejected? How is communication ensured between the authorities responsible for identification of victims of trafficking and immigration and asylum authorities when there are reasonable grounds to believe that a person who is irregularly staying in the country is a victim of trafficking? (Art. 10)

1.1. Follow-up 1st Evaluation Round

In the first evaluation round, GRETA urged the Swiss authorities "to ensure that all victims of trafficking, regardless of their immigration status, are properly identified and can benefit from the assistance and protection measures provided for under the Convention […] It is also essential to address the particularly vulnerable situation of victims of trafficking residing illegally in Switzerland" (No. 208). [1] GRETA was especially concerned about the Directives and Guidance on Foreigners in Switzerland and the practice that

> "[…] if an asylum seeker becomes a victim of trafficking in Switzerland while the Dublin Regulation procedure is ongoing, the criminal proceedings and Dublin procedure will run concurrently. This means that the person will be returned to the country where he or she was first registered, in accordance with the Dublin regulation, as soon as requirements for this return are met. A special visa will be issued to this person if he or she has to come back to Switzerland to participate in criminal proceedings. GRETA is concerned that this may in practice run counter to the state's obligations under Articles 10 and 12 of the Convention to identify and provide assistance to victims of trafficking, and to provide a recovery and reflection period in accordance with Article 13" (No. 123).[2]

Both concerns remain as pressing as ever. With the increased numbers of detected victims in the asylum sector, the gaps in victim protection in the Swiss asylum system become more apparent: There is no standardized scenario for protection and support measures which includes proactive provision of specialized victim support, adequate accommodation and clear responsibilities for the financing of these measures by the Confederation or the cantons. All of these obstacles are even

[1] GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland, 1st evaluation round, October 2015, No. 208, p. 48. Available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168063cab6.
[2] Ibid, p.34.

heightened if, as feared by GRETA in comment No. 123, another EU country is responsible for the processing of the asylum application, in accordance with the responsibility criteria of the Dublin-III-Regulation. Concerns about the discrimination of migrant victims of trafficking have also been raised in the context of the Universal Periodic Review of Switzerland.[3]

1.1.1. No procedures to ensure specialized victim support

Even though there have been two internal training sessions on THB for SEM auditors and an internal guideline for the SEM caseworkers has been adopted, and in spite of Action No. 19 of the NAP, which specifically aims to "optimise processes to ensure identification of human trafficking victims and provide victim assistance during the asylum (including Dublin) procedure," the progress cannot keep up with the changing demands with which professionals on the practical level are confronted. The delivered trainings focused primarily on detection of potential victims of THB; however, it is not enough to hand out a brochure with telephone numbers of cantonal Victims Assistance Offices to those who have become victims on Swiss soil. The current internal guidelines[4] lack reference to the rights of victims of trafficking under international and human rights law. There are no instructions which involve cooperation with specialized NGOs and the according follow-up support. This situation is particularly troubling as it underlines SEM's understanding that it is in no case responsible for victim protection but that instead, responsibility for victim protection and support generally lies in the hands of the cantons. However, to date, there is no clear distribution of competencies on the federal level (e.g. for the financing of victim support services).

Despite the increased number of detected (potential) victims of THB in the asylum sector, all victim support organizations in the working group for the alternative GRETA report mention cases in which victims of THB were not identified properly in the first stage of the asylum process and received a negative decision or a dismissal of their application. Due to a lack of viable alternatives, such as returning to their home country or the responsible Dublin-State, they remained in Switzerland as illegal migrants. They were only transferred to specialized victim organizations after coming to the

[3] Report of the Working Group on the Universal Periodic Review, Recommendations to Switzerland, December 2017, No. 146.65: "Adopt a new National Action Plan against Trafficking in Persons with a gender perspective which guarantees the protection of victims without any type of discrimination, in particular regarding their migration status" (Honduras); and No. 146.66. "Follow up on offences linked to trafficking of persons irrespective of the victim's immigration status, in order to prevent the victim from being criminalized during the procedure" (Mexico). Available at: https://www.upr-info.org/sites/default/files/document/switzerland/session_28_-_november_2017/a_hrc_37_12_e.pdf.

[4] State Secretariat of Migration. Internal guidelines for the handling of asylum applications from victims of THB (June 2017). Note that the SEM is currently revising these guidelines. According to the SEM the objective is to optimize the processes to secure detection of victims of THB and to optimize access to victims' assistance during the asylum procedure within Action No. 19 of the NAP.

attention of outreach work organizations years after their first demand for asylum. As a result of their missing detection, they experienced further exploitation in Switzerland.[5]

In March 2017, a coalition of four specialized victim organizations – Antenna MayDay, ASTREE, Centre Social Protestant CSP GE, and FIZ – organized a colloquium[6] in order to enhance the dialogue between practitioners, migration authorities and scholars on the by then widely under-researched[7] nexus of asylum and THB in Switzerland. The colloquium had to be financed by the organizations themselves and by private donors; only a very small portion was covered by the Federal Department of Foreign Affairs and by the Federal Office of Justice, whereas fedpol withheld financial contribution altogether.

1.1.2. No consistent approach on the federal level to evaluate the credibility of THB

Two recent verdicts of the FAC have placed a welcome emphasis on the obligation of the SEM to recognize the signs of potential THB, and then take further steps to ensure identification, protection and assistance of victims.[8] In decision D-5920_2016[9], the lack of credibility of the statements of the victim are considered to be a further hint of a possible victim of THB, thus for the first time interpreting this non-coherence as a hint for human trafficking rather than labelling the whole asylum application as unreliable. However, in a later decision in a different case[10], the FAC dismissed this earlier argumentation and denied credibility of THB. This highlights the fact that there is no consistent approach, neither in the practice of the FAC nor in respect to problems with credibility at the SEM.

1.1.3. Exploitation abroad: Arbitrary access to victim support services

The number of identified victims of THB in the asylum system has increased continuously in recent years,[11] underlining the limits of the current legal provisions and their challenges for victim support. Two parliamentary interpellations[12] addressed these gaps, especially highlighting the lack of access

[5] See also the Recommendations of the Convention on the Eradication of every Discrimination against Women CEDAW, 2016, 29c).
[6] The program can be seen at: http://plateforme-traite.ch/index-de.html.
[7] For a comprehensive overview and evaluation of the current practice in Switzerland see: Frei Nula, Die Umsetzung der völkerrechtlichen Verpflichtungen zum Opferschutz im schweizerischen Asylverfahren, 2018.
[8] D 6806/2013: „3. Ist eine Person Opfer von Menschenhandel oder befindet sie sich in einer realen und unmittelbaren Gefahr, Opfer von Menschenhandel zu werden, sind individuelle Schutzmassnahmen zugunsten der betroffenen Person zu ergreifen (E. 5.2.6); Verpflichtung der Staaten zur Identifizierung von Opfern von Menschenhandel sowie Anspruch der Opfer auf Schutz und Unterstützung gemäss EKM (E. 6).“
[9] Federal Administrative Court FAC D-5920_2016; D-6806_2013.
[10] FAC D-4763/2016.
[11] Numbers of potential victims of THB at the SEM: 2013: 14, 2014: 84, 2015: 32, 2016: 76 and 2017: 100.
[12] Interpellation Min Li Marti, 17.3310, „Ist der rechtliche Schutz für Opfer von Menschenhandel im Asylverfahren ausreichend?“ Available at: https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20173310 and Min Li Marti, 17.3805:

to victim support under the Victims Assistance Act (VAA) for victims in the asylum system whose exploitation took place outside of Switzerland.[13] In its reply, the Federal Council explained that in order to remove this discrimination, a reformation of the Victims Assistance Act is needed. An examination of these possibilities is foreseen in Action No. 22 of the NAP, *Assistance to victims of crime abroad*. Yet, feasibility of this undertaking lies in the willingness of the Parliament to change the law. And even if an agreement was reached to change the law, this would be a yearlong process, whereas victims should have the right to receive assistance immediately.[14] And even if they have been exploited in Switzerland and hence fall under the Victims Assistance Act, they are in the hands of cantonal arbitrariness: The Federal Council in its reply to the parliamentary interpellation states clearly that the responsibility to assure and finance victim support is in the hands of the cantons.[15] This leads to unequal treatment, as not all cantons are willing to finance the services or specific accommodation corresponding to the special needs of a victim of THB.

Most cantons, due to their tight financial budget and the missing procedures for specialized victim assistance in the asylum system, do not transfer the victims to specialized support centres but leave them in the normal asylum shelters, which do not provide the adequate support and protection for victims of THB. This is in stark contrast to the legal provisions under Article 12 of the Convention: Victim protection, assistance and accommodation should not be dependent on cantonal resources and savings should not be undertaken at the cost of the victim's wellbeing!

1.1.4. Risks and chances of the restructuring of the asylum system

The upcoming restructuring of the asylum system contains both risks and chances for the identification of victims of THB. On the one hand, the accelerated procedure includes free legal counselling and representation available to all asylum seekers from the very beginning. This can lead to increased detection of possible THB cases, as has been shown by the experience of the Test Centre in Zurich.[16] The centralization of the new system further provides the possibility to train all actors involved in a more centralized manner, which could further facilitate proactive detection at an early stage, e.g. through the legal representatives and increase awareness and knowledge about the rights of victims of trafficking. Also, the more centralized reorganization would enable the

„Wie kann der Opferschutz bei Opfern von Menschenhandel im Asylverfahren verbessert werden?" Available at: https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20173805.

[13] According to Art. 3 VAA in combination with Art. 17 VAA, victims whose exploitation took place outside of the Swiss territory do not benefit from the services provided by the VAA.

[14] Art. 12 of the Convention.

[15] Interpellation Min Li Marti, 17.3310.

[16] The test center in Zurich has been a pilot project for the evaluation of the centralization of the asylum system starting in 2019.

establishment of new processes specifically for vulnerable groups, analogous to the special protection provisions for unaccompanied minors. On the other hand, the shorter time frame, and the fact that not all asylum seekers are transferred to cantons, means that there may be too little time to build up enough trust with those affected for them to disclose their story, especially due to the lack of available (proficient or culturally sensitive) translators. It also raises the following questions: Which precautionary measures are foreseen with regards to specialized accommodation, support, counselling, and protection when a victim is detected? Will the specialized NGOs be involved? And which provisions are foreseen in case of a transfer to a canton; how can a comprehensive protection be guaranteed? All of these questions remain unanswered.

Demands

- Follow-up scenario from the moment of suspicion to ensure access to all guarantees provided under Art. 12 of the Convention
- Binding national standards applicable on the national and cantonal level must be established and periodically monitored. These must include: regular training on systematic detection of potential victims of THB and the follow-up scenarios, the establishment of cooperation mechanisms between authorities and specialized victims' organizations (including the adjustment of the internal SEM guidelines), access to all guarantees provided under the Convention for victims of THB such as to special accommodation, counselling and support as well as financing and access to specialized medical and psychological support without discrimination whether the place of the exploitation was in Switzerland or not
- Involvement of specialized victim support organizations as early as possible in order to ensure professional identification and victim support (including access to translators), and provision of adequate resources to remunerate these services
- Implementation of the human rights approach at every stage of the asylum procedure and application of Art. 3 of the Convention (non-discrimination) and Art. 8, para. 2 of the Federal Constitution: The rights of victims of THB in the asylum sector must be respected and secured from the moment of the first suspicion. International law standards flowing from the CoE Convention as well as the jurisprudence of the ECHR should be respected at any time
- In case of a transfer from a federal centre to a canton: Clear processes and provisions for a comprehensive victim protection[17] (including all financial aspects)

[17] See also UPR recommendation No. 146.64: “Review the national action plan against trafficking, strengthening coordination between the Confederation, cantons and civil society to ensure a harmonized, robust and victim-oriented response” (United Kingdom of Great Britain and Northern Ireland).

1.2. Dublin Regulation

1.2.1. Dublin regulation prioritized over human rights law

In its replies to GRETA's recommendations in November 2017, Switzerland describes its procedure in Dublin cases as follows:

> "Regarding the special situation of THB victims coming under the asylum legislation, the reflection and recovery period is taken into consideration in the asylum procedure as, in the national procedure (when examination of the asylum request lies within the jurisdiction of Switzerland), the procedural timeframes for issuing a decision on an asylum request and, where applicable, ordering expulsion are longer than 30 days; under the Dublin procedure, no decision is made in a period of at least 30 days following the identification of a potential victim of trafficking in human beings. In addition, the victim's transfer to another Dublin State may be postponed, within the timeframes provided for in the Dublin Regulation, if the victim was exploited in Switzerland and has lodged a criminal complaint."

Both points are highly problematic and illuminate the reality of GRETA's concerns that Switzerland is not duly respecting Art. 10 and 12 of the Convention in Dublin cases.[18] Two points are especially troubling: Firstly, the recovery and reflection period in Dublin cases is perceived by the government as a form of statutory period rather than a timeframe in which the victim's need for support and protection must be met. There is no intention that during this period, Swiss authorities take responsibility for organizing the recovery and reflection period with access to special protection and support or that the asylum procedure is suspended for this period. Secondly, it confirms that victims who have been exploited in Switzerland are still being sent to the responsible Dublin state, rather than paying attention to their specific needs, which might involve giving them an opportunity to stay in Switzerland for the asylum process under the sovereignty clause in accordance with Art. 17 of the Dublin regulation.

1.2.2. No functioning victim protection in the accelerated Dublin procedure

The Dublin procedure, which is accelerated in comparison to the national asylum procedure, remains a key challenge to securing a human rights approach and providing adequate assistance to victims, especially where the short interview about the identity *(Befragung zur Person BzP*) already

[18] GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland, 1st evaluation round, October 2015, No. 123, p. 34.

reveals that another Dublin state is “responsible” for the dossier. In this accelerated procedure, deportation and return of victims are often arranged so quickly that many potential victims go unnoticed. Even when a potential victim is identified, the Dublin procedure is continued, which means that the person is transferred to the country of their first entry, at best with a note to the responsible state authorities that he or she might be a victim of THB, but without safeguarding effective reception, protection and support in the Dublin country. There is no cooperation with specialized NGOs to arrange contact with a specialized victim organization in the Dublin country. These transfers are usually justified by the fact that the Dublin state responsible has signed the relevant conventions to combat THB, and that it is thus deemed "safe" to transfer the victims there, without assessing whether that assumption is true in the individual case. Victim protection and assistance is, in these cases, not seen as at the responsibility of Switzerland, but as that of the Dublin state. Rather, the Dublin procedure is given priority over victim protection considerations.

1.2.3. No consideration of expert evaluations

The practice to send victims of THB back to the responsible Dublin country has been supported by several decisions of the FAC[19], and stands in contradiction to Art. 10, para. 2 of the Convention demanding that a person shall not be removed from territory until the identification process according to Art. 10 has been completed. In a decision in July 2017, the FAC underlined this by passing a verdict demanding that, in cases in which reasonable grounds that a person might be a victim of THB are present, there shall be a proper investigative interview according to Art. 10 of the Convention. Before FAC made this ruling, this duty had been neglected by the SEM in this case.[20] The SEM is thus obliged to examine humanitarian reasons for applying the sovereignty clause in every individual case.[21]

In another, very recent case from March 2018,[22] the investigative interview in order to evaluate whether an extradition to France was feasible or not did take place. The suspicion that it is a victim of THB had been underlined by a report from the FIZ and it was also clear from a medical referral that the victim’s physical and mental health was very unstable and an extradition would worsen her state. The SEM neglected to take these two reports into consideration and decided nonetheless the extradition to France. It argued that France has a good health care system, signed the relevant Conventions to combat THB and that they did inform the French authorities about the fact that the person is a potential victim of THB. The FAC thus reprimanded the SEM for not taking into

[19] See the following decisions of the FAC: F-7256_2017; F-3379_2017; D-1046_2017.
[20] FAC, D-6806_2013.
[21] See also SEM, Internal Guidelines for victims of THB in the asylum procedure, p. 13.
[22] FAC, D-768/2018.

consideration the two reports and to send her back despite the clear signs that this would worsen her state. From the perspective of the FAC; there was no reason for the SEM to neglect the reports and under these individual medical conditions, a self-entrance on humanitarian grounds was imperative.[23]

However, in neither case did the FAC evaluate whether or not the fact of being a victim of THB is in itself a reason for the execution of Art. 17 Dublin-regulation (self-entrance on humanitarian grounds).

1.2.4. No application of Art. 17 Dublin-III-regulation

In most cases, victims do not receive any special support nor are they granted the right to a proper identification through a specialized NGO; rather, these are not systematically contacted at all, or are only made aware of the case through the initiative of a legal guardian or other organizations. In some cases, the victims were brought to their attention as they were asked to write a report in order to evaluate their qualification as victims of THB.

When the sovereignty clause is applied on humanitarian grounds, the responsibility for financing and offering victim support must be clearly established between the federal and cantonal governments so that a comprehensive transfer is guaranteed.

The tendency to not systematically identify potential victims of THB in the Dublin procedure reflects the lack of access to victim support for victims of THB, as mentioned in chapter 1.1.3. Victims falling under the Dublin regulation thus experience further discrimination and are often deported to the place where the exploitation took place. Even if migration authorities inform the responsible Dublin state that a person is a potential victim of trafficking, it is questionable whether this really increases victim protection or rather exposes them even more.

FIZ alone has had six cases from 2015-2017 in which victims were informed that they would be deported back to the Dublin state in which their exploitation took place, thus risking re-trafficking. Out of lack of confidence in the authorities' ability to guarantee their safety in the place where they were exploited, many of them (supposedly) decided to no longer stay in the asylum procedure and disappeared. Some also showed such strong emotional reactions that the sovereignty clause had to be applied on medical grounds. However, the sovereignty clause under Art. 17 of the Dublin-III

[23] FAC, D-768/2018, para. 6.6.

regulation is very rarely applied; it is avoided whenever possible and only justified under "individual circumstances."

1.2.5. Focus on prosecution rather than victim support

Even victims who were exploited within Switzerland are deported to the Dublin country responsible for their dossier or to their home country. It remains unclear whether access to an organized recovery and reflection period for them is dependent on collaboration with authorities or not as there seem to exist different perceptions: According to the answer of the Federal Council on the interpellation 17.3310, they are entitled to receive a 30-day recovery and reflection period while receiving victim support under the VAA *if a criminal proceeding in Switzerland is ongoing*.[24] This is in stark contrast to the principal element of the recovery and reflection period, which originates in the idea that it provides a timeframe in which a victim has the space to rest and *consider* cooperation with prosecution authorities rather than making the cooperation a condition for receiving a recovery and reflection period.

On the other hand, Switzerland states about the recovery and reflection period in the asylum procedure that "under the Dublin procedure, no decision is made in a period of at least 30 days following the identification of a potential victim of trafficking in human beings."[25] This practice is also problematic, as it perceives the period as a form of statutory period rather than a timeframe in which the victim's need for support and protection must be met (see also 1.2.1).

Furthermore, the Dublin procedure runs concurrently, is not suspended and victims would be issued a re-entry visa for the event of a court hearing.[26] According to experts,[27] this practice is not feasible, as no victim of THB would come back to collaborate with the very authorities that deported them and denied them proper protection after their giving of evidence.

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[24] See answer No. 10: « Le délai de rétablissement et de réflexion, généralement d'une durée minimale de trente jours, est pris en considération **en ce sens que l'on vérifie si une procédure pénale est en cours au moment du transfert**. Si tel devait être le cas, le SEM et les cantons en tiendraient compte dans le sens où le transfert serait reporté, dans le cadre du délai de transfert prévu par le Règlement Dublin, afin que les actes de procédure les plus importants puissent, dans le mesure du possible, être effectués avant que la personne ne soit transférée. […] » Available at :https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20173310.

[25] Report submitted by the Swiss authorities on measures taken to comply with Committee of the Parties Recommendation CP(2015)13 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, November 2017, p. 11. Available at: https://rm.coe.int/cp-2018-1-rr-che-en/16807902df.

[26] See Directive of the SEM on the Foreign Nationals Act, para. 5.6.8.4. Available at: https://www.sem.admin.ch/dam/data/sem/rechtsgrundlagen/weisungen/auslaender/weisungen-aug-d.pdf.

[27] Members of cantonal round tables, such as prosecution authorities and victim assistance offices.

This practice also clearly discriminates against victims who are not able/willing to cooperate with authorities or who have been exploited outside of Swiss territory. For them, the 30-day recovery and reflection period is not organized as such, their Dublin procedure is not suspended and they do not receive access to the services that a recovery and reflection period should entail since they have no access to VAA.

Demands

- Application of the sovereignty clause under Art. 17 of the Dublin-III regulation in cases of suspicion of a potential victim of THB. If deportation is unavoidable, access to victim support must be guaranteed, and possible hindrances for the extradition must be taken into account on a case-by-case basis, such as the danger of re-trafficking or retaliation acts by the traffickers in the Dublin country.
- Refrain from the presumption that a country is "safe" for victims if it has ratified international anti-trafficking conventions and conduct individualised assessments of the legality and reasonableness of a Dublin transfer.
- Victim support and victim protection in case of exploitation outside of Switzerland must be enabled based on Art. 12 of the Convention. So far, Switzerland does not acknowledge its direct applicability. However, this would close the gaps in the VAA with regards to financing protection and support for victims of THB who have been exploited outside of Swiss territory. Rules and guidelines are necessary to determine which authority is responsible of financing such victim support and protection measures in the asylum procedure.
- There shall be no discrimination for victims in the asylum procedure (and no discrimination therein between those whose application is handled in Switzerland and those whose falls under the Dublin regulation) in receiving a clearly marked recovery and reflection period with all the necessary support and full access to rights from the moment of suspicion.
- In cases of extradition, repatriation, or deportation of a victim of THB, provisions under Art. 16 of the Convention must be guaranteed. This includes ensuring that their rights, dignity and security are taken into consideration at all times and securing guaranteed protection from the Dublin state.

2. Minors

Questions 7 – 12: Special measures concerning children (Art. 5, 10, 11, 12, 14, 15, 16, 28 and 30)

7. Please describe whether and how trafficking in children is specifically addressed in your country. If there are institutions responsible for taking the lead in combating trafficking in children and a specific national referral mechanism for child victims of trafficking, please provide details.

8. What practical measures are taken to reduce children's vulnerability to trafficking and create a protective environment for them, including through a. ensuring registration of all children at birth, in particular from socially vulnerable groups, b. raising awareness of THB through education, c. training professionals working with children.

9. Please explain what methods are used to verify the age of a presumed victim of trafficking where the age is uncertain and there are reasons to believe that the person is a child. Would such a person be presumed to be a child until the age verification is completed?

10. What steps are taken in your country to ensure that the rights of the child and his/her best interests are duly taken into consideration, in particular when it comes to: identification, legal guardian,..

11. What practical measures are taken in your country to identify victims of trafficking among unaccompanied foreign minors, including asylum seekers? What measures are taken to prevent their disappearance? Have there been cases of non-voluntary return of child victims of trafficking?

12. What programmes and services exist in your country for the (re)integration of child victims of trafficking? What solutions are provided if the reintegration of the child into his/her family is not in the child's best interests?

2.1. Follow-up 1st Evaluation Round

2.1.1. No governmental funding to develop instruments to combat child trafficking

Despite the recommendations of GRETA in the 1st evaluation round of Switzerland to

i) improve data collection and research about child trafficking (proposal no. 9)

ii) strengthen the efforts of prevention of at-risk children, including unaccompanied children and those in childcare institutions (no. 13)

iii) setting up a procedure for the identification of child victims of trafficking, which takes into account their special circumstances and needs and involves child specialists, child protection services and specialized police and prosecutors (no. 15)

iv) provide specific assistance for child victims of trafficking (no.16),

efforts on behalf of the authorities to address these have been minimal.

In accordance with the National Action Plan (NAP), the aspect of minors is included in some actions (e.g. in Action No. 18. Victim protection program, Action No. 19 Asylum- Victim Protection), but not in others and this perspective is not mainstreamed throughout the implementation of the NAP.

Action No. 24, "Institutionalized exchange on unaccompanied minors and trafficking in children in Switzerland," has the goal to "establish a platform for the regular exchange of information on unaccompanied minors and trafficking in children, and identify any need for action," and was only included in the NAP thanks to the insistence of civil society members. However, it is an "informal" action, which means that it would meet on a voluntary and non-remunerated basis without any financial resources[28] and has not taken place once since the implementation of the NAP in April 2017. A first meeting is planned for fall 2018. However, initiative, organization and financing of the event are completely dependent on the goodwill of the Foreign Police of the Canton of Berne and Protection de l'enfance Suisse without financial support from the government.

Efforts in the area to combat child trafficking in Switzerland in recent years has thus been limited to the initiatives of non-governmental actors such as Protection de l'enfance Suisse, in which ECPAT Switzerland is incorporated. The elaboration and distribution of their products, such as their manual for practitioners (2016), their leaflets especially for actors working with minors in the asylum sector (2017), and their video and infographic to raise awareness among the general population (2017),[29] have all been financed solely by Protection de l'enfance without the financial support of the government.

2.1.2. No cantonal cooperation processes for the special assistance to child victims of trafficking

There are no binding processes specifically taking into account the special rights and needs of children. Protection de l'enfance Suisse/ ECPAT Switzerland, together with other civil society

[28] See also the recommendations of the Committee on the Rights of the Child CRC to Switzerland on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC II) No. 30 b) and c) to provide the necessary financial resources.
[29] All available in French, German and Italian at: https://www.kinderschutz.ch/fr/traite-des-enfants.html.

organizations, has elaborated a guidance manual for the arrangement of cooperation mechanisms that not only takes into account the needs and rights of children, such as the best-interest determination process and their right to participation, but also offers indicators for professionals (within and outside of the asylum system) to detect potential victims of child trafficking.[30] Action No. 24 would be an important instrument to put the processes proposed in the manual into practice, to develop them further into binding processes that involve all relevant actors, and to implement them on the cantonal level.

Specific assistance for child victims of trafficking is not formally established and their support remains a challenge due to the lack of clear responsibilities. What is more, there are no specific shelters or assistance services for them, thus putting them in a difficult situation. Even though ASTREE, Coeur des Grottes and FIZ host and assist young migrant women, there are no specialized units for children under 16. As a result, child victims of trafficking have to be placed in girls' shelters, which is often an inadequate solution, since the girls experience shame and feel that they are different from the other tenants. Also, the staff in girls' shelters are not systematically trained to deal with the specificities and the risks that trafficked girls could be exposed to.

2.2. (Un)accompanied minors and specific challenges in the asylum procedure

2.2.1. Use of contested methods for age assessment

Despite the Swiss Pediatric Association's call to boycott the medical age assessment based on the carpal bone analysis in May 2017[31], and a decision of the Federal Administrative Court[32] which states that both carpal bone analysis as well as the forensic method used by the State Secretariat of Migration SEM are "as exact or inexact" [33] as the other, these methods of medical age assessment are still widely used as an indicator to decide whether a person is an adult or a minor.

This is especially alarming in the light of the fact that it is common practice to deport adult victims of THB back to either the country responsible under Dublin-III-regulations or their home countries, leading thus to the extradition of some victims of THB who are actually minors. There have been several cases in which child victims of THB were to be sent back to Italy or France. Child victims of

[30] Protection de l'enfance Suisse, «Traite des enfants. Prévention, identification et soutien des victimes mineures», 2016. Available at: https://www.kinderschutz.ch/fr/fachpublikation-detail/manuel-traite-des-enfants-prevention-identification-et-soutien-des-victimes-mineures.html.
[31] Swiss Pediatric Association, Position de la Société suisse de pédiatrie, Détermination de l'âge des jeunes migrants. Available at: https://bullmed.ch/fr/article/doi/bms.2017.05557/.
[32] FAC, D-859/2016.
[33] This method is based on four pillars: morphological analysis, age assessment of the bones, tooth status, and x-ray examination of the collarbone.

THB are often instructed to lie about their age to the authorities and show false identification which proves their adulthood. Only once they gain confidence in and protection through victim support units they are able to reveal more of their story and disclose their real age, which is why a proactive identification by authorities and the assumption of minority according to Article 10, para. 3 of the convention[34] is urgently needed. ASTREE alone has 5 cases in which minors have been treated as adults, some even led to extraditions under the Dublin-III-regulation (for further discussion on the problematic implementation of the Dublin-III-regulation, see chapter 1.2.).

2.2.2. No regulated follow-up scenario in case of suspicion

In the responses to the Lanzarote Committee (Committee of the parties to the Convention of the Protection of Children against sexual exploitation and sexual abuse) for the urgent monitoring round on the prevention of the sexual exploitation of children affected by the refugee crisis, Switzerland explains that the SEM detected 7 potential victims of THB among unaccompanied minors between January 2015 and mid-June 2016 alone.[35] To date there exists no follow-up scenario specifically for minor potential victims in case of suspicion during an interview at the SEM, such as informing the legal guardian/confidant or issuing a notification to the respective child protection authorities.[36] This is not compatible with Switzerland's national and international obligations to guarantee children's rights and must be addressed urgently within the working group of Action No. 19 of the NAP (Human Trafficking and Asylum).

2.2.3. Special attention needed for accompanied minors

Even though there are special protection measures to protect unaccompanied minors in the asylum system,[37] the protection of accompanied minors should also receive attention. Hence, it is important that border guards as well as migration authorities are aware of the fact that some traffickers pretend to be relatives of a child, or are in fact relatives involved in the trafficking of a child. Therefore, it is important that family ties are well checked in order to make sure that a child is not placed with his or her trafficker or a guardian who is endangering the child.

[34] "When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age."
[35] Convention Lanzarote, Questionnaire cible pour la Suisse: Protéger les enfants touchés par la crise des réfugiés de l'exploitation et des abus sexuels, September 2016, S. 3. Available at: https://rm.coe.int/16806ab572.
[36] According to Art. 443 and 307ff Swiss Civil Code.
[37] Such as the mandatory appointment of a legal guardian according to Art. 17, para 2 Asylum Act.

2.2.4. Sending back of unaccompanied minors at the border

The circumstances at the southern border of Switzerland (Como-Chiasso) were especially alarming in the summer months of 2016. 4649 unaccompanied minors were transferred to foreign authorities in 2016 without proper procedure and without having been appointed a legal guardian for the procedure.[38] Dozens of unaccompanied minors were also sent back to Italy immediately, without the appointment of a legal guardian, because they were assumed to have made false statements about their age and to have claimed to be younger in order to receive special assistance. In some cases, they were not even permitted to ask for asylum in Switzerland under the justification by border guards that some were already at the Swiss border check point before and did not want to ask for asylum in the first place but only transfer towards Germany, which made their later asylum claims implausible.[39] At the border in Brig, the situation is even more diffuse since there is no adequate accommodation for unaccompanied minors.

Despite Art. 64 para. 4 FA which states the obligation to appoint a confidant until the situation of an unaccompanied minor is clear (or during the removal procedure respectively)[40], the Swiss border guards GWK are unable to fulfill their duties because all actors involved deny responsibility for these children, making it impossible to appoint legal guardians for them, since neither the state authorities of the SEM nor the cantonal authorities of canton Ticino assume it is their responsibility.

There is little information on the disappearance of minors in the asylum system. There have been 556 "unchecked departures" of minors in Switzerland in 2017[41] – mostly Eritreans, due to the tightening of migration regulations towards Eritreans. Some of them reappear in Germany or in other European countries, others remain missing. The fear of extradition and the inability to legally continue on to another European country to rejoin family members leads many to go underground, where they are exposed to the risk of abuse and trafficking.

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[38] V. réponse du CF du 15 mai 2017 à l'interpellation 17.3019 - Schmid-Federer Barbara, PDC, Requérants d'asile mineurs non accompagnés refoulés à la frontière suisse. Les données relatives aux régions ne sont pas données. Available at: https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20173019.

[39] See also Swissinfo, „Kaum Schutz für minderjährige Flüchtlinge", February 2018. Available at: https://www.swissinfo.ch/ger/wirtschaft/bericht-der-ngo-intersos_kaum-schutz-fuer-minderjaehrige-fluechtlinge/43849502; and Amnesty International, "Schweiz missachtet die Rechte von Minderjährigen", 31 August 2016, available at: https://www.amnesty.ch/de/laender/europa-zentralasien/schweiz/dok/2016/missachtete-rechte-von-minderjaehrigen.

[40] „The competent cantonal authorities shall immediately appoint a representative for any unaccompanied minor foreign national to safeguard the minor's interests during the removal proceedings."

[41] SEM statistics.

Demands

- Strengthening the preventive approach: Make sure that all relevant actors, such as border guards, guardians, migration authorities, social workers, legal advisers and security personnel in asylum centers, are trained to proactively detect potential victims of child trafficking.[42] It is especially important that they are made aware of the fact that minor victims of THB are often instructed to pretend to be adults, and that not all "family" members are actually relatives of the child, or that members of the family might be involved in the trafficking.
- Establish clear processes specifically for minor victims of THB (within and outside of the asylum system) and implement them on the cantonal level through directives. These have to address the responsibilities in i) the course of action in case of a suspicion, including the contact to a specialized victim organization, immediate protection and adequate accommodation, ii) residence permit and access to victim support services, and iii) special support and a durable solution that corresponds to the best interests of the child. Action No. 24 of the NAP should be used as an instrument to establish these processes and must be equipped with the relevant resources to do so.
- Ensure that all child victims, regardless of whether they seek asylum or not, benefit from the assistance measures provided under the convention and in accordance with the recommendations of the Swiss Conference of Social Directors.[43]

[42] See also OPSC II No. 14c) and 18b).
[43] CDAS, Recommandations de la Conférence des directrices et directeurs cantonaux des affaires sociales (CDAS) relatives aux enfants et aux jeunes mineurs non accompagnés dans le domaine de l'asile, Mai 2016, p.42 f. Available at: http://www.sodk.ch/fr/domaines/migrations/mineurs-non-accompagnes-mna/.

3. Trafficking for the purpose of forced Labour

Question 13. Have any difficulties been experienced in your country in identifying and prosecuting cases on the ground of trafficking for the purpose of forced labour services, slavery and practices similar to slavery or servitute? If so, please provide details.

23. Please describe measures taken in your country to prevent trafficking for forced labour or services, inter alia, by means of labour inspection and labour administration, monitoring of recruitment and temporary work agencies, and monitoring of supply chains.

47. Have there been any developments in your country's law regarding corporate liability for THB offences? Does corporate liability apply to legal persons involved in THB for the purpose of forced labour or services, including by their sub-contractors throughout the supply chain? Please provide examples of any relevant cases and the sanctions imposed.

3.1. Follow-up 1st Evaluation Round

3.1.1. Awareness raising and proper identification: No tailored follow-up scenarios

In the last evaluation round, GRETA urged Switzerland to make sure that all victims of trafficking, in particular victims of trafficking for the purpose of labour exploitation, are "properly identified and can benefit from the assistance and protection measures contained in the Convention."[44]

Action No. 7 of the NAP, *Awareness-raising among the labour inspectorate* has the goal "to compile and distribute information materials (brochures/leaflets) to raise awareness and inform labour inspectorates." The authors and working group of this report welcome these measures and their advancement.[45] However, efforts should not end with a pre-liminary identification through labour inspectorates which might at the same time lead to an increase of sentences against the Foreign Nationals Act (FNA). Rather, in order to ensure a consistent human rights approach, processes must go beyond a pre-liminary identification of labour exploitation and opening the perspective for potential victims of THB. It has to include the cooperation with specialized civil society organizations as well as follow-up scenarios for those affected so they can benefit from the rights and assistance foreseen by the convention. What is more, the restrictive migration regime inhibits victims to come forward and disclose their situation, making them even more prone to extortion and exploitation

[44] Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings Recommendation CP(2015)13 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland, 2015, p. 5. Available at: https://rm.coe.int/168063cab4.
[45] See also CEDAW recommendation No. 29e).

by their exploiters and less likely to report. Indeed, often it is the victims themselves receiving fines for working illegally in Switzerland and who have to leave the country. The follow-up scenarios also must be adjusted to the fact that often, victims of exploitation in the context of human trafficking (henceforth THBL) do not want to receive victim support but rather the possibility to continue to work and receive the remuneration they were entitled to receive with the help of legal aid and specialized NGOs.

3.1.2. Lack of clear legal definition of labour exploitation in the context of human trafficking

GRETA recommended shedding more light on the phenomena of labour exploitation in the context of human trafficking. We welcome the financing and conduction of this study; its results were published by the University of Neuchâtel in March 2016.[46] The study did not only emphasize the fact that THBL does occur in Switzerland, but it also showed the lack of clear-cut definitions of forced labour and labour exploitation since the researchers were obliged to come up with their own definition of human trafficking for the purpose of labour exploitation for the survey:

> *"Human trafficking for the purpose of labour exploitation corresponds to a succession of actions aimed at exploiting the labour of a person. By exploiting the vulnerable situation of a person and/or deceiving them as to the nature of the work or the working conditions, human traffickers force their victims to agree to recruitment and subsequently to work under exploitative conditions, sometimes by threatening their victims or exerting physical violence."*[47]

Similarly, GRETA also "considers that stating explicitly in the definition of trafficking in human beings, as contained in the criminal code, the notions of forced labour or services, slavery, practices similar to slavery, and servitude as types of exploitation could improve the implementation of this provision."[48]

The case *Chowdury and others vs. Greece*[49] from the European Court of Human Rights in March 2017 makes an important example also relevant for future Swiss dispensation of justice:[50] It was the first time that the ECHR "found violations of Art. 4 in respect of trafficking for the purpose of

[46] University of Neuchâtel, Labour exploitation in the context of human trafficking. A baseline study for Switzerland, March 2016. Available at: https://www.ksmm.admin.ch/dam/data/fedpol/aktuell/news/2016/2016-04-06/res-sfm-menschenhandel-e.pdf.
[47] Ibid, p. 2.
[48] GRETA recommendations to Switzerland 2015, p. 3.
[49] European Court of Human Rights, Chowdury and others vs. Greece, March 2017. Available at: https://ec.europa.eu/anti-trafficking/case-law/chowdury-and-others-v-greece-0_en.
[50] See also the recent verdict of the Tribunal Correctionel in Geneva: P/8333/2018 : jugement du Tribunal correctionnel rendu le 12 avril 2018. Available at: http://ge.ch/justice/tribunal-correctionnel.

labour exploitation."[51] Restriction of movement was not qualified as a condition sine qua non and Greek authorities were reprimanded for the failure "to fulfil their positive obligations under this (Art. 4, para. 2 ECHR) article to prevent human trafficking, to protect victims, to effectively investigate the offences committed, and to punish those responsible for human trafficking offenses."[52] Most importantly, it explicitly formulated the irrelevance of the victim's consent by arguing that "victims may willingly accept the exploitation because they have no alternative to make a living or because they do not perceive it as exploitation."[53]

3.2. Difficulties in identifying and prosecuting cases of THB for the purpose of labour exploitation

This lack of a common definition of what constitutes THB for the purpose of labour exploitation does not only inhibit identification, but also complicates criminal prosecution. Thus, recent discussions have raised the question whether an additional article in the Criminal Code is needed in order to counterbalance the vagueness of the current wording of the penalization THB for the purpose of labour exploitation (Art. 182 Swiss Criminal Code) and the difficulties of gaining access to victim support services. Analogous to Art. 195 of the Swiss Criminal Code in case of sexual exploitation, such an article would penalise all forms of labour exploitation regardless of it being a case of trafficking or not. This would be especially important since the exploitation of labour is currently only forbidden according to the Code of Civil Law.

Currently, it is very difficult to prove the facts constituting the offence of THB for the purpose of labour exploitation. In the very few cases in which the offence is acknowledged to go beyond labour exploitation, it fell under Art. 157 Swiss Criminal Code that penalizes offences against property/ profiteering (usury). Yet, this offence does not imply access to victim support services. Rather, it is a property violation and its execution has consequences for the perpetrator only, but does not go along with specific rights to support and protection for the victim. Often, the victim was sentenced to a fine according to FNA and/or had to leave the country. The fear of being penalized according to the FNA and the Federal Labour Act thus decreases the possibility that a victim turns to the authorities for help. In practice, this means that the tension between offences against the FNA and access to victim rights and support remains.

[51] GRETA, 7th General Report on GRETA's Activities, 2017, No. 72, p. 33. Available at: https://rm.coe.int/greta-2018-1-7gr-en/16807af20e.
[52] Ibid.
[53] Ibid.

3.3. Only vague efforts to prevent THB in supply chains

Whereas in the NAP Action No. 6 has the goal to, *Awareness-raising in the private sector: Raise awareness among the private sector of human trafficking and exploitation, and motivate private sector players to take counter-measures*, the Federal Council just dismissed a petition that advocates for corporate liability (a petition by the Swiss Coalition for Corporate Justice SCCJ) with the argumentation that its implementation would "weaken Switzerland as an industrial location."[54] The petition demands that "companies will be legally obliged to incorporate respect for human rights and the environment in all their business activities. This mandatory due diligence would also apply to the activities of Swiss companies' abroad"[55] and of course cover all forms of THB in the supply chain.

At the moment, the only action taken by the Swiss government to address this specific issue is in the Nation Action Plan on Business and Human Rights, in which one action consists of "Supporting the political dialogue of the UN special rapporteur on Trafficking in Human Beings."[56]

Demands

- Identification: A consistent human rights approach, processes must go beyond pre-liminary identification and include the cooperation with specialized NGOs as well as the financing of follow-up scenarios for those affected so they can fully benefit from the provisions foreseen by the convention. This would also inhibit discrimination on the cantonal level.
- Implementation of GRETA recommendation No. 36 which demands a clearer definition of the term "labour exploitation" in Art. 182 of the Swiss Criminal Code, including the explicit formulation of the different forms of labour exploitation (as stated in the Convention under Art. 4 (a): forced labour or services, slavery, practices similar to slavery, and servitude). It also has to be stated that the consentment of the victim is irrelevant. Further, labour exploitation as such should be criminalized as an offence under the Criminal Code.
- A stronger engagement of the Swiss government to tackle human trafficking in the private sector by giving clear instructions to labour inspectors to detect THB and by taking (national and international) corporations with headquarters in Switzerland into responsibility to ensure that there is no THB in their supply chains
- Easier access to residence permits and the right to work in Switzerland

[54] Bundesbeschluss: Entwurf über die Volksinitiative «Für verantwortungsvolle Unternehmen – zum Schutz von Mensch und Umwelt», 2017. Available at: https://www.admin.ch/opc/de/federal-gazette/2017/6379.pdf.
[55] Swiss Coalition for Corporate Justice, Text of the initiative. Available at: http://konzern-initiative.ch/initiativtext/?lang=en.
[56] Secretariat of Economic Affairs SECO, National Action Plan on Business and Human Rights, December 2016. Available at: file:///C:/Users/gmerz/Downloads/uno_leitprinzipien_wirtschaft_menschenrechte%20(1).pdf.

- Ratify the Convention on the Protection of the Rights of all Migrant Workers

4. Non-Punishment provision

Question 49. Is the non-punishment provision incorporated in law and/or prosecution guidelines? If so, please provide the relevant texts. Please give details, including references to case law where relevant, of cases where the non-punishment principle has been applied and the outcome of such cases.

4.1. Follow-up 1st Evaluation Round

In the first evaluation round, the Swiss government deflected GRETA's critique of the lack of an explicit non-punishment clause by pointing out that this guarantee is already implemented through Art. 19 and 52-55 of the Penal Code.[57] Also, in the follow-up report, they stated that:

> "[…] If a person is convicted, it means they have not been recognised as a victim. Therefore, it is primarily an error in identification, not ignorance of the legal situation that leads to a victim being unjustly punished. The identification guidelines and training will help ensure that victims can be identified more easily and not be convicted, usually for illegal stay."[58]

We welcome the efforts of Action No. 16 of the NAP, 'Non-punishment of victims of trafficking in human beings,' in which law enforcement services are introduced, inter alia, to the topic of exemption from punishment for victims. Nevertheless, we are very concerned that this combination of legal provisions and training is not enough to prevent criminalization of victims. Current developments on the ground suggest as much: Victims of THB are still being punished for offences against immigration legislation (such as the possession of falsified documentation), labour laws, or regulations on prostitution. This is diametrically opposed to the goals of the Convention to ensure victim's access to rights, because when victims of THB fear that they will be punished for their offences, they are much less likely to turn towards authorities or others for help. This in turn is used by traffickers as a common means for intimidation.[59]

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[57] Art. 19: a perpetrator can only be convicted if he or she acted with criminal intent, Art. 52-55: conditions in which persons may be exempted from punishment.
[58] Report submitted by the Swiss authorities on measures taken to comply with Committee of the Parties Recommendation CP(2015)13 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings November 2017, p. 13. Available at: https://rm.coe.int/cp-2018-1-rr-che-en/16807902df.
[59] Jovanovic Marija, The Principle of Non-Punishment of Victims of Trafficking in Human Beings: A quest for Rationale and Practical Guidance, Journal of Trafficking and Human Exploitation, Vol 1 Nr. 1, p. 46-76, Paris Legal Publishers, 2017, p. 42.

4.2. Consequences of the missing provision: Leeway of interpretation

Since there is no clear provision, there remains leeway for interpretation and no clear standards on when it should be applied. Rather, it is currently at the discretion of the public prosecutor's office to waive prosecutions for acts that have been committed under the influence of traffickers. In some cases, orders of summary punishments are not waived completely but only deferred and could be re-activated any time, especially once the victim ends collaboration with authorities.

Police officers are obliged to report offenses (e.g. against immigration law) and they have to initiate steps for preliminary investigation without instituting criminal proceedings. Only the public prosecutor's office has the power to waive these. This is even more concerning since in police controls, if potential victims do not immediately disclose their story to the police and are thus not detected as potential victims, they can receive fines, are expelled and/or banished from Swiss soil. Therefore, it is even more important that the specialized victims' organizations are included at the earliest stage possible and that at least a recovery and reflection period can be obtained rather than a criminalization. Prosecutor's offices must receive training on THB.

The instructions for reporting offenses implies that cooperation with authorities can be used as leverage in case the victim ends collaboration, and that illegal residence may be held against the victim in case of non-cooperation. In fact, this attitude can be observed in several cantons: In some cases, proceedings for offenses against immigration laws or labour laws are withheld until the closure of a case against the traffickers. Once the victim ends collaboration however, the victims of THB receive fines or are extradited from Swiss soil.

As a result, it is not primarily the lack of identification, as mentioned in the NAP, which leads to violations of the non-punishment provision, but rather that victims' offences are intentionally held against them for leverage. This is in stark contrast to the intention of the provision as another pillar of protection.[60]

At the same time, it is true that gaps in identification remain a sore point in the implementation of Art. 26 of the Convention, especially in the context of exploitation for criminal activities such as theft, fraud or illicit begging, but also in the context of THBL (which highlights the difficulties

[60] Background Paper of the UN Working group on Trafficking in Persons, Non-punishment and non-prosecution of trafficking in persons: administrative and judicial approaches to offences committed in the process of such trafficking, CTOC/COP/WG.4/2010/4, p. 3: "Para. 12 (a) A victim of trafficking in persons shall not be held criminally or administratively liable [punished] [inappropriately incarcerated, fined or otherwise penalized] for offences [unlawful acts] committed by them, to the extent that such involvement is a direct consequence of their situation as trafficked persons. (b) A victim of trafficking in persons shall not be held criminally or administratively liable for immigration offences established under national law."

described in chapter 3.2.). CSP GE alone reports 5 cases in which victims were not considered as such but rather, once they turned towards authorities, were considered offenders against labour or immigration laws and received fines or were expelled from the country.

The reformation of the Swiss Criminal Procedure Code[61] offers the unique possibility to outweigh the shortcomings and resulting cantonal discrepancies of the current provisions in Switzerland by anchoring the principle of non-punishment for offences committed under the influence of traffickers in a legally binding way.[62] Its goal should not be the complete immunity of victims, but rather it should secure their protection, prevent re-victimization and encourage them to give evidence against their traffickers.

Demands

- Training on the non-punishment provision – not only for law enforcement officers, but especially for public prosecutor's offices. The non-punishment provision must be seen as a form of victim protection; there must be a definite exemption from punishment
- In case of suspicion, inclusion of specialized victim's organizations at the earliest stage possible (and thus obtaining a recovery and reflection period) as it is not very likely that a victim would disclose her or his story to the police immediately.
- Anchoring of the principle of non-punishment in the reformation of the Swiss Criminal Procedure Code and elaborate standardized mechanisms, including: Criteria which offences are neither prosecuted nor punished and guidance as how to proceed in an individual case for the evaluation of a punishment exemption claim

[61] Parliamentary Motion 14.3883: Adjustment of the Swiss Criminal Procedure Code.
[62] See also the position paper of FIZ on the reformation of the Swiss Criminal Procedure Code, 2017. Available at: https://www.fiz-info.ch/images/content/Downloads_DE/Publikationen/Stellungnahmen/FIZ_STN_2018-Aenderungen_StPO.pdf.

5. Recovery and Reflection Period

Question 38. Please specify in which cases recovery and reflection period can be granted and who is entitled to it (nationals, foreign nationals). Please describe the procedure for granting a recovery and reflection period, the assistance and protection provided during this period, and any difficulties encountered in practice.

5.1. Follow-up 1st Evaluation Round

GRETA recommended that Switzerland should continue to increase efforts to "ensure the application of the recovery and reflection period, including by strengthening the training of cantonal police forces, prosecuting authorities, crime victims support centers and migration authorities of all cantons" (No. 152). This recommendation has been followed by the implementation of Action No. 20 of the NAP, in which Competo[63], a model for how to proceed in cases where THB is suspected. Trainings have been given to abovementioned actors with the participation of specialized NGOs.

5.1.1. Competo-process is not binding

While highly welcoming the establishment of the Competo process and its distribution, there remain concerns about the fact that it does not contain information on how to organize the recovery and reflection period in a standardized manner, e.g. which services the victims are entitled to receive during this period (counselling, trauma therapy, etc.) and which accommodation standards are adequate. Furthermore, despite having the goal of securing rights for victims among all cantons equally, Competo is not yet a legally binding process that must be followed. In order to ensure the principle of equality, the Competo process must first be evaluated in terms of its application in practice and must become a legally binding process.

ASTREE, CSP GE and FIZ report that, once a petition for a recovery and reflection period has been filed under the Federal Act of Foreign Nationals, tolerance is usually granted by migration authorities. For further discussion of the challenges to receiving a recovery and reflection period for potential victims of THB in the asylum process, please refer to chapter 1.2.

5.1.2. Loss of access to victim support in case of not immediate disclosure

Despite the fact that permits for recovery and reflection period are mainly granted once filed by specialized NGOs, it should be noted that this only refers to cases in which potential victims of THB

[63] State Secretariat of Migration, Master process Competo. Available at: https://www.sem.admin.ch/dam/data/sem/rechtsgrundlagen/weisungen/auslaender/ohne-erwerb/leitprozess-competo-d.pdf.

have already been identified, i.e. in which detection has already taken place (through police or others). According to GRETA, however, "the recovery and reflection period should be granted when there are reasonable grounds to believe that the person concerned is a victim of trafficking, i.e. before the identification procedure has been completed."[64] There have also been cases in which there was a suspicion of THB, but the victims did not disclose their story immediately and then were deported, thus losing access to specialized victim support. It is unknown how many victims who have not been proactively detected/identified are not profiting from this guarantee and are directly expelled.

5.2. Questionable statutory interpretation of the aim of the recovery and reflection period

Another concern remaining is that the original goal of the recovery and reflection period, which is to offer the victim the possibility to regain stability, gain trust and free themselves from the influence of the traffickers, often remains in the background. Even though GRETA reminded the Swiss authorities that the period is in itself "not conditional on co-operation with investigative or prosecution authorities and should not be confused with the issue of a residence permit under Article 14(1) of the Convention,"[65] and CEDAW-Committee's recommendation to "grant residence permits to enable all victims of trafficking to avail themselves of protective and rehabilitation measures, irrespective of their willingness or unwillingness to cooperate with the police",[66] according to Art. 35, para 3 OASA, it can be ended prematurely if the victim decides against cooperating with the authorities.

In practice, it is a recurring pattern that the recovery and reflection period is ended prematurely when the victim does not consent to collaborate with the authorities. There are cases in which victims have been invited for "informal" talks by public prosecutors, officially to orientate them about the recovery and reflection period, but in practice they were already interrogated about the case and informed that if they would not collaborate, the recovery and reflection period would end prematurely and they would have to leave Switzerland. This "weighing" of a case's relevance during the recovery and reflection period has been reported from different parts of Switzerland. Not only can an interrogation at this point have a very destabilizing effect on the victim, but also it is a misuse of the provision. This course of action also neglects the fact that, if the victim received a longer recovery period, he or she would also be likely to provide more in-depth information. Even more

[64] GRETA recommendations to Switzerland 2015, para. 144.
[65] Ibid.
[66] CEDAW recommendations to Switzerland, No. 29d).

problematic is the situation for victims of THB who are in the asylum process and in whose cases Art. 35 OASA does not apply. In Switzerland's report on the measures taken to comply with Committee of the Parties' recommendation, it is argued that the recovery and reflection period in the asylum procedure is taken into consideration because "procedural timeframes for issuing a decision on asylum request and, where applicable, ordering expulsion are longer than 30 days." [67] However, the recovery and reflection period must be granted from the moment of suspicion of human trafficking, and cannot be simply taken from the timespan during which the asylum procedure takes place, especially not without granting any special protection and support provisions (see also chapter 1.2.5). The recovery and reflection period does not consist of a mere residence permit but must include victim protection measures!

Demands

- During the reflection period, no police questioning or interrogations shall be carried out, nor shall any victim's personal data be transferred. In this regard, a clear directive as well as further sensitization and training are required, in particular for police, public prosecutors and migration authorities.
- Cooperation (or non-cooperation) with authorities shall not be used as leverage, and the recovery and reflection period must be granted from the moment of suspicion, not after identification. Rather, in order to guarantee a human rights- and victim-centered approach, the recovery period shall serve as an opportunity for the victim to make an informed decision as to whether or not they wish to cooperate with authorities. Therefore, a short residence permit would be more adequate.
- Evaluation of the application of the Competo process and institutionalization as a legally binding standard which also includes information on how to organize the recovery and reflection period
- There shall be no discrimination between victims in the asylum procedure (and no discrimination therein between those whose application is handled in Switzerland and those whose falls under the Dublin regulation) and victims who fall under the Federal Act of Foreign Nationals. Both must be granted a clearly marked recovery and reflection period with all the necessary support and full access to rights from the moment of suspicion.

[67] Report submitted by Swiss authorities to GRETA in November 2017, p. 11. Available at: https://rm.coe.int/cp-2018-1-rr-che-en/16807902df.

6. Residence Permit

Question 39. If there is a provision in your country's law that provides for the possibility of issuing a residence permit owing to the victim's personal situation, how is this interpreted in practice? Please provide examples.

40. When a residence permit is issued for the purpose of co-operation with the competent authorities, how is "co-operation" interpreted and what does it consist of in practice?

6.1. Follow-up 1st evaluation round

As a response to GRETA's recommendation that "the Swiss authorities should continue and increase their efforts to ensure that victims can fully benefit from the right to obtain a renewable residence permit regardless of the canton competent for issuing it" (160), Switzerland clarified that the Federal Law on Foreigners "does not provide for the right to a stay permit on humanitarian grounds"[68] but that, once the recovery and reflection period ends, an application to such permit can be made, "regardless of whether or not the victim was willing to cooperate with prosecution authorities."[69] There is a distinction made between an "extremely serious case" leading to a stay permit on humanitarian grounds and "not extremely serious cases" leading to a temporary admission.[70]

Action No. 21 of the NAP aims to adapt the OASA so that those "victims not intending to cooperate with the prosecution authorities who cannot be granted permission to stay in cases of hardship may be given permission for a temporary stay for the duration of the period in which they may continue to benefit from services under the LAVI."[71]

However, keeping the obstacles so high that a temporary stay is only considered once all other options are exhausted is not at all a victim-oriented approach. It must be highlighted here that in order to guarantee the provisions of the Convention under Art. 12, the aim must not be a prolongation of the recovery and reflection period for collaborating victims, but rather the possibility to receive the time for stabilization by respecting Art. 14, para. 1 lit. a. A renewable residence permit should not merely be given in exchange for a victim's collaboration, but also if "their stay is necessary owing to their personal situation." It is clear from years of experience that

[68] Report submitted by Swiss authorities to GRETA in November, 2017, p. 11 f. Available at: https://rm.coe.int/cp-2018-1-rr-che-en/16807902df.
[69] Ibid.
[70] Their characteristics are described in the SEM directive on foreigners, para. 5.6.8.2.5., p. 102f. Available at: https://www.sem.admin.ch/dam/data/sem/rechtsgrundlagen/weisungen/auslaender/weisungen-aug-d.pdf
[71] Report submitted by Swiss authorities to GRETA in November 2017, p. 11.

such a stabilization takes at least 6 months. The need and right to be granted this timespan for stabilization remains the same for all victims, whether they collaborate or not. The application process for a stay on humanitarian grounds is very long and extensive, and is in contradiction with the need for stability during this period. We therefore demand a non-bureaucratic, six-month residence permit for all victims of THB, independently of whether they collaborate with authorities or not.

6.2. Negative consequences of non-binding formulations

Further, it has to be noted that all these provisions remain non-binding for execution in the cantons and are formulated as possibilities rather than as clear obligations for adhering to Art. 14 of the Convention. The granting of residence statuses is therefore still at the discretion of the cantonal responsible authorities (in some cases, even at the discretion of a single person).

Firstly, despite the fact that the authorities state in the explanatory report that an application for a stay on humanitarian grounds "*may be made* regardless of whether or not the victim was willing to cooperate with the prosecution authorities,"[72] such an application does not have a high chance of being granted. Art. 4 of the Convention states that a prolonged residence permit may be granted if it is deemed necessary either due to the victim's personal situation, or for the purpose of collaboration with persecution authorities. In practice, the latter reason is seen as a more legitimate reason to prolong a residence permit or to issue a stay on humanitarian grounds. Furthermore, there have been cases in which both criteria were fulfilled – the victim had cooperated with authorities *and* her personal situation required a stay permit on humanitarian grounds – but no permit was issued. In one case, a stay permit was issued, but the victim support benefits were stopped.

Secondly, the wording of the directive that "insufficient integration *may be negligible* if the weighing up of the elements of an individual case considered extremely serious suggests that leave to stay may be granted on humanitarian ground," and that "the particular circumstances of victims are taken into account"[73] is not always taken into consideration by cantonal migration authorities. Especially if a victim of THB was forced to engage in illegal activities (e.g. i work without permit), their chances of being granted a stay permit on humanitarian grounds are lower, since its issuing is dependent on the grounds that an applicant respects the law.[74]

[72] Report submitted by Swiss authorities to GRETA in November 2017, p. 11.
[73] SEM directive on foreigners, para. 5.6.8.2.5., p. 102f.
[74] Art. 31, para. 1 lit. b. OASA.

Lastly, since there is no clear timeframe in which cantonal authorities must make their decision, victims must endure extremely long waiting periods (up to 2.5 years) before their status is clarified. Having to live with this uncertainty is not only emotionally very unsettling, but it also makes it extremely difficult to find a job or accommodations, which in turn stands diametrically opposed to their requirement to have "the will to participate actively in the economy or further education."[75]

Demands

- A non-bureaucratic, six-month residence permit for all victims of THB, independently of whether they collaborate with authorities or not
- Evaluation of the application of the Competo process and institutionalization as a legally binding standard: The non-binding formulation of Art. 30 lit. e AuG is insufficient and leads to extreme divergences in the application of the law. In practice, the issuing of stay permits for victims of trafficking in human beings differs depending on the canton in which they were exploited, the authorities in charge, or even on the decision of a single civil servant. In order to ensure uniform implementation and interpretation of the abovementioned article, binding specifications must be formulated at ordinance-level at least (including clear guidance on the timespan allowed for the cantons to decide)

[75] Art. 31, para 1 lit. d. OASA.

7. Compensation and Legal Redress

Question 42. Please indicate any measures taken since the first evaluation report to promote effective compensation of victims of THB, in particular when it comes to:
a. access to information on the relevant judicial and administrative proceedings in a language the victim can understand;
b. access to free legal assistance and legal aid during investigations and court proceedings;
c. compensation from the perpetrator;
d. compensation from the state;
e. compensation for unpaid wages to victims of trafficking. Please provide examples of compensation awarded and effectively provided to victims of THB.

43. What specific measures are taken to make available the assets of traffickers to provide compensation (for example, effective financial investigations resulting in seizure of assets of perpetrators with the view to their confiscation)?

44. Is there a possibility for victims of THB to claim damages and compensation in the country of destination after their return to the country of origin? Please provide any relevant examples.

7.1. Assertion of claims not automatic

Victims of human trafficking are generally regarded as witnesses in proceedings. If they wish to influence the proceedings and/or assert civil law claims in criminal proceedings, they must constitute themselves as private plaintiffs in the criminal and/or civil point (Art. 118 CCP). As private plaintiffs, the victims have a party status and are questioned as informants.

Victims who do not constitute themselves as private plaintiffs are not party to the case and have fewer possibilities for intervention (including the right to inspect files, the right to participate in the taking of evidence, the right to apply for evidence and the right to take legal action).

Victims are only entitled to free administration of justice if they constitute themselves as private plaintiffs and the other conditions (prospects of the proceedings and financial situation of the victim) are fulfilled. If the victim or a family member requiring support has sufficient income or assets, he or she must pay the lawyer himself or herself if victim support does not cover the costs. In some cases, legal representation in victim assistance proceedings is not considered necessary and accordingly no compensation is paid for legal fees. This is particularly disturbing as the victims are generally not in a position to submit an application without legal representation (especially for language reasons).

Since investigations into trafficking in human beings are very extensive, the official appointed legal representatives of victims are not treated in the same way as official defense. The presence of the victim's lawyers in the taking of evidence is not always compensated, so that the victims lose their rights to ask supplementary questions, or to be present at the taking of evidence.

7.2. Cost risk in the event of an appeal

Where victims of trafficking appeal, they shall bear the risk of costs in the event that they are defeated in the proceedings. Even if they only demand confirmation of the previous judgement, this risk still exists. The only way to avoid this is for the victim to expressly declare that they will abstain from submitting their own application. In this way, the victim of a crime cannot exercise the right to have a first instance judgment reviewed without having to reckon with costs. The victims' rights are thus difficult to defend, as any statement is associated with the risk of costs. If a victim does not have free legal assistance, this can lead to enormous financial burdens.

It seems outrageous that the victim may be ordered to pay compensation for an offender who is acquitted in appeal proceedings. This risk exists even if the free administration of justice has been granted and/or the VAA office has provided a cost guarantee for the court costs and the representation of the injured party. Only in very rare cases does the VAA office award a guarantee of costs for any compensation in court for the defense of the accused person.

7.3. Satisfaction generally too low

The compensation paid to the victims by Swiss courts is generally too low. Although there are signs of an increase in at least some cantons compared to previous years, the compensation amounts are still often lower than those paid, for example, in the case of rape, although trafficking in human beings for the purpose of sexual exploitation is in fact equivalent to multiple rapes. The psychological and physical violence caused by the perpetrators results in multiple psychological damage. An increase in compensation is needed.

"The appropriateness of any compensation awarded may be wholly decided during the first instance, without review by higher courts." The same applies to the review by the Court of Appeal, which may decide not to re-examine the appropriateness of the compensation, but to defer to the discretion of the lower court. It is incomprehensible from the point of view of the injured party why, in the event of an appeal, the higher court does not examine the appropriateness of the compensation at its own discretion.

Although more and more claims for damages are also being dealt with by the courts, it is often a matter of lost earnings to which the victims were forced. As a rule, however, the courts find it

difficult to quantify or estimate the specific amount of the lost income, even though this would be possible under Art. 42 (2) OR[76], and even when it is known for what duration the trafficked persons were able to earn income through their work while receiving none or almost none of it.

7.4. Lengthy procedures and cuts

According to the VAA, the compensation depends on the severity of the offence, but has a maximum of CHF 70,000 (Euro 59,500[77]) for victims. The criminal judgment generally forms the basis for OHG compensation, but is reviewed by the VAA and reduced on the basis of the provisions applicable to victim assistance law. If the victim returns to his or her country of origin, there may be further, in some cases massive, cuts in the sums paid in court, because these are adjusted to the cost of living in that country.

If the victim is granted compensation, it is often not possible to enforce the claim because the perpetrators are penniless. The victim can assert his or her claims at the victim support center. In a generally lengthy procedure, the latter examines whether the conditions under victim assistance law for the payment of a compensation are fulfilled.

If, after such a long time, a sum of compensation is finally granted, in the worst case the money cannot be paid out to the victims because they are no longer available. There is an urgent need to remedy this situation and speed up procedures.

Demands

- The compensation and amends paid to victims of human trafficking in Switzerland is generally too low and also varies greatly from case to case. This is particularly true in cases where the victims have already worked in prostitution in their country of origin or knew that they would work in prostitution. In this respect, the judiciary and cantonal victim assistance offices must be further sensitized and trained.
- Switzerland should ensure that victims of human trafficking do not bear any cost risk if they participate in proceedings as private plaintiffs and that they are entitled to free legal assistance in every case, irrespective of whether they are constituted as private plaintiffs or in criminal or victim assistance proceedings.

[76] Federal Act supplementing the Swiss Civil Code of 30 March 1911 (SR 220).
[77] According to the exchange rate on 05.04.2018.

8. Protection of victims, witnesses and collaborators with the judicial authorities

Question 53. What measures are taken to protect victims, witnesses and NGOs assisting victims during criminal proceedings from potential retaliation or intimidation during the investigation and during and after the criminal proceedings? In how many cases have special protection measures been used in respect of victims and witnesses of THB? Please specify any difficulties in providing victim/witness protection and creating a safe environment for their participation in investigations and court proceedings.

54. What other measures are taken to promote the participation of victims and witnesses in criminal proceedings and to give testimonies which accurately reflect their experiences and assist courts in establishing the truth? Can a victim of THB be assisted by a social worker, psychologist and/or NGO representative during the investigation and court hearings?

8.1. Insufficient protection of victims' personal rights in proceedings

According to the Swiss Criminal Procedure Code (StPO), the director of proceedings is to take suitable protective measures when participation in the proceedings exposes the victim to serious danger to life and limb or serious prejudice. Among other things, the director of proceedings can also ensure the anonymity of the witness. However, in practice, this is rarely the case and/or is handled in widely different ways depending on canton. The necessary measures for protecting the victims do indeed exist, but they are only utilized by a small number of committed law enforcement authorities.

According to Art. 70(1) a of StPO, members of the public can be excluded from court hearings if the legitimate interests of a person involved, and in particular the victim, so require. This option is also regularly not exercised, with the justification that it is outweighed by the public interest in the court hearing. The special situation of the victims and the risk they expose themselves to when they testify against human traffickers is not sufficiently taken into account. Already the knowledge that the offenders can watch the examination of the victim via a video transmission is itself a huge burden on the victim. It does happen that victims then prefer to not (or no longer) provide any testimony.

Aggrieved parties often go into hiding or are forced to leave Switzerland before the proceedings can be completed. The victims become difficult to reach and no longer appear at the court hearings as witnesses. Due to the absence of or invalid testimony, the accused parties may be acquitted. As a result, what in many cases has taken the police and public prosecutor a great deal of time and

effort to investigate and compile in an indictment is rendered useless due to deportation or a lack of victim protection or deportations.

In the case of a violation of personal rights due to insufficient measures, it is also very difficult to sue someone – the victim is left to fend for him- or herself with after yet another traumatic experience.

8.2. Insufficient petition rights for the lawyers of victims

Victims who participate actively in the proceedings as private claimants and are granted party rights do not have petition rights with regard to sanctions against the accused. They can neither request imprisonment of the offender nor that he/she undergo forensic or psychiatric therapy.

Demands

- The protective measures provided in the Swiss Criminal Procedure Code for the benefit of the victim must be implemented. The safety and protection of the victim's personal rights must be placed above the interests of the offender and the public.