

Alternative Report on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings in Switzerland

3rd evaluation round

For the attention of the
Group of Experts on Action against Trafficking
in Human Beings (GRETA)

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List of abbreviations and acronyms

ASTRÉE	Association supporting victims of human trafficking in Vaud
BMRI	Specialized police dealing with illegal immigration and human trafficking, Vaud
CDAS	The Conference of Cantonal Directors of Social Affairs
CLAVI	Consultation centre for victims of criminal offences under federal law
CSIR	Social Centre for the Integration of Refugees, Vaud
CSOL-LAVI	Swiss Conference of Liaison Offices for the federal law on Assistance to Victims of Crime
CSP	Protestant Social Centre, Geneva
CTHB	The Council of Europe Convention on Action against Trafficking in Human Beings
ECHR	European Convention on Human Rights
fedpol	Federal Office of Police
FIZ	FIZ, Advocacy and Support for Migrant Women and Victims of Trafficking Zurich
FNIA	Foreign Nationals and Integration Act
GRETA	Group of Experts on Action against Trafficking in Human Beings
LAVI	Federal Law on Assistance to Victims of Crime
Ltém	Federal Act on Extrajudicial Witness Protection
MayDay	Antenna MayDay SOS Ticino
NAP	National Action Plan
NEGEM	National committee of experts against human trafficking
NGO	Non-governmental organisation
OASA	Ordinance on admission, residence and gainful employment
OSAR	Swiss aid organisation for refugees
ProCoRe	Prostitution Collective Reflexion
SCC	Swiss Criminal Code
SEM	State Secretariat for Migration
SCOTT	Coordination service against human trafficking and the trafficking of migrants (of fedpol)
UMAS	Unaccompanied minor asylum seeker
VoHT	Victim of human trafficking

1. Introduction

This third alternative report for the Group of Experts on Action against Trafficking in Human Beings (GRETA) was drafted by Plateforme Traite – the Swiss Platform against Human Trafficking. Its purpose is to inform GRETA of the findings of specialist advice centres for victims of human trafficking (VoHT), as well as other organisations, on the implementation of the Convention on Action against Trafficking in Human Beings (CTHB) of the Council of Europe in Switzerland.

Plateforme Traite is a network of four Swiss organisations (Antenna MayDay SOS Ticino, Association AS-TRÉE, CSP Genève and FIZ, Advocacy and Support for Migrant Women and Victims of Trafficking) which was created in 2019. The four organisations advise and support victims of human trafficking. All the organisations aim to offer comprehensive support to victims. The common basic principles are respect for the rights of victims according to the CTHB and a focus on the needs of the persons concerned (victim-centred approach). The support offered and the awareness-raising work of the members of the Platform are also guided by these principles. The four organisations work in different regions of Switzerland and together they cover the three major language areas (German, French and Italian). The common objective is to guarantee adequate protection for victims in all cantons, based on the standards as provided for in the CTHB.

For the first two evaluation rounds, FIZ, Advocacy and Support for Migrant Women and Victims of Trafficking drafted the alternative reports in collaboration with other organisations. For this report, a working group was set up, consisting of three people acting for the member associations of Plateforme Traite. All member organisations of Plateforme Traite, as well as the national network of 27 consultation centers for sex workers ProCoRe, the Unia trade union (the biggest trade union in Switzerland) and lawyers who represent victims in their criminal proceedings have cited specific cases and contributed to the report with their expertise. The report is also supported by the Swiss sans-papiers Suisse platform, which brings together all 14 advice centres for undocumented migrants in Switzerland, and the Swiss NGO Platform for Human Rights, which comprises one hundred NGOs committed to defending human rights.

The report is structured in three parts. The first part outlines a brief reminder of the legal context in Switzerland, as well as an introduction to the cross-cutting issue of differences across the cantons. In the second part, specific questions on the topic of «access to justice» in the GRETA questionnaire are dealt with. For each question, in addition to our assessments and general observations, examples of specific situations monitored by the members of the Platform or the network are presented. There are also recommendations for the attention of the authorities concerned, the aim of which is to improve the protection of victims. In the last part, we consider the development and implementation of GRETA's urgent recommendations since the last evaluation round in 2019.

Yellow box: Protection of VOT – bad practice example

Blue box: Protection of VOT – good practice example

1.1 The legal context in Switzerland

1.1.1 Legal bases with regard to human trafficking

In order to introduce the questionnaire responses, we present here a brief reminder of the legal context associated with the fight against human trafficking and the protection of VoHT in Switzerland.

A service specialising in the battle against trafficking in human beings and the trafficking of migrants (SETT) of the federal police (fedpol) is responsible for national coordination and sets the national strategy for the fight against trafficking. However, due to the federalist structure of Switzerland, it is the cantons that are responsible for organising the protection of VoHT and providing adequate financial and material support.

Nevertheless, the framework conditions or protection standards for all VoHT identified in Switzerland are not clearly regulated at the cantonal level. With regard to supporting victims, the federal law on Assistance to Victims of Crime (LAVI)¹ and its cantonal directives constitute the only federal legal basis for regulating support to VoHT and which can subsidise organisations offering accommodation for VoHT. Assistance to victims is subject to the entry conditions for LAVI, namely identification of the type of crime (crimes against physical integrity), the place of the offence, which must be in Switzerland, and the causal link; a situation

¹ Loi sur l'aide aux victimes, LAVI, of March 23, 2007 (Status as of January 1, 2019), accessed on April 20, 2023: <https://www.fedlex.admin.ch/eli/cc/2008/232/fr>

that leads to a lack of uniformity in the management and protection of VoHT in the different cantons, which is regularly criticised by specialist organisations.²

In 2023, the gap in the law on assistance to victims of crimes still exists in Switzerland: Where the offence was committed abroad, it invariably excludes victims of human trafficking from all victim support services.

Other pieces of legislation also relate to victim assistance, such as the federal act on Extrajudicial Witness Protection (Ltém)³, which is difficult to apply to VoHT and which, to our knowledge, has never been implemented.

The ordinance on measures to prevent human trafficking-related⁴ crimes allows the Confederation, via fedpol, to grant financial aid to organisations governed by private or public law, if they have headquarters in Switzerland. This enables them to implement measures to prevent human trafficking, in particular by increasing detection and training activities.

In criminal terms, the offence is automatically prosecuted under art. 182 of the Swiss Criminal Code (SCC)⁵, but this provision is rarely applied, particularly when it comes to labour exploitation. Since 2007 and up to 2019, only 10 criminal convictions have been brought in Switzerland for the offence of trafficking in human beings for the purpose of labour exploitation⁶. The absence of a definition of human trafficking for the purpose of labour exploitation in the article 182 SCC gives rise to a restrictive interpretation by the criminal authorities.⁷

The laws regulating the question of the residence of VoHT are the Asylum Act (AsylA) and the Foreign Nationals and Integration Act (FNIA)⁸. The Asylum Act was not modified following the introduction / ratification of international conventions: Trafficking does not constitute a ground for asylum. The victim status is taken into account to determine the condition of vulnerability of the victim, especially in the context of reviewing barriers to expulsion by the federal authorities.

The COMPETO⁹ process, set up in 2016, aims to regulate the roles and competences of the various services with regard to regularising the residence of VoHT in all the cantons. However, there is currently no national referral mechanism, but rather loose guidelines for identification and responsibility in the cantons.

1.1.2 In-depth study on residence permits according to the FNIA

With regard to the granting of residence permits, Switzerland has opted for the two approaches proposed by article 14, CTHB, namely the granting of a residence permit in exchange for collaboration with the criminal prosecution authorities, and the granting of a residence permit that takes into account the needs of the victim¹⁰. FNIA and its implementing ordinance (OASA)¹¹ grants victims the opportunity to benefit from a recovery and reflection period of at least 30 days in accordance with article 13, CTHB in the cases of suspected trafficking¹². In practice, the granting of these time limits varies: in some cantons, they are sometimes granted immediately for a period of 3 months, while in others, for 30 days only. They are occasionally renewable, depending on the situation of the victim and according to the context in which they are granted. In some cantons, on the other hand, almost no requests have been approved, even though many victims have been identified. This is the case in Ticino, where to our knowledge only one request for a period of reflection and recovery has been validated to date although many other victims have been identified in recent years.

2 See chapter 1.2 of this report and the Plateforme Traite press release concerning the publication of the study «La lutte contre la traite des êtres humains dans le contexte cantonal» of September 21, 2022, accessed on April 20, 2023: <https://plateforme-traite.ch/actualites/differences-importantes-entre-les-cantons-dans-lengagement-contre-la-traite-des-etres-humains/>

3 Law on the Extrajudicial Protection of Witnesses (Ltém), consulted on April 20, 2023: <https://www.fedlex.admin.ch/eli/cc/2012/814/fr>

4 Ordinance on measures to prevent human trafficking offences; consulted on April 20, 2023: <https://www.fedlex.admin.ch/eli/cc/2013/680/fr>

5 Swiss Penal Code of December 21, 1937 (Status as of June 1, 2022), art. 182, new version in force since December 1, 2006; punishes anyone who, «as a supplier, intermediary or customer engages in the trafficking of a human being for the purpose of sexual exploitation, exploitation of his or her labour or for the purpose of removing an organ shall be liable to a custodial sentence or to a monetary penalty.» Accessed April 20, 2023: https://www.fedlex.admin.ch/eli/cc/54/757_781_799/de#art_182

6 Annatina Schultz «Die Strafbarkeit von Menschenhandel in der Schweiz», Schulthess Verlag 2020. Plateforme Traite members are aware of at least three more convictions for TEH for labor exploitation since 2019.

7 This subject is developed in chapters 2.6 and 3.2.

8 Federal Act on Foreign Nationals and Integration (FNIA), of December 16, 2015, Status as of June 1, 2022: website accessed on April 19, 2023: <https://www.fedlex.admin.ch/eli/cc/2007/758/fr>

9 Schéma descriptif du processus Competo: <https://www.sem.admin.ch/dam/sem/fr/data/rechtsgrundlagen/weisungen/auslaender/ohne-erwerb/leitprozess-comepeto-f.pdf.download.pdf/leitprozess-competo-f.pdf>

10 STCE 197 - Explanatory Report to the Council of Europe Convention, §182, p.30: PDF online consulted on April 19, 2023: <https://rm.coe.int/16800d3812>

11 Ordinance on Admission, Residence and Gainful Employment (<https://www.fedlex.admin.ch/eli/cc/2007/759/fr>)

12 Art. 30, para. 1, let. e, FNIA (https://www.fedlex.admin.ch/eli/cc/2007/758/en#art_30) in conjunction with art. 35 OASA (https://www.fedlex.admin.ch/eli/cc/2007/759/fr#art_35).

If the victim is willing to cooperate with the criminal prosecution authorities, they are entitled to obtain a short-term residence permit¹³ for the duration of the criminal proceedings. Case law¹⁴ asserts the direct applicability in Swiss law of Art. 14 par. 1 let. b of the CTHB and recognises the right of victims to obtain a residence permit when the criminal authorities consider their residence in Switzerland necessary for the purposes of an ongoing investigation¹⁵. However, according to the findings of the members of Plateforme Traite, some cantons grant short-term permits only after verification with the criminal authorities of the offence prosecuted, the need for the presence of the victim and the duration of their presence. The permit granted, generally after several months of waiting, is often scheduled for six months, which is not sufficient for criminal proceedings which often last several years.¹⁶

Residence may be extended in extremely serious individual cases¹⁷ (also described as cases of hardship) in the following situations: when the short-term permit has not been renewed or will not be renewed, when the criminal procedure has ended, or when the criminal authorities consider that they no longer require a victim to be present in Switzerland. The residence permit can also be applied for if criminal proceedings are not involved, but so far this has only been granted in isolated cases. The direct application of article 14 par. 1 let. a of the Council of the European Convention on Action against Trafficking in Human Beings has been confirmed by the High Court, which has recognised a right to a residence permit if the competent authority considers that the personal situation of the VoHT requires it¹⁸. In practice, it is very difficult to obtain such a residence permit based on these provisions in the majority of cantons. This is a major concern of specialist organisations which note that numerous refusals contribute to creating a precarious situation with regard to the reestablishment and integration of VoHT in the long term, and jeopardise their protection.¹⁹

The canton of Vaud, which has integrated its fight against human trafficking into a public policy, piloted by the Department of Health and Social Welfare, is an exception. Here, the processing of permit applications at the cantonal level is aligned with the CTHB:

Following identification of the victim and their agreement to take part in the ASTRÉE protection program, there is the option of asking the Population Service of the canton of Vaud, which is the cantonal authority responsible for granting residence permits, for a reflection period of three months. Depending on the situation of the victim, this request can be renewed for up to nine months, based on the circumstances.

If the victim is willing to cooperate with the criminal prosecution authorities, they may apply for a short-term residence permit for the duration of the criminal proceedings. This authorisation, generally a B permit, also gives the option of pursuing gainful employment. So far, it has been granted when a criminal complaint has been filed, and it may be renewed provided that criminal proceedings are ongoing. Based on recent case law, the immigration authorities of the canton of Vaud do not seek the opinion of the criminal authorities, nor do they assess the progress of the procedure and the charges. Once the criminal procedure has been completed, and as described, residence may be extended in the event of an individual case that is extremely serious, if it meets the guidelines of the State Secretariat for Migration. Favourable advance notices from the immigration authorities of the canton of Vaud are generally taken into account by the State Secretariat for Migration which grants the permits. This request is also made for people who have not filed a complaint, but whose situation meets the criteria for granting indicated in the directive from the State Secretariat for Migration of 01/03/2023.

¹³ Art. 30, para. 1, let. e, FNIA (https://www.fedlex.admin.ch/eli/cc/2007/758/en#art_30) in conjunction with art. 36 OASA (https://www.fedlex.admin.ch/eli/cc/2007/759/fr#art_36).

¹⁴ Federal Court rulings: ATF 145 I 308, ATF 142 I 152.

¹⁵ Federal Court ruling: 2C_373/2017, c. 3.4.2.

¹⁶ See chapters 2.4 and 2.6 in this report.

¹⁷ Art. 30, para. 1, let. B, FNAI (https://www.fedlex.admin.ch/eli/cc/2007/758/en#art_30) in conjunction with art. 31 OASA (https://www.fedlex.admin.ch/eli/cc/2007/759/fr#art_31).

¹⁸ Federal Court ruling: 2C_483/2021, c. 4.3.

¹⁹ This issue is explored in depth in the article «Victimes de traite des êtres humains : le calvaire de la reconnaissance» in the journal of the Observatoire romand du droit d'asile et des étrangers. *èrèxs*, issue 4, December 2022. Online PDF accessed April 26, 2023: https://oda-romand.ch/wp/wp-content/uploads/2023/02/panorama_04_pp_hautel.pdf.

1.2 Differences between cantons in the fight against human trafficking²⁰

Switzerland is committed to ensuring the protection of VoHT through the signing of various international conventions in this regard. In the meantime, several measures have been implemented to respond to this problem at national and cantonal levels. However, these policies are still only partially effective and barely exist at all in certain regions.

Since 2011, Switzerland has published a total of three National Action Plans (NAP) aimed at combating human trafficking. The Confederation establishes the framework conditions for countering trafficking via these action plans, but specific protection measures for the detection, accommodation and care of victims in particular, are the responsibility of the cantons.

As mentioned in the chapter with regard to the legal context, the cantons' implementation of the measures suggested by the Confederation is currently very diverse. Due to Switzerland's federal nature, each canton is delegated to make their own arrangements in terms of the level of investment provided for fighting human trafficking and taking care of victims. Although the development of public policies at varying rates is a typical feature of the Swiss system, these differences appear to be problematic when they affect fundamental rights and result in unequal treatment for the beneficiaries.

In Switzerland, there are few specialist services to support VoHT. German-speaking Switzerland has the NGO FIZ, which has defined partnership agreements with several cantons²¹. In French-speaking Switzerland, only two cantons (Geneva and Vaud) have organisations that offer specialist services for victims of trafficking. In Geneva, CSP is responsible for providing legal support to victims. In the canton of Vaud, ASTRÉE is the only association in Switzerland funded entirely by public services. In Ticino, the NGO MayDay acts on behalf of migrants and victims of trafficking.

There has also been a cantonal consultation service for human trafficking in Neuchâtel since 2021, provided by the Neuchâtel Foundation for the Coordination of Social Action (FAS), as well as a new specialist association for assisting VoHT in the canton of Valais (which commences its activities at the end of 2023). Members of Plateforme Traite have close and regular discussions with these organisations. There are others that offer accommodation for VoHT, including Cœur de Grotte in Geneva and Fortis in Bern. ACT212 operates a hotline for VoHT.

Based in particular on the cases brought to justice, the cantons frequently argue that they do not have sufficient cases to warrant investment in a system dedicated to the fight against human trafficking and the care of victims. Conversely, experience in the field among the four members of Plateforme Traite shows that, without the implementation of operations aimed at identifying and supporting victims of trafficking, few cases arise. The absence of awareness and training of local partners leads to a lack of knowledge of the signs of trafficking, thereby limiting the identification of potential victims and access to their rights. The cantons that benefit from prevention and support measures for victims have seen an increase in the number of cases detected and in criminal proceedings being initiated for prosecuting trafficking as a crime.²² In summary, these experiences demonstrate that, without specific measures, cases are not picked up. There is therefore a direct link between the protection of victims, the emergence of the phenomenon and the opportunity to effectively prosecute traffickers.

This leads to obvious inequalities in access to rights and adequate care, depending on the location of the victim. These cantonal differences are an issue that cuts across all the topics addressed in our responses to the questionnaire for Switzerland.²³

20 To take a closer look at the situation in the Latin cantons, Angela Oriti, director of ASTRÉE, published a report in January 2023 on «L'état des lieux des services de protection pour les victimes de traite en Suisse latine et collaborations possibles», Canton de Vaud.

21 Service agreements have been signed with the cantons of Aargau, Basel-Landschaft, Bern, Lucerne, Schaffhausen, Schwyz, Thurgau and Zurich.

22 See official statistics on the fedpol website, consulted on April 20, 2023:
<https://www.fedpol.admin.ch/fedpol/de/home/kriminalitaet/menschenhandel/strafverfolgung.html>

23 This problem is also mentioned in the latest TIP report, and is cited as the reason why Switzerland was downgraded to TIER 2 (TIP Report 2022, Department of the State United States of America, page 521). Online PDF consulted on April 26, 2023:
<https://www.state.gov/wp-content/uploads/2022/10/20221020-2022-TIP-Report.pdf>

2. Responses to the questionnaire

2.1 Right to information (Art. 12 and 15, CTHB)²⁴

2.1.1 Lack of awareness among authorities and public institutions

Working directly with VoHT, we often noticed that some of them had already sought help by providing their story to various services. The lack of awareness of the police, prison staff, migration services, employment inspectors and criminal authorities is detrimental to victims because then they are not recognised as such. Lack of knowledge of the signs of human trafficking complicates and delays detection, victims are not referred to specialist organisations, do not receive the assistance and protection required and do not have access to their rights. Members of Plateforme Traite found that a lack of awareness and training in the authorities makes it difficult to identify VoHT, which in turn, causes problems in assessing the phenomenon and adapting strategies to combat human trafficking.

In the cantons where there are no specialist organisations or clear referral mechanisms, the victims are left to fend for themselves and are disadvantaged by the limited leeway and knowledge of those who might help them. The members of Plateforme Traite regularly read press articles about police activities or reports of trials featuring the stories of potential victims, without any support services having had contact with them. This suggests that these possible victims did not have access to the necessary information concerning their rights and the existence of specialist organisations.²⁵

2.1.2 Collaboration with specialist police teams

Frequently on the front line, the police have a decisive role to play in identifying potential victims on the ground. The number of detections made by members of Plateforme Traite in prisons confirms, among other things, a lack of awareness and knowledge of the signs of trafficking.

However, members of Plateforme Traite note that a cantonal police force with specialists in human trafficking, where this exists, is important in enabling victims to access their rights. Police generally have a clear understanding of their role, recognise the importance of organisations concerned with victim protection, and collaborate in the interest of the victim when their account indicates that trafficking is involved.

Specialist teams exist in several cantons, for example in the canton of Geneva which has a team to counter human trafficking and illicit prostitution (BTPI) and in Vaud, with a team dealing with illegal immigration networks (BMRI). These teams listen to potential VoHT encountered in the field and/or referred by associations specialized in victim protection and also help to direct many potential victims to these organisations. ASTRÉE & CSP contact their respective cantonal teams when a victim wishes to file a complaint. ASTRÉE & CSP organise an initial meeting at their respective premises in order to put the victims at ease and explain their rights and obligations to them. These collaborations also exist in several cantons in German-speaking Switzerland, in particular with FIZ.

2.1.3 National coordination in crisis situations

We welcome the fact that the four specialist organisations of Plateforme Traite are integrated into the national committee of experts (NEGEM)²⁶ and the resurgence of the State Secretariat for Migration working group «Human trafficking and asylum», as well as fedpol working group to develop a training concept. However, more active national coordination, which could respond in the short term to the need to coordinate the services concerned (including victim protection organisations) in crisis situations such as the war in Ukraine or the pandemic, would enable better management of activities to raise awareness. At the beginning of 2022, the situation in Ukraine and the massive influx of refugees into Switzerland caught the attention of the media and the Confederation, in particular with regard to the risk of exploitation faced by these refugees. There has been no coordination of specialist human trafficking services at a national level with a view to disseminating information intended for refugee populations and the official communications of the migration authorities

²⁴ See Chapter 3.4, 3.5 and 3.6 for the situation of VoHTs in the asylum system.

²⁵ A selection of press articles evoking situations of exploitation, accessed April 20, 2023:

<https://www.workzeitung.ch/2020/10/schinderei-bschiss-und-mafiamethoden/>

<https://www.tageswoche.ch/gesellschaft/die-dunkle-seite-der-kirsche/index.html>

<https://www.20min.ch/story/schlaege-und-hungerlohn-ehapaar-hielt-kindermaedchen-wie-eine-sklavin-233844327942>

²⁶ Negem is the national group of experts against trafficking in human beings, led by Fedpol. Negem supports the development and implementation of the National Action Plan against Trafficking in Human Beings.

didn't mention the specialist services.²⁷ Funded by private donations, Plateforme Traite and its members have very quickly produced information material in several languages and have distributed it widely among partners of the respective networks.²⁸

2.1.4 Distribution of national funds concerned with the prevention of human trafficking

At the beginning of 2022, fedpol announced that the financial resources available²⁹ to combat human trafficking were insufficient, and that in 2023, the annual joint financing of measures to fight human trafficking would exceed CHF 600 000 CHF, i.e. an increase of CHF 200 000 compared to the previous year. Hailed as good news initially³⁰, we were informed that these CHF 200 000 had been diverted from funds for measures for countering violence in prostitution. This transfer of resources poses a major ethical problem and consequently an incomprehensible reduction in prevention and information measures by NGOs involved in the field of sex work. It is important to consider that the organisations which ensure crime prevention in the area of prostitution in particular are those which, as first responders, may also come into contact with VoHT. They therefore play a key role in identifying potential victims. Reducing federal funds for prevention in the field of prostitution therefore also compromises the fight against human trafficking.

It is also unclear whether the CHF 600 000 will be available in the years that follow.³¹ This lack of long-term planning creates uncertainty within specialist organisations that rely on these resources when it comes to activities based on this funding. The distribution criteria were not conveyed by fedpol up to that point, but a reflection process around the establishment of minimum quality standards for recipient organisations began in 2023.

2.1.5 Recommendations³²

- Plateforme Traite would like to see greater proactivity from the Confederation and the cantons with regard to awareness among the general public and institutions, particularly in respect of:
 - The police: first responders in the police should be trained in human trafficking to recognise signs of exploitation; the subject of human trafficking must be integrated into their basic training and continuing education in all cantons³³;
 - Prison staff: each professional body working in the prison environment (social workers, medical teams, guards, etc.) must be made aware of the signs of human trafficking and the right of victims to specialist assistance; the working group set up by NEGEM to develop a training concept must include these professionals in the concept;
 - The services operating in the labour market: the various stakeholders in the labour market (trade unions, employers' associations, joint and tripartite commissions, employment services, labour inspectors, consulting services in the field of migration and integration centers) must be made aware of human trafficking issues, particularly with regard to labour exploitation;
 - These measures to raise awareness and training programmes must include organisations specialising in victim protection, with the aim of discussing the issue of human trafficking and the strategies to fight it in line with the reality on the ground.
- Ensure that protection organisations are involved as soon as possible in the protection, identification and advising of potential victims of human trafficking. To do this, it is necessary to:
 - Specify the cantonal mechanisms for combating human trafficking and the assistance of VoHT through the creation of round tables and referral mechanisms in all the cantons, as provided for in the National Action Plan (NAP);
 - Guarantee access to specialist advice and secure accommodation managed by an organisation that deals with the protection of VoHT for all victims in all cantons;
 - Evaluate and apply minimum quality standards in the implementation of measures to protect and support VoHT;
- It is necessary to increase the funding of organisations that specialise in human trafficking, without this support being detrimental to organisations that are active in the preventing violence linked to prostitution;

27 The SEM campaign, website accessed on April 25, 2023: <https://www.sem.admin.ch/sem/de/home/asy/menschenhandel/kampagne.html>

28 Online PDF and website, accessed on April 20, 2023: <https://plateforme-traite.ch/besoin-daide/>

29 Legal basis: Ordinance on measures to prevent human trafficking offences

30 As presented in this press release: <https://www.fedpol.admin.ch/fedpol/fr/home/aktuell/mmm.msg-id-92239.html>

31 The national parliament must approve them each year.

32 See chapters 3.3-3.6 for recommendations on the situation of VoHTs in the asylum system.

33 This recommendation is in line with that made by GRETA in point 29 of the 2nd round evaluation report. <https://rm.coe.int/report-on-the-implementation-of-the-council-of-europe-convention-on-ac/1680981889>

- Due to the cantonal differences, it is all the more important that the financial resources are guaranteed in a sufficient and sustainable manner at the national level, and that they are distributed in accordance with quality standards.

2.2 Legal assistance and free legal aid (Art.15 CTHB)

2.2.1 Access to specialist defence in criminal procedures

Over the years, the members of Plateforme Traite have developed contacts with specialist lawyers who are interested in and familiar with the complex issues relating to human trafficking. If the victims decide to lodge a complaint or they are already involved in criminal proceedings, the specialist services can direct the victims to these competent lawyers. Where no service exists, the risk is that victims are defended by a court-appointed lawyer who is not competent in the complex defence involved in these situations. They might also defend traffickers, which could prejudice the defence. Contact with specialist organisations is therefore all the more crucial in such circumstances. The lack of awareness regarding the provision of training for lawyers, prosecutors and judges reduces victims' access to their rights and to fair treatment in accordance with the Convention.

2.2.2 Access to legal aid

In Switzerland, people who take part in legal proceedings can benefit from legal aid. But this financial assistance is not unconditional and is granted on the following two conditions:

- If their financial resources are insufficient; it has to be the case that the victim does not have enough money or income to assume the costs of legal proceedings and the fees of a lawyer;
- The case must be considered as having a chance of success.

Furthermore, this help is not free. It constitutes an advance, and the victims must repay it as soon as they have the opportunity. VoHT who work do not meet the financial conditions for legal assistance, but they do not have sufficient means to pay the lawyer's fees and the high court costs.

2.2.3 Legal fees

When it comes to legal costs, victims are less well placed than perpetrators. The convicted perpetrator has the option of appealing to the Cantonal Court without the risk of having to pay court costs. On the other hand, the victim cannot risk appealing if the perpetrator is acquitted by the first judicial proceedings, because if the second set of proceedings confirms the first verdict, the victim might in certain circumstances have to bear all the legal costs, which may be extremely high. In this event, the victim can only hope that the public prosecutor will continue the proceedings on the points that are relevant and decisive for the victim.

2.2.4 Absence of legal aid for administrative procedures

Legal aid does not cover the costs of lawyers in matters of residence. These requests are provided by victim protection organisations, insofar as these exist in the canton and they specialise in the rights of foreign nationals and the right to asylum. The cost of administrative procedures may therefore also be a financial burden on specialized organisations. In cantons where there is a lack of these organisations means, victims have limited access to legal support and consequently to their rights, particularly in terms of applications for residence permits, given the complexity of these procedures.

A young woman, victim of sexual exploitation, filed a criminal complaint against the perpetrator of her exploitation in 2017. Despite her request to the competent authorities, she never obtained a residence permit as a VoHT while the criminal proceedings were ongoing. There was a lack of awareness and administrative knowledge from both her lawyer and the canton's migration authorities. In addition to this, there was a consistently negative response from the prosecutor in charge, regarding the need for the victim to be present during the criminal proceedings (although the latter requested this in between for hearings). These factors, and the refusal for a residence permit to be granted, kept the victim in an illegal status and in a condition of stress and ongoing uncertainty about her future for years. When the perpetrator of the exploitation was convicted, the canton agreed to grant her a residence permit. However, the conditions for issuing a hardship permit were not met according to the State Secretariat for Migration, because, in the absence of papers, the victim had not been able to undertake integration procedures throughout the years when the criminal proceedings were taking place. It was only after it was taken on by a specialist organisation, namely ASTRÉE, that her case could be properly defended and the permit finally granted. The cooperation with ASTRÉE was crucial in allowing the victim access to her rights.

2.2.5 Unequal legal support for victims at the first hearing

It is difficult for a VoHT to assert their rights, due to a legal framework that discriminates against victims, all the more so as foreign nationals, for their defence in terms of residence as well as criminal defence. Unlike alleged perpetrators, victims do not immediately and automatically benefit from a lawyer for the legal process. This is a great disadvantage when compared to the perpetrator's situation, especially if when the VoHT is not put in contact with an organisation specialising in victim protection.

2.2.6 Recommendations

- It should be possible for victims to benefit from the services of a specialist lawyer to represent them before the courts and throughout the criminal proceedings;
- Ensure that VoHT do not bear financial risk when participating in proceedings as a witness or plaintiff;
- Enable equality of defence between victims and defendants by allowing the right of VoHT to be assisted from the first interview with the police;
- Guarantee access to and maintenance of specialist administrative support in connection with residence permits for VoHT via a lawyer or a VoHT protection organisation.

2.3 Psychological assistance (Art.12 CTHB)

2.3.1 Access to psychological and medical support

All the members of Plateforme Traite agree that the medical community is very important for directing victims to specialist organisations as well as throughout the follow-up. However, there are barriers to accessing psychological and medical support.

For VoHT for whom exploitation has occurred in Switzerland, CLAVIs guarantee psychological assistance services for up to ten sessions, with one opportunity to repeat this. However, this help is not available for VoHT who have suffered exploitation abroad or those where the signs of human trafficking were not picked up on, for example with the offence of usury. It would therefore not be possible for the latter to have access to mental health services without the help of specialist organisations that support them financially. In addition to monetary benefits, victim protection organisations provide guidance and support to the competent medical services for all victims treated, and they have developed practices to facilitate access to these.

Besides the difficulties in accessing healthcare in Switzerland for migrants in general³⁴, it is the lack of awareness of their plight that harms victims. Indeed, our experience shows us that it is essential to refer victims to psychiatrists / psychologists who are attentive to their problems, so that victims can be taken care of according to their needs and requests. Traumas are complex and health professionals are unfamiliar with

³⁴ Health insurance costs in Switzerland are very high. However, despite the fact that health insurance is compulsory (after three months' residence) and guaranteed by law, there are many obstacles to affiliation for undocumented migrants. Access to financial aid (subsidies) is not guaranteed to undocumented migrants in most cantons; health insurers do not readily accept undocumented migrants for coverage, and make it very difficult in practice. As a result, undocumented migrants, whether victims or not, have no access to non-emergency medical and/or psychiatric care. Care provision for migrants also varies considerably from canton to canton. In some cantons, migrants can only turn to private practices, with no guarantee of coverage and at their own expense. This results in poor care in complex situations.

some of them, such as those related to witchcraft. Alternative therapies are not covered by basic health insurance. In general, only classic forms of psychotherapy are offered (because these are the ones that are refundable), and they are not always appropriate, depending on their cultural background and the traumas experienced by the VoHT.

Once they are financially independent, victims must assume the very high costs of therapy sessions themselves³⁵. They often require long-term follow-up, which they may end up not pursuing due to lack of financial means, and which could considerably slow up their journey of recovery.

During criminal proceedings and for residence permit applications, medical reports may be requested by courts and administrative authorities respectively, to determine the suffering experienced and/or the credibility of allegations made. In this sense, victims who have not had access to these services, because they are not supported financially or they are not directed towards them, are penalised, in particular when it comes to certifying the harm they have suffered.

2.3.2 Good practice for specialist organisations

Thanks to private donations and in collaboration with the Psychiatric University Hospital Zurich, FIZ has set up weekly low-threshold psychiatric consultations for VoHT. A psychiatrist attends the FIZ offices on one afternoon each week. This offer is intended to benefit those who are going through the asylum procedure and who do not have access to psychiatric help, or do not have health insurance as they do not qualify for residence status at that stage. These ongoing consultations are very popular and are often fully booked.

ASTRÉE works with ethno-psychiatrists who have an awareness of witchcraft. Some victims, mainly from West Africa, who are supported by the association, mentioned that they were unable to collaborate for reasons related to witchcraft. Others changed their story or concealed certain information for fear of reprisals related to witchcraft rites associated with their exploitation. Very few are interested in and aware of classical psychotherapy. They are more likely to respond to contact with specialist ethno-psychiatrists who work with elements known to them, in particular to do with juju for victims originating from Nigeria. This intervention is more likely to help them in their capacity to act. ASTRÉE has observed considerable changes in these victims, who are often able to free themselves of the fear-based hold exerted on them.

In October 2022, Antenna MayDay established a collaboration with a psychotherapy and psychiatry practice. This has enabled victims coming to MayDay and who needed psychological support, to be assisted urgently by a professional, especially victims seeking asylum. This was not previously the case. The costs are borne by MayDay.

2.3.3 Recommendations

- Fedpol's awareness campaign in the healthcare sector should continue, but with the involvement of the specialist organisations of Plateforme Traite;
- Provision of ongoing training for the health sector on specific traumas related to trafficking (for example, witchcraft);
- Increased public funding for pioneering projects enabling access to health and alternative therapies for VoHT in all cantons;
- Supporting victims in pursuing their recovery therapy over the long term.

³⁵ Even with health insurance, the costs of medical treatment are largely borne by the insured.

2.4 Access to work (Art. 12 CTHB)

Requests for access to training, language courses and/or work are routinely made by beneficiaries monitored by the member organisations of Plateforme Traite. This is often a first step towards recovery and integration, whereby they can resume an activity towards a daily routine and normal lifestyle. However, this topic is not mentioned at all in the 2023-2027 NAP. There is no federal reflection on this issue, nor are there any planned implementation activities. Consideration at the national level seems to revolve solely around emergency management and not around the option of long-term integration. There are considerable differences between cantons with regard to access to language courses and training for victims.

Paradoxically, proof of integration (work, activities and knowledge of the language) and financial independence are important, even crucial, for an application for a hardship permit and in turn, for successful integration.

Daily routine and work opportunities are important for stability, but also to avoid re-trafficking, as many VoHT are under great pressure to earn money, even if they have been able to escape the exploitation environment.

ProCoRe testifies to several interactions with victims who left protection programmes because they didn't have a daily occupation and therefore had no daily routine. This increased their anxieties and the pressure to seek an activity. Finding themselves without money to send to their families in their country of origin, and with no prospects of integration, some of them were pushed into returning to illegal activities and therefore towards the danger of re-trafficking.

2.4.1 The residence permit and access to the employment market

Access to the employment market depends on the residence permit. During the recovery and reflection period, the «tolerated stay» does not grant permission to work.

To enable attendance at criminal proceedings, the vast majority of cantons issue a short-term L permit, which can be a deterrent on the employment market as it does not make the holder an appealing candidate. In theory, employers may apply for authorisation from the employment service to hire the person, but this administrative process is lengthy and off-putting, and few companies are aware of the option. Consequently, as criminal proceedings may sometimes last for several years, the victim does not have the opportunity to become financially independent through work during this long period. This can prove to be detrimental to them in the long term, when it comes to applying for a hardship permit, among other things. This is because dependence on social assistance is an important criterion and is unfavourable in the assessment by the authorities. When VoHT have the opportunity to obtain such a residence permit, the cantons usually issue a B permit (recognised refugees permit) with a work permit. This is much more helpful on the employment market and does not require additional steps by an employer. However, as mentioned earlier, it is very difficult to obtain such a hardship permit.

2.4.2 Granting of a short-term permit (L permit) and the consequences

The practice of issuing short-term permits varies from one canton to the next, despite the fact that residence permits must then be approved by the State Secretariat for Migration.³⁶ In most cantons, these permits are issued for six months and only when the criminal authority has confirmed that the victim's presence is required in Switzerland, and if the case involves the offence of trafficking. In practice, victims generally only have this permit for two months, because the related administrative procedures take a long time and they sometimes have to pay a fee to obtain the permit (approximately CHF100 in Geneva). Moreover, these permits are not renewed automatically, and they require assistance from a dedicated specialist protection organisation to ensure the success of the renewal of the permit throughout the criminal procedure.

FIZ recounts the case of a victim whose L permit was routinely renewed for more than 11 years. The short-term residence permit is renewed every six months due to ongoing criminal proceedings. The options and opportunities for doing work or training with an L permit are minimal. Integration and access to the employment market are difficult in reality. With no prospect of progression, the victim's self-esteem has deteriorated over the years and is very low, she reports feeling «useless» due to not working and not feeling part of society.

³⁶ See best practice in the canton of Vaud, chapter 1.2 in this report.

In the canton of Geneva, it is possible to work with a short-term permit, but only if criminal proceedings have been initiated for human trafficking. If proceedings have been brought for usury³⁷, access to the labour market is denied because the permits are issued on a general legal basis and not specifically for VoHT³⁸. As this offence is easier to demonstrate, the criminal authorities favour its investigation in order to optimise their chances of obtaining a conviction.³⁹

In Geneva, there were several cases of non-specific short-term permits for victims of trafficking being issued by the State Secretariat for Migration for victims whose criminal prosecution cited the offence of usury. This was the case, even though they were recognised as VoHT by a specialist NGO and were being taken care of within the cantonal referral mechanism. In these cases, authorisation of a gainful activity is prohibited. This has serious consequences for the victims who have left the exploitation environment and who have found employment, because the risk is that they will not bring charges for fear of losing their new job. Moreover, it is impossible for them to integrate, despite this being a determining factor in the assessment for a long-term residence permit. Finally, the well-being of the victim is also affected by not being able to work and being unable to plan for the long term. Furthermore, during the criminal proceedings, if the charge of human trafficking is not upheld, but is replaced by usury (for example in cases of labour exploitation), the permit granted is changed and the victim is no longer authorised to work.

2.4.3 Difficulty in accessing training

We also note that as long-term permits are not guaranteed, victims cannot commit to long training. They therefore always find themselves working in the same sectors, in cleaning, care and kitchens. Best practice has been established in the canton of Vaud:

In 2022, a pilot project was validated by the canton of Vaud to increase support for VoHT in the process of professional integration and the search for housing. This support is now provided in collaboration with the Social Centre for the Integration of Refugees (CSIR). The victims followed up by ASTRÉE could be referred to the CSIR to benefit from specialist support in these areas, once they had obtained their residence permit and after a follow-up assessment. When the person had found independent accommodation, the CSIR continued to support them with a view to their professional reintegration, and was able to grant them financial assistance from the integration income.

2.4.4 Recommendations

- Adapt a uniform practice in all cantons and within the State Secretariat for Migration that involves granting a B permit with the option of pursuing gainful activity for one year where the victim is collaborating with the criminal authorities;
- Standardise the practice of granting a B permit with the option of pursuing gainful employment for one year. This should apply to all cantons in cooperation with the State Secretariat for Migration where the applicant is collaborating with the criminal authorities, without taking into account the qualification of offences during the investigation;
- Make integration programmes and language courses accessible as soon as support for victim assistance (in accordance with the LAVI) is offered and/or once they are involved with a specialist organisation.

³⁷ Art. 157 Swiss Criminal Code: offence against property, which punishes anyone who exploits for his own or another's financial gain or the promise of such gain, the position of need, the dependence, the weakness of mind or character, the inexperience, or the foolishness of another person to obtain a payment or service which is clearly disproportionate to the consideration given in return. https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en#art_157

³⁸ Art. 30 para.1 let. e FNIA and 32 al. 2 OASA

³⁹ Une étude scientifique confirme cette problématique: Graf et Probst: «Strafverfolgung von Menschenhandel zum Zweck der Arbeitsausbeutung in der Schweiz», Centre suisse de compétence pour les droits humains (CSDH), 2020, page 15.

2.5 Compensation (Art.15 CTHB)

Over the course of the support, our general observation is that victims do not receive compensation in line with the damage and harm suffered.

2.5.1 Economic losses

With regard to compensation for losses such as unpaid wages or any relative gain obtained by the perpetrators of exploitation, several obstacles hinder these being assessed and paid to victims. None of the members of the Plateforme Traite could refer to a situation where the victim received compensation of this type. The main difficulty is related to the inability to access the property and assets of the perpetrators, which is mainly invested abroad. As the state does not offer compensation in this case, the victim is usually unable to claim payment of damages in connection with their exploitation. There is no compensation fund for civil proceedings if the defendant is considered to be insolvent. This claim is ultimately taken into consideration in a purely theoretical way during the rulings, because it never comes to fruition.

With regard to court decisions, not only are the criminal authorities reluctant to quantify the actual amounts of profits derived from exploitation, but also some victims have been excluded from the opportunity to access this process due to the type of exploitation involved. This is the case in particular for those who are victims of human trafficking for illegal activities, and for those without residence status and with no work permit at the time of the exploitation that is considered to be an illegal activity. Lawyers specialising in the defence of VoHT note that the court's primary objective is to convict the perpetrators, and they do not take steps to ensure compensation for the damage suffered by victims.

In this sense, the deportation of foreign criminals⁴⁰ also contributes to the fact that the damage caused to the victims is ultimately never compensated. If the perpetrators are foreign nationals, they are sent back to their country of origin at the end of their incarceration, without any follow-up being implemented in connection with the payment of damages.

In 2021, a district court in the canton of Zurich sentenced a couple for human trafficking. This is the first conviction concerning trafficking for the purpose of labour exploitation in the canton of Zurich. However, the court ruled that the victims were not entitled to compensation for damages in connection with unpaid wages, given that they were in Switzerland without a residence permit and with no work permit and that they should therefore not have been working.

2.5.2 Moral reparations

The amounts of state compensation received by the victims monitored so far by the members of Plateforme Traite are very low. They do not correspond to the harm suffered, even though these are serious offences.

In the event of the inability of the defendants to pay the amount set for moral damage, there is a principle of the subsidiarity of state support. The limits of the legal framework apply to VoHT, namely a ceiling of CHF 70 000. However, in practice, the highest compensation for a VoHT recorded by the LAVI compensation authorities was CHF 15 000⁴¹. Most sums are much lower; sometimes for exploitation situations lasting several months or years. Moreover, the amounts relating to moral reparation for cases of human trafficking for the purpose of labour exploitation are even lower than those for human trafficking for sexual exploitation purposes. In practice, victims of the offence of usury cannot access the compensation for moral reparation provided, subsidised by the state, because offences against property do not entail such a right⁴².

The difficulty for the courts in bringing convictions for human trafficking also has a major impact on the assessment of the sums for moral damage. When the recognised offences are in other categories, the amounts are significantly reduced, despite the harm suffered being extremely serious.

40 Further information on the law on the expulsion of criminal foreigners (accessed April 20, 2023): <https://www.bj.admin.ch/bj/fr/home/sicherheit/gesetzgebung/archiv/ausschaffung.html>

41 In this case, the law on assistance for victims of crime sets a maximum amount of CHF 70,000 (Cf. art. 23 al. 2 LAVI). The amounts for moral reparations are classified according to an approximate grid of more or less serious consequences for the victim. Taking into account a series of criteria to establish the consequences of the trauma on the victim, the highest amounts for moral damages have been awarded, among others, to VoHT. According to the LAVI compensation authorities, in order to guarantee equal treatment, the calculation is made by comparing different situations. These compensation authorities are therefore the ones who set the amounts according to the offences, and they base their comparisons on their own decisions, thus creating a very low glass ceiling for the amounts awarded.

42 With the exception of offences whose constituent elements also protect the physical or mental integrity of CSOL-LAVI, 12 in particular art. 140 SCC and art. 156 SCC.

The ASTRÉE association describes the case of a victim who, after being exploited in prostitution for several years by her companion, ended up reporting him to the police. The means of coercion used were threats to their children and physical and psychological violence. She was exploited every day for several years and had to hand over all the money for the services performed on the street and in authorised indoor locations. After several years of criminal proceedings, the exploiter was found guilty of encouraging prostitution, assault and aggravated threats, and was sentenced to 36 months in prison. The victim, attended by a psychiatrist, still suffers from the trauma of exploitation, both physically and psychologically. She received compensation of CHF 4 000, although the ruling had set the initial claim at CHF 8 000, which in no way corresponds to the money obtained by her exploiter during all those years, nor to the moral damage from which she suffers.

Instead of a full payment of the amount provided for at the end of the trial, the practice is such that victims with specialist organisations must give additional evidence attesting that the victim is still suffering from the consequences of the offences suffered.

A VoHT being monitored by ASTRÉE made a presentation to the authority in charge of her case. She had to retell her story and provide evidence of her trauma despite the verdict passed by the court, which detailed the violence suffered throughout the exploitation. The psychological impact of recalling the exploitation, as well as voicing her traumas, was very serious for the victim, and it took several weeks for her to recover.

These amounts are further reduced if the victim returns to their country of origin, or if they plan to do so.

Several situations reported by FIZ mention a reduction in the compensation sum for moral damages. The reason for this is that the sum has to be adapted to the situation in the country of origin (or country of destination) so as not to create inequality between the victims. The calculation between Switzerland and the country in question is based on the cost of living/GDP. There have therefore been reductions of up to 50% of the initial sums allocated as moral reparation. In the canton of Bern, a female VoHT in forced prostitution, who was subjected to rape and physical violence for several weeks, was initially awarded a moral compensation amount of CHF 6 000. This sum was reduced by 50% on the grounds that she had already returned to her country of origin under the cantonal return assistance programme. The economic and social conditions in the applicant's country of origin differed markedly from those in Switzerland. The granting body therefore ruled that the victim would benefit from a considerable advantage compared to a victim living in Switzerland. Similar cases in other cantons have been identified by FIZ.

Ultimately, if the granting of a residence permit or its renewal is not guaranteed for victims of trafficking during the criminal procedure, they will not be able to continue with the procedure to its conclusion. Therefore, they will not necessarily have access to the compensation to which they are entitled, because the victims must provide a great deal of evidence to obtain compensation from abroad. It is also possible that they will not receive it at all if the connection is not maintained by the lawyer or specialist organisation.

In addition, legal aid always has to be requested by the lawyer for compensation procedures. This entails a reassessment of the victim's situation which is long and discouraging. Once again, in the cantons where there is no specialist support, the victims are adversely affected in the pursuit of their complaint and their rights relating to compensation. This creates major inequalities in treatment depending on the canton.

2.5.3 Recommendations

- Unpaid wages and the sums taken from the VoHT should be calculated by the courts and awarded to the victims as damages. The State should subsidise these in the event of the perpetrators being insolvent⁴³;

⁴³ In the article «Prétentions civiles des victimes de traite d'êtres humains à des fins d'exploitation du travail» by N. Meriboute and F. Burgener, two solutions are presented: the modification of the LAVI so that a specific regime for VoHTs would be put in place, or the creation of a special compensation fund outside the LAVI (p. 9), accessed on April 20, 2023: <https://forumpenale.recht.ch/de/artikel/02fp0321auf/pretentions-civiles-des-victimes-de-traite-detres-humains-des-fins>

- The residence status of the victim should not be a deciding factor in assessing the right to compensate its economic losses;
- The judicial authorities and the cantonal compensation offices should be made more aware of the moral harm suffered, and receive training to enable a more accurate evaluation;
- Compensation amounts should not be further reduced if a VoHT lives abroad;
- There should be a routine guarantee of access to a lawyer to take legal action towards compensation for damages and moral harm once criminal proceedings have ended, irrespective of the victim's income.

2.6 Investigation, prosecution, sanctions and measures (Art. 22, 23 & 27 CTHB)

We note a general difficulty on the part of the criminal authorities in achieving convictions for human trafficking. By contrast, the alternatives for qualifying offences related to human trafficking seem to be easier to demonstrate and are therefore favoured, such as usury and encouraging prostitution⁴⁴. A lack of awareness within the criminal justice system is one of the causes. Although the various police forces appear to be gradually giving instruction on the subject in certain cantons, there is currently very little training and other means of raising awareness available for lawyers, prosecutors and judges. The consequences of the lack of cognisance and training are noticed by specialist organisations at different stages of the care of victims, for example, in terms of detection, filing of complaints, multiple hearings and verdicts given by the courts.

2.6.1 Prosecutor specialisation

There are now specialist prosecutors in some cantons. A few successful trials have been conducted. However, as evidenced by the many unsuccessful procedures, there remains a crucial lack of specialisation among public prosecutors.

Victims' statements are processed according to the political sensitivity of the canton and the interest shown in the issue. Not only does prosecutors' awareness of the issue of human trafficking differ between cantons, but it also results in disparities in how investigations are conducted and in victim defence. In a court in the canton of Vaud, for example, forms of witchcraft, and more specifically practices around juju, have been recognised in several trials as a means of victim coercion. From the perspective of the cantonal courts of Geneva and Zurich, it is the abuse of situations of vulnerability which has been recognised as one of the means of coercion, following an analysis of article 182 SCC with regard to international conventions⁴⁵. Human trafficking for labour exploitation is regularly defended by prosecutors in Geneva, but it is all too rarely the subject of investigation and proceedings in other cantons.

Plateforme Traite notes that these cantonal convictions for human trafficking, particularly for the purpose of labour exploitation, have no direct effect on the willingness of the other cantons to identify and/or prosecute, or even condemn situations of exploitation in work. Specialist organisations are fighting to have these means of coercion recognised in other situations and other cantons.

⁴⁴ A scientific study confirms this problem: Graf and Probst: «Strafverfolgung von Menschenhandel zum Zweck der Arbeitsausbeutung in der Schweiz», Swiss Competence Center for Human Rights (CSDH), 2020, page 15.

⁴⁵ Geneva ruling JTCO/43/2020 of 09.04.2020: <https://justice.ge.ch/apps/decis/fr/jtp/show/2362459>

CSP has published an article on [humanrights.ch](https://www.humanrights.ch/fr/pfi/droits-humains/traite-humaine/traite-etres-humains-exploitation-travail-geneve) which deals in depth with this judgment (consulted on April 20, 2023):

<https://www.humanrights.ch/fr/pfi/droits-humains/traite-humaine/traite-etres-humains-exploitation-travail-geneve>
Zürich ruling (not yet published): <https://www.nzz.ch/zuerich/winterthur-ehenaar-wegen-menschenhandels-verurteilt-ld.1626044>

The Ticino trade union Unia reported to MayDay that it had exposed a serious case, concerning the practices of Alptransit. This illustrates not only the absence of training in the authorities, but also the lack of commitment of the state to prosecute perpetrators and the exploitative networks despite clear indicators. During the execution of a public procurement contract on the construction of the Alptransit tunnel, the Unia union intercepted workers from an Italian company. The deployment of its workers for this contract in Switzerland was based on the free movement agreement between Switzerland and the European Union. The workers criticised the very harsh working conditions, which were well below what is permitted under the national agreement for the construction of railways as well as employment law. The accompanying measures provide for the application of the same rights for workers posted abroad. The workers were locked in the construction site, had to work double the scheduled hours and give up part of their wages following blackmail from superiors. Unia has calculated a reduction in wages of around 35% to 45% in relation to workers' rights, with a total exceeding CHF 3.5 million. Based on these findings, Unia invited the workers to report the company through criminal proceedings. Four years after the events took place, more than ten workers have filed a complaint and witnesses are prepared to testify in favour of the workers, but Ticino justice is not making progress in the investigations. In fact, there are serious questions about the way in which the investigations have been carried out so far. The first steps were taken after the broadcast of a long report by Italian-speaking Swiss television. It was only eight months after the first exposures that the authorities carried out searches on the site and at the headquarters of the company in question. The judicial authorities also issued a press release publicly announcing their intentions to carry out searches at the company's headquarters and on the construction site, which may have had the effect of encouraging the company to hide evidence. One of the highest-profile plaintiffs had his tyres slashed and his car scratched after giving evidence. The prosecutor in charge of the investigation ultimately asked the lawyer representing the workers to find an out-of-court solution, even though offences such as usury or human trafficking are meant to be prosecuted *ex officio*. Up to now, the main defendant has not even been interviewed by the police, and it is four years since the initial statements. Only a few middle managers have been interviewed recently as people having information about the facts.

Moreover, what regularly occurs is that non-specialist prosecutors take on human trafficking cases even if there are specialist prosecutors in the canton. Consequently, they are not picked up on as human trafficking cases, but are prosecuted as other less serious offences instead (if at all) and the rights of victims are not triggered. Many non-specialist prosecutors, for example, continue to think that human trafficking involves a situation of coercion taking place in captivity. The following example gives a picture of the challenges in practice:

A client of FIZ began offering sexual services when she was 17 years old. This is how she met a man who brought her to Switzerland from a third state. In Switzerland, she looked after his children, as agreed with him, but she also had to take care of the household and was forced into providing sexual services. She came to Switzerland twice in total. The second time she came because she was threatened in the country of origin to go back to the perpetrator in Switzerland. After some months, she presented herself to the police and described her situation. The police did not recognise this as a case of human trafficking and referred her to the asylum procedure. It was here that the asylum authority SEM picked up on the features of human trafficking and put her in touch with FIZ. The case was entrusted to a prosecutor who did not specialise in human trafficking, and who did not recognise the situation as one of coercion or false promises, and therefore did not conclude that human trafficking was involved. The fact that she entered Switzerland several times was considered to be an indication that this was not a situation of exploitation. The proceedings were dismissed and the complainant filed an appeal as the evidence had not been sufficiently taken into account. The appeal was accepted, but in the absence of a resumption of the case by a competent prosecutor, it was dismissed. A new appeal is currently pending. The procedure has been going on for more than four years without any progress and with no specialist prosecutor being involved.

CSP Geneva reports a situation of a lack of identification leading de facto to a conviction. The victim was reported to the police by the perpetrator of the exploitation for an illegal stay, with the aim of deportation, once the latter had escaped from the coercive environment. She told her story to the police, and there were several signs of human trafficking. The police did not redirect her to a specialist victim protection service and she was not assigned a lawyer. An order not to prosecute the perpetrator was issued, and he was therefore unconcerned following the victim's complaint. On the other hand, the public prosecutor prosecuted the victim for illegal residence, she was reported to the migration authorities for deportation, and they received the police report with her statements. It was the cantonal migration authority which then contacted CSP to explain the situation. Despite the victim's statements as well as the signs of trafficking, it was not identified. There was no referral to a specialist service by the police or the public prosecutor, resulting in a gross lack of protection and a conviction that ran counter to the principle of non-punishment of victims.

2.6.2 Problems in carrying out procedures

Criminal proceedings are often long, lasting up to several years, and have a detrimental effect on the victims. They have to make themselves available for years after filing a complaint, and sometimes have to face the perpetrators of the exploitation and recall their traumas on several occasions.

In Geneva, lawyers have prosecuted several cases where the Geneva criminal authorities investigate human trafficking cases in breach of the obligation to expedite swiftly. For example, some cases passed through five prosecutors. The case of a victim, exploited at restaurants in Geneva and in another European country, was opened following a complaint submitted in 2015. This was passed down through five prosecutors, before the intention to close the case was returned in April 2023. Another case also involving victims exploited in the domestic sector in Geneva was opened in 2017, went through two prosecutors, and is still currently at the investigation stage.

Cases of complaints concerning labour exploitation in domestic work that are brought against diplomats, UN representatives or wealthy families very rarely succeed and are quickly closed. In Geneva, CSP notes that procedures, in particular those which involve waiving the diplomatic immunity of certain defendants, take so long that the latter leave the country before the investigations can be concluded. Proceedings are usually lengthy, making it very difficult for victims to move on emotionally to a new chapter in their lives and commence the rebuilding process.

It may be the case that the criminal authorities do not take sufficient measures to ensure that defendants are present at the trial hearing, or to prevent the risk of reoffending. In several cases, defendants of human trafficking were released quickly, without any alternative measures to guarantee their presence at hearings and trials. The same is true for defendants without legal status in Switzerland, who could be sent back at any time, therefore making it impossible to prosecute them.

2.6.3 Short-term permit during criminal proceedings

In some cantons, besides the impact on investigations and criminal proceedings being conducted, the input of the prosecutors also determines whether or not the victim obtains a residence permit for the duration of the criminal proceedings. Despite the applicability of art. 14 par. 1 let. B, CTHB, this right is not guaranteed, because some cantonal services seek the advice of the prosecutors when it comes to a first permit being granted or its renewal. This is without taking into account the willingness of the victim or their legal representative to pursue criminal proceedings, or consideration of their needs.

CSP monitored a victim who filed a complaint six years ago and whose investigation is still ongoing with the public prosecutor. The victim was not interviewed by the public prosecutor and there was no encounter between victim and the defendant. Renewal of the short-term permit was denied. The prosecutor considered that the victim was not required to be present since they were formally interviewed by the police and represented by a lawyer. The prosecutor also believed that it would be possible for them to obtain a visa to appear personally if a trial were to take place. The victim's lawyer argued that it was important for the client to be able to stay in Switzerland for the duration of the proceedings in order to assert their rights. However, the migration authorities turned down the granting of a residence permit for a VoHT, on the pretext that their status as a victim had not been proven. The conditions for applying for a residence permit in the case of hardship not being met, and failing to meet the integration criteria, the migration authority decided to deport the victim to Southern America.

2.6.4 Human trafficking in labour exploitation

We note a difficulty in recognising labour exploitation, even more so in domestic work and when there are family or community links between the victims and the defendants. The gendered view of domestic work and childcare also remains a major obstacle in the courts when considering signs of human trafficking. It is rarely judged as human trafficking, and the sentences handed down against the defendants, even in verdicts for usury, are barely a deterrent. It was only in 2020 that a cantonal court (GE)⁴⁶ recognised for the first time the abuse of a situation of vulnerability as a human trafficking offence in a case of labour exploitation at construction sites. This factor has been acknowledged in cases of sexual exploitation for many years. However, it is still very rarely applied in court and must often be combined with other means of coercion⁴⁷.

A victim assisted by ASTRÉE who had been exploited for several years in domestic work had lodged a complaint of human trafficking against the perpetrators. The signs of human trafficking were obvious. The court of first instance acquitted the two defendants of all charges on the pretext of the absence of a contract, as proof that the relationship between the parties was limited to an exchange of good practices. The offence of human trafficking for the purpose of work exploitation was therefore not upheld, and nor was the charge of usury. The defendants received a simple fine for facilitating illegal residence. An appeal was presented by the public prosecutor, as well as by the victim's lawyer. The victim feels a great sense of injustice.

2.6.5 New case law that does not respect the needs of victims

A judgment of the Federal Court of 2021⁴⁸ stipulates that in a situation of «evidence against evidence», the court may require the aggrieved party to appear in person before the court again, even many years later. Such proceedings carry an enormous risk of further traumatising and re-victimisation, and this is a frequent scenario for victims of human trafficking. Contrary to the recommendations of organisations for the protection of victims among others, the consequences of such a practice are not sufficiently taken into account. With this judgment, a judicial practice has become entrenched in case law. This is particularly problematic in the case of human trafficking, where the victim is the main provider of evidence and therefore plays a central role in criminal proceedings.

2.6.6 Prosecution of perpetrators' accomplices

The observations of lawyers specialising in the defence of VoHT demonstrate a lack of willingness to investigate the role of perpetrators' accomplices in human trafficking. This applies in particular with regard to persons awarding contracts and/or formally in charge of company management where procedures are investigated relating to human trafficking for the purpose of labour exploitation. The general impression noted by the lawyers is that the investigation is largely directed towards prosecuting the main perpetrators, who are often foreign nationals with no legal status, and that it does not target Swiss or resident accomplices. In the same way, financial transactions in connection with the said offences are generally not subject to particular attention, and this ultimately hinders victims being compensated.

⁴⁶ Geneva ruling: JT/CO/43/2020 of 09.04.2020.

⁴⁷ For more information, see the article «Trafficking in human beings and labour exploitation: an overly restrictive interpretation of Article 182 of the Criminal Code», published in *Plaidoyer* 5/20 (October 2020), by Leila Boussemaçer, a lawyer with the CSP's Trafficking Department.

⁴⁸ Federal Court ruling: 6B_1087/2019 of 17.2.2021, accessed on April 20, 2023. See also the case study in the *FIZ Magazin* «Schutz. Recht. Gerechtigkeit?», 2022, page 3.

Geneva lawyers report situations where criminal proceedings have been opened, based on complaints from victims assisted by specialist associations, but in several cases, the public prosecutor's office has failed to investigate them, or has been very reluctant to do so. The positions of the trustees as administrators of the companies were used to obtain the mandates and set up the contracts connected with exploitation. In two cases, the role and involvement of the people who subcontracted the work were not investigated, or at least not seriously. In a recent case, the person who provided a garage in which the workers were forced to live in unsanitary conditions, was not interviewed. The property, although used for conducting the offence, was not sequestered or seized.

2.6.7 Recommendations⁴⁹

- All criminal proceedings likely to involve human trafficking must be examined and conducted by prosecutors specialising in this area. Specific training on human trafficking to be provided for prosecutors;
- The risks of re-traumatisation and the importance of stability for the victim must be taken into account when assessing whether it is necessary for a victim to give evidence in person in court, and this should be avoided as far as possible;
- Standardise the practice of granting a residence permit in all cantons and for the State Secretariat for Migration in the event of collaboration with the criminal authorities. Guarantee the application of Art. 14 par. 1 let. b, CTHB, without a routine request to the criminal authorities on the presence of the VoHT being required;
- In criminal proceedings relating to human trafficking, accomplices and other persons who have profited from the exploitation must also be prosecuted and punished along with the direct perpetrators;
- The presence of the defendants must be guaranteed throughout the investigation, to enable their conviction and to ensure the safety of the victim;
- Apply article 182 SCC in accordance with article 4, CTHB and 4 ECHR.

2.7 Non-Punishment provision (Art. 26 CTHB)

2.7.1 Difficulties of applying the principle of non-punishment

In the last GRETA report, Switzerland was asked to compulsorily adopt a law with regard to non-punishment, in particular for the process of identifying the victim⁵⁰. To date, there are still no specific provisions for its application.

There are many «after the fact» cases of identification in prison, when the victim has already been convicted of an offence related to exploitation, or once they have been expelled from Switzerland due to an illegal stay. In prison, victims are usually identified by medical staff or social workers. It remains difficult to access the prison environment and to raise awareness within it, and contact is usually made at the instigation of specialist organisations. Once decisions have come into force and the victims convicted and/or fined, the application of the principle of non-punishment proves to be long and complicated. It requires resources, including financial ones that are inaccessible to victims without the support of dedicated organisations. Specialist lawyers maintain that the application of Swiss law is not appropriate to ensure implementation of the non-punishment principle once the verdict is final. Cases of victims exploited in illicit activities are particularly difficult to identify in this context, and they have little chance of receiving specialist help. Awareness of this exploitation is almost non-existent, so victims almost never have access to protection.

⁴⁹ See chapter 2.1 for recommendations on raising awareness and training prosecuting authorities.

⁵⁰ Recommendation of the committee of the parties, adopted in 2019, site consulted on April 20, 2023: <https://rm.coe.int/recommendation-on-implementation-of-the-council-of-europe-convention-o/16809868a2>

FIZ was informed by a legal representative of the asylum application for a young man from North Africa, aged 15. The representative was aware that he had already been identified as a VoHT by specialized organization for THB in another European country. Despite this, he was threatened with a Dublin deportation order. Before FIZ could meet him, he went into hiding. It was not until several months later that he resurfaced in an adult remand centre, and FIZ was able to talk to him there. At first, he was very suspicious. The FIZ adviser discovered that it was easier for him to rap than to speak. They managed to find out that he had also been forced into Switzerland by the criminal network that had exploited him since he was a child, and this took place in several countries in Europe. He had been assigned an ex officio lawyer, who rejected visits by the FIZ and requests for information on human trafficking in the context of the criminal proceedings against the victim. The lawyer refused to relinquish his mandate and give preference to a specialist lawyer hired by FIZ, and the young man was sentenced for various offences. Meanwhile, the network threatened to harm the victim's young sister in her home country if he made any statements. This led to him not providing specific information on the exploitation network during his criminal proceedings in Switzerland, and this negatively impacted his conviction. The lawyer hired by FIZ appealed for a decision so that the human trafficking aspect could be sufficiently taken into account. However, the next hearing confirmed the verdict with regard to the offences without considering the principle of non-punishment, but nevertheless proceeded with the cancellation of his expulsion. The asylum application is currently being examined. Without the intervention of the specialist NGO, the victim would not have had the support required the deportation to be reconsidered.

The implementation of procedures aimed at withdrawing previous decisions is not guaranteed, and above all does not ensure a favourable outcome. This is discouraging for victims and lawyers. ASTRÉE has supported several victims in exploitation situations, who are involved in proceedings for breach of the FNIA due to an illegal stay, as well as illicitly exercising of prostitution under duress. After several months of proceedings with specialist lawyers, the victims were acquitted of the charges and objection procedures were initiated. However, in one case, the victim was still liable for the legal and defence costs, which were higher than the amount of the fine and therefore their standard of living. This practice is paradoxical to the goal of redressing the harm experienced by the victim which underpins the principle of non-punishment.

Moreover, even when the victims were acquitted of an exploitation-related offence, review procedures have still not been initiated for the same types of offences, for which the implementation of the sentence had already entered into force. Thus, the victim was not entitled to compensation or reimbursement for all the offences relating to the same period of exploitation if these have already been paid for, in particular by their imprisonment. This would require launching a new procedure supported by a lawyer, involving new costs, among other things.

FIZ reports several cases where VoHT have received penalty orders as a result of gainful activity without permission and illegal residence, despite having been identified as VoHT. This occurred as a result of participation in criminal proceedings as witnesses, which also resulted in the conviction of the perpetrators, where the offences were committed under duress. In one case, statements made as a witness in the criminal proceedings were used to support these penalty orders and the VoHT was not informed that these statements could also be used against them.

A victim exploited in prostitution, originally from Eastern Europe, was fined several times during the pandemic period for illegal activity under Covid legislation, and breaches of the obligation to declare her activities, among other things. The fines were consistently paid by the exploiter with the money that the VoHT earned from working. The woman was subsequently recognised and identified as a VoHT. Although the police and criminal prosecution authorities also identified her as a victim, it was de facto not possible to cancel fines and final criminal orders issued during the operating situation. In this sense, the public authorities therefore accepted funds resulting from an offence due to these fines. The collection of fines paid by victims of human trafficking by the cantonal authorities raises the ethical question of the state profiting from a criminal offence. As a result of the fines and criminal fines imposed, it is also possible that the victim will be refused entry to Switzerland in the future.

Legally, in cases of suspected human trafficking involving labour exploitation, employment inspectors must notify the police. In turn, and despite the presumption of trafficking, the police automatically have to report illegal residence if the person does not have a regular status. This procedure greatly discourages alleged victims and makes them fear asking for help, cooperating and declaring their exploitation. It may even put them in danger were they to abscond. However, in some cantons, reporting is not automatic and referral to trade unions and specialist organisations is facilitated, where these exist.

Even if victims wish to go to the police, they are faced with the fact that, without permission to reside in Switzerland, lodging a criminal complaint with the police, means they risk having their precarious residence status disclosed. This makes them subject to the accusation of illegal residence and possible deportation from Switzerland.

The employment inspectors in a canton without a specialized organisation for the protection of VoTH discovered potential victims of human trafficking at an Asian restaurant where several employees were living in unsanitary conditions. Despite clear indicators of human trafficking, the alleged victims were imprisoned for illegal residence before later being released. With no trust in the authorities and despite referral to support services, the fearful victims did not give any information and disappeared as soon as they were released from prison.

2.7.2 Recommendations⁵¹

- The principle of non-punishment must be anchored in Swiss law;
- A clear mechanism should be established to review convictions and sentences already declared if a victim is only identified as such at a later stage;
- It would also be necessary to establish a legal procedure for the cancellation or postponement of fines and criminal orders that have already become final when the punishable acts have been committed because of the exploitative situation, and to enable the recovery of money from fines already paid (this money has in fact been obtained in most cases under exploitative conditions);
- Potential victims should be directed to specialist organisations as soon as they are suspected to be victims;
- It should be possible to report offences without having to reveal residence status to the authorities (safe reporting).

2.8 Protection of victims and witnesses (Art. 28 & 30, CTHB)

2.8.1 Problems associated with witness and victim protection

As shown in the previous points, no protection for victims is guaranteed in the cantons where there are no specialist services or referral mechanism. This is particularly the case in the cantons which only provide minimum accommodation through CLAVI services (especially in hotels). These lodgings do not meet the necessary security criteria and cannot ensure the protection of VoHT. They therefore put the victim's life in danger due to the threat of re-trafficking.

For victims where the offence was committed abroad, no financial and medical support is provided by LAVI. Protection therefore comes under the alternative options available in the canton and resources provided by organisations. Currently, only the canton of Vaud makes funding available for the management of these situations via ASTRÉE, from cantonal public monies.

The Confederation's responses to the GRETA questionnaire show that very few VoHT have obtained a long-term residence permit based on their personal situation⁵² (only between ten and twenty permits per year) while the members of Plateforme Traite identify and take responsibility for several hundred victims each year (see appendix 1). The obstacles to obtaining a long-term permit, and therefore long-term protection, are significant, and this uncertainty discourages victims from participating in criminal proceedings.

There is no guarantee of access to administrative rights in connection with their permit and of personal safety and safety of their close family for persons for whom reporting via a criminal complaint is not an option and who are acting as police informants.

⁵¹ See also the recommendations in chapter 2.1.

⁵² Answer from Switzerland, page 43, accessed on April 25, 2023: <https://rm.coe.int/suisse-reponse-au-3e-questionnaire-du-greta/1680ab0ab7>

There are no protection programmes in the country of origin for the families of victims who file complaints or for those who return to their country of origin. In situations where proceedings are moved to the perpetrator's and victim's country of origin, the risks involved are enormous if the victim/witness returns to the country, and there is no guarantee of protection and an approach that supports the victim.

The implementation of the witness protection programme is still inaccessible to VoHT in Switzerland⁵³. None of the victims followed up by the members of Plateforme Traite had access to this programme, despite being at serious risk in some cases.

2.8.2 Recommendations

- The Law on Assistance to Victims of Offences (LAVI) must be adapted urgently so that all victims, including those who are exploited abroad, can have access to protection and to all their rights;
- Rapid adoption is required by Parliament of the modification of the law on assistance to victims⁵⁴, so that the protection of VoHT is ultimately no longer linked to the place of the offence;
- Failing this, the cantons must provide specific protective measures and financial aid for this group of VoHT;
- If victims are unwilling or unable to participate in criminal proceedings, this must not impede access to their rights, in particular the right to a residence permit due to their situation of personal distress (case of hardship);
- The criteria for granting a permit for personal reasons (hardship cases) should be made less restrictive to ensure long-term protection.

2.9 International cooperation (Art. 32 CTHB)

2.9.1 Problems associated with international cooperation

The transnational nature of exploitation is common to the vast majority of victims monitored and encountered by the members of Plateforme Traite. We note that international cooperation becomes essential when the victim files a complaint, asks for a permit or decides to return to live in their country or elsewhere.

Given the lack of international police cooperation in some countries, it is impossible to offer victims specific solutions for the protection of their families in the country. This discourages them from filing a complaint for fear of the risk of reprisals. In the event of a return to the country of exploitation, the risk of re-trafficking is then increased depending on the protection provisions of that country.

It is rare, almost non-existent, that complaints and mandates sent abroad are followed up, even with European countries. Many victims supported by ASTRÉE, who have suffered an offence abroad (France, Moldova, Italy, etc.), have filed complaints directly with the public prosecutor. This, in turn, directs the complaints to the competent equivalent authorities. Very few responses to complaints have been sent back to date, which makes it more difficult to follow them up. Only a few summonses abroad have been received so far, while dozens of complaints have been sent via ASTRÉE since 2019. However, it has been the case that victims' hearings have been delegated to the Swiss police authorities via requests for mutual assistance, as they cannot guarantee the safety and return of victims without papers.

This inadequate collaboration with the countries of origin also makes it difficult to prosecute the network members operating abroad, even when perpetrators are convicted in Switzerland.

There are also obstacles in cases where a VoHT in the asylum procedure wishes to file a complaint for an offence abroad. Although everyone in Switzerland has the right to lodge a complaint, the police are reluctant to deal with complaints from asylum seekers. This is because cooperation with police abroad is complex and difficult, and generally has little chance of success. Similarly, local police have a low level of interest in these procedures and, in many cases, this results that no criminal investigation is started justified with the absence of detailed information.⁵⁵

⁵³ As described in the chapter on the legal context 1.1.

⁵⁴ Parliamentary initiative 22.456, «Closing a gap in LAVI. Supporting crime victims abroad».

⁵⁵ For an in-depth look at this topic, see the article «Komplexe Strafverfolgung mit Tatort Ausland», in: FIZ Magazin «Tatort: Ausland», 2021, p. 7 ff. Available at, accessed April 20, 2023: https://www.fiz-info.ch/images/content/Downloads_DE/Publikationen/Magazin/FIZ_Magazin_2021_def.pdf.

2.9.2 Recommendations

- Switzerland must strengthen international cooperation so that family members of VoHT in the country of origin can also be protected against perpetrators in the event of a complaint being filed;
- Develop mutual assistance agreements to facilitate the follow-up of complaints and to guarantee the prosecution of perpetrators with the countries concerned;
- Ascertain the risks to the safety of the victim before returning them to the country of exploitation if this cannot be avoided.

2.10 Cross-cutting issues

The various subjects considered to be cross-cutting are addressed in the chapter on cantonal differences (chap. 1.2), in the care of minor VoHT (chap. 3.3) and general recommendations regarding victims exploited abroad (chap. 2.8).

3. Follow-up: questions adapted for Switzerland

3.1 National Action Plans

3.1.1 Implementation of the second National Action Plan (NAP) 2017-2020

In the Confederation's second National Action Plan, the measures relating to awareness-raising and international cooperation have largely been implemented. Many other measures were expected to lead to a tangible improvement in access to protection for victims, but many of these have been suspended or reduced by the authorities and have therefore brought no improvement in practice. These included:

- Rectify cantonal inequalities in the protection of victims: As described in chapter 1.2, there are major differences between cantons regarding the implementation of victim protection measures in Switzerland. Action no. 18 of the second NAP⁵⁶ aimed to redress this situation by setting up a national programme for the protection of victims, with the objective of guaranteeing that «criteria are set for a uniform application of the existing federal legal instruments in the cantons»⁵⁷. To do this, the authorities and experts from the specialist organisations had jointly developed a compendium of specific measures to respond to the problems at a federal level. In the meantime, resources have been withdrawn from the former specialist human trafficking unit of fedpol (formerly SCOTT) and the compendium has never been finalised or applied.
- Improve the protection of VoHT in the asylum system as required by GRETA in 2019 through «immediate action» in this area⁵⁸: The results of the work relating to action no. 19 of the NAP⁵⁹, which aim to «optimise the procedures in order to ensure the identification of VoHT and to guarantee support for victims in the asylum procedure (including Dublin)», were published in May 2021⁶⁰. We note here that the State Secretariat for Migration distances itself from certain recommendations of the working group developed with the «asylum and human trafficking» specialist organisations (among others) in its conclusion⁶¹. Also, that a large part of the recommendations that the State Secretariat for Migration does not implement concern central points regarding the protection of victims. Despite the publication of this report, the real objective of improving access to protection for victims in the asylum procedure has therefore not been achieved.⁶²

56 Second National Action Plan against TEH 2017-2020, adopted November 30, 2016, page 17. Online PDF accessed April 19, 2023: <https://www.fedpol.admin.ch/dam/fedpol/en/data/aktuell/news/2017/2017-04-13/nap-2017-2020-e.pdf.download.pdf/nap-2017-2020-e.pdf>

57 Ibid.

58 Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland, 2019, page 60. online PDF consulted on April 19, 2023: <https://rm.coe.int/report-on-the-implementation-of-the-council-of-europe-convention-on-ac/1680981889>

59 Measure aimed at the Protection of victims of human trafficking in asylum matters, Second National Action Plan against TEH 2017-2020, page 17-18.

60 Report on potential victims of THB in the asylum procedure by the «Asylum and Human Trafficking» Working Group, 2021. The working group included representatives of fedpol authorities, the Association of Cantonal Migration Services, the International Organization for Migration, CSP Genève, FIZ and the Swiss Refugee Aid Organization OSAR. Online PDF consulted on April 19, 2023: <https://www.sem.admin.ch/dam/sem/fr/data/publiservice/berichte/ber-menschenhandel-202105.pdf.download.pdf/ber-menschenhandel-202105-f.pdf>

61 SEM conclusions, 2021. Online PDF consulted on April 19, 2023: <https://www.sem.admin.ch/dam/sem/fr/data/publiservice/berichte/ber-menschenhandel-202105-mgmt-response.pdf.download.pdf/ber-menschenhandel-202105-mgmt-response-f.pdf>

62 Detailed information about the current situation of VoTH in the asylum system is provided later in this report in the answers to follow-up questions about identification, access to support services and time for recuperation and reflection.

- To guarantee access to protection measures and specialist care for victims of offences committed abroad: Under action no. 22 of the NAP⁶³, it was a matter of developing bases on the question of ensuring assistance to people who have been exploited abroad, but who do not fall within the scope of the LAVI⁶⁴. In 2019, the Conference of Cantonal Directors of Social Affairs (CDAS) published a report⁶⁵ on this subject showing that there were no provisions concerning access to and funding for the support and accommodation of VoHT where the place of the offence is located abroad. But to date, no action has been taken in this sense. However, a reflection appears to be underway at the federal level⁶⁶ and the subject is addressed in an action included in the third NAP⁶⁷.

3.1.2 Third National Action Plan 2023-2027

The third NAP includes important measures to improve the protection of victims. The cantonal cooperation bodies are assigned a central role in the implementation of these measures, but we note that the existence of a cantonal round table is not enough on its own to ensure effective cooperation between the various state and non-state services, nor to guarantee adequate support and minimum standards of protection for VoHT.

3.1.3 Recommendations⁶⁸

- The Confederation must ensure that all the cantons can fulfil their obligations by putting in place specific and tangible measures for cooperation, identification and care of victims by supporting and supervising the actions of the cantons in this sense;
- The Confederation should deploy sufficient resources to be able to assume the coordination role and bear the responsibility for the involvement of the cantons⁶⁹;
- The implementation of the activities planned in the NAP between 2023 and 2027 must be financially supported by a budget in order to make the planned actions feasible; this point was already raised during the evaluation of the last NAP.

3.2 Human trafficking for the purpose of labour exploitation

3.2.1 Follow-up

Over the past five years, human trafficking for the purpose of labour exploitation has received increased attention from the general public and the authorities. This is a positive development. Many awareness and training activities for professionals have been set up and carried out, mainly by organisations specialising within their canton and networks of respective partners. Despite this, there are still many obstacles to VoHT who are exploited for work being able to assert their rights.

The problems highlighted in the second evaluation report of Plateforme Traite⁷⁰ mostly remain, such as:

- An absence of awareness both among the various authorities and the general public;
- The lack of definition in Swiss criminal law, where none of the means of coercion mentioned in article 4 of the CTHB is mentioned. Consequently, there is non-recognition of human trafficking cases⁷¹;
- The recurrence of criminal proceedings initiated for the offence of usury instead of human trafficking, which does not give access to the same rights and protection as a VoHT would have. This confirms the difficulty of the criminal authorities in proving the abuse of situations of vulnerability as a means of coercion.⁷²

63 Second National Action Plan against TEH 2017-2020, page 19.

64 Federal Law on Assistance to Victims, accessed on April 19, 2023: <https://www.fedlex.admin.ch/eli/cc/2008/232/fr>

65 Marianne Schwander, Denise Baltensperger: In-depth report on the problem of victim assistance services for victims of trafficking exploited abroad, 2018. PDF en ligne consulté le 19 avril 2023: https://ch-sodk.s3.amazonaws.com/media/files/2d8d791e/502f/4a01/99df/97c9c64ffba/2022.03.07_Bericht_Opfer_MH_Ausland_d.pdf

66 Parliamentary initiative 22.456: «Closing a gap in LAVI. Supporting crime victims abroad», accessed on April 19, 2023: <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20220456>

67 Action 5.2 of the Third National Action Plan against TEH 2023-2027, adopted December 16, 2022, pages 24-25. Online PDF consulted on April 19, 2023: <https://www.news.admin.ch/newsd/message/attachments/74538.pdf>

68 More information on this subject can be found in Plateforme Traite's commentary on the adoption of the 3rd NAP by the Federal Council, accessed on April 19, 2023: <https://plateforme-traite.ch/actualites/commentaire-sur-ladoption-par-le-conseil-federal-du-plan-daction-national-de-lutte-contre-la-traite-des-etres-humains/>

69 This point had already been raised by GRETA in the second evaluation round, in figure 18 of the report. <https://rm.coe.int/report-on-the-implementation-of-the-council-of-europe-convention-on-ac/1680981889>

70 FIZ and others: Alternative report on the implementation of the council of Europe convention on action against trafficking in human beings in Switzerland, 2018, pages 23-27.

71 See chapter 2.6 of this report.

72 See Graf et Probst: «Strafverfolgung von Menschenhandel zum Zweck der Arbeitsausbeutung in der Schweiz,» page 15.

In addition, we note the following problems:

- It is still rare today for a case of labour exploitation to be identified as a potential case of human trafficking and for the victim to be put in contact with specialist organisations by the criminal prosecution authorities or labour inspectors. There are certainly agreements or mechanisms for collaboration between labour inspectors or trade unions and organisations specialising in the protection of victims in certain cantons, but this practice remains very rare;
- The specialist organisations of Plateforme Traite note that their identification of human trafficking for the purpose of labour exploitation is often questioned by the criminal authorities, the migration authorities and also the CLAVI. Consequently, the victims are unable to assert their rights, among other things, with regard to residence permits, and are excluded from LAVI support services.

3.2.2 Recommendations⁷³

- The identification of VoHT for the purpose of labour exploitation by organisations specialising in the protection of victims, based on the CTHB, must be recognised by the authorities;
- The cantons must strengthen the system for monitoring working conditions in the domestic sector.

3.3 VTEH mineures

3.3.1 VTEH mineures

The overall situation regarding minor VoHT has unfortunately not changed since the last evaluation cycle and remains of great concern. The members of Plateforme Traite regularly observe situations where the rights of child victims are not respected:

- There is no specialist accommodation in the scope of protection for minor VoHT;
- There is virtually no training for the services concerned and even less coordination of this training by the state; any training of which we are aware was organised on the initiative of organisations specialising in the protection of victims⁷⁴;
- Action no. 24 of the second National Action Plan⁷⁵ providing for the organisation of an institutionalised discussion around minor VoHT has not been carried out, because only one meeting has taken place to date.

The third National Action Plan provides for several specific actions for child victims. The responsibility for decisive actions is delegated to the cantons, in particular, establishing cooperation mechanisms and referral procedures, as well as raising awareness among stakeholders in contact with minors who are VoHT. More precisely, this is the responsibility of the cantonal round tables, which, as mentioned before, do not exist in all cantons. Without an allocated budget or binding measures at the federal level, the implementation of specific actions by the cantons is called into question.

3.3.2 VoHT unaccompanied minors in the asylum system (UMAS)

The situation of unaccompanied minors in the asylum system is particularly alarming. On 24 April 2023, the National Commission for the Prevention of Torture (NCPT) published a report in which it expressed its concern about the insufficient supervision of unaccompanied young people in federal asylum centres, thus supporting the observation of the lack of adequate support: «According to the Commission's assessment, the support teams are currently no longer able to provide personal and continuous support to young unaccompanied asylum seekers»⁷⁶. Many of them have already been in Europe for several years, they move from one state to another and have no identity papers. In many cases, the presumption of minority is not applied by the migration authorities, who conduct a bone examination where there is doubt about age. If people are considered to be of age, they may then be subject to Dublin Regulations and are generally sent back to another European country.

⁷³ See also recommendations in chapter 2 and the recommendations in the Plateforme Traite brochures «Ensemble contre la traite des êtres humains», 2020 (https://plateforme-traite.ch/wp-content/uploads/2020/10/Brochure_Plateforme-suisse-contre-la-traite-des-etres-humains.pdf) and «Unworthy work», 2021 (https://plateforme-traite.ch/wp-content/uploads/2021/10/Un-travail-indigne_FR_Web.pdf)

⁷⁴ In Vaud and Zürich, the specialist associations ASTRÉE and FIZ respectively have set up networks with several institutions to raise awareness and provide appropriate care for victims. The lack of procedures for referring minors to specialized organizations, and the lack of suitable accommodation, prompted the creation of these working groups.

⁷⁵ Second National Action Plan against TEH 2017-2020, page 20.

⁷⁶ Press release from the National Commission for the Prevention of Torture CNPT dated 24.4.2023: «Requérant-e-s d'asile mineur-e-s non accompagné-e-s: la CNPT est préoccupée par l'encadrement insuffisant dans les centres fédéraux», accessed on 28.4.2023: <https://www.nkvf.admin.ch/nkvf/fr/home/publikationen/mmm.msg-id-94504.html>

Travelling in Europe makes UMAS particularly vulnerable to exploitation, violence and child trafficking. The withdrawal of specific support at the age of 18 is highly problematic, as a large number of UMAS have been victims of child trafficking or other abuses that require specialist support over the long term.

The precarious state of support and supervision structures for unaccompanied minors in the field of asylum results in poor detection and management of their problems. This presents an obstacle to accessing their rights.

3.3.3 Recommendations

- Raise awareness and train all services and institutions that may be in contact with potential minor VoHT;
- Make the criminal prosecution authorities aware of the exploitation of minors for criminal purposes and the principle of non-punishment;
- Develop orientation procedures and suitable accommodation solutions by drafting binding and specific procedures for the protection of minor VoHT as well as for UMAS in asylum, which regulate responsibilities as well as involving a specialist organisation and secure accommodation in all cantons;
- Ensure the systematic establishment of legal representation for unaccompanied minors, whether or not they are asylum seekers;
- Apply the presumption of minority provided for in Article 10 of the CTHB to all unaccompanied minors, whether or not they are asylum seekers;
- Relaunch the working group at the federal level to support these processes.

Plateforme Traite further shares the recommendations of the study «Ausbeutung von Minderjährigen in der Schweiz im Kontext von Menschenhandel» (Exploitation of minors in Switzerland in the context of human trafficking).⁷⁷

3.4 Identification

Plateforme Traite finds that more victims are identified in cantons where there are organisations specialising in the protection of victims, which carry out proactive awareness-raising activities.

But identification is not sufficient in itself; political commitment is also required. Financial support from the cantons and federal government is also essential to ensure the sustainability of comprehensive specialist assistance. In the canton of Ticino, for example, many victims are identified, but the only services available are those provided by the LAVI, which are not specifically for VoHT. Currently, there is no appropriate accommodation, or rather no adequate housing facilities have been identified to accommodate VoHT. Therefore, it is not possible to continue monitoring in the medium or long term⁷⁸.

Chapter 2.1 on the «Right to information», as well as chapter 1.2 «Cantonal differences in the existence of arrangements to support VoHT» exposes the general problems with regard to identifying VoHT.

3.4.1 Identification in asylum

In general, it can be said that the detection of potential VoHT in the asylum procedure has increased significantly compared to the years prior to 2019. This is due to awareness-raising measures among the mandated legal representatives and the close cooperation with specialist organisations.

In many cases and based on our experience, it is the legal representatives mandated by the State Secretariat for Migration who identify potential victims of human trafficking and subsequently put them in contact with specialist services.

The State Secretariat for Migration has developed its own identification process⁷⁹ which, unlike the CTHB, does not provide for cooperation with a specialist external service to conduct identification⁸⁰. Despite a recommendation in GRETA on this topic in 2019⁸¹ and other recommendations from the «Human trafficking and asylum» working group in 2021⁸², in its internal procedures, the State Secretariat for Migration still only

77 Tina Büchler, Gwendolin Mäder et al: «Exploitation des mineurs dans le contexte de la traite des êtres humains en Suisse», Centre suisse de compétence pour les droits humains (CSDH), 2022, page 118 ff. Online PDF consulted April 19, 2023: <https://www.news.admin.ch/news/message/attachments/74616.pdf>

78 Op. cit. Report by Angela Oriti «L'état des lieux des services de protection pour les victimes de traite en Suisse latine et collaborations possibles», January 2023.

79 If there are indications of TEH, the SEM conducts an in-depth interview with the victim concerning human trafficking.

80 See CTHB, art. 10, (accessed April 19, 2023: <https://www.fedlex.admin.ch/eli/cc/2013/94/fr>) as well as the CTHB Explanatory Report, point 128, online PDF consulted on April 19, 2023: <https://rm.coe.int/16800d3812>

81 Recommendations to GRETA Switzerland for the 2nd evaluation cycle, point 153. Online PDF consulted on April 19, 2023: <https://rm.coe.int/report-on-the-implementation-of-the-council-of-europe-convention-on-ac/1680981889>

82 Recommendation 3.5.1.1 in the Report on Potential Victims of Human Trafficking in the Asylum Process by the Asylum and Human Trafficking Working Group, 2021, page 22.

provides for the delivery of a leaflet with the addresses of the LAVI cantonal victim support services. This is therefore not specialist⁸³ (however, the leaflet offers the option of adding the addresses of specialist organisations by hand). As a result, this means that the State Secretariat for Migration constitutes the sole identification service and thus creates unequal treatment between VoHT in the asylum procedure and VoHT in the immigration law procedure. The CTHB provides for collaboration with a specialist service for identification precisely because many victims often have little confidence in the authorities. However, the current procedure of the State Secretariat for Migration sometimes works in reverse: it is only after the identification of the potential victim by the in-depth hearing on human trafficking conducted by the State Secretariat for Migration, that the victim is granted a period of recovery and reflection and that they receive the leaflet. However, the responsiveness of legal representation services makes it possible in some cases to mobilise a specialist organisation prior to the human trafficking hearing.

In cases where the alleged victims have not had access to an external specialist service, it is questionable whether examination of the facts with regard to human trafficking indicators can be considered adequate based on a single interview. Also, victims have no information on the follow-up to their reports. Moreover, it is virtually impossible to examine the facts relating to human trafficking in depth within the context of the accelerated asylum procedure due to time limits.

The accelerated asylum procedure, let alone the Dublin procedure which is applied in most of these cases, is not at all suitable for groups of people as vulnerable as VoHT, whose stories are extremely complex⁸⁴.

3.4.2 Handling of information from hearings by the State Secretariat for Migration

When victims give information about a human trafficking offence during asylum hearings, the details are automatically transmitted to the federal police. The victim may or may not allow the authorities to contact them. However, they are not kept informed of the follow-up to their statements. Moreover, the victims do not always understand that this authorisation to transmit information does not formally constitute a criminal complaint on their part.

Antenna MayDay relates the situation of a victim identified by the State Secretariat for Migration, who after their hearing, gave their consent to be contacted by the criminal prosecution authorities. This was because the offence of which they had been the victim had taken place in Switzerland and France. Informed of this by the State Secretariat for Migration, fedpol directed the case to the French prefectures concerned. The VoHT then applied for a short-term residence permit in order to participate in the criminal proceedings in the canton of Ticino. This request was then transferred to the Canton of Lucerne (the canton assigned) and was ultimately rejected. The victim was then sent back to France after a few days of administrative detention (subsequently considered by the Cantonal Court to be abusive) without being able to obtain information related to the investigation in connection with their statements. The victim never had access to information about the investigation, nor about the possible opening of criminal proceedings.

3.4.3 Recommendations

- Clarify responsibility for referring victims of human trafficking to a specialist service: the State Secretariat for Migration must ensure proactive networking with dedicated advisory centres;
- Finalise and adopt the training concept promised since 2019⁸⁵, to enable the implementation of regular, mandatory and generalised training for all stakeholders who are likely to come into contact with potential victims of human trafficking in the context of asylum procedures;
- Allow victims in the asylum process to have access to the follow-up of their statements in connection with a criminal offence when they are transmitted from the State Secretariat for Migration to fedpol;
- Specialist organisations should be mandated as external expertise and paid for human trafficking assessments carried out as part of the asylum process.

⁸³ Ibid, SEM opinion 3.5.2, on the recommendation 3.5.1.1, pages 22-23.

⁸⁴ An initial assessment of the accelerated asylum procedure and the position of the Swiss refugee aid organization OSAR on this subject: «In accelerated procedures, people suffering from physical or psychological ailments hardly have the time to name and prove them. Complex cases, for which there are numerous means of proof or several hearings are necessary, are too rarely allocated to the extended procedure, which is nevertheless intended for this purpose». The report dates from 2020 and was accessed on April 19, 2023 at: https://www.fluechtlingshilfe.ch/fileadmin/user_upload/Publikationen/Positionspapiere/200129-faktenblatt-bilanz-beschleunigtes-asylverfahren-de.pdf.

⁸⁵ As part of the SEM's official report on the postulate of Feri 16.3407: Analysis of the situation of refugee women (postulate available at: <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20163407>), consulted on the website on 28.4.2023. It is specified that a corresponding training concept will be developed, see: Analyse de la situation des femmes et des jeunes filles relevant du domaine de l'asile dans les centres fédéraux d'asile. SEM report in response to postulate Feri 16.3407, available at: <https://www.parlament.ch/centers/eparl/curia/2016/20163407/Bericht%20BR%20D.pdf>, accessed the website on 28.4.2023.

3.5 Access to assistance measures

Access to specialist support services, as provided for in Article 12 of the CTHB, crucially depends on the existence and funding of specialist protection organisations. It is a cross-cutting issue and is described in chapter 1.2 «Cantonal differences in existing VoHT support systems». It is also in the follow-up questions on the situation of VoHT for workplace exploitation 3.2.1, on child victims 3.3 and for victims exploited abroad and in the asylum system 2.8.1. Barriers to specialist help are found specifically in:

- The difference in treatment between VoHT who were exploited in Switzerland and those exploited in another country. The latter still do not have access to the services provided for victims of LAVI offences⁸⁶;
- Where there are no specialist organisations, victims only have access to LAVI services (if they are detected, which rarely happens in cantons without a specialist organisation). Based on the experience of organisations active in the field, we can conclude that the duration and conditions of LAVI assistance do not make it possible to guarantee VoHT protection in accordance with the standards of the Convention.

It should also be mentioned here that there is no specific shelter for men in Switzerland, despite the increasing number of male VoHT identified. There is therefore an urgent need for dedicated accommodation. In Geneva in particular, there is a lack of provision for male victims, while the number of situations of labour exploitation identified is at its highest. Nevertheless, FIZ and ASTRÉE are able to accommodate male victims in suitable lodgings.

3.5.1 Non-compliance of federal reception centres with the requirements of article 12, CTHB

In 2023, the federal asylum centres that accommodate asylum seekers are still not an appropriate place to house VoHT. Switzerland breaches the provisions of the CTHB despite recommendations for change. The State Secretariat for Migration, on the other hand, continues to assert that the accommodation in the centres meets the requirements of the CTHB⁸⁷. The conclusions of the State Secretariat for Migration contradict the GRETA publication⁸⁸ which indicates that asylum centres are not suitable accommodation for VoHT. In 2019, the State Secretariat for Migration planned to publish a report on the accommodation of vulnerable people in federal asylum centres in order to improve their situation, but this is still not available. Accommodation in the centres remains unsuitable for victims of trafficking, without any other accommodation solution being offered.

The Swiss reality in the federal asylum centres therefore does not correspond to the accommodation criteria for the VoHT for several reasons:

- Women and LGBTQ+ persons reported feeling threatened and harassed in the centres⁸⁹;
- Victims stated that access to medical care is too slow and sometimes complex;
- Staff in the centres are not trained in helping VoHT;
- Safety cannot be guaranteed there;
- The absconding of VoHT from accommodation structures is noted as an «uncontrolled departure», as is the case for all other asylum seekers, which is problematic given the risks linked to their safety. They are neither on a wanted list, nor are they subject to any special regulations concerning their procedure. However, they are automatically subject to a non-consideration decision because of their disappearance, even if it subsequently becomes clear that they were apprehended/abducted by the perpetrators⁹⁰.

To give an example of specific cases, the most recent judicial decisions as well as a detailed legal handling of the current situation of VoHT, where the place of the offence is located abroad within the framework of the Swiss Dublin procedure, we refer to the article «Opfer von Menschenhandel mit Ta-tort Ausland im Dublin-Verfahren» [Victims of human trafficking in the Dublin procedure, where the crime was committed abroad] (ASYL magazine, edition 2/2023)

⁸⁶ See chapter 2.8 of this report.

⁸⁷ Two parliamentary interpellations have been submitted on this subject: 20.4146 Interpellation «Access to support services for victims of human trafficking who are asylum seekers and whose crime took place abroad during the period of federal jurisdiction», website accessed on 28.04.2023: <https://www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20204146>, and its successor interpellation 20.4620 «How does the Confederation provide specific benefits for victims of human trafficking?», website accessed on 28.05.2023: <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20204620>.

⁸⁸ Guidance note, 2020. Online PDF consulted April 19, 2023: <https://rm.coe.int/guidance-note-on-the-entitlement-of-victims-of-trafficking-and-persons/16809ebf44>.

⁸⁹ See also the official SEM report on postulate Feri 16.3407 «Analysis of the situation of refugee women».

⁹⁰ FIZ is aware of two such cases. For reasons of anonymity, however, they cannot be discussed here.

3.5.2 Dublin

The endangerment in the event of Dublin transfer is still not resolved. The consequences are disastrous: 90% of VoHT in the asylum procedure encountered by FIZ where the place the offence was committed is located abroad, go directly to the Dublin procedure.

Within the «Human trafficking and asylum» working group, the State Secretariat for Migration opposed the majority opinion, requesting that no application for readmission should be lodged in the Dublin State during the recovery and reflection period⁹¹. Contrary to the recommendations, the State Secretariat for Migration asserted that no guarantee from the competent member state was necessary to carry out the return⁹². It rejects the recommendation to ensure that the victim receives adequate care after being returned to the Dublin State⁹³.

The migration authorities do not plan to collaborate with a specialist organisation for assisted returns to the countries of origin at any time, and do not assess the danger before applying the return. The lack of response and cooperation of the third country is not taken into account when examining the application of the sovereignty clause and the inadmissibility of the return⁹⁴ and no follow-up is implemented, even in complex situations. To our knowledge, the sovereignty clause allowing the Dublin transfer to be suspended for humanitarian reasons has not been applied to any VoHT.

The fact that Dublin transfers of VoHT are carried out in insecure circumstances is also linked to the case law of the Federal Administrative Court (FAC). The practice of the last five years has shown that neither the State Secretariat for Migration nor the FAC are particularly concerned about the risks incurred by VoHT in the event of return to a Dublin country. The reports and recommendations of specialist organisations on this subject are not routinely taken into account in the rulings. Changes in the practice of the State Secretariat for Migration on this subject are only made on the basis of adaptations of the case law of the FAC.⁹⁵

3.5.3 Funding for the care of VoHT in asylum for an offence in Switzerland

Another obstacle arises with regard to access to assistance services for VoHT in the field of asylum. Even when the offence takes place in Switzerland, it is not clear which canton funds the services for victim assistance. The Competo process indicates that it is where the offence took place that serves as a reference. However, the canton of residence may also be decisive, depending on the circumstances. This situation remains problematic in terms of funding in some cantons, when the VoHT in the asylum procedure is allocated to a canton that is different to the one where the offence took place.⁹⁶

FIZ currently has several cases where the offence took place in Switzerland, but where the victim was exploited in one canton, and allocated to another canton as part of an extended asylum procedure. The two cantons waive responsibility by interpreting the recommendations of the CSOL-LAVI differently in terms of funding. The canton of assignment insists on the canton where the offence took place being responsible for the services. However, the canton where the offence occurred maintains that the canton responsible is the one that granted the residence permit. Where the persons in question are nevertheless housed in FIZ accommodation facilities, this means that FIZ must support them with private funding, in the absence of an agreement between the cantons.

91 Cf. report of the working group on human trafficking and asylum, recommendation 1.10.1.4. as well as the related SEM position paper: «The SEM decides when an application to take charge [...] is submitted».

92 See *ibid.* recommendation 3.10.1.5. and the SEM position paper on this recommendation.

93 *Ibid.* recommendation 3.10.1.6. GRETA also requires this follow-up, see: Pietrowicz/Rijken, ch. 16.41.

94 *Ibid.*

95 Guest commentary by FIZ: «(Dublin) deportations at all costs: what consequences for victims of human trafficking?» on [humanrights.ch](https://www.humanrights.ch/fr/nouvelles/renvois-prix-traite-humaine), 2022, accessed April 19, 2023: <https://www.humanrights.ch/fr/nouvelles/renvois-prix-traite-humaine>

96 In addition, according to Art. 15 para. 3 LAVI, a victim can choose the LAVI consultation center, regardless of the place of offence or residence.

3.5.4 Recommendations

- VoHT in asylum should not be housed in a federal asylum centre and must have access to suitable accommodation and specialist care by a dedicated organisation;
- Apply the sovereignty clause under Art. 17 of the Dublin-III Regulation in all cases of suspected human trafficking;
- If deportation is unavoidable, ensure access to victim support in the Dublin State;
- The State Secretariat for Migration must take into account possible obstacles to extradition on a case-by-case basis, such as the risk of re-trafficking or reprisals;
- Adapt the recommendations of the CSOL-LAVI mentioned above in order to specify the financial responsibilities of the cantons in the granting of LAVI benefits for VoHT assigned to a canton other than the one where the offence took place.

3.6 Recovery and reflection period

3.6.1 Recovery and reflection period for VoHT in asylum

Perhaps the greatest new feature in the procedures of the State Secretariat for Migration is the granting of a recovery and reflection period. If, after the in-depth hearing on human trafficking, the State Secretariat for Migration considers the person as a VoHT, the person concerned is informed that she or he has 30 days to think about cooperating with the criminal prosecution authorities. During this period, there is no hearing on the grounds of asylum⁹⁷ and «no decision is made to return or execute a return»⁹⁸.

As presented above, the internal processes of the State Secretariat for Migration do not actively provide for the person concerned to be put in touch with a specialist advice centre. Without access to specialist support, the recovery and reflection period granted thus falls short of its main objective: to begin the process of reflection and recovery before passing on the information related to trafficking. In practice, the victim is actually questioned regularly with regard to human trafficking during a special hearing, and it is only after this detailed interview that the reflection period is granted. This procedure is therefore diametrically opposed to the purpose of such a period as provided for in the CTHB.

3.6.2 Recovery and reflection period for VoHT under FNIA

For VoHT who are not in the asylum procedure, and who therefore come under the Foreign Nationals and Integration Act (FNIA), there are major cantonal differences regarding the granting of a recovery and reflection period, as previously described in the «Legal context in Switzerland» at point 1.1.

The support of a specialist organisation is decisive at this stage of care, because:

- In some cantons, the specialist organisations have developed good cooperation with the authorities. Reflection periods are granted in principle, and extensions are also generally given if the victim is not yet sufficiently stable;
- If there is a specialist service that has an official mandate from the canton, a VoHT has access to the support services in principle, according to article 12, CTHB;
- Specialist organisations undertake to ensure that the reflection period is respected and that the victim has time to regain stability and recover before a hearing, particularly if the police are pressurising to question the victim.

If there are no specialist organisations, or if they are not supported by the canton, as is the case with Antenna MayDay in Ticino, the victims do not actually have access to support services and, to our knowledge, a period of reflection is almost never requested.

3.6.3 Recommendations

- VoHT in asylum proceedings must have access to the same support services during the recovery and reflection period as VoHT who come under the FNIA;
- During the period of reflection and recovery, no questioning or interrogation should be carried out by the police, and no personal data of the victim should be transferred. In this respect, a clear directive is required, as well as training and raising awareness, in particular for the police, prosecutors and migration authorities.

⁹⁷ Cf. report of the working group on human trafficking and asylum, page 12.

⁹⁸ Cf. response to Seiler Graf interpellation 20.4146.

