



**A4**

Crossing borders for effective police investigation  
to protect female victims of sex trafficking  
and enhance accountability mechanisms

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## **A4 Practice Advice**

KEMEA



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## INDEX

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Project coordinator	KEMEA – Centre for Security Studies (GR), <a href="http://www.kemea.gr">www.kemea.gr</a>
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Project contact	Dr Giorgos Triantafyllou, A4 Project Coordinator, Centre for Security Studies (KEMEA), <a href="mailto:g.triantafyllou@kemea-research.gr">g.triantafyllou@kemea-research.gr</a>
Start date	2021-03-01
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Website	<a href="http://www.a4project.eu">www.a4project.eu</a>
Facebook	@a4projecteu
Twitter	@a4projecteu
Instagram	@a4projecteu

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## Abbreviations & Definitions

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## 1. Introduction

The A4 Practice Advice report is the result of Task 4.6 – Finalization of the developed A4 multidisciplinary approach. According to the project's Grant Agreement, T4.6 is described as follows:

This activity will focus on reviewing the formed (WP2) and pilot tested A4 Action Plan as well as cross-border and cross-sectoral cooperation, while prioritizing the protection and non-revictimization of female victims. Based on the acquired experience throughout the pilot testing of the created safety net for the Northern Greek Borders, a working team will be formed, composed of all participating organizations, with the express purpose to develop the A4 Practice Advice. The A4 Practice Advice will include criminal investigation pathways for an effective prosecution of perpetrators, countering the established culture of impunity as well as will feed into the policy recommendations to be developed by the applicant organization, and submitted to its supervisor, namely the Greek Ministry of Citizen Protection, and to the EC.

## 2. Scope

The scope of the A4 Practice Advice report is to present in a clear and comprehensive way, practical guidance on THB-related issues and processes. The report will build upon the knowledge and experience accumulated through the A4 research and implementation activities, aiming to promote a structured framework and related procedures enhancing victim-centered knowledge, skills and competences of LEAs. The presentation of the relevant issues will be done by outlining the current realities in Greece and Bulgaria, highlighting good practices from Austria that could be transferred to these two countries of Southeastern Europe.

## 3. The legal framework

Albeit the existence of various deviations, all three countries of interest have criminalised THB as a distinct crime.<sup>1</sup> The criminalisation of THB has been grounded on the THB definition provided by the 2000 United Nations (UN) "Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime", known as the Palermo Protocol. In addition, all three countries have in place separate laws to guarantee the rights of THB victims for protection and compensation.

### 3.1 Greece

In Greece, the new Penal Code (PC) entered recently into force (the L. 4619/2019 (Off. Gaz. 95 A /11.6.2019 ratified the new Penal Code, efficient since 1<sup>st</sup> July 2019). The article 323A of the new penal code includes all exploitation forms that the Directive 2011/36/EC foresees, and the means used for the purpose of exploitation. More specifically, its 7 first paragraphs foresee:

1. Whoever with the use of violence, threat of violence or other coercive means or with the imposition or misuse of power recruits, abducts, transfers, unlawfully retains, harbours, delivers or receives somebody, with the purpose of his exploitation, shall be punished with imprisonment until ten years and a fine.

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<sup>1</sup> For a more detailed analysis of the legal frameworks in Greece, Bulgaria and Austria, see the A4 project D2.3 – Summary of primary and secondary research findings report.



2. With the same penalty, the culpable shall be punished even if, to achieve the same purpose, commits the acts of the previous paragraphs, extorting the consensus of somebody, with the use of fraudulent means or luring him exploiting his vulnerable position.
3. The act of the previous paragraphs shall be punished with imprisonment<sup>12</sup> and a fine, when:  $\alpha$  ) it is committed as a profession,  $\beta$  ) it is committed by an officer, who during the exercise of his duties or taking advantage of this capacity of his, commits or participates in any way to the act, c) it is related to the victim's unlawful entrance, residence or exit from the country or d) it resulted in the victim's severe bodily harm. If the act resulted in death, imprisonment of at least ten years shall be imposed.
4. The act of paragraphs 1 and 2 shall be punished with the penalties of the previous paragraph, when it is directed against a minor, even if it is committed without the use of the means that are mentioned thereby. With the same penalties shall be punished whoever, using the means of paragraphs 1 and 2, recruits a minor with the purpose of using him in armed operations.
5. The notion of "exploitation" in the previous paragraphs includes the extortion of unlawful material benefit from: a) the induction in slavery or practices similar to slavery, b) the induction in servitude, c) the labour or begging of the victim (labour exploitation), d) the commitment of criminal acts by the victim e) the removal of cells, tissues or organs of his body f) the commitment of sexual acts, real or pretended, or the provision of labour or services with the exclusive purpose of sexual arousal (sexual exploitation) or g) his coercion to get married.
6. With at least three years imprisonment and a fine shall be punished whoever knowingly, without using the means of the paragraphs 1 and 2, hires a victim of trafficking, receives the services of such a person, has sexual intercourse with him or receives the income from his exploitation.
7. Whoever, without using the means of paragraph 1 and 2, promotes minors to begging, with the purpose of exploiting their income, shall be punished with imprisonment and a fine».

Moreover, sexual exploitation, which was punished under the distinct article 351 of the annulled P.C., has been added to the forms of exploitation listed under article 323 A of the new P.C. Furthermore, Greek legislation foresees in Article 1 of the L. 4251/2014 that all children victims of induction to prostitution (349 P.C.), sexual assault for money (351 P.C.), sexual tourism (323B), child pornography (348A P.C.) and online grooming (348B P.C.) are considered THB victims and can be officially recognized by the Judicial Authorities according to the relevant procedure.

In short, Greek criminal legislation, apart from the specific crime of human trafficking, contains special provisions to protect children who have fallen victims to induction to prostitution (pandering), sexual assault for money, sexual tourism, child pornography, and online grooming. Child victims of these crimes are treated as THB victims and may be officially recognised as such. In this regard, a specialized procedure is in place, allowing for the one-step official recognition of a person as victim of THB, before and regardless of the initiation of the prosecution. The competent prosecutor may issue a decision officially recognising someone as a victim of THB without the latter submitting a request to this effect, and with a low threshold of probability that the crime of THB has actually been committed. The prosecutor's decision remains valid until potentially revoked following the conclusion of the trial. In practice, prosecutors tend to award limited duration to their victim recognition decisions, despite the absence of a relevant legal basis allowing them this discretion. Issues related to the practical application of this process are highlighted below, in the chapter on cooperation.



### 3.2 Bulgaria

In Bulgaria, Article 159A par. 1 of the Bulgarian Penal Code foresees that "An individual who recruits, transports, hides or admits individuals or groups of people in view of using them for sexual activities, forceful labour, dispossession of bodily organs or holding them in forceful subjection, regardless of their consent, shall be punished by deprivation of liberty of two to eight years and a fine....".

Par 2 foresees that "Where the act under par. 1 has been committed: 1. with regard to an individual who has not turned eighteen years of age; 2. through the use of coercion or by misleading the individual; 3. through kidnapping or illegal deprivation of liberty; 4. through abuse of a status of dependency; 5. through the abuse of power; 6. through promising, giving away or receiving benefits, (amended, SG, No. 27/2009) punishment shall be deprivation of liberty from three to ten years and a fine...." It is noticeable that according to the Bulgarian legal framework regarding trafficking the use of special means such as coercion, deceit, kidnapping, unlawful deprivation of freedom, the use of a condition of dependency, abuse of power, through promising, giving or receiving profits is not a part of the definition of the THB crime, but only used as aggravating circumstances.

Article 155 par. 1 of the Bulgarian Penal Code foresees that "A person who persuades an individual to practice prostitution or acts as procurer or procuress for the performance of indecent touching or copulation, shall be punished by deprivation of liberty of up to three years and by a fine..." while par. 3 of the same article foresees that if the inciting has been done "with a venal goal in mind", the offence is aggravated.

Overall, Bulgarian criminal law does not consider the use of special means (such as coercion, deceit, kidnapping, unlawful deprivation of freedom, the use of a condition of dependency, abuse of power, through promising, giving or receiving profits) as a part of the legal definition of THB, but instead as aggravating circumstances. Our research identified one key bottleneck to the investigation and prosecution of THB in the Bulgarian law on criminal procedure, in relation to the summoning and examination of material witnesses. Specifically, the authorities' inability to locate a material witness (who often times may not want to be found) can lead to the suspension of the proceedings, causing their prolongation for years at a time in certain cases, and often resulting in them being time-barred due to the expiration of the statute of limitations. This can be particularly problematic in cross-border cases, where some of the witnesses may reside abroad, rendering their detection more difficult and requiring the cooperation of authorities from different countries.

### 3.3 Austria

In Austria, Section 104A of the Austrian Criminal Code on "Trafficking in human beings" foresees that:

1. A person who recruits, harbours, otherwise receives, transports, or offers or transfers to another person an adult using dishonest means (para. 2) against this person with the deliberate intention of the person's exploitation (para. 3), is to be punished with a prison sentence of a minimum of six months up to five years.
2. Dishonest means are the use of force or severe threats, the deception about facts, abuse of authority, a position of vulnerability, insanity or of defencelessness, intimidation and the receiving or giving of benefits for handing over control over the person.
3. Exploitation includes sexual exploitation, exploitation through organ transplantation, labour exploitation, exploitation of begging and the exploitation to commit criminal activities."



Austrian criminal law also foresees the crimes of cross border prostitution trafficking and exploitation of a stranger in virtue of which trafficking of women with the purpose of sexual exploitation is punished.

#### 4. Victim Identification and Assistance

#### 5. Criminal Investigation

#### 6. Legal Prosecution

#### 7. Cross sectoral cooperation

#### 8. Cross-border cooperation

#### 9. conclusions



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