



## Swiss Coordination Unit against the Trafficking in Persons and Smuggling of Migrants (KSMM)

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### Combating Human Trafficking in Switzerland: Strategic Milestones

Switzerland's efforts to combat human trafficking are many-faceted. Various governmental and non-governmental agencies – most of them in close co-operation with the **Swiss Coordination Unit against the Trafficking in Persons and Smuggling of Migrants KSMM** – support these efforts. The following is a summary of the strategic milestones in **improving the basic conditions and instruments for combating human trafficking** in Switzerland.

- Triggered by an interdepartmental report on human trafficking in Switzerland published in September 2001, the KSMM was established in 2003. It brings together federal and cantonal agencies, NGOs and inter-governmental organisations involved in combating human trafficking and migrant smuggling. A hub for information and analysis in matters of human trafficking, the KSMM develops tools and strategies for combating this crime. Moreover, it co-ordinates measures for victim protection and for preventing and prosecuting human trafficking. The KSMM's Permanent Secretariat is attached to the Federal Office of Police fedpol.
- In 2004, an **operative unit dealing with paedophilia, human trafficking and migrant smuggling** was established within fedpol's main division of the Federal Criminal Police FCP. In 2007, this division was separated into a section dealing with paedophilia and pornography, and one dealing with human trafficking and migrant smuggling. At the same time, the number of staff in the latter section was increased. Its duties focus on supporting the cantonal police in investigations involving other cantons or having an international aspect.
- In 2004, the FIZ Advocacy and Support for Migrant Women and Victims of Trafficking (FIZ Fachstelle Frauenhandel und Frauenmigration) in Zurich opened the first office in Switzerland specialising in intervention and counselling for female trafficking victims. The project, known as Makasi, focuses on counselling and assisting female trafficking victims, improving victim protection and helping victims to enforce their rights. The Makasi project supplements state measures in the field of victim assistance.
- In August 2004, the former Federal Office of Immigration, Integration and Emigration IMES sent a circular to the cantonal migration offices informing them of the statutory basis for granting victims of human trafficking residence in Switzerland. The circular included recommendations for granting victims a period of reflection to consider whether they wish to co-operate with law enforcement agencies, for their stay in Switzerland during investigations and for granting stay on humanitarian grounds. The recommendations were later superseded by the new Foreign Nationals Act of 2008.

- Based on the experiences gained from the first round table talks on human trafficking, which took place in Canton Zurich and were initiated by the FIZ in 2001, a group of federal and cantonal experts together with specialists from NGOs compiled a set of **guidelines on co-operation in fighting human trafficking** (*Kooperationsmechanismen gegen Menschenhandel*) **under the lead of the KSMM**. The guide was published in late **2005** on the occasion of a national **conference** on human trafficking in Switzerland. It offers a survey of the tools available for fighting human trafficking and recommendations to cantonal authorities on how to co-ordinate work with victim assistance services when dealing with this particular crime. In the guide's annex there is also a **checklist on how to identify victims of human trafficking**.
- With a view to improving co-operation among police, justice, and migration authorities and victim counselling services, many cantons have introduced co-operation mechanisms – so-called **round-table talks on fighting human trafficking**. These talks are intended to help form a uniform basis for understanding the issue of human trafficking and finding solutions. Moreover, the meetings serve to delineate the responsibilities, the areas of interaction, and the duties of the authorities and institutions involved. In 2005, as few as two cantons had institutionalised forms of co-operation among the various authorities and institutions; today, seventeen cantons have institutionalised co-operation in fighting human trafficking.
- In a March 2005 circular addressed to the **Swiss foreign missions**, the Federal Department of Foreign Affairs FDFA introduced **preventive measures for the protection of cabaret dancers**. For instance, visa applicants wishing to enter Switzerland to work as cabaret dancers are invited for a talk at the consulate, where they are given written information on their future employment and asked to sign the contract of employment. In addition, they are informed of the risks this work entails, their rights as dancers, further counselling possibilities, and the fact that it is illegal to be forced into prostitution.
- In a May 2006 circular, the Federal Department of Foreign Affairs FDFA issued a **directive on the employment of domestic workers by Swiss-based foreign diplomatic missions**. This directive governs hiring regulations and labour standards, thus preventing domestics working for a foreign mission from possible exploitation. Disputes may be submitted to the Bureau de l'Amiable compositeur in Geneva for mediation.
- Switzerland has ratified two protocols. One is the **Protocol on the Sale of Children, Child Prostitution and Child Pornography**, an optional protocol to the United Nations Convention on the Rights of the Child; the other is the **Protocol on Human Trafficking**, an optional protocol to the United Nations Convention on Transnational Organized Crime. These protocols became operative on 19 October 2006 and 26 November 2006, respectively.
- The ratification of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography resulted in the amendment of Article 196 of the Swiss Criminal Code SCC. This article, dealing with human trafficking, needed revision to be brought into line with the international definition of human trafficking set out in Article 3 of the Optional Protocol on Human Trafficking. The **new Article 182 SCC**, in force since 1 December 2006, now makes human trafficking not only for the purpose of sexual exploitation, but also for the purpose of exploiting labour and the removal of human organs a criminal offence. In addition, under the revised article a single instance of trafficking in a single person already constitutes a crime. Furthermore, the recruitment of persons to be trafficked is considered equivalent to trafficking proper and is punishable accordingly.

- The revision of the General Part of the Swiss Criminal Code SCC, effective from 1 January 2007, introduced a new provision regarding the **exemption of trafficking victims from penalty**: In the absence of a need for punishment, the principle of discretionary prosecution set out in Article 53 SCC allows for dispensing with prosecution. Dispensing with prosecuting victims is also possible under Article 54 SCC (effect on the offender) if the punishable act that victims have committed has a significant adverse effect on them. Moreover, the provisions on duress and necessity as set out in Article 17 SCC apply.
- The Conference of Cantonal Police Commanders of Switzerland set up an **intercantonal “Working Group on Trafficking in Human Beings / Migrant Smuggling.”** This group began working in summer 2007, convening once or twice a year. Its goal is threefold: to work out standardised approaches in investigation that are applicable to all police forces throughout Switzerland; to promote operational networking among police corps; and to intensify the exchange of police expertise.
- On 1 January 2008, the Federal Act on Foreign Nationals (Foreign Nationals Act FNA) and the Ordinance on Admission, Residence and Employment became effective. These pieces of legislation regulate **the stay in Switzerland of human trafficking victims**. Swiss law is thus now in line with the provisions of the Council of Europe Convention against Trafficking in Human Beings. The Swiss statutory provisions allow for granting victims at least 30 days to consider whether they wish to co-operate with law enforcement agencies, for granting them stay in Switzerland pending criminal proceedings against their traffickers, and the right to stay in cases of personal hardship. Moreover, the statutory provisions provide that victims and witnesses of human trafficking be granted federally funded return and reintegration assistance (Art. 30(1)(e) and Art. 60 (2)(b) FNA; Art. 35 and Art. 36 Ordinance on Admission, Residence and Employment).
- Since 9 September 2008, a **registration form has been available to everyone on the website of the Federal Office of Police ([www.stop-childsextourism.ch](http://www.stop-childsextourism.ch)) for reporting suspicions of child sex tourism**. The public is thus given an opportunity of easily reporting to the police occurrences and observations that might suggest child abuse. Reports are dealt with by the Paedophilia and Pornography Unit of the Federal Criminal Police and, if found to be substantiated, appropriate steps are taken.
- The Federal Victim Support Act was entirely revised and became operative on 1 January 2008. **The Victim Support Act is the statutory basis for providing assistance to victims of human trafficking and for compensating NGOs for specialised victim assistance services they provide on commission by the cantons**. Article 9(1) of the Victim Support Act stipulates that when establishing and operating victim assistance centres, the cantons are required to take into consideration the different needs of various victim groups, a term that subsumes victims of human trafficking. The cantons are free to operate public or joint assistance centres or to commission private assistance centres.
- Since April 2007, the Swiss Police Institute SPI has been offering **specialised courses on combating human trafficking**. These courses are open to members of the Swiss police forces, the Border Guard Corps and employees at the cantonal migration offices. Previously held in German only, these courses were first held in French in 2009. Various other courses organised, among others, by KSMM assure the continued training of specialists in the fight against human trafficking; in November 2008, for instance, the Competence Centre on Forensics and Economic Crime staged a training course tailored to members of the judicial authorities and other public officials with a vested interest in the subject. Also, for the first time, a training course took place at the *Haute école de travail social Genève* in September 2010, addressing the educational needs of employees at victim assistance centres in

the French-speaking part of Switzerland. Since then, specialised training courses have been offered at regular intervals.

- Sponsored by several NGOs and the Swiss government, a national prevention campaign, the “**EURO 08 Campaign against Trafficking in Women**”, was launched in summer 2008. The campaign addressed matchgoers attending the 2008 European soccer championship held in Switzerland. The goal of the campaign was to inform the public on the extent and consequences of trafficking in women, and make prostitutes' clients sensitive to the issue. The campaign consisted of a spot broadcast both on Swiss national TV channels and during public viewing of matches on wide screens. In addition, the public was given the opportunity of learning more about the issue of trafficking in women through information material made available at special events.
- In September 2008, Switzerland signed the **Council of Europe Convention on Action against Trafficking in Human Beings**. The Convention was ratified on 17 December 2012 and will come into force on 1 April 2013. Under the Convention, signatory states undertake to prevent and fight all forms of human trafficking, to protect victims, to prosecute the perpetrators and to promote international co-operation to achieve these goals. The Convention supplements the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which is a protocol to the United Nations Convention Against Transnational Organised Crime of 15 November 2000. It is expressly based on the principles of human rights and, in particular, aims to improve the rights and protection of victims.
- **The Federal Act on Extra-Procedural Witness Protection** (WitPA; SR 312.2) and its implementing provisions – the Ordinance on Extra-Procedural Witness Protection (WitPO; SR 312.21) – came into force on 1 January 2013. Switzerland now fulfils all the requirements of the Council of Europe Convention on Action against Trafficking in Human Beings. The new act extends protection to witnesses in federal and cantonal criminal proceedings outside the actual proceedings and after conclusion of the trial. A newly established national Witness Protection Unit is responsible for the operative implementation of the new piece of legislation. **Witness and victim protection in criminal proceedings** is grounded in the cantonal criminal procedure codes and has been guaranteed since January 2011 in the Federal Code of Criminal Procedure (CrimPC Art. 149 seq.). The cantonal police corps are responsible for protecting persons who are in danger of harm to life and limb. Police protection has thus been extended to victims who are not involved in criminal proceedings but who are nevertheless at risk.
- A set of **new directives on the Foreign Nationals Act issued by the Federal Office for Migration FOM** was published on its homepage in autumn 2009. These directives elucidate the application of provisions on the stay in Switzerland of victims of human trafficking. Specifically, these directives stipulate that regardless of whether victims of human trafficking are willing to co-operate with the prosecuting authorities, they may be granted the right to stay if a case of serious personal hardship exists.
- On 16 June 2010, Switzerland signed the **Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse** (Lanzarote Convention). The Convention was ratified by Switzerland on 18 March 2014 and came into force on 1 July 2014. Under the Convention signatory states are obliged to criminalise the sexual abuse of children, child prostitution, child pornography and the forced participation of children in pornographic acts. Some points of the Convention go beyond the scope of former Swiss criminal law because they extend protection to minors between 16 and 18 years. Switzerland's accession to the Convention therefore required various amendments to the Swiss Criminal Code. For example, any person who pays for the sexual services of under 18-year olds can now be punished with a custodial sentence of up to three years. Also, any person inciting under 18-year olds into prostitution can be punished with a custodial sentence of up to ten years.

- A comprehensive **child abduction alert system** has been operative since 1 January 2010. An alert is issued if there is a strong suspicion or certainty that a child has been abducted and the child's physical integrity is under threat. Alert messages are broadcast on radio and TV, displayed on highway information boards and distributed over the public address system in train stations and airports and through press agencies. This procedure facilitates the early search for abducted minors, minimising the risk of sexual exploitation.
- After a two-year trial period, a **project aimed at assisting the return home and reintegration of victims and witnesses of human trafficking, and exploited cabaret dancers was definitively implemented in April 2010**. Implementation is based on Article 60(2)(b) of the Foreign Nationals Act. Assistance is assured by co-operation among Swiss federal government agencies, cantonal return assistance centres and the International Organization for Migration IOM. In addition, the Federal Office for Migration FOM (now the State Secretariat for Migration SEM) in collaboration with the Swiss Agency for Development and Cooperation SDC supports structural aid programmes aimed at fighting human trafficking.
- As a result of various police reviews, the Federal Office for Migration FOM (now the State Secretariat for Migration SEM) concluded in 2010 that the statute on cabaret dancers no longer had a preventive effect, and was indeed facilitating exploitation and human trafficking. The Federal Council therefore decided on 22 October 2014 to revoke the statute. The partial revision of the Ordinance on Admission, Stay and Employment ASEO will enter into force on 1 January 2016. The revocation of the statute was accompanied by several measures to protect women.<sup>1</sup>
- The Swiss Agency for Development and Cooperation SDC and the Human Security Division – both at the Federal Department of Foreign Affairs FDFA – **support the fight against human trafficking in trafficking victims' countries of origin through various projects and measures that are implemented in co-operation with international organisations and local NGOs**. The numerous prevention and reintegration projects amount to several million Swiss francs each year.
- In 2011, the FIZ opened Switzerland's first **shelter for victims of trafficking in women**. The shelter's concept was based on a comparative study of accommodation for victims in Germany, Austria, Romania and Spain.
- In February 2012, the **Federal Office for Migration FOM (now the State Secretariat for Migration SEM) issued a circular** to the cantonal migration and employment offices on applying the provisions on stay with regard to people employed in prostitution. According to the circular, cantonal authorities carrying out identity checks on foreigners should be sensitive to any signs of sexual exploitation or trafficking. If the authorities find any such signs, the person concerned should be informed about the possibilities of victim assistance. If the person is in Switzerland illegally, they should be granted a period of reflection under Article 35 of the Ordinance on Admission, Residence and Employment. The content of the circular thus **underlines the paradigm shift that, where human trafficking is suspected, victim protection takes precedence over enforcing measures against foreigners staying in Switzerland illegally**.

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<sup>1</sup> <http://www.ejpd.admin.ch/ejpd/de/home/aktuell/news/2014/2014-10-220.html> (not available in English)

- The KSMM Steering Committee approved Switzerland's first **National Action Plan Against Human Trafficking 2012-2014** with effect from 1 October 2012. The plan was made public by the head of the Federal Department of Justice and Police at a conference to mark the European Anti-Trafficking Day in Bern on 18 October 2012. The National Action Plan defines Switzerland's overall strategy to combat human trafficking and charges the agencies responsible for its implementation with 23 measures in the fields of prevention, prosecution, victim protection and co-operation.
- On 1 January 2014, the **Ordinance on Measures to Prevent Criminal Offences in Connection with Human Trafficking** (Anti-Human Trafficking Ordinance) came into force. The Ordinance allows the federal authorities to become more involved in combating human trafficking by carrying out or providing financial support for preventive measures. The regulation also allows the federal authorities to provide financial assistance to organisations and projects that are committed to fighting human trafficking and, for example, are active in victim care. The Ordinance also provides the necessary legal basis for KSMM's activities to combat human trafficking.
- The Swiss Public Prosecutors Conference SPPC decided at their delegate conference on 21 November 2013 that the cantons must appoint a contact person for human trafficking cases. The person appointed must be familiar with the key attributes and challenges of such cases. The **SPPC is to keep a list of relevant public prosecutors**.
- In an effort to standardise the tasks and responsibilities of the migration services, the police and NGOs, and co-operation with each other on matters concerning resident status and permits, a multidisciplinary process under the name of **COMPETO** was established in 2014 with a view to training the migration authorities and to providing a basis for the whole of Switzerland for dealing with questions on the status of human trafficking victims.
- As part of Switzerland's enlargement contribution, **co-operation with countries in Eastern and Southeastern Europe has been intensified and institutionalised**. The programs aim at strengthening prevention and improving victim protection in the countries of origin. They include measures to provide greater assistance to trafficking victims returning home, to improve co-operation between Switzerland and the respective country of origin by establishing bilateral guidelines and prevention measures, and to intensify police co-operation in fighting trafficking through the greater exchange of experience and practice between law enforcement services. The programs provide support to state agencies and organisations within civil society, and are intended to promote co-operation between all players. Ultimately, their aim is to prevent human trafficking in Switzerland.
- The very first **joint training course** on combating human trafficking took place at the Swiss Police Institute SPI in June 2016 for German-speaking **members of the public prosecution and police services**. The new training module takes account of developments with regard to co-operation between law enforcement services resulting from the revised Criminal Procedure Code and will provide from now on regular training for members of the public prosecution services.