



# **GRETA**

Group of Experts on Action  
against Trafficking in Human Beings

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## **Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Poland**

First evaluation round

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## Preamble

As the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) and the monitoring mechanism to evaluate its implementation are relatively new, it is appropriate to set out their salient features at the beginning of the first report to each Party to the Convention.

The Convention was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005, following a series of other initiatives by the Council of Europe in the field of combating trafficking in human beings. The Convention entered into force on 1 February 2008. It is a legally binding instrument which builds on already existing international instruments. At the same time, the Convention goes beyond the minimum standards agreed upon in other international instruments and aims at strengthening the protection afforded by them.

The main added value of the Convention is its human rights perspective and focus on victim protection. The Convention clearly defines trafficking as being first and foremost a violation of human rights and an offence to the dignity and integrity of the human being; greater protection is therefore needed for all of its victims. The Convention also has a comprehensive scope of application, encompassing all forms of trafficking (whether national or transnational, linked or not linked to organised crime) and taking in all persons who are victims of trafficking (women, men or children). The forms of exploitation covered by the Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.

As trafficking in human beings is a world-wide phenomenon, one of the express purposes of the Convention is to promote international co-operation in the efforts to combat trafficking. In this context, it is noteworthy that the Convention is not restricted to Council of Europe member states; non-member states and the European Union also have the possibility of becoming Parties.

To be effective, and given the nature of the phenomenon, a strategy for combating trafficking in human beings must adopt a co-ordinated and multidisciplinary approach, incorporating prevention, protection of victims’ rights and prosecution of traffickers. The Convention contains various provisions in each of these three areas, placing obligations on States to take appropriate measures, in partnership with civil society and in co-operation with other States.

The measures provided for by the Convention in the area of prevention include awareness-raising for persons vulnerable to trafficking; economic and social initiatives to tackle the underlying causes of trafficking; actions aimed at discouraging demand; and putting in place border control measures to prevent and detect trafficking in human beings.

The Convention also provides for a series of measures to protect and promote the rights of victims. Victims of trafficking must be identified and recognised as such in order to avoid police and public authorities treating them as “irregular migrants” or criminals. Victims should be granted physical and psychological assistance and support for their reintegration into society. Further, by virtue of the Convention, victims are entitled to a minimum of 30 days to recover and escape from the influence of the traffickers and to take a decision about their possible co-operation with the authorities. A renewable residence permit should be granted if their personal situation so requires and/or if their continued presence is needed in order to co-operate in a criminal investigation. In addition, the Convention establishes the right of victims to receive compensation and provides for measures for their repatriation and return with due regard to the rights, safety and dignity of the victims.

In the area of substantive and procedural criminal law, the Convention places on Parties a series of obligations aimed at enabling the effective prosecution of traffickers and ensuring that they are punished in a proportionate and dissuasive manner. Particular attention is paid to the issue of victim and witness protection during investigation and court proceedings. Parties should also provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities.

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Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations contained in it, which consists of two pillars: the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties.

GRETA is composed of fifteen independent and impartial experts chosen for their recognised competence in the fields of human rights, assistance and protection of victims, and action against trafficking in human beings, or because of their professional experience in the areas covered by the Convention. The task of GRETA is to evaluate the implementation of the Convention by the Parties, following a procedure divided into rounds. At the beginning of each round, GRETA defines autonomously the provisions to be monitored and determines the most appropriate means to carry out the evaluation, being guided by the Rules of procedure for evaluating implementation of the Convention adopted at GRETA's 2nd meeting (16-19 June 2009). GRETA has decided that the duration of the first evaluation round shall be four years starting at the beginning of 2010 and finishing at the end of 2013.

In carrying out its monitoring work, GRETA has the right to avail itself of a variety of means for collecting information. As a first step, GRETA sends a detailed questionnaire to the authorities of the Party undergoing evaluation. It may also make additional requests for information. By virtue of the Convention, Parties are obliged to co-operate with GRETA in providing the requested information. Another important source of information is civil society and, indeed, GRETA maintains contacts with non-governmental organisations which can provide relevant information. In addition, GRETA may decide to carry out a visit to the country concerned in order to collect additional information or to evaluate the practical implementation of the adopted measures. This visit allows for direct meetings with the relevant bodies (governmental and non-governmental) and is also an occasion for GRETA to visit facilities where protection and assistance are provided to victims of trafficking and other related structures. Furthermore, GRETA may decide to organise hearings with various actors in the field of action against trafficking in human beings.

GRETA's evaluation reports are thus the result of information gathered from a variety of sources. They contain an analysis of the situation in each Party regarding action taken to combat trafficking in human beings and suggestions concerning the way in which the country may strengthen the implementation of the Convention and deal with any problems identified. In its assessment, GRETA is not bound by the case law of judicial and quasi-judicial bodies acting in the same field, but may use them as a point of departure or reference. The reports are drawn up in a co-operative spirit and are intended to assist States in their efforts; they can offer support for the changes on which the national authorities have already embarked, and lend legitimacy to the direction of national policies. Because of its multidisciplinary and multinational composition, and as a consequence of its independent approach, GRETA provides a professional and impartial international voice in this process.

As regards the procedure for the preparation of reports, GRETA examines a draft report on each Party in plenary session. The report is sent to the relevant government for comments, which are taken into account by GRETA when establishing its final report. This final report is adopted by GRETA in a plenary session and transmitted to the Party concerned, which is invited to submit any final comments. At the expiry of the time-limit of one month for the Party to make comments, the report and conclusions by GRETA, together with eventual comments made by the national authorities, are made public and sent to the Committee of the Parties. In the context of the first evaluation round, this completes GRETA's task in respect of the Party concerned, but it is only the first stage in an on-going dialogue between GRETA and the authorities.

The second pillar of the monitoring mechanism, the Committee of the Parties, is composed of the representatives in the Committee of Ministers of the Parties to the Convention and of representatives of Parties non-members of the Council of Europe. On the basis of GRETA's reports, the Committee of the Parties may adopt recommendations addressed to a Party concerning the measures to be taken to implement GRETA's conclusions.

## Executive summary

The Polish authorities have taken a number of important steps to prevent and combat trafficking in human beings. The social assistance, aliens' and labour legislation have been developed since 2007 to provide for a number of rights for victims of human trafficking. The criminalisation of trafficking in human being, as defined in the Convention, took effect in September 2010. That said, concerning the types of exploitation covered by the offence of trafficking in human beings in Polish law, GRETA urges the authorities to include an express prohibition of servitude so as to ensure greater certainty and clarity as to the scope of domestic law.

A series of national programmes and action plans against trafficking in human beings have been adopted since 2003. The National Action Plan for 2011-2012 is comprehensive in nature and aims to cover all aspects of action against human trafficking. The Inter-Ministerial Committee for Combating Trafficking in Human Beings oversees the implementation of the action plan, while day-to-day co-ordination of the activities of governmental and non-governmental stakeholders is ensured by the Unit against Trafficking in Human Beings of the Ministry of the Interior. Furthermore, specialised anti-trafficking structures have been set up within the Police, the Border Guard and the General Prosecutor's Office. The involvement of non-governmental organisations in the Inter-Ministerial Committee and its working groups, as well as in the planning and implementation of the national action plan, is also a positive feature of the Polish anti-trafficking framework.

Concerning prevention of human trafficking, GRETA welcomes the steps taken by the Polish authorities, in collaboration with non-governmental and intergovernmental organisations, to raise general awareness of human trafficking, through information campaigns, school education and training of relevant professionals. That said, GRETA encourages the authorities to strengthen their efforts to discourage demand for services of trafficked persons as regards all forms of exploitation. GRETA also considers that the Polish authorities should take further steps to identify persons and groups vulnerable to human trafficking and to focus on prevention among them through targeted social, economic and other initiatives.

GRETA welcomes the efforts made by the Polish authorities to adopt a multi-disciplinary approach to the identification of victims of trafficking through the setting up of the National Consulting and Intervention Centre for Polish and Foreign Victims of Trafficking. Nevertheless, GRETA urges the authorities to take further steps to secure that all victims of trafficking are properly identified and can benefit from all the assistance and protection measures provided for under the Convention. In particular, the Polish authorities should adopt nation-wide procedures for the identification of child victims of trafficking and pay more attention to the identification of trafficking victims among persons detained as irregular migrants.

The provision of accommodation and support to victims of trafficking is ensured by the National Consulting and Intervention Centre for Polish and Foreign Victims of Trafficking, 14 designated crisis intervention centres across the country, as well as non-governmental organisations. Nevertheless, GRETA considers that the authorities should improve the system for providing assistance to child victims of trafficking, both in terms of accommodation and of medium and long-term support programmes tailored to the children's needs. The authorities should also ensure that suitable accommodation is provided to male victims of trafficking and that they can fully benefit from the assistance measures provided for in law.

GRETA urges the Polish authorities to ensure, in compliance with their obligations under Article 13 of the Convention, that all possible victims of trafficking, including European Economic Area nationals, are systematically informed of the possibility of having a recovery and reflection period and are effectively granted such a period regardless of whether or not they co-operate with the investigation.

Despite the existence of legal possibilities for compensation, very few victims of trafficking have received compensation from the perpetrators, and there are no statistics available concerning victims of trafficking who have received State compensation. GRETA urges the Polish authorities to adopt measures to facilitate and guarantee access to compensation for victims of trafficking, including through the systematic provision of information to victims and by encouraging prosecutors to request compensation orders to the largest possible extent.

GRETA expresses concern over the significant differences between the number of identified victims of trafficking and the number of successful prosecutions and convictions. GRETA encourages the Polish authorities to take measures to identify gaps in the investigation procedure and the presentation of cases in court with a view to ensuring that human trafficking offences are investigated and prosecuted promptly and effectively, leading to proportionate and dissuasive sanctions. Further, GRETA considers that there is a need for improvement of the knowledge and sensitivity of judges, prosecutors, investigators and lawyers about trafficking in human beings and the human rights of victims.

Finally, GRETA considers that the Polish authorities should extend all special protection procedures to cover child victims of THB up to the age of 18. GRETA also invites the Polish authorities to make full use of the available measures to protect victims and witnesses of human trafficking and to prevent intimidation in the course of the investigation and during and after the court proceedings.



## I. Introduction

1. Poland deposited the instrument of ratification of the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) on 17 November 2008. The Convention entered into force for Poland on 1 March 2009.<sup>1</sup>

2. As established in Article 36(1) of the Convention, the Group of Experts on Action against Trafficking in Human Beings (“GRETA”) monitors the implementation of the Convention by the Parties. GRETA does so in conformity with the procedure laid down in Article 38 of the Convention and the Rules on the evaluation procedure of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties. For the first evaluation round (2010-2013), GRETA drew up a monitoring timetable according to which the Parties to the Convention were divided into groups, Poland being in the second group of 10 Parties to be evaluated.

3. In accordance with Article 38 of the Convention, GRETA proceeded with the examination of the measures taken by Poland to implement the provisions set out in the Convention. The “Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties – first evaluation round” was sent to Poland on 25 February 2011. The deadline for replying to the questionnaire was 1 September 2011. Poland submitted its reply on 31 August 2011.

4. In preparation of the present report, GRETA used the reply to the questionnaire by Poland, other information collected by GRETA and information received from civil society. In addition, an evaluation visit to Poland took place from 23 to 27 April 2012. It was carried out by a delegation composed of:

- Ms Hanne Sophie Greve, member of GRETA;
- Mr Jan van Dijk, member of GRETA;
- Ms Petya Nestorova, Executive Secretary of the Convention on Action against Trafficking in Human Beings.

5. During the visit, the GRETA delegation held meetings with representatives of relevant Ministries and other public bodies, as well as with the Head of the Commission of Justice and Human Rights of the Polish Parliament (see Appendix II). These meetings took place in a spirit of close co-operation.

6. The GRETA delegation held separate meetings with representatives of non-governmental organisations (NGOs), other members of civil society, lawyers and intergovernmental organisations present in Poland (see Appendix II). GRETA is grateful for the information provided by them.

7. Further, in the context of the visit to Poland, the GRETA delegation visited the National Consultation and Intervention Centre for Polish and Foreign Victims of Trafficking and a shelter for victims of trafficking in human beings, both State-funded and run by the NGO La Strada Foundation. The GRETA delegation also visited a crisis intervention centre in Piastów (Pruszków County), run by the local authorities, and a shelter for trafficking victims run by the NGO PoMOC Association.

8. GRETA wishes to place on record the excellent assistance provided by the contact person appointed by the Polish authorities, Ms Urszula Kozłowska, Expert in the Unit against Trafficking in Human Beings, Ministry of the Interior.

9. The draft version of the present report was adopted by GRETA at its 15th meeting (26-30 November 2012) and was submitted to the Polish authorities on 17 December 2012 for comments. The authorities’ comments were received on 18 February 2013 and were taken into account by GRETA when drawing up the final evaluation report, which was adopted at GRETA’s 16th meeting (11-15 March 2013).

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<sup>1</sup> The Convention as such entered into force on 1 February 2008, following its 10th ratification.

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## **II. National framework in the field of action against trafficking in human beings in Poland**

### **1. Overview of the current situation in the area of trafficking in human beings in Poland**

10. Poland is a country of origin, transit and destination of victims of trafficking in human beings (THB). According to official statistics, the number of formally identified victims was 315 in 2008, 611 in 2009, and 323 in 2010. Polish nationals constituted 76% of the victims identified in 2008-2010 (221 in 2008, 439 in 2009 and 283 in 2010). The main countries of destination for Polish victims of trafficking were Germany, the Netherlands, Belgium, Spain, Sweden, France and the UK. The main countries from which victims were trafficked to Poland are Ukraine, Bulgaria, Romania, the Republic of Moldova, Belarus, Vietnam and the Russian Federation. The total number of identified victims included 66 children in 2009 and 32 in 2010.

11. The Polish authorities have not provided a breakdown of the above-mentioned numbers according to victim's sex and type of exploitation. As regards foreign nationals trafficked to Poland, GRETA was informed that trafficking of women for the purpose of sexual exploitation remains predominant (some 80% of all identified cases). That said, there are numerous reports according to which trafficking for the purpose of labour exploitation in Poland is on the rise, in particular from Azerbaijan, China, Nepal, the Philippines, Vietnam, Bangladesh and other Asian countries. However, although many foreigners have been found victims of labour law violations, only a few have been identified as victims of trafficking for forced labour. As regards Polish nationals trafficked abroad, the types of exploitation in recent years have involved sexual exploitation, forced labour in the agricultural sector, domestic service, benefit fraud, and using victims' documents to establish false bank accounts and credit agreements.

12. Data for 2012 from the Police and Border Guard on cases of "justified suspicion of identification of a victim of human trafficking" refer to 181 persons (133 women and 48 men), of whom 90 were Polish nationals. While the majority of the victims (100) were trafficked for sexual exploitation, there were also 50 cases of trafficking for forced labour, 21 cases of trafficking for the purpose of forced criminal activities, five cases of trafficking for the purpose of forced begging, and five cases of trafficking resulting in slavery. Most of the victims (140) were exploited in Poland. The main countries of destination were Sweden and UK.

## 2. Overview of the legal and policy framework in the field of action against trafficking in human beings

### a. Legal framework

13. At the international level, in addition to the Council of Europe Anti-Trafficking Convention, Poland is Party to the United Nations (UN) Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (ratified respectively in November 2011 and September 2003). Poland is also Party to the UN Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, and the ILO Conventions No. 29 (concerning Forced or Compulsory Labour) and No. 182 (concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour). Further, Poland has acceded to a number of Council of Europe conventions in the criminal field which are relevant to action against THB.<sup>2</sup>

14. Since joining the European Union (EU) on 1 May 2004, Poland is bound by the EU legislation in the field of combating THB, in particular Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims<sup>3</sup>; Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who co-operate with the competent authorities; Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims; Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Framework Decision 2001/220/JHA of 15 March 2001 of the Council of the European Union on the standing of victims in criminal proceedings; and Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography.

15. The national legal framework in the field of action against THB has evolved over the years. Until 2010, Polish criminal law did not define “trafficking in human beings.”<sup>4</sup> The Criminal Code (CC) criminalised forcing an adult into prostitution (Article 203), inducing a minor into prostitution (Article 204(3)), and enticement or abduction of a person with the aim of having him/her engage in prostitution abroad (Article 204(4)). Through the Act of 20 May 2010 concerning changes to the CC, a definition of trafficking in human beings was introduced in Article 115, paragraph 22, of the CC, and a new Article 189a was added concerning the legal classification of THB. These amendments took effect on 8 September 2010. As a result, Articles 204(4) and 253<sup>5</sup> of the CC were repealed.

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<sup>2</sup> The European Convention on Mutual Assistance in Criminal Matters and its Additional Protocols; the European Convention on Extradition and its 1st and 2nd Additional Protocols; the European Convention on the International Validity of Criminal Judgments; the European Convention on Transfer of Sentenced Persons and its Additional Protocol; the European Convention on the Transfer of Proceedings in Criminal Matters.

<sup>3</sup> Replacing Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking inhuman beings.

<sup>4</sup> See Report of the United National Special Rapporteur on trafficking in persons, especially women and children, Mission to Poland, A/HRC/14/32/Add.3, 2 June 2010, pp.18 - 20.

<sup>5</sup> Article 253(1) of the CC (legal classification) stated: “Whoever conducts trafficking in persons even with their consent shall be subject to the penalty of deprivation of liberty for a minimum term of three years.”

16. In addition to criminal legislation, the social assistance, aliens' and labour legislation have been developed over the years to provide for a number of rights of victims of human trafficking. The following laws and regulations without legal status have relevance to action against THB and the protection of victims:

- the Act on Foreigners of 13 June 2003<sup>6</sup> (which regulates the recovery and reflection period and residence permits for victims of trafficking who are foreign nationals);
- the Act on Social Assistance of 12 March 2004, amended through the Act of 16 February 2007 (which provides the legal framework for taking care of foreign children without parental care and defines the benefits provided to victims of trafficking who are third-country nationals);
- the Act on Employment Promotion and Labour Market Institutions of 20 April 2004<sup>7</sup> (which criminalises the employment of foreign nationals who have been made to perform illegal work or have been misled);
- the Act on State Compensation for Victims of Certain Crimes (2005);
- the Methodological guidelines for prosecutors carrying out or supervising criminal procedures dealing with trafficking in human beings;
- the Algorithm of conduct of law enforcement officers in case of revealing a crime consisting in trafficking in human beings.

b. National Programmes and Action Plans

17. The first National Programme for Combating and Preventing Trafficking in Human Beings was adopted by the Council of Ministers on 16 September 2003, building on the results of a 2001 UN-sponsored programme for the preparation of a national strategy against THB. Currently the fifth such document, entitled National Action Plan against Trafficking in Human Beings for 2011-2012 (hereinafter "NAP for 2011-2012"), is being implemented. It was adopted on 10 June 2011.

18. The NAP for 2011-2012 contains a number of specific tasks grouped under three main headings:

- i. Preventive actions and research, including information and awareness-raising campaigns, such as for Polish nationals migrating abroad to look for employment and for foreign nationals coming to Poland for work; preventive measures related to the EURO 2012 Football Championship in Poland; training of job centre employees and teachers; developing annual reports on THB in Poland; improved data collection and analysis;
- ii. Improving the effectiveness of measures, including activities on the analysis and amendment of relevant legal provisions; strengthening co-ordination at the regional level; upgrading the qualifications of Police and Border Guard staff; training of judges, prosecutors, labour inspectors and other relevant professionals; international co-operation;
- iii. Support and protection of victims, including activities such as amending the legislation related to third-country nationals; drafting a model for supporting child victims; updating the model for supporting foreign victims; creating tools facilitating the identification of victims; updating the methodological guidelines for prosecutors; setting standards for the provision of assistance to victims; training employees of educational and care centres, NGO employees and consular staff; establishing co-operation with trade unions, etc.

<sup>6</sup> Consolidated text, Journal of Laws 2006, No. 234, item 1694, as amended.

<sup>7</sup> Consolidated text, Journal of Laws 2008, No. 69, item 415, as amended.

19. A total of 856 000 PLN (appr. 205 769 euros) were earmarked in the budget of the Ministry of the Interior for the implementation of the NAP in 2011, and it was envisaged that 908 000 PLN would be earmarked in the Ministry's budget for 2012. Additionally, in 2011 the Ministry of the Interior spent 131 995 PLN on measures organised in the framework of the Polish Presidency of the Council of the European Union. Further, the Ministry of Labour and Social Policy allocated 996 000 PLN from its 2011 budget for the training of social workers and the funding of crisis intervention centres accommodating victims of trafficking, and 1 048 000 PLN were earmarked in the 2012 budget. In total, 1 103 583 PLN were spent from the budgets of relevant ministries in 2011 to implement activities under the NAP.<sup>8</sup> It is estimated that the total cost of the implementation of the NAP for 2011-2012 would amount to 2 044 000 PLN (appr. 498 000 euros). In addition, external financing is provided for several projects included in the NAP from the EU, the Norway Grants, and the Council of Baltic Sea States (CBSS). GRETA welcomes the transparent approach adopted by the Polish authorities vis-à-vis the planning and financing of anti-trafficking activities.

20. The public institutions and NGOs responsible for the implementation of the NAP are represented in the Inter-Ministerial Committee for Combating and Preventing Trafficking in Human Beings (see paragraph 23). The Ministry of the Interior also co-operates with other relevant partners, such as international organisations, research centres and foreign embassies in Poland, with a view to implementing the tasks included in the NAP. The implementation of the NAP is subject to annual evaluation through a report which is approved by the Inter-Ministerial Committee and submitted to the Prime Minister.

21. The Polish authorities have informed GRETA that a National Action Plan against Trafficking in Human Beings for 2013-2015 has been drafted and is expected to be adopted around June 2013. The new plan reportedly envisages a number of training activities, including for judges and prosecutors, some of which will take place jointly with Border Guard officers. In the area of awareness raising, it is planned to organise competitions for the best Master's thesis, the best comic books on trafficking for forced labour and the best preventive poster.

22. Reference can also be made to the National Action Plan "Poland for Children" for 2004-2012, which sets priority objectives and actions concerning education, support to families whose living conditions may constitute a threat to the schooling of children, and protection from sexual harassment and abuse.

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<sup>8</sup> Report on the implementation of the National Action Plan against THB in 2011.

### 3. Overview of the institutional framework for action against trafficking in human beings

#### a. Inter-Ministerial Committee for Combating Trafficking in Human Beings

23. The Inter-Ministerial Committee for Combating Trafficking in Human Beings (hereinafter: "Inter-Ministerial Committee") was set up by Ordinance No. 23 of the Prime Minister of 5 March 2004, most recently amended through Ordinance No. 32 of the Prime Minister of 20 April 2012. It functions as a consultative body of the Prime Minister. The current structure of the Inter-Ministerial Committee is as follows:

- Chairperson: the Undersecretary of State in the Ministry of the Interior
- Deputy Chairperson: Deputy Commander of the General Headquarters of the Police
- Members - representatives of:
  - the Minister of Education
  - the Minister of Justice
  - the Minister of the Interior
  - the Minister of Labour and Social Policy
  - the Minister of Foreign Affairs
  - the Minister of Health
  - the Ministry of Administration and Digitalisation
  - the Internal Security Agency
  - the Commander of the General Headquarters of the Police
  - the Commander of the General Headquarters of the Border Guard
  - the Plenipotentiary of the Government for Equal Treatment
  - the Head of the Office for Foreigners.

24. A number of other bodies are invited to take part in the work in the Inter-Ministerial Committee, with a consultative status, in particular the Chancellery of the Prime Minister, the National Labour Inspectorate, the General Prosecutor's Office, the Office of the Human Rights Defender, the Office of the Children's Rights Defender, the International Organisation for Migration (IOM), and the NGOs La Strada Foundation, Caritas Poland, Itaka Foundation - Centre for Missing People, Nobody's Children Foundation, Halina Nieć Legal Aid Centre, and PoMOC Mary Immaculate Association.

25. The tasks of the Inter-Ministerial Committee involve approval of the NAP, assessment of its implementation, proposing new measures aimed at the effective suppression and prevention of trafficking in human beings, and co-operation with governmental institutions, local self-government bodies and NGOs. The Inter-Ministerial Committee meets twice a year. The Secretariat of the Inter-Ministerial Committee is provided by the Unit against THB of the Ministry of the Interior (see paragraph 27), which also takes part in the work of the Inter-Ministerial Committee. The report on the work of the Inter-Ministerial Committee is submitted to the Prime Minister by 31 January each year.

26. An expert-level Working Group has been set up within in the Inter-Ministerial Committee for the purpose of regular monitoring of actions under the NAP and exchanging information. The Working Group meets four times a year and comprises experts from the institutions and organisations represented in the Inter-Ministerial Committee. Within the Working Group, there are thematic expert groups dealing with prevention, support to victims, children and collection of statistical data. Ad hoc thematic groups can be set up for any other particular issue.

b. Unit against Trafficking in Human Beings of the Ministry of the Interior

27. The Unit against Trafficking in Human Beings, within the Migration Policy Department of the Ministry of the Interior, was set up in 2006. It is responsible for drafting the NAP and provides the Secretariat of the Inter-Ministerial Committee as well as of its Working Group and thematic expert groups. Further, the Unit monitors the functioning of the State-funded National Consulting and Intervention Centre for Polish and Foreign Victims of Trafficking, which is run by the NGO La Strada Foundation, and co-operates with relevant partners, including NGOs, intergovernmental organisations, research centres and embassies. The Unit currently comprises four staff.

28. As part of its tasks assigned under the NAP, the Unit against THB collects statistical data from the Police, the Border Guard, the General Prosecutor's Office and the Ministry of Justice. These statistics are published on the website of the Ministry of the Interior as well as in the Ministry's annual reports.

c. Police

29. The Central Unit for Combating Trafficking in Human Beings was set up by order of the Deputy Chief Police Commander of 5 July 2007, and was initially placed within the Criminal Bureau of the General Headquarters of the Police. In January 2011, the Central Unit became part of the Central Investigation Bureau of the General Police Headquarters. It covers supervision and co-ordination of all police investigative activities as well as international co-operation. The Unit employs four full-time police officers and one civilian staff.

30. At the regional level, in each of Poland's 16 regions (voivodeships) there are teams for combating THB within the criminal divisions of the respective Police Headquarters, as well as at Warsaw Police Headquarters. In March 2011, co-ordinators for combating THB were appointed in every Regional Division of the Central Bureau of Investigation, in addition to the teams within the criminal divisions of the Regional Police Headquarters. GRETA was informed that a total of 86 police officers across the country are involved in co-ordination and overseeing of anti-THB work.

31. THB was one of the top priorities of the Police during the EURO 2012 Football Championship. The Central Unit for Combating Trafficking in Human Beings within the Central Investigation Bureau is undertaking efforts to make THB one of the priorities of the Chief Police Commander. The Police prepare annual reports on THB, containing an analysis of current trends, selected cases and statistical data, which are submitted to the Ministry of the Interior.

d. Border Guard

32. The Border Guard, which is a law enforcement agency under the Ministry of the Interior, has a central Unit for monitoring and analysis of THB cases and co-ordinating actions with other stakeholders in the field of combating THB. This specialised unit was set up within the General Headquarters pursuant to Decision No. 139 of the Border Guard Chief Commander of 18 June 2008. The unit comprises 10 persons. Moreover, in 2009, the First Section for Irregular Migration and Trafficking in Human Beings was established within the First Department for Combating Organised Crime of the National Border Guard Headquarters (ZOŚ KGSG). In addition, there are some 30 Border Guard officers acting as co-ordinators for combating THB throughout the country. They are based at the Investigative Department of the General Headquarters of the Border Guard, in each of the 10 regional divisions of the Border Guard and the Border Guard training centre in Koszalin.

33. The Border Guard's statutory tasks include border traffic control, issuing of visas, prevention, detection and preparatory investigation of border crimes<sup>9</sup> under the supervision of the Prosecutor's Office, and control over the legality of the stay and employment of foreigners. To the extent that illegal migration may be linked to human trafficking, the Border Guard are competent to detect and identify victims of human trafficking and are included in the NAP as one of the implementing agencies. GRETA was informed that the statutory tasks of the Border Guard are in the process of being extended and a draft law is expected to be considered by the Polish Parliament in the second half of 2013.

e. General Prosecutor's Office

34. Within the General Prosecutor's Office,<sup>10</sup> the Department on Organised Crime and Corruption is responsible for intelligence gathering, collection and analysis of data, and co-ordination and supervision of investigations, including cases of THB. An anti-trafficking co-ordinator has been assigned to advise prosecutors dealing with THB cases. In 2006, the Department on Organised Crime and Corruption developed Methodological guidelines for prosecutors carrying out or supervising criminal proceedings on trafficking in human beings. The guidelines refer, *inter alia*, to the features of THB offences, the procedural actions to be taken (including special investigation techniques), the rights of victims of human trafficking (including special measures for children), the non-punishment provision (see paragraph 207), possibilities for compensation, and penal measures (including forfeiture of assets).

35. Each Appellate Prosecutor's Offices has a division for organised crime and corruption which employs experienced prosecutors supervising investigations of serious crimes, including THB, which are conducted by the Police and the Border Guard. All Prosecutor's Offices throughout the country have to inform the General Prosecutor's Office about any THB inquiry (initiation, subject, legal basis, information on the victims, procedural measures, etc.). There are also anti-human trafficking co-ordinators at the level of the Appellate Prosecutor's Offices and some of the regional Prosecutor's Offices.

f. National Labour Inspectorate

36. The National Labour Inspectorate (NLI) is subordinated to the Polish Parliament (Sejm). It is composed of the Chief Labour Inspectorate in Warsaw, 16 district labour inspectorates (each covering one province with its territorial competence), 43 sub-district offices, as well as the NLI's Training Centre in Wroclaw. The statutory tasks of the NLI include supervision of compliance with labour legislation, including occupational health and safety rules and regulations, and, since 2007, inspecting the legality of employment of Polish citizens and foreign nationals, as well as inspection of employment agencies. However, the powers of the NLI do not include inspections of private households. The responsibilities of labour inspectors also include prosecution of offences, in particular those against employees' rights stipulated in the Labour Code, as well as offences in the field of legality of employment of Polish citizens and foreign nationals and the operation of employment agencies. Labour inspectors gather information on cases of human trafficking on the basis of an analysis of complaints and legal counselling requests forwarded to the NLI, as well as during inspections, in particular those concerning the legality of employment of foreigners.

<sup>9</sup> "Border crimes" include illegal migration, falsification of documents, smuggling of arms, drugs, cigarettes, etc.

<sup>10</sup> Since 2010, the General Prosecutor's Office is a structure independent of the Ministry of Justice, comprising 11 Appellate Offices, 45 Regional Offices and 342 District Offices.



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g. NGOs

37. NGOs play a key role in the field of action against THB in Poland, through advocacy, awareness-raising activities, training, assistance to victims and research. La Strada Foundation is the oldest running anti-trafficking NGO in Poland. As a result of a public tender, in 2009 it was assigned the task of running the National Consulting and Intervention Centre for Victims of Trafficking and a shelter for adult women victims of trafficking, both of which are financed from the State budget. La Strada is involved in the identification and referral of victims of trafficking, the provision of training to relevant professionals, data collection and research, and preventive activities. The NGO Nobody's Children Foundation focuses on prevention of different forms of child exploitation and engages in advocacy, research and victim support. The NGO Halina Nieć Legal Aid Centre, based in Cracow, monitors immigration detention facilities and border crossing points (on the basis of an agreement with the Border Guard and the UNHCR) and provides legal assistance to foreign nationals. The NGO PoMOC Mary Immaculate Association, based in Katowice, provides comprehensive assistance to women victims of violence and forced prostitution and their children; the activities of PoMOC include streetworking, preventive work, shelter accommodation, re-adaptation housing, and a consultative point offering legal advice, individual therapy and assistance to find work.

38. In their comments to the draft GRETA report, the Polish authorities have indicated that since January 2013, in addition to La Strada Foundation, the NGO PoMOC has been chosen through a procedure of open competition organised by the Ministry of the Interior, to implement the task of running the National Consulting and Intervention Centre for Polish and Foreign Victims of Trafficking.

39. Other NGOs active in the field of action against human trafficking are Caritas Poland and Itaka Foundation - Centre for Missing People. As noted in paragraph 22, all of the previously mentioned NGOs are invited to take part in the work in the Inter-Ministerial Committee, with a consultative status. Only La Strada Foundation and, since January 2013, PoMOC receive State funding for the public task of running the National Consulting and Intervention Centre for Victims of Trafficking. The other NGOs implementing anti-human trafficking projects rely on financing from other sources (municipal, church, international donors, etc.).

### III. Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Poland

#### 1. Integration of the core concepts and definitions contained in the Convention in the internal law

##### a. Human rights-based approach to action against trafficking in human beings

40. Article 1(1)(b) of the Convention establishes as one of its purposes the protection of the human rights of the victims of trafficking. Further, Article 5(3) includes the obligation for Parties to promote a human rights-based approach in the development, implementation and assessment of the policies and programmes to prevent THB. The Explanatory Report on the Convention states that the main added value of the Convention is its human rights perspective and focus on victim protection. In the same vein, the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking emphasise that “the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims”<sup>11</sup>.

41. THB constitutes an offence to the dignity and fundamental freedoms of the human being and thus a grave violation of human rights. GRETA emphasises the obligations of States to respect, fulfil and protect human rights, including by ensuring compliance by non-State actors, in accordance with the duty of due diligence. A State that fails to fulfil these obligations may, for instance, be held accountable for violations of the European Convention on Human Rights (ECHR). This has been confirmed by the European Court of Human Rights (ECtHR) in its judgment in the case of *Rantsev v. Cyprus and Russia*, where the Court concluded that THB within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention falls within the scope of Article 4 of the European Convention on Human Rights<sup>12</sup> (which prohibits slavery, servitude and forced or compulsory labour). The Court further concluded that Article 4 entails a positive obligation to protect victims or potential victims, as well as a procedural obligation to investigate trafficking.<sup>13</sup>

42. The Convention on Action against Trafficking in Human Beings requires States to set up a comprehensive framework for the prevention of THB, the protection of trafficked persons as victims of a serious human rights violation, and the effective investigation and prosecution of traffickers. Such protection includes steps to secure that all victims of trafficking are properly identified. It also involves measures to empower trafficked persons by enhancing their rights to adequate protection, assistance and redress, including recovery and rehabilitation, in a participatory and non-discriminatory framework. Further, measures to prevent THB should be taken in the field of socio-economic, labour and migration policies.

43. GRETA wishes to stress the need for States to also address THB as a form of violence against women and to take account of gender-specific types of exploitation, as well as the particular situation of child victims of trafficking, in line with the relevant international legal instruments.<sup>14</sup>

<sup>11</sup> Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

<sup>12</sup> *Rantsev v. Cyprus and Russia*, application no. 25965/04, judgment of 26 July 2005, ECtHR 2010, paragraph 282.

<sup>13</sup> See also *Siliadin v. France*, application no. 73316/01, ECtHR 2005 VII; *C.N. and V. v. France*, application no. 67724/09, ECtHR judgment of 11 October 2012; and *C.N. v. the UK*, application no. 4239/08, ECtHR judgment of 13 November 2012.

<sup>14</sup> Such as the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the United Nations Convention on the Rights of the Child and the Optional Protocol thereto on the sale of children, child prostitution and child pornography, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, and the International Labour Organisation Convention Concerning Decent Work for Domestic Workers.

44. In their reply to GRETA's questionnaire, the Polish authorities have indicated that the Polish legal system does not specify human rights violations as a separate category, but a violation of human rights would give the injured party the right to bring an action before the European Court of Human Rights. According to the authorities, no particular protection exists for victims of THB beyond what is available to victims of other crimes. However, due to the very nature of THB, some remedies available in law are more likely to be considered adequate in such cases. One such remedy is the compensation for victims of crime introduced by the Act on State Compensation of Victims of Certain Crimes. The Polish authorities have also referred to the Methodological guidelines for prosecutors carrying out or supervising criminal procedures dealing with trafficking in human beings (see paragraph 207), which cover the issue of non-punishment of victims of trafficking in human beings by taking advantage of the existing legal measures (i.e. discontinuance of penal proceedings, refusal to institute proceedings or extraordinary mitigation of the penalty).

45. The Polish authorities have indicated that Article 91 of the Polish Constitution provides for direct application of international agreements, which means that persons can invoke an international agreement in order to support their claims. Furthermore, the judicial and law enforcement authorities are obliged to apply the provisions of an international agreement where domestic law does not regulate a particular field or does so in a way that contradicts the agreement. Where there is a conflict between a ratified international agreement and domestic law, the international agreement takes precedence. Polish courts have reportedly invoked on numerous occasions provisions of the European Convention on Human Rights, but there are no examples of cases in which they have passed a judgment on the basis of Article 4 of the ECHR in cases of trafficking in human beings.

46. Further, the Polish authorities have referred to the active involvement of NGOs in the prevention of human trafficking and the identification of and the provision of support to victims as an indication of a human rights-based approach to action against THB. According to the authorities, the prevalence of this approach is also demonstrated by the NAP for 2011-2012, which includes many activities related to victim support, and the fact that most of the funding provided by the State is dedicated to victim support.

47. The human rights-based approach to action against THB entails transparency and accountability on the part of the State through the adoption of a national policy and action plans for combating trafficking in human beings, the co-ordination of the efforts of all relevant actors, the regular training of relevant professionals, research and data collection, and the provision of adequate funding for the implementation of all these measures. The following sections of this report examine in detail the effectiveness of the policies and measures taken by the Polish authorities in these fields.

b. Definitions of "trafficking in human beings" and "victim of THB" in Polish law

i. *Definition of "trafficking in human beings"*

48. In accordance with Article 4(a) of the Convention, trafficking in human beings includes three components: an action ("the recruitment, transportation, transfer, harbouring or receipt of persons"); the use of certain means ("threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person"); and the purpose of exploitation ("at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs"). In the case of children, pursuant to Article 4(c) of the Convention, it is immaterial whether the means referred to above have been used.

49. Under Polish law, the definition of trafficking in human beings is provided in Article 115, paragraph 22, of the CC (Chapter XXIII “Offences against liberty”), which reads as follows:

“Human trafficking means recruitment, transportation, transfer, harbouring or receipt of persons with the use of the following:

- 1) violence or unlawful threat,
  - 2) abduction,
  - 3) deception,
  - 4) fraud or taking advantage of inability for proper understanding of taken actions,
  - 5) abuse of dependence in the relationship, abuse of critical situation or a state of helplessness,
  - 6) provision or acceptance of material or personal benefit or promise thereof to a person taking care or having custody of another person,
- in order to abuse such person even if such abuse is performed upon the consent of such abused person, especially in prostitution, pornography or other forms of sexual abuse, in forced labour or services, begging, slavery or other forms of abuse of human dignity or for the purpose of acquiring cells, tissues or organs in violation of the provisions of law. If the conduct of the perpetrator is directed against a minor,<sup>15</sup> it constitutes human trafficking, even if methods or measures mentioned in sections 1-6 have not been applied”.<sup>16</sup>

50. All three components of the definition in Article 4(a) of the Convention are contained in the above-mentioned definition under Polish law. As regards the list of means for committing human trafficking contained in Article 115(22) of the CC, GRETA notes that it does not specifically include “abuse of power”. The Polish authorities have clarified that the Convention’s term “abuse of power or of a position of vulnerability” does not appear in the CC as such because it is implemented through the notions of “abuse of dependence, abuse of critical situation or a state of helplessness” which are of the same nature and cover the same scope. According to the authorities, there is consistent case law and a uniform stance of the jurisprudence as to the interpretation of these terms. “Dependence” is construed as a legal or actual relation, in which the vital matters of one person (such as professional situation, health, economic considerations) are dependent on the will of another person (e.g. the relation between a superior and a subordinate, physician and patient, teacher and student). This dependence does not have to be direct, for example it is sufficient that an employee’s situation depends on her showing obedience to the Chief Executive Officer’s son.<sup>17</sup> Dependence is a legal or actual relation, which gives one person the ability to exert a specific influence, either directly or indirectly, over another person’s fate or their legal, social or economic status.<sup>18</sup> There is no doubt that in cases of trafficking in human beings there is a state of dependence between the perpetrator and the victim, the perpetrator having the power to decide the victim’s fate. Further, in the opinion of the General Prosecutor’s Office, “abuse of dependence” is wider than the term “abuse of power” included in the Convention, and therefore the opportunities to investigate this crime are greater.

<sup>15</sup> Under Polish law, a minor is a person under the age of 18.

<sup>16</sup> Unofficial translation provided by the Polish authorities.

<sup>17</sup> A. Marek, *Komentarz do Kodeksu Karnego*, LEX 2010, Edition 5.

<sup>18</sup> Decision of the Supreme Court of 18 December 2008, V KK 304/08.

51. As regards the types of exploitation, GRETA notes that, in addition to the ones explicitly provided for in the Convention, Article 115(22) of the CC refers to begging and “other forms of abuse of human dignity”. “Servitude” is not specifically mentioned as a type of exploitation, but the Polish authorities have argued that, in the light of case law of the Constitutional Tribunal pertaining to the infringement of human dignity, in particular on the basis of Article 30 of the Polish Constitution,<sup>19</sup> as well as the case law of the European Court of Human Rights, servitude is a form of abuse of human dignity and is covered by this term. According to the authorities, in its judgment P 10/06 of 30 October 2006, the Constitutional Tribunal stated that the obligation to respect and protect the dignity of the person does not apply solely to infringements committed by the public authorities, but also by private entities. The Tribunal stated that human dignity is closely related to, among others, self-respect and the need to be respected by other people. Further, the General Prosecutor’s Office has circulated an opinion to all subordinate prosecutor’s offices which points out that human trafficking abuses a person’s dignity because it makes him/her play the role of a tool for achieving illegal goals.

52. GRETA notes that in *Siliadin v. France*<sup>20</sup>, the European Court of Human Rights found that the concept of “servitude” in Article 4 of the ECHR prohibits “a particularly serious form of denial of freedom”. It includes, “in addition to the obligation to provide certain services to another ... the obligation on the ‘serf’ to live on the other’s property and the impossibility of changing his status”.<sup>21</sup> The Court found that the French Criminal Code did not provide “practical and effective protection” against treatment contrary to Article 4 of the ECHR. The prohibition in domestic law of exploitation through labour and subjection to working and living conditions that are incompatible with human dignity was insufficient to meet the State’s positive obligations under Article 4. The Court has reiterated this finding in the more recent cases of *C.N. and V v. France*<sup>22</sup> and *CN v. UK*.<sup>23</sup> In *CN v. UK*, the Court recognised “domestic servitude” as a specific offence, “which involves a complex set of dynamics, involving both overt and more subtle forms of coercion, to force compliance”. Due to the absence of a specific offence of servitude in domestic law, the Court found that the authorities were unable to give sufficient weight to these factors and to meet their obligation under Article 4 of the ECHR to carry out an effective investigation into C.N.’s complaints. Drawing on this case law of the European Court of Human Rights, the absence of a specific criminal offence of servitude in domestic law in Poland may lead to difficulties in complying with the State’s positive obligations under Article 4 of the ECHR, to prevent, investigate and prosecute servitude. **GRETA therefore urges the Polish authorities to enact a specific legislative prohibition of servitude so as to ensure greater certainty and clarity as to the scope of its domestic law.**

53. Concerning children, the above-mentioned national definition makes it clear that any of the actions committed against a minor constitutes THB even if no means have been used, which is in line with the definition in the Convention.

54. Furthermore, GRETA notes with satisfaction that the national definition of THB states explicitly the irrelevance of the consent of a victim of trafficking to the intended exploitation where any of the means have been used.

<sup>19</sup> Article 30 of the Polish Constitution states that the inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It is inviolable and its respect and protection is the obligation of public authorities.

<sup>20</sup> *Siliadin v. France*, application no. 73316/01, ECtHR judgment of 26 July 2005, paragraph 123.

<sup>21</sup> *Ibidem*.

<sup>22</sup> *C.N. and V v. France*, application no. 67724/09, ECtHR judgment of 11 October 2012.

<sup>23</sup> *CN v. UK*, application no. 4239/08, ECtHR judgment of 13 November 2012.

55. According to the Polish authorities, the Criminal Code does not differentiate between THB committed nationally or transnationally, and therefore cases of human trafficking are prosecuted to the full extent irrespective of whether they were committed within the territory of Poland or outside it, in accordance with the Polish rules of jurisdiction. THB which is not linked to organised crime is covered by the legal classification in Article 189a of the CC, which provides for deprivation of liberty for a minimum term of three years. If THB is committed in the context of an organised group, each perpetrator is automatically treated like a recidivist (pursuant to Article 65(1) of the CC), which entitles the court to impose a higher penalty.

56. For further analysis of the definition of THB and related offences from a substantive criminal law perspective, see paragraphs 195-202.

*ii. Definition of "victim of THB"*

57. The Convention defines "victim of THB" as "any natural person who is subjected to THB as defined in Article 4 of the Convention". Recognition of victims of trafficking as such is essential as it gives rise to their entitlement to the broad range of protection and assistance measures set out in the Convention.

58. There is no definition of a victim of THB as such in the Polish legal system. The definition of a victim of an offence ("injured") is provided in Article 49(1) of the Code of Criminal Procedure (CCP), according to which "the injured is a natural or legal person whose property or rights have been directly violated or threatened by an offence". Therefore according to the Polish authorities, the definition of a victim of THB is contained in the definition of the offence of THB provided in Article 115(22) of the CC, in combination with Article 49(1) of the CCP. The status of victim of THB is granted by the Prosecutor's Office or the Police during the preliminary proceedings. Appeal concerning a denial of status can be made to the Prosecutor's Office.

59. The Polish authorities have stated that all potential victims are protected to the full extent of the law. As with any other offences, there is no distinction between men and women as victims. However, special protection is granted to children and, as stated in paragraph 48, a minor is considered a victim of THB even if none of the means listed in the above-mentioned definition of THB were employed.

60. The question of the definition of victim of THB will be further discussed in the sections of this report dealing with the identification of victims and the assistance measures provided to them, along with the related proposals made by GRETA.

- c. Comprehensive approach to action against THB, co-ordination of all actors and actions, and international co-operation

*i. Comprehensive approach and co-ordination*

61. One of the aims of the Convention is to design a comprehensive framework for the protection of and assistance to victims and witnesses. To be effective, any national action to combat THB must be comprehensive and multi-sectoral, and take on board the required multidisciplinary expertise. Article 29(2) of the Convention requires Parties to take measures to ensure the co-ordination of national policies and actions against THB, including through the setting-up of specific co-ordinating bodies. Further, the Convention refers to the need to co-operate and build strategic partnerships with civil society through co-operative frameworks that can help governments fulfil their obligations under the Convention (Article 35).

62. The legal framework for combating human trafficking in Poland has evolved over the years. GRETA notes that the inclusion of a definition of THB in the Criminal Code took effect only in September 2010, a delay reportedly due to political changes. Currently THB committed for different types of exploitation, both transnationally and nationally, is criminalised by the CC. The rights of victims of trafficking, be it Polish or foreign nationals, have been incorporated in the social assistance and aliens' legislation since 2007 which, as stressed by the Polish authorities, predates the inclusion of a definition of THB in the CC.

63. Concerning the institutional framework for tackling human trafficking, GRETA notes as positive steps the setting up of the Inter-Ministerial Committee, the Unit against Trafficking in Human Beings within the Ministry of the Interior, and specialised structures within the Police, the Border Guard and the General Prosecutor's Office. The involvement of NGOs in the Inter-Ministerial Committee and its expert groups, as well as in the planning and implementation of the NAP, is also a positive feature.

64. That said, given that the Unit against THB is expected to perform a variety of tasks linked to the planning, implementation and evaluation of the NAP, GRETA notes that further investment should be made in the development of its human and financial resources. GRETA also notes that, in a number of countries, the structures which co-ordinate action against THB are not placed within a particular Ministry but, rather, are directly subordinated to the Council of Ministers; this demonstrates the willingness of the authorities to ensure that such structures have a genuine inter-agency functioning.

65. The NAP is comprehensive in nature and aims to cover the aspects of prevention, protection, prosecution, international co-operation, as well as legislative developments. Both governmental and non-governmental actors are involved in the implementation of the NAP. GRETA notes that particular attention is paid in the NAP for 2011-2012 to trafficking for labour exploitation, which is acknowledged by the Polish authorities as a growing problem. It is difficult to indicate which sectors of the Polish economy are mainly affected, but according to various sources, THB for forced labour occurs mainly in agriculture, construction, food processing, agriculture and domestic help.<sup>24</sup> According to information from the National Labour Inspectorate, foreign workers are most frequently employed in processing industry (e.g. tobacco plants, food processing plants), hotels and restaurants, construction industry and agriculture.<sup>25</sup> That said, the scale of this problem is yet unknown, and it is necessary to take specific measures to research and address it. There is also a lack of knowledge about internal trafficking (i.e. within Poland).

66. According to civil society representatives, very few children are identified as victims of trafficking and there is a lack of attention to indicators suggesting that unaccompanied foreign minors might have been trafficked. As regards trafficking in children, the NAP for 2011-2012 includes as activities "drafting and implementing a model of supporting child victims of trafficking" and "specialist training of employees of educational and care centres and foster families with regard to the identification of child victims of trafficking".

67. The NAP for 2011-2012 also refers to a pilot project for the setting up of units against THB at the level of the voivodeships, including representatives of the regional structures of the social assistance department, Labour Inspectorate, Police, Border Guard and NGOs. According to the report on the implementation of the NAP in 2011, a Unit against THB started operating in Mazowieckie voivodeship. However, no other units could be set up at the voivodeship level. It is planned to use funding from the Norway Grants to create such units in 2013-2016. GRETA notes that it is important to pursue plans for the setting up of regional co-ordinating structures which include representatives of the social, education, child protection, health care and law enforcement structures, as well as NGO representatives.

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<sup>24</sup> See Z.Lasocik, L.Wieczorek, *Trafficking for Forced Labour in Poland - Research Report*, Human Trafficking Studies Centre, Warsaw University, Warsaw 2010, p. 53.

<sup>25</sup> *Ibid.*, p. 54.

68. In 2008 and 2009, the Ministry of the Interior published a report on THB in Poland. The NAP for 2011-2012 stresses the importance of continuing the publication of such reports as an instrument for raising awareness about THB. The most recent report, covering the period 2009-2011, was published in 2012.<sup>26</sup>

69. As noted in paragraph 19, the Government approves annual reports on the implementation of the NAP, but there is no evaluation performed by an independent body. In addition to the annual reports drawn up by the Government, such an independent evaluation can assist the authorities in assessing the impact of the activities and help them plan future policies and measures to combat THB. As there seems to be a lack of information on the dynamics of THB in Poland, GRETA notes that considerable advantages could be drawn from appointing an independent national rapporteur. The Polish authorities have indicated that the current draft of the National Action Plan against Trafficking in human Beings for 2013-2015 includes as a task “organisation of a round-table discussion on possibilities and legitimacy of establishment in Poland of the institution of the National Rapporteur on Trafficking in Human Beings recommended in the Council of Europe Convention on Action against Trafficking in Human Beings and Directive 2011/36/EC”.

70. **GRETA considers that the Polish authorities should take further steps to ensure that the national action to combat THB is comprehensive, and in particular to:**

- **increase co-ordination at the regional level of the activities of public bodies and NGOs involved in the implementation of anti-trafficking measures;**
- **step up action to combat THB for the purpose of labour exploitation, in particular in the sectors of agriculture, construction, food processing and domestic help;**
- **pay increased attention to prevention and protection measures addressing the particular vulnerability of children to trafficking.**

71. **GRETA also invites the Polish authorities to ensure that the Unit against THB is put in a position to fulfil its mandate effectively by further investing in its human resources.**

72. **Further, GRETA invites the Polish authorities to introduce an independent evaluation of the implementation of the NAP as a tool for assessing the impact of the activities and for planning future policies and measures to combat THB, and to consider the establishment of an independent National Rapporteur or other mechanism for monitoring the anti-trafficking activities of State institutions (see Article 29, paragraph 4, of the Convention and paragraph 298 of the Explanatory Report).**

*ii. Training of relevant professionals*

73. The NAP for 2011-2012 includes a number of tasks related to the provision of training to different professionals (police officers, Border Guard officers, prosecutors, judges, labour inspectors, social workers, employees of the Office for Foreigners dealing with asylum applications, employees working in Refugee Centres, consular personnel, employment agencies staff, trade unions lawyers and staff employed in care and educational centres for children). The funds for such training are allocated within the budget of the Ministry of the Interior and the budgets of the respective institutions responsible for the implementation of tasks under the NAP.

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<sup>26</sup> *Zapobieganie handlowi ludźmi w Polsce. Materiały do raportu za lata 2009-2011.*  
[http://www.msw.gov.pl/portals/pl/468/5517/Publikacje\\_nt\\_handlu\\_ludzmi.html](http://www.msw.gov.pl/portals/pl/468/5517/Publikacje_nt_handlu_ludzmi.html)



74. The subject of THB forms part of the curricula of police academies. Every new police officer undergoes basic training on human rights, with a module of THB (victim identification and assistance). Outside experts (e.g. from NGOs) are invited as trainers. Specialised courses on THB are provided to criminal division officers (229 persons have been covered by 10 such courses held in 2009-2011). Since 2007, an annual training seminar is organised together with the Border Guard.

75. The Border Guard have a four-level training system on THB which was approved in October 2010 by the Chief Commander of the Border Guard and covers all staff (from new recruits to senior staff). The training aims at providing practical knowledge (e.g. how to interview potential victims of trafficking) and involves NGO representatives, prosecutors and other relevant professionals as trainers. Out of a total of 15 000 Border Guard officers in Poland, some 5 000 had received training on THB by the end of 2011. The aim is to train all Border Guard officers, regardless of whether they are in direct contact with victims of human trafficking.

76. Since 2005, training on THB is an obligatory element of the initial training of social workers. The Ministry of Labour and Social Policy has allocated 140 000 PLN (some 33 654 euros) for such training. In 2011, the Ministry delivered four three-day training seminars covering issues related to identification, support of victims of trafficking, and co-operation with other bodies. Further, in 2011, the Ministry's Labour Market Department published guidelines on THB for labour office staff.

77. As regards training of labour inspectors, four courses have been organised since 2009, covering a total of 161 employees. Moreover, in 2010, in the framework of the project entitled "Transnational, cross-sector action to combat trafficking for the purpose of labour exploitation. Identifying and assisting victims - FREED"<sup>27</sup>, a seminar entitled "The role of labour inspection in fighting forced labour" was held. It included practical exercises on identifying cases of THB for the purpose of forced labour, with the use of the "List of operational indicators of trafficking in human beings - adults for forced labour developed by the International Labour Organisation with the co-operation of the European Union". The seminar was attended by 29 National Labour Inspectorate (NLI) employees. Furthermore, the ILO manual "Forced Labour and Human Trafficking: A handbook for labour inspectors" was translated into Polish and adapted to the situation in Poland and the needs of NLI's labour inspectors. The manual, which includes lists of operational indicators of THB for the purpose of forced labour and guidelines for NLI's labour inspectors to help them identify cases of forced labour, was distributed to all district labour inspectorates.

78. Training on THB for judges and prosecutors is provided through the National School for Judges and Prosecutors. Prosecutors and judges benefit from an annual training plan. The trainings are voluntary. In 2011, 460 prosecutors and judges took part in the training programme entitled "Criminalistic, criminological and legal aspect of THB" organised in appellate prosecutor's offices throughout Poland. In 2009-2012 in total of 656 judges and prosecutors were trained on this issue within training sessions organised by the School, both in Poland and abroad while taking part in projects.

79. Intergovernmental organisations, foreign embassies (e.g. of the UK and USA), NGOs (e.g. La Strada Foundation, Nobody's Children Foundation, Halina Nieć Legal Aid Centre, PoMOC Association) and the Trade Union "Solidarność" co-operate closely with governmental institutions by providing experts and funds for the training for professionals. For example, the IOM organised in 2011 a series of training seminars for Border Guard officers and a workshop for embassy staff on how to assist victims of trafficking, and in March 2012, a specialised workshop on victim identification procedures for Border Guard staff working in detention centres. The IOM has also translated into Polish the Handbook on direct assistance to victims of THB. The UNHCR has been involved in the training of Border Guard officers since 2004. Training for law enforcement officers on the identification of victims of trafficking has also been provided by La Strada and PoMOC Association.

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The National Labour Inspectorate was a partner in this project.

80. As part of the preventive activities ahead of the EURO 2012 Football Championship, training on THB was organised for district command police officers in Warsaw, and the NGO Nobody's Children Foundation organised training seminars (financed by the Mario Project) on trafficking in children and commercial child abuse for employees of educational care centres in several towns.

81. GRETA welcomes the efforts made by the Polish authorities to train professionals working in the field of prevention of THB and protection of victims, and in particular the use of a multi-disciplinary approach to such training and the integration of THB training in the basic training of police officers. Despite these efforts, NGOs have expressed concern about the lack of a proactive attitude on the part of law enforcement officers and the prevalence of negative stereotypes which hinder them from identifying victims of trafficking (see paragraph 217). It is also felt that judges need more training of THB and the rights of victims.

**82. GRETA considers that the Polish authorities should take further steps to improve the knowledge and sensitivity of relevant professionals, in particular prosecutors and judges, about THB and the rights of victims. Future training programmes should be designed with a view to improving the knowledge and skills of relevant professionals which enable them to identify victims of trafficking, to assist and protect them, to facilitate compensation for victims and to secure convictions of traffickers.**

*iii. Data collection and research*

83. The human rights-based approach to anti-trafficking policies advocated by the Convention requires adequate monitoring and evaluation. An essential element is the regular availability of comprehensive statistical information on both trends in human trafficking and on the performance of main actors in the fight against trafficking. The collation of data from different state institutions and NGOs raises concerns about data protection, especially when personal data are involved. International standards have been set for the collection, storage, transfer, compilation and dissemination of data. In order to ensure full compliance with these standards, Parties are expected to apply appropriate measures and techniques of data protection. An additional requirement for human rights-based anti-trafficking policies is the conduct of research and analysis with special attention to the rights and interests of victims.

84. In Poland, data of THB is collected by the Police, the General Prosecutor's Office and the National Consulting and Intervention Centre for Polish and Foreign Victims of Trafficking.

85. The statistics collected by the police crime statistics system "Themis" concern the number of investigations initiated for the first time for the disclosure of THB cases, the number of completed investigations, the number of evidenced and detected crimes, the number of persons suspected of committing a crime, and the number of persons granted the status of victim in the course of investigations.

86. The data collection by the General Prosecutor's Office is based on an analysis of cases which have received or should receive, according to the Office, legal qualification from CC provisions related to THB. The General Prosecutor's Office collects data on the number of preliminary proceedings, the number of completed cases, the number of cases resulting in bringing an indictment, the number of charged persons and injured parties, and the number of convictions.

87. The Unit against THB attempts to collate the different sets of data, so far with limited success, due to the above-mentioned differences in approach to data collection. The Unit has prepared a new scheme for data collection, building on an ICMPD project which developed a list of guidelines for data collection, and expects that the information collected in 2012 will be more complete. The list of guidelines for data collection prepared by the Unit against THB was used to create a form for collection of data by the National Consulting and Intervention Centre for Polish and Foreign Victims of Trafficking. It was also partly used by the Ministry of Justice to develop a new form which was sent to courts in order to collect information on THB cases. Since 2006, the Police and Border Guard are obliged by the Ministry of the Interior to send forms in every case where there is a justified suspicion that a person is a victim of THB in order to include the person in the Programme for Support and Protection Victim/Witness of Trafficking in Human Beings. In order to gain information about all victims of THB identified by law enforcement agencies, since January 2012, the Police and Border Guard are obliged to send forms in every case where there is a justified suspicion that a person is a victim of THB. In 2010 and 2011 the Unit against THB also requested the Ministry of Foreign Affairs and the National Labour Inspectorate to collect data.

88. The above-mentioned form used by the National Consulting and Intervention Centre for Victims of Trafficking to collect data relates to the number of victims referred to the Centre for assistance and the number of calls to the helpline. La Strada Foundation pays particular attention to the respect of the privacy of the victims. It reports to the Ministry of the Interior on an annual basis on its activities, but does not contribute to a comprehensive data collection system.

89. The most recent Ministry of the Interior report on THB, covering the period 2009-2011 (see paragraph 68), analyses data and statistics from the Police, General Prosecutor's Office and Ministry of the Interior. For the first time data on Polish citizens exploited abroad is presented.

90. **GRETA considers that, for the purpose of preparing, monitoring and evaluating anti-trafficking policies, the Polish authorities should develop and maintain a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical information from all main actors and allowing disaggregation (concerning sex, age, type of exploitation, country of origin and/or destination, etc.). This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection, including when NGOs working with victims of trafficking are asked to provide information for the national database.**

91. As far as research is concerned, on the initiative of the Unit against THB, a study exploring public awareness of risks associated with human trafficking and working abroad was performed by TNS OBOP on 18-21 February 2010 under a project conducted by the British Embassy in Warsaw. The research was planned by the Ministry of the Interior in co-operation with IOM, La Strada Foundation and Nobody's Children Foundation and in consultation with the institutions represented in the Inter-Ministerial Committee. The project was conducted on a representative random sample of 1 005 Polish citizens aged 15+, and was based on face-to-face in-home interviews. The results of the opinion poll, which were publicised through a press conference, pointed to the need to step up prevention among young people.

92. Over the years, as part of the implementation of different National Action Plans, the Unit against THB has commissioned experts to perform the following studies:

- Analysis of the rules of providing safe accommodation to the victims of trafficking in human beings in the experience of chosen organisations: standards of safe shelters (2012);
- Analysis of the existing models of providing support and assistance to victims of trafficking in human beings by social assistance units (2012);
- Status of foreign children victims of trafficking in the light of the Family Law (2011);
- Analysis of the position of foreign children in proceedings before the guardianship court, including analysis of the situation of victims of human trafficking (2009);
- Definition of trafficking in human beings: draft statutory rule (2007).

93. Further, the NGO Nobody's Children Foundation has been commissioned by the Unit against THB to carry out a study on court cases involving children (related to the offences of THB, prostitution and forced begging).

94. In 2011, the European Institute for Crime Prevention and Control affiliated with the UN (HEUNI) published a report on trafficking for forced labour and labour exploitation in Finland, Poland and Estonia, based on EU-funded research initiated in 2007.<sup>28</sup> The research on Poland was carried out by the Human Trafficking Studies Centre of Warsaw University, which published in 2010 a comprehensive research report on trafficking for forced labour in Poland.<sup>29</sup>

95. GRETA is also aware of some academic studies on THB (e.g. doctorate research) and studies by lawyers on case law. However, this research is not funded by the State.

**96. GRETA invites the Polish authorities to continue conducting and supporting research on THB-related issues as an important source of information for the evaluation of current programmes and for planning future policy measures. Areas where research may shed more light on the extent of the problem of THB include trafficking for the purpose of labour exploitation, trafficking in children and internal trafficking (i.e. within Poland).**

#### *iv. International co-operation*

97. The Convention requires Parties to co-operate with each other "to the widest extent possible" in order to prevent and combat THB, protect and assist victims, and investigate related criminal offences (Article 32).

98. In Poland, international co-operation is regulated by Section XIII of the CCP, which contains provisions regulating mutual legal assistance and extradition, as well as by EU instruments such as the freezing order and European arrest warrant. According to Article 615(2) of the CCP, the provisions of Section XIII do not apply when an international treaty to which Poland is a Party, or a legal act regulating the activity of an international criminal tribunal, provide for a different approach.

99. Poland is a Party to multilateral agreements concerning international co-operation, in particular the European Convention on Mutual Assistance in Criminal Matters and its Additional Protocols, the Convention established by the Council in accordance with Article 34 of the Treaty of the European Union on Mutual Assistance in Criminal Matters between the Member States of the EU and its Additional Protocol, and the European Convention on Extradition and its Additional Protocols.

<sup>28</sup> HEUNI, A. Jokinen, N. Ollus and K. Aromaa (eds.) *Trafficking for Forced Labour and Labour Exploitation in Finland, Poland and Estonia*, Helsinki 2011.

<sup>29</sup> Z.Lasocik, L.Wieczorek, *Trafficking for Forced Labour in Poland - Research Report*, Human Trafficking Studies Centre, Warsaw University, Warsaw 2010.

100. Further, Poland has concluded bilateral agreements on co-operation in combating serious crime (including human trafficking) with Armenia, Austria, Belarus, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Germany, Hungary, India, Ireland, Italy, Kazakhstan, Latvia, Lithuania, Mexico, Morocco, Netherlands, Republic of Moldova, Romania, Slovak Republic, Slovenia, Spain, Sweden, Tajikistan, Turkey, Ukraine, Uzbekistan and Vietnam. An agreement with Croatia was awaiting ratification and an agreement with Serbia was awaiting the official approval of the Prime Minister of Poland. The process of negotiation or re-negotiation was underway as regards agreements with Albania, Argentina, Iran, Libya, Mongolia, Peru, Russian Federation, Tunisia and USA. The Polish authorities have indicated that, in the absence of bilateral agreements, international co-operation is based on the UN Convention against Transnational Organised Crime and the Palermo Protocol or on the rule of reciprocity.

101. Spontaneous information can be provided on the grounds of Article 11 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, Article 7 of the Convention on Mutual Assistance in Criminal Matters between EU Member States, and Article 18 of the UN Convention against Transnational Organised Crime.

102. The Police and the Border Guard can transfer information outside Poland if the country to which the information is passed will ensure at least the same level of protection as that which applies to the territory of Poland, and has ratified bilateral agreements on protection of personal data and classified information. The scope of the data exchange is also specified in the international agreements on combating organised crime (including human trafficking). The following channels of information exchange are used: (i) through liaison officers accredited to foreign embassies in Poland and Police and Border Guard liaison officers accredited to Polish delegations abroad; (ii) through Polish and foreign diplomatic missions and consular posts; (iii) through national offices or contact points of international organisations (Interpol) and agencies (Europol, Frontex).

103. The Polish police forces have participated in a number of cases of international police co-operation to fight trafficking in human beings on the basis of bilateral agreements. There are frequent cases of conducting so-called "mirror investigations". The most significant example of that kind was operation "Italia" carried out by the police unit in Katowice and the Carabinieri in Rome in 2010 and dedicated to stopping an organised crime group trafficking Polish women to Italy for sexual exploitation. As a result of this operation, all offenders were prosecuted. The investigation of the "Mokotowska group", which involved trafficking of women for sexual exploitation and drugs trafficking, is an example of co-operation between the Polish and Bulgarian police. Three police surveillance measures were put in place in 2009; 37 perpetrators were identified and four of them were remanded in custody. There are also cases of close collaboration with the Romanian and Ukrainian police. The presence of police liaison officers at the Bulgarian and Romanian Embassies is reportedly very fruitful for direct information exchanges.

104. According to representatives of the General Prosecutor's Office met during GRETA's visit to Poland, there is also very good co-operation with the relevant authorities in Germany and UK. A recent example of successful co-operation concerned a case of THB of Polish nationals for benefit fraud in the UK. On the other hand, there have been problems in securing the co-operation of the relevant authorities in Belarus, the Russian Federation and the Republic of Moldova.

105. GRETA was informed that the Polish authorities have not yet participated in Joint Investigation Teams (JIT).<sup>30</sup> From the perspective of the Police, JITs are a useful tool in the context of combating activities of international organised criminal groups involved in THB. In the last five years, the Central Unit for Combating THB has repeatedly offered to work on the preparation of an agreement to set up a JIT with law enforcement agencies and the judiciary of R.O.S. Carabinieri (Italy), BKA (Germany) and Scotland Yard (UK). However, under Polish law, the decision to form a JIT falls under the responsibility of the General Prosecutor's Office. In 2010 and 2011, the General Prosecutor's Office of Poland proposed to the UK to sign an agreement on the establishment of JITs in two proceedings on THB. However, these JITs were not set up because of formal obstacles, namely Poland did not receive an official confirmation that the British authorities were carrying out preliminary proceedings in relation to the Polish proceedings, this being a basic requirement for the establishment of JITs according to Polish law.

106. In July 2012, in the framework of the IOM's project Polish-Ukrainian Migration Dialogue, a meeting was held between representatives of the Unit against THB and a delegation from Ukraine on problems related to combating THB. In September 2011, joint training was held for law enforcement officers from Poland, Belarus and Ukraine. Further, in 2011, in the framework of the Task Force against THB of the Council of Baltic Sea States (TF-THB CBSS), the first stage of the project DEFLECT (Data and Education on Forced Labour Exploitation and Counter Trafficking) was completed.

107. The Polish Presidency of the Council of the EU in 2011 was an occasion for the Polish authorities to organise a number of international activities in the area of action against THB, such as an international expert seminar on "Management models within the field of combating and preventing THB," during which modules were devoted to the issue of national referral mechanisms, risk assessment, assisted voluntary return and reintegration. Further, one of the panels of the meeting of the informal EU Network of National Rapporteurs or Equivalent Mechanisms on Trafficking in Human Beings in July 2011 was devoted to the problem of human trafficking within the EU. Reference can also be made to co-operation between the Unit against THB and Frontex towards the organisation of a conference in Warsaw on the occasion of the EU Anti-Trafficking Day.

108. GRETA commends the efforts made in the area of international co-operation and **invites the Polish authorities to continue developing the aspect of international co-operation with a view to preventing THB, assisting victims of trafficking and prosecuting offenders.**

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<sup>30</sup> Envisaged by Article 13 of the Convention on Mutual Assistance in Criminal Matters of 29 May 2000 and the Council Framework Decision on Joint Investigation Teams of 13 June 2002.

## 2. Implementation by Poland of measures aimed to prevent trafficking in human beings

109. According to Article 5 of the Convention, Parties must take co-ordinated action to prevent THB, with the involvement of relevant NGOs, other organisations and members of civil society, as appropriate. The Convention requires Parties in particular to take measures to discourage demand, strengthen border controls and ensure the integrity, security and validity of travel or identity documents (Articles 6 to 9).

110. In accordance with the Convention, measures to discourage demand for the services of victims of trafficking, especially women and children, should be understood as a positive obligation on Parties to adopt and reinforce such measures as regards THB for the purpose of any form of exploitation (see paragraph 108 of the Explanatory Report of the Convention). As it is stated in the Recommended Principles and Guidelines on Human Rights and Human Trafficking, strategies aimed at preventing THB shall address demand as a root cause of trafficking.<sup>31</sup>

### a. Measures to raise awareness and discourage demand

111. Considerable efforts have been made by the Polish authorities, in collaboration with NGOs and intergovernmental organisations, to raise general awareness about THB. The most recent information campaign took place on the occasion of the EURO 2012 Football Championship. It was entitled “Do not Lose” (“*Nie przegraj*”) and was organised jointly by the Ministry of the Interior, the Ministry of Sport and Tourism, the Tourism Association and several NGOs. It involved, *inter alia*, a media campaign, distribution of leaflets in six foreign languages, and the setting up of a dedicated website and helplines. Further, the NGO Nobody’s Children Foundation prepared and distributed information materials on child abuse.

112. A number of preventive activities are organised annually on the occasion of the EU Anti-Trafficking day, 18 October. Thus in 2011, La Strada and the Unit against THB organised an event in Warsaw during which information materials were distributed. The police academies in different parts of the country also organised lectures, screenings of films, distribution of leaflets and exhibitions. Further, as noted in paragraph 107, a conference was organised in Warsaw by Frontex, under the patronage of the Ministry of the Interior, in co-operation with six EU agencies.

113. An information campaign on trafficking in human beings for forced labour was organised in 2009-2010. It was directed towards Polish citizens migrating to EU Member States to find employment. The campaign used a spot produced on the initiative of IOM, MTV and the Ministry of the Interior and Administration. The spot was broadcast on public and commercial TV channels in 2009 (on the occasion of EU Anti-Trafficking Day, for two weeks) and in June 2010 (before the summer period when many people travel abroad). At the same time, information on the campaign was put on a specially designed website.<sup>32</sup> Other materials used for the campaign included newspaper advertisements, a guide entitled “Poles abroad” on the Ministry of Foreign Affairs website, and a publication of the Ministry of the Interior. As part of the NAP for 2011-2012, the preventive action was renewed through the “Safe Work” campaign led by the NGO Itaka Foundation - Centre for missing people, under the patronage of the Ministry of the Interior. The measures included a conference, a website,<sup>33</sup> an information brochure, a helpline for people planning to work abroad, and information on TV and radio and in the electronic media. The Ministry of Labour and Social Policy also prepared a brochure for people considering to take up employment abroad and published a link to the National Employment Agency Register on the website of the Public Employment Services.

<sup>31</sup> Principle 4 of Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

<sup>32</sup> [www.stophandelludzmi.pl](http://www.stophandelludzmi.pl)

<sup>33</sup> [www.bezpiecznapraca.eu](http://www.bezpiecznapraca.eu)

114. Another information campaign on trafficking in human beings for forced labour targeted foreigners taking up work in Poland. The campaign was organised and funded by the Ministry of the Interior and the Ministry of Foreign Affairs. In 2009, as part of the campaign, leaflets in Russian and Ukrainian were delivered by consular personnel to applicants for Polish visas in the two countries concerned, and in 2010, similar leaflets were handed out to visa applicants speaking other languages (Bulgarian, Chinese, Kazakh, Romanian, Tajik, Thai, Uzbek, Vietnamese, etc.). Furthermore, training for trade unions lawyers was provided as part of this campaign. The campaign was continued under the NAP for 2011-2012. In 2011, IOM started the implementation of a three-year project entitled "Rights of migrants in practice", in collaboration with the Ministry of the Interior and the National Labour Inspectorate, which is targeted at foreign nationals coming to work in Poland.

115. In 2009, the Ministry of Education, the Ministry of the Interior and NGOs started implementing awareness-raising activities targeting young people, especially those considered to be at risk (the schools were specially chosen by the Ministry of the Interior, in co-operation with the Ministry of Education). Teachers were trained on how to conduct awareness-raising lessons about the risk of human trafficking. The training was carried out on the initiative of the Ministry of the Interior, in co-operation with the NGOs Nobody's Children Foundation and La Strada Foundation. The comic strip "You're not for sale" prepared by the Council of Europe and a special leaflet prepared by the Unit against THB of the Ministry of the Interior were used. Around 10 000 pupils took part in lessons focused on prevention of THB in 2009-2010.

116. The Preventive Bureau of the Police Headquarters is implementing a THB prevention programme which involves educational, information and intervention activities for adults and children. Specific awareness-raising campaigns and other activities have been organised at the level of the voivodeships (e.g. by Katowice Police Command, "Do I know where I am driving to" campaign; in Radom, "No to human trafficking" campaign; in Opole, the distribution of a leaflet entitled "Child victim of trade").

117. Other awareness-raising initiatives have included a competition for young people for the best short film about human trafficking (carried out in 2010), a competition for the best Master's thesis, and a competition for the best short story.

118. Furthermore, the NGO Halina Nieć Legal Aid Centre organised in 2010 an information campaign aimed at raising the awareness of Cracow region inhabitants about the phenomenon of trafficking in children, including for forced begging. The NGO PoMOC Association in Katowice is also actively engaged in prevention through publications, contacts with the media and participation in TV programmes.

119. No measures directly aimed at discouraging demand leading to human trafficking have been taken in Poland, though admittedly the above-mentioned awareness-raising and educational activities allow young people to gain knowledge about the risk of becoming a victim of trafficking as well as the punishment for committing such a crime. The use of services of a victim of THB is not criminalised under Polish law and GRETA was informed that this issue was under discussion before the last elections, but since then it has not been on the political agenda. That said, the Polish authorities have referred to other legal provisions which are relevant to discouraging demand, such as the criminalisation of the production of child pornography, as well as the criminalisation of the illegal employment of foreigners, in particular Article 10 of the 2012 Act on the consequences of employment of foreigners illegally staying in the territory of Poland, which expressly prohibits the employment of a foreigner who is a victim of trafficking in human beings and does not possess valid documents. Further, the Ministry of Justice has prepared a draft amendment to the Criminal Code introducing liability for the use of sexual services of a minor engaged in prostitution. According to the Polish authorities, these provisions provide the advantage of not having to prove the perpetrator's knowledge that a person is a victim of trafficking in human beings.



120. GRETA welcomes the efforts made in Poland in the area of prevention of THB. That said, no impact assessment of the awareness-raising activities has been carried out. There is also a need to step up efforts to discourage demand for the services of victims of THB as a form of prevention. The prevention activities in the context of the EURO 2012 Football Championship could be used as a starting point for developing demand-reduction campaigns. As regards in particular THB for the purpose of labour exploitation, although the legal framework and practice have developed in recent years, there is clearly room for improving the awareness of this phenomenon, which is of growing concern.

**121. GRETA considers that future actions in the area of awareness raising should be designed in the light of impact assessment of previous measures and research, and be focused on the needs identified. Awareness-raising campaigns, education in schools and training of relevant professionals should aim at promoting gender equality and eradicating gender-based violence and the stigmatisation of victims of trafficking.**

**122. Further, GRETA encourages the Polish authorities to strengthen their efforts to discourage demand for services from trafficked persons as regards all forms of exploitation.**

**123. GRETA also invites the Polish authorities to contribute to awareness-raising prevention activities in the main countries of origin of victims trafficked to Poland, in co-operation with these countries, in order to alert potential victims of THB-related risks.**

b. Social, economic and other initiatives for groups vulnerable to THB

124. There have been no social or economic measures in Poland aimed directly at disadvantaged groups vulnerable to trafficking. All measures aimed at the elimination of unemployment and poverty, as well as measures undertaken to ensure equal educational opportunities, are dedicated to the groups concerned without separating people who are especially vulnerable to THB. Data collected by the National Consulting and Intervention Centre for Victims of Human Trafficking indicate that young people in general constitute a risk group. Nevertheless, it is hard to say which regions are more in danger and require particular action. According to the Polish authorities, information campaigns targeting young people have been directed at those who are considered to be at risk of trafficking. As noted in paragraph 108, children from certain schools have been identified as being more vulnerable to THB and therefore awareness-raising activities have been designed and targeted at them. Specific awareness-raising activities have also been directed at regions with high unemployment (e.g. Masovian Voivodeship) and regions identified as carrying a higher risk of THB (e.g. Lubusz Voivodeship, which is affected by weekend prostitution and drug abuse).

**125. GRETA considers that the Polish authorities should take further steps to identify persons and groups vulnerable to THB and to address them through targeted social, economic and other initiatives.**

c. Border measures to prevent THB and measures to enable legal migration

126. As noted in paragraph 30, the Border Guard have specialised units and staff dealing with prevention and combating of human trafficking. The Border Guard conducts preparatory proceedings as well as investigative and operational activities aimed at gathering evidence against perpetrators of human trafficking, which is passed on to the Police and the Prosecutor's Office. At present, the Border Guard do not have the power to investigate human trafficking offences unless they are connected to border crimes. A legislative amendment is currently being considered with a view to including among the statutory duties of the Border Guard combating human trafficking and slavery (see paragraph 33).

127. Information on the terms and conditions of legal stay in Poland is available on the websites of the Ministry of Foreign Affairs and each Polish Consulate abroad. This information is also posted on announcement boards in Polish consulates. Further, information leaflets available in 14 different languages are distributed.

128. When issuing visas, consular officials take into consideration various factors, possible dangers and other information available to them. In case of a suspicion of THB, consular staff are instructed to refuse to issue a visa and inform the competent authorities in Poland. However, it is noteworthy that most foreign victims of THB arrive in Poland legally. An “affidavit” is issued by employers to Ukrainian and Moldovan nationals as a proof of future employment in Poland. The condition is to take up the agreed employment within three months; if not, the visa is cancelled.

129. The Ministry of Foreign Affairs disseminates information through its consular officers to Polish nationals abroad on what to do in case of THB. A manual on working abroad is available on the website of the Ministry of the Interior. In 2010, the Ministry developed guidelines for Polish nationals seeking employment in other EU Member States, containing information on THB risks and contact numbers, which are also available on the Ministry’s website (see also paragraph 113).

130. Since 2011 a common project of the Ministry of the Interior, IOM and NLI entitled “Migrants’ rights in practice” is being implemented. It supports hotlines set up in Ukraine, Belarus and Armenia for persons planning to travel to Poland in order to provide them with information on their rights. Special information with the number of a hotline in Poland is also delivered to migrants at Poland’s Eastern border crossings. There is also a special website<sup>34</sup> where migrants can access information on their rights, including information on the risk on human trafficking. The website is available in seven languages (English, French, Armenian, Polish, Russian, Ukrainian and Vietnamese). In 2013 it is planned to organise meetings with migrants already present in Poland.

131. While welcoming the measures already taken, **GRETA considers that the Polish authorities should continue their efforts to provide written information to foreign nationals planning to travel to Poland, in a language that they can understand, in order to alert them to the risks of THB, inform them of where they can go for help and advice, and provide them with information on their rights.**

d. Measures to ensure the quality, security and integrity of travel and identity documents

132. The Polish authorities have informed GRETA that, in order to ensure the quality and security of identity documents, Polish passports have two biometric characters: a facial image and, since 2009, fingerprints. There are also plans to introduce biometric IDs.

133. The Border Guard are responsible for the control of documents. Representatives of Division VI of the Forensic Laboratory of the Border Guard take part in the work of an expert team working on the design of new identity and travel documents, as well as in the work of an informal group tasked with the creation of a national system for the protection of official documents. Alerts on the falsification of documents are stored in the internal data communications network of the Border Guard.

134. Border Guard officers are periodically trained on falsification trends and how to verify the authenticity of documents. Training on detecting travel and identity document fraud is also provided to Ministry of Foreign Affairs officials. The Forensic Laboratory of the Border Guard provides, *inter alia*, training to Border Guard officers (e.g. on “design documents”, new document falsification methods and trends, analysis of handwriting) and staff of the Ministry of Foreign Affairs who are preparing to become consuls. The laboratory’s experts update “Album design documents”, including the development of documents submitted for inspection, information on stolen blank documents and document fraud cases.

135. In addition, the Border Guard co-operate with representatives of forensic laboratories in other EU Member States in the exchange of information. During regular meetings of the EU Council Working Group Limits/False Documents, the collected materials are presented to other Member States.

### **3. Implementation by Poland of measures to protect and promote the rights of victims of trafficking in human beings**

#### **a. Identification of victims of trafficking in human beings**

136. Article 10 of the Convention requires Parties to adopt measures to identify victims. In order to do so, Parties must provide their competent authorities with persons who are trained and qualified in preventing and combating THB and in identifying and helping victims, including children. Identifying a trafficking victim is a process which takes time, and therefore the Convention provides for the rights of potential victims by establishing that when the competent authorities have reasonable grounds to believe that a person has been a victim of trafficking, he/she must not be removed from the country until the identification process is completed and must receive the assistance required by the Convention.

137. In Poland, there are two routes for identifying victims of trafficking: by the National Consulting and Intervention Centre for Polish and Foreign Victims of Trafficking, and by law enforcement agencies.

138. The National Consulting and Intervention Centre for Polish and Foreign Victims of Trafficking performs the identification of victims of trafficking who are legally present in Poland and do not wish to contact a law enforcement agency, or have not been identified as victims of trafficking by such an agency. The centre was set up in 2009 and is completely financed from the budget of the Ministry of the Interior. The NGO La Strada Foundation was initially chosen, following a public tender, to run the centre. As noted in paragraph 38, since January 2013, a second NGO, PoMOC, is involved in the implementation of this public task. If staff working at the Centre are convinced that a person is a victim of trafficking, he/she is entitled to assistance (see paragraphs 150-154).

139. The tasks performed by the National Consulting and Intervention Centre include: operation of a 24-hour helpline and an Internet advisory centre; identification or support in the identification of victims of trafficking in human beings; assistance given to victims during their contact with law enforcement bodies and the justice administration; psychological support; interpretation; and legal consultation. The Centre employs five permanent staff, including two psychologists, a mediator and a pedagogue, and uses a range of external specialists, in particular lawyers. The Police, Border Guard or any other stakeholder who suspects that a person might be a victim of trafficking can consult the Centre during the identification process, making use of its specially trained and experienced staff. La Strada has issued a leaflet with indicators for the identification of victims of trafficking and provides training on identification to law enforcement officials and other relevant professionals.

140. The identification of victims of trafficking by the Police or the Border Guard follows the so-called "Algorithm of conduct of law enforcement officers in case of revealing a crime of THB" which provides detailed instructions. According to this "algorithm", in case of a report that a person may be a victim of trafficking, the law enforcement official should inform a specially trained officer of the same sex as the possible victim. This officer should establish whether there are reasonable grounds to suspect a THB offence, whether the person could be a victim/witness of this offence, and whether he/she agrees to report the offence. The potential victim should be informed of his/her rights to support under the Law on Social Assistance (see paragraph 150) and, in the case of foreign nationals, of the right to access the Programme for Support and Protection of Victims/Witnesses of Trafficking in Human Beings (see paragraph 152).

141. The “algorithm” contains special instructions concerning persons with an irregular immigration status in Poland, who have to be identified by the Police or the Border Guard in order to enjoy support and protection. According to the “algorithm”, if such a person does not want to report an offence, he/she has to be informed of the right to a three-month reflection period (see paragraph 168). If the person decides to report the offence, he/she is informed of the right to apply for a residence permit. If the victim decides to enjoy the previously mentioned rights, the law enforcement officer issues a special certificate confirming that there is a reasonable presumption that the person concerned is a victim/witness of THB and that he/she is included in the Programme for Support and Protection. This certificate can be used by the victim to apply to the head of the regional administration (*voivod*) for permission to stay in Poland. GRETA was informed that the provisions of the “algorithm” are being developed, *inter alia*, with a view to spelling out the steps to be taken in the case of child victims of trafficking.

142. A victim of trafficking can also be identified by the Prosecutor’s Office (e.g. if there is a difference in opinion between the Police or Border Guard and an NGO as to whether a person is a victim), but this possibility has been used very rarely: there was only one case of a foreign national who was identified as a victim by the Prosecutor’s Office in 2006-2011 and included in the Programme for the Support and Protection of Victims/Witnesses of THB. At the same time, the Polish authorities have indicated that there is a lack of information concerning victims of foreign nationality who were identified by the Prosecutor’s Office, but were not included in this Programme.

143. According to civil society representatives met during GRETA’s visit to Poland, there is insufficient outreach work and a lack of proactive approach in the identification of possible trafficking victims, in particular among irregular foreign nationals held in detention by the Border Guard and unaccompanied minors. It is also necessary to step up the gathering of intelligence and the sharing of information between relevant actors as regards detecting cases of THB for forced labour.

144. As already noted in paragraphs 11 and 65, trafficking for the purpose of labour exploitation is on the rise in Poland (e.g. in agriculture, food processing, etc.). According to the Polish authorities, in the course of inspections by the National Labour Inspectorate (NLI), in particular of the legality of employment of foreign nationals, labour inspectors look for potential cases of trafficking in human beings for the purpose of forced labour. However, as mentioned in paragraph 36, the powers of the NLI do not include inspections of private households. GRETA was informed that, as a result of inspections and the analysis of complaints lodged with the NLI, about 10 reports have been filed by the NLI with the Prosecutor’s Office since 2007 concerning possible human trafficking cases. One such case concerned mushroom picking in 2009-2010, involving some 30 women from the Philippines who had been recruited by a Polish agency.

145. Concerning transnational trafficking for labour exploitation of Polish nationals, the National Labour Inspectorate performs checks of employment agencies sending Polish nationals abroad. Such agencies have to be registered by the head of the regional government and must sign a contract with the person concerned, as well as with the foreign employer. The agency cannot receive payments from the recruited workers other than as reimbursement of expenses exclusively related to the departure and return of the person, issuing a visa, medical examination and translation of documents. In case of violation of the relevant provisions (Article 121 of the Act on Employment Protection and Labour Market Institutions), the agency can be deprived of the right to conduct business. If a person had suffered financial loss, he/she can sue the agency through civil action.

146. As regards child victims of trafficking, in 2009 the Unit against THB started pilot projects in four voivodships with a view to establishing procedures for the identification of such victims and finding safe places to accommodate them. However, no child victims were identified and assisted through these projects.

147. Unaccompanied minors are placed in orphanages financed by the regional government. The GRETA delegation was informed of cases where such minors had disappeared from orphanages. Considering the fact that there are a number of unaccompanied foreign minors in institutions, it is important to step up the identification of child victims of trafficking, e.g. by extending the above-mentioned pilot projects to the whole of Poland and by covering various groups at risk, such as unaccompanied minors, children who are begging, etc.

148. GRETA welcomes the efforts made by the Polish authorities to adopt a multi-disciplinary approach to the identification of victims of THB through the setting up of the National Consulting and Intervention Centre for Polish and Foreign Victims of Trafficking. That said, **GRETA urges the Polish authorities to take further steps to secure that all victims of trafficking are properly identified and can benefit from all the assistance and protection measures provided for under the Convention. To this end, the Polish authorities should:**

- **strengthen multi-agency involvement in victim identification by introducing a national referral mechanism which defines the roles and procedures of all authorities competent to perform identification and frontline staff who may come into contact with victims of trafficking;**
- **provide frontline staff with operational indicators, guidance and toolkits to be used in the identification process; these indicators should be regularly updated in order to reflect the changing nature of human trafficking;**
- **ensure that law enforcement officials, social workers, labour inspectors and other relevant actors adopt a more proactive approach and increase their outreach work to identify potential victims of trafficking;**
- **adopt nation-wide procedures for the identification of child victims of trafficking;**
- **pay more attention to the identification of victims of trafficking among persons detained as irregular migrants and provide additional training to staff who come in contact with such persons.**

b. Assistance to victims

149. The Convention requires Parties to take measures to assist victims in their physical, psychological and social recovery, taking account of the victim's safety and protection needs, in co-operation with NGOs and other organisations engaged in assistance to victims. This assistance must be provided on a consensual and informed basis, taking account of the special needs of persons in a vulnerable position, as well as children, and it must not be made conditional on the victim's willingness to act as a witness (Article 12). The need to take account of victims' needs is also referred to in the Convention's provisions concerning temporary residence permits (Article 14) and the rights of children victims of trafficking (Article 12(7)). The Convention also establishes that the assistance to victims of THB must include appropriate and secure accommodation.

150. The legal basis for providing assistance to victims of trafficking in Poland is contained in the Act on Social Assistance, Article 7(7)(a) of which states: "social assistance is granted to people and their families in particular due to (...) the need for the protection of victims of trafficking in human beings". Pursuant to Article 5 of the Act on Social Assistance, victims of trafficking are entitled to all social welfare benefits specified in Article 36 of the same Act. The victim's concrete needs for assistance are discussed with a social worker. The assistance is financed by the state budget (as tasks assigned to territorial self-governments within the scope of governmental administration) and by the own budgets of the territorial self-governments. The territorial self-governments can assign the implementation of victim assistance to NGOs following a tender procedure and on the basis of an agreement. Following an amendment to the Act on Social Assistance which entered into force on 1 April 2010, the head of the regional administration is responsible for co-ordinating actions to prevent THB and for granting support to victims within the framework of the social assistance system.

151. The Act on Social Assistance defines in Section 5a a catalogue of benefits provided to victims of trafficking in human beings who are third-country nationals and have been issued a temporary residence permit on the basis of Section 53a(2)(4) or Section 53(1)(15) of the Act on Foreigners. This catalogue includes: assistance in the form of emergency intervention, *inter alia*, psychological and legal support, social assistance, safe shelter (from two to eight months); medical care; protection by means of stay in a crisis intervention centre; meals in the form of whole-day board or cash benefit for subsistence; clothing; and an allowance for special purposes. The benefits are provided by district (*poviat*) family assistance centres and social welfare centres, using financing from the state budget.

152. The Programme for the Support and Protection of Victims/Witnesses of THB was set up in 2006 in order to cater for foreign nationals who are possible victims of human trafficking. It is financed entirely by the Ministry of the Interior. Since 2009, the programme has been implemented by the National Consulting and Intervention Centre for Polish and Foreign Victims of Trafficking. There are three conditions for being included in the programme: (i) victim's contact with a law enforcement agency which performs identification; (ii) existence of justified suspicion that the person might be a victim of human trafficking; (iii) the victim breaking all contact with the perpetrators. Victims have to agree to take part in the programme.

153. The scope of the programme covers crisis intervention, identification of the victim's needs, case-management (consultations, support, safety, etc.), interpretation, transport of the victim on the territory of Poland, safe shelter (accommodation, food, clothes, etc.), if necessary, change of appearance, medical and psychological consultations, and purchase of medicines. The Centre also provides legal advice to victims, assists them during their contacts with law enforcement officials and the judiciary, and organises the victim's safe return to his/her country of origin.

154. GRETA was informed that the National Consulting and Intervention Centre for Polish and Foreign Victims of Trafficking provides support to victims of trafficking regardless of whether they have been formally identified by the law enforcement authorities or co-operate with them or not. Support by the Centre is provided to both Polish citizens and foreign nationals. Within the NAP for 2011-2012, 750 000 PLN (approx. 180 288 EUR) were allocated for the running of the National Consulting and Intervention Centre in 2011. The amount allocated in the 2012 budget was 778 000 PLN.

155. Adult female victims of trafficking are accommodated in the shelter run by La Strada (see paragraph 159) or referred to another shelter or a crisis intervention centre (see paragraph 160). The Centre is also responsible for finding a safe place for male victims of THB who can be referred to crisis intervention centres or placed in hostels.

156. According to data provided by National Consulting and Intervention Centre, it assisted 193 victims in the period April-December 2009, 253 in 2010, 133 in 2011 (of whom 52 were foreign nationals) and 198 in 2012 (including 109 foreign nationals). Men constituted some 10% of all victims.

157. GRETA notes that according to the official statistics, a total of 185 foreign nationals participated in the Programme for Support and Protection of Victims/Witnesses of THB in 2006-2012 (including 128 women, 43 men and 14 children). The majority of the assisted foreign victims (146) were legally present in Poland. Most of the victims were from Bulgaria (56), Romania (54) and Ukraine (21). The Police performed 126 of the identifications and the Border Guard, 58. Out of the assisted foreign victims, 174 co-operated in the investigation.

158. According to statistical data on provided social welfare benefits, in 2009, 31 739 PLN (approximately 7 935 euros) were spent on 28 third-country national victims of trafficking, pursuant to Section 5a of the Act on Social Welfare, and in 2010, 23 558 PLN (appr. 5 889 euros) on 12 such victims. Because of the method used to collect statistical data, it is not possible to indicate the amount of funds disbursed for support to other victims of trafficking in human beings.

159. The GRETA delegation visited three accommodation facilities for victims of THB in different parts of Poland. La Strada Foundation runs the only specialised State-financed shelter for victims of THB in the country. It is intended for adult women and has a capacity of eight places (in case of need, more places can be created). The shelter offers very good material conditions (three bedrooms with one to three beds; kitchen; living room; bathroom). A staff member is present around the clock. The longest stay has been nine months.

160. The Ministry of Labour and Social Policy has designated 14 crisis intervention centres across the country to receive victims of trafficking. GRETA visited one such centre in Piastów, Pruszków County. The centre, which was originally set up in 2006 to cater for victims of domestic violence, is funded by the county budget and also receives a grant from the regional authorities specifically dedicated to victims of trafficking. Such victims are referred to the crisis centre by La Strada Foundation, which also offers assistance in the provision of psychological support to victims, the setting up of individual plans, as well as covering victims' medical expenses. The centre has a total capacity of 14 places and can receive both women and men victims of trafficking, as well as the victims' children. For example, two men victims of THB for forced labour were accommodated there in the recent past. Victims of trafficking can in principle stay up to three months in the centre. However, an extension is possible, in consultation with the Ministry of the Interior and La Strada Foundation (for example, a woman spent eight months at the centre and got trained in the meantime as a hairdresser). The average length of stay was reported to be four months. The GRETA delegation observed that the centre offered very good conditions (three bedrooms, a common room, kitchen, two bathrooms, laundry, playground for children) and employed a range of specialists (psychologists, social worker, pedagogue, lawyers, psychiatrist).

161. Since 2004, the NGO PoMOC Association runs a shelter for women and their children. The shelter employs six staff (including a psychologist, social worker, educator, therapist and child specialist) who are available on call around the clock. One staff is present on the premises overnight. At the time of GRETA's visit, the shelter was accommodating six women victims of human trafficking and their four children. Living conditions in the shelter were of a very high quality (eight rooms with one to four beds; two bathrooms; a kitchen; living rooms; indoor and outdoor play areas for the children). Victims could remain for up to a year at the shelter and were provided with material, psychological and spiritual support, individual and group therapy, as well as assistance to get trained and to find work. However, GRETA was informed that the local health centre refused to treat people without medical insurance and PoMOC staff had to use their personal contacts with doctors to ensure that victims received treatment.

162. In the period 2003-2011, PoMOC assisted 223 persons (135 women and 88 children), of whom 169 were victims of trafficking, including 15 foreign nationals (from Bulgaria, the Republic of Moldova, Romania and the Russian Federation). Some of the victims were identified by PoMOC street workers, using identification guidelines developed by PoMOC, but nearly 90% of the victims were referred to PoMOC by the Police, the Border Guard or La Strada Foundation. PoMOC relies mostly on its own resources and to some extent on foreign donors to fund the provision of support to victims of trafficking. Some funding is provided by the local authorities, through the line for combating domestic violence, but no funding is given by the State or the voivodeship despite the fact that victims of trafficking are referred to PoMOC from various parts of the country.

163. GRETA welcomes the setting up of the National Consultation and Intervention Centre for Polish and Foreign Victims of Trafficking and the provision of public funding for the running of the shelter for victims of trafficking managed by La Strada Foundation, as well as for a number of crisis intervention centres across the country. That said, GRETA is concerned that no public funding is provided to the shelter run by the PoMOC Association to which victims of trafficking are referred by the authorities, and considers that every referral merits funding.

164. The Act on Social Assistance provides the legal framework for taking care of foreign children without parental care residing in the territory of Poland. One of the tasks assigned to the local authorities consists in funding the stay of foreign children in round-the-clock child care institutions or foster families, irrespective of the child's immigration status. The district (*powiat*) where the child was found directs him/her to a relevant childcare institution. The child may be put in a child care institution on the basis of a court decision or at their own request. Children are placed with foster families by a court decision. A family court can limit parental authority and appoint a legal guardian.

165. La Strada Foundation has an agreement with a child care institution in Warsaw where unaccompanied minors are accommodated. As part of the NAP for 2011-2012, the Polish authorities intended to develop a system of supporting child victims of trafficking by setting up safe shelters for them and drawing up identification tools for professionals.

**166. GRETA considers that the Polish authorities should take further steps to provide assistance to victims of trafficking, and in particular to:**

- **ensure that there is a sufficient number of places across the country offering adequate conditions and adapted to the victims' needs; when assistance is delegated to NGOs, the State has an obligation to provide adequate financing and ensure the quality of the services delivered by the NGOs;**
- **improve the system for providing assistance to child victims of trafficking, both in terms of accommodation and as regards medium and long-term support programmes tailored to the needs of the children;**
- **ensure that suitable accommodation is provided to male victims of trafficking and that they can fully benefit from the assistance measures provided for in law;**
- **guarantee access to public health care for victims of trafficking.**

c. Recovery and reflection period

167. As victims of trafficking are extremely vulnerable after the trauma they have experienced, Article 13 of the Convention introduces the obligation for Parties to provide in their internal law for a recovery and reflection period of at least 30 days. The recovery and reflection period, in itself, is not conditional on co-operation with the investigative or prosecution authorities and should not to be confused with the issue of a residence permit under Article 14(1) of the Convention. Pursuant to the Convention, the recovery and reflection period should be granted when there are reasonable grounds to believe that the person concerned is a victim of trafficking, i.e. before the identification procedure has been completed. During this period, Parties must authorise the person concerned to stay on their territory and expulsion orders cannot be enforced.

168. In Poland, the recovery and reflection period is regulated by the Act on Foreigners.<sup>35</sup> Pursuant to Article 53a(2), point 4, of this Act, "a residence permit for a specified period can be issued to a foreigner who resides in Poland illegally if the body in charge of conducting proceedings in the case of trafficking in human beings states that the foreigner is probably a victim of trafficking in human beings within the meaning of the Council Framework Decision of 19 July 2002 on combating trafficking in human beings".<sup>36</sup> The residence permit is issued upon the foreigner's application for the time necessary to decide whether to co-operate with the authority competent to conduct the proceedings, but for no longer than three months. The general rules for issuing residence permits (i.e. possessing health insurance, source of income or financial resources, and legal title to dwelling) do not apply and no stamp duty is charged for the issuance of the residence permit for the recovery and reflection period. During this period, the person concerned is entitled to assistance within the Programme for the Support and Protection of Victims/Witnesses of THB. Pursuant to Article 89(1), point 3, of the Act on Foreigners, expulsion or deportation orders are not enforced during the reflection period.

<sup>35</sup> Consolidated text, Journal of Laws 2006, No. 234, item 1694, as amended.

<sup>36</sup> O.J. EC L 203 of 1.08.2002.



169. According to NGOs providing assistance to victims of trafficking and lawyers, information on the recovery and reflection period is not systematically provided to victims and this instrument is used very rarely. Statistics provided by the Unit against THB indicated that only 13 victims of trafficking received residence permits under the provision related to the recovery and reflection period in the period 2006-2011. No recovery and reflection period permits were issued in 2010 and 2011. There are reports from civil society according to which foreign victims of THB who do not co-operate with the investigation are not classified as victims of trafficking and are not offered a reflection period.

170. GRETA stresses that the victim-centred approach of the Convention implies that a recovery and reflection period should be offered to all possible victims of trafficking, together with the provision of protection and assistance measures during this period, which could also have positive effects on the investigation of human trafficking offences. **GRETA urges the Polish authorities to ensure, in compliance with their obligations under Article 13 of the Convention, that all possible victims of trafficking, including European Economic Area nationals, are systematically informed of the possibility to have a recovery and reflection period and are effectively granted such a period regardless of whether or not they co-operate with the investigation.**

171. **Further, GRETA considers that the relevant legislation should be amended in order to reflect the Convention and the fact that Council Framework Decision of 19 July 2002 on combating trafficking in human beings had been replaced by Directive 2011/36/EU.**

d. Residence permits

172. Article 14(1) of the Convention provides for two possibilities when it comes to the issuing of renewable residence permits to victims of trafficking: on the basis of their personal situation and/or their co-operation with the competent authorities in the investigation or criminal proceedings.

173. In Poland, the Act on Foreigners provides for the possibility of issuing a residence permit to a victim of trafficking who decides to co-operate with law enforcement agencies, either immediately after being detected or during the recovery and reflection period. Pursuant to Article 56(2), point 4, of this Act, a fixed-term residence permit can be granted to victims of human trafficking for up to six months, with the possibility to apply for a new permit in accordance with Article 53(1), point 15, of the Act. In order to be issued with such a residence person, the person who is a victim of trafficking in human beings within the meaning of the Council Framework Decision of 19 July 2002 on combating trafficking in human beings has to fulfil all of the following conditions: a) he/she resides in Poland, b) he/she co-operates with the bodies in charge of conducting proceedings in the case of human trafficking, c) he/she has severed contacts with the suspected traffickers. Currently it is not possible for a foreigner to receive a permanent residence permit in Poland. Victims granted residence permits under Article 53(1), point 15, of the Act on Foreigners can be expelled if their stay in the country constitutes a threat to state security and defence, or to public security and order.

174. Foreign nationals may also be granted a permit for tolerated stay on the territory of Poland on the basis of the general rules of Article 97(1) of the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland. This Act does not refer specifically to the rights of victims of THB and in every case the situation of the person is examined individually. GRETA was informed of the case of a Nigerian woman victim of THB who was granted tolerated stay in Poland on humanitarian grounds.

175. GRETA understands that there has also been at least one case of a victim of human trafficking who was granted asylum in application of the non-refoulement principle, as a result of an intervention from the UNHCR.

176. GRETA was informed that draft guidelines to the Act on Foreigners were adopted by the Permanent Committee of the Council of Ministers on 16 August 2011 and on their basis, the Government Centre of Legislation will prepare draft amendments to the Act on Foreigners concerning, *inter alia*, the residence permits for victims of trafficking. One of the proposed amendments is to make it possible for victims of THB to be issued with a permanent residence permit if they have spent at least two years in Poland. The Polish authorities have informed GRETA that, according to the draft, a foreign national suspected of being a victim of human trafficking within the meaning of Article 115(22) of the CC shall be issued a certificate confirming the suspicion by an institution competent for conducting criminal proceedings referred to in Article 189a (1) of the CC. The certificate shall be valid for a period of three months from the date of its issuance and, in the case of a child, the issuing institution may prolong the validity period to four months. The foreign national's stay shall cease to be regarded as legal at the moment of notification to the Minister of the Interior of the foreigner having willingly, actively and on his/her own initiative re-entered into contact with persons suspected of human trafficking.

177. The statistics provided by the Polish authorities show that very few residence permits have been issued to victims of trafficking on the basis of their co-operation with law enforcement agencies: one in 2009, none in 2010, three in 2011 and 10 in 2012.

**178. GRETA urges the Polish authorities to ensure that victims of THB can take full advantage of the right to be granted a residence permit.**

e. Compensation and legal redress

179. Article 15 of the Convention establishes the obligation for Parties to provide in their internal law for the right of victims of trafficking to legal assistance and free legal aid. Parties must also provide for the right of victims of trafficking to compensation from the perpetrators as well as adopt legislative or other measures to guarantee compensation for victims from the State. A human rights-based approach to action against THB entails the effective prosecution of traffickers, putting the emphasis on the right to an effective remedy for the victim. Further, Article 15(1) of the Convention establishes that victims of trafficking must have access to information on relevant judicial and administrative proceedings in a language which they can understand.

180. In Poland, pursuant to the Law on Free Legal Aid, a victim of trafficking is entitled to legal counselling, support in drafting documents, the right to have an attorney before the court, prosecutor and Constitutional Court, as well as the right to a waiver of procedural expenses. These rights are guaranteed without it being necessary to assess the victim's financial status. Further, in accordance with Article 87 of the Code of Criminal Procedure (CCP), a victim who has the status of a party to the proceedings can avail him/herself of professional legal aid, which is provided free of charge if the victim demonstrates inability to bear the costs of such aid without detriment to the upkeep of him/herself or their next of kin (Article 88 in conjunction with Article 78 of the CCP). That said, GRETA was informed by lawyers and civil society representatives that the funding provided by the State to *ex officio* lawyers (some 100 euros for the length of the proceedings) is too low to ensure the quality of the legal aid provided to victims. As regards irregular migrants, only NGOs provide legal assistance and aid to them as they are not covered by the Law on Free Legal Aid.

181. According to the Polish authorities, there are five avenues for victims of trafficking to obtain compensation in Poland:

- (i) during criminal proceedings, by filing a motion in accordance with Article 46 of the CC;
- (ii) during criminal proceedings, by bringing a civil action on the basis of Articles 62-70 of the CCP;
- (iii) in civil proceedings, if the decision of the criminal court did not award just satisfaction;
- (iv) in civil proceedings, independently of criminal proceedings, in accordance with the general principles of Article 415 of the Civil Code;
- (v) on the basis of the Act on State Compensation for Victims of Certain Crimes.

182. Article 46(1), of the CC provides that “in the case of conviction, the court, upon a motion from the injured person or from another person so entitled, shall impose the obligation to redress the damage caused, in whole or in part”. Paragraph 2 of Article 46 provides that the court can decide that “exemplary damages” be granted to the injured party even if no application for compensation has been made.

183. On the basis of Article 415(6) of the CCP, if the amount of compensation granted through the criminal procedure was not full, the victim can make an additional claim during civil procedure. Action can be brought by a prosecutor or by the victim before the start of the proceedings of the main trial (Articles 62-70 of the CCP).

184. There is also a possibility for victims to be compensated on the basis of the 2005 Act on State Compensation for Victims of Certain Crimes<sup>37</sup> which was prepared in order to implement Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims. This Act applies to victims who have suffered seriously as a result of a crime, but there is no special provision in it as regards victims of human trafficking. The following conditions need to be fulfilled: the offence caused death, serious detriment to health, disturbance to the functioning of a bodily organ or disturbance to health; the victim or her/his relatives have made an application; the compensation cannot be paid by the perpetrator.

185. State compensation can be received by victims of crimes committed both intentionally and unintentionally and covered by the following provisions of the CC:

- Article 156(1): “Whoever causes grievous bodily harm in a form which: 1) deprives a human being of sight, hearing, speech or the ability to procreate, or 2) inflicts on another person a serious crippling injury, an incurable or prolonged illness, an illness actually dangerous to life, a permanent mental illness, a permanent total or substantial incapacity to work in an occupation, or a permanent serious bodily disfigurement or deformation, shall be subject to the penalty of the deprivation of liberty for a term of between one and 10 years.”
- Article 157(1): “Whoever causes a bodily injury or an impairment to health other than specified in Article 156(1), shall be subject to the penalty of the deprivation of liberty for a term of between three months and five years.” The bodily injuries referred to in this provision have to last more than seven days.

186. The body entitled to adjudge State compensation is the court, upon the motion of the victim, her/his relatives or the public prosecutor, filed within two years of the date when the crime was committed. Compensation can be granted only to Polish and EU citizens on condition that the crime was committed on the territory of Poland. State compensation can be granted regardless of whether the perpetrator was found, accused or convicted. GRETA understands that there is no dedicated State compensation fund and that any compensation awarded would be paid directly from the State budget. Compensation can be granted only up to the amount that will cover lost earnings or other sources of income, the costs connected with medical treatment and rehabilitation, or funeral expenses. According to the Polish authorities, the extension of the scope of the Act on State Compensation for Victims of Certain Crimes to third-country nationals would lead to a practical impossibility of exercising their rights under this Act because of the absence of appropriate bodies in non-EU Member States capable of considering motions for compensation from victims of human trafficking.

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Journal of Laws 2005, No. 169, item 1115.

187. Despite the existence of the above-mentioned legal possibilities, GRETA understand that very few - if any - victims of trafficking have received compensation from the perpetrators. There are no statistics available concerning victims of THB who have received State compensation as the compensation awards are not broken down with reference to the type of victims. According to data from the General Prosecutor's Office, in 2011 there were no cases of compensation granted to victims of human trafficking, be it on the basis of the Act of State Compensation for Victims of Certain Crimes or during criminal proceedings. The Polish authorities have informed GRETA that in 2013, a record form with a section on the number of persons granted State compensation and the amounts paid to them will be introduced. It would be possible to include other information in this form, such as motions for damages filed in criminal proceedings. The information gathered through the new form will be compiled in a statistical system which is being set up as part of an Integrated Accounting and Staff System.

188. Further, GRETA understands that the Polish authorities intend to set up a special expert group to analyse the legislation and functioning of the compensation provisions with a view to ensuring access of victims of trafficking to existing compensation schemes.

**189. GRETA urges the Polish authorities to adopt measures to facilitate and guarantee access to compensation for victims of trafficking, and in particular:**

- **ensure that victims of trafficking are systematically informed in a language that they can understand of the right to seek compensation and the procedures to be followed;**
- **enable victims of trafficking to exercise their right to compensation, by building the capacity of legal practitioners to support victims to claim compensation and including compensation into existing training programmes for law enforcement officials and the judiciary;**
- **encourage prosecutors to request compensation orders to the largest possible extent;**
- **include all victims of trafficking in the scope of the Act on State Compensation for Victims of Crimes, irrespective of their nationality and residence status or the type of injury sustained;**
- **enable victims of trafficking who have left Poland to benefit from the possibilities to claim compensation.**

**190. Further, GRETA invites the Polish authorities to further develop the system for recording compensation claims of and awards to victims of trafficking.**

f. Repatriation and return of victims

191. Article 16 of the Convention requires Parties to establish repatriation programmes which aim at avoiding re-victimisation and involve relevant national or international institutions and NGOs, as well as to make efforts to favour the reintegration of victims into the society of the State of return. Parties must also make available to victims of trafficking contact information or structures that can assist them in the country of return, such as law enforcement offices, NGOs, legal professionals and social welfare agencies. The return of victims of trafficking must preferably be voluntary and needs to be carried out with due regard for the rights, safety and dignity of the person and for the status of any legal proceedings related to the fact that the person is a victim of THB.

192. The return of migrants to their countries of origin is implemented on the basis of an agreement concluded on 7 November 2005 by the Minister of the Interior and the IOM Office in Poland on the voluntary return of foreign nationals. The project is intended for foreign nationals who have not received refugee status or asylum in Poland, have had their refugee status withdrawn, or in respect of whom there is a decision obliging them to leave Poland. Since November 2011, this agreement also covers the assisted voluntary return of victims of trafficking, including EU nationals. The assistance includes return counselling, organisation of the return trip, and support in obtaining travel documents. IOM staff interview the person and ensure that he/she understands the procedures. Risk assessment is carried out by the IOM office in the country of return, if necessary with the involvement of the police and local NGOs. Arrangements are also made to meet the person upon arrival and, if necessary, provide him/her with shelter accommodation and other assistance. In 2012, nine victims of THB benefitted from return assistance provided by the IOM.

193. La Strada Foundation is responsible for the safe return of victims of THB who are supported by the National Consulting and Intervention Centre and who are included in the Programme for the Support and Protection of Victims/Witnesses of Trafficking in Human Beings. La Strada uses its network of contacts with NGOs in other countries to ensure that victims of trafficking are supported upon return.

194. The GRETA delegation was informed of proposed amendments to the “algorithm” with a view to including in it a module on risk assessment which spells out the role which the Police should play in the process. It is also proposed to amend the Act on Foreigners with a view to formalising the procedure for voluntary return. **GRETA would like to be kept informed of developments in this area.**

## 4. Implementation by Poland of measures concerning substantive criminal law, investigation, prosecution and procedural law

### a. Substantive criminal law

195. Pursuant to Article 18 of the Convention, Parties have the obligation to establish THB as a criminal offence when committed intentionally. Further, the Convention requires Parties to consider taking measures to criminalise the use of services which are the object of exploitation, with the knowledge that the person is a victim of THB (Article 19). In addition, forging travel or identity documents, removing, concealing or destroying them, as well as procuring or providing them, must also be established as criminal offences, when committed intentionally and for the purpose of enabling THB (Article 20).

196. Under Polish law, THB is subject to a single criminal offence, set out in Article 189a of the CC, which reads: "1. Whoever commits the crime of human trafficking,<sup>38</sup> shall be subject to the penalty of deprivation of liberty for a minimum term of three years. 2. Whoever commits an act of preparation for the crime specified in paragraph 1, shall be subject to the penalty of deprivation of liberty for a term between three months and five years." The maximum penalty according to the general rules applying to felonies, which cover THB, is deprivation of liberty for a term of 15 years (Article 37 of the CC). The court can impose on the convicted person additional measures, such as payment of compensation to the victim, forfeiture of proceeds or making the judgment publically known.

197. The aggravating circumstances provided for in Article 24 of the Convention are not specifically mentioned in relation to the offence of THB. According to the Polish authorities, the aggravating circumstances specified in Article 24 of the Convention are being applied not only through cumulative legal qualification (Article 11(2) of the CC) and the possibility to invoke a breach of Article 160 of the CC (endangering life and health), Article 200 (sexual abuse of a minor), Article 231 (abuse of power) or Article 258 (organised crime) in conjunction with Article 189a (trafficking in human beings), but also through the general guidelines on the determination of the penalty set out in Article 53 of the CC. The latter provision takes into account the circumstances mentioned in Article 24 of the Convention and the court has to consider, among others, the nature and extent of the consequences of the offence (Article 24, item b), the mode of the offender's conduct (Article 24, items a and d), the extent and nature of a breach of duties (Article 24, item c) and the degree of the harm to the society. The latter is ascertained taking into account the nature and character of the infringed interest, the amount of damage inflicted or threatened, the mode and circumstances of the commission of the offence, the gravity of duties breached, and the offender's intent, motivation, the nature of duty of care breached and the degree of breach. Therefore, it is argued by the Polish authorities, the scope of circumstances examined by the court in the determination of the penalty is much broader than the aggravating circumstances indicated in Article 24 of the Convention.

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<sup>38</sup> This must be interpreted in conjunction with the provisions of Article 115(22) of the CC which sets out the definition of THB (see paragraph 49).

198. When determining the penalty, the court (or other authority conducting proceedings, such as the public prosecutor) is obliged to take into account any judgment passed in Poland or another EU Member State (Article 114a of the CC). The Polish authorities have indicated that taking into account of convictions from non-EU Member States is done on the basis of Article 114(2) of the CC, which applies when there is a previous conviction in another state for actions for which proceedings are pending in Poland against the same person. In such a case, the court is required to include the term of actual deprivation of liberty in another state when determining the penalty in Poland. In relation to other convictions, despite a lack of specific regulations, the case law of the Supreme Court<sup>39</sup> does draw such a possibility from Article 64(1) of the CC, which provides for a stricter penalty in a case of relapse into crime. It is immaterial whether the offender served the sentence in Poland or abroad, nor whether the penalty in question was imposed by a Polish or foreign court.

199. While there is no specific criminalisation of retaining, removing, concealing, damaging or destroying a document committed for the purpose of enabling THB, all such types of conduct are considered general offences. Anyone who counterfeits, steals, retains, damages, destroys, renders unfit for use, conceals or removes a document of another person, whether for the purposes of THB or not, is subject to a penalty of imprisonment for up to two years under Articles 270 to 276 of the CC.

200. The 2002 Act on Criminal Liability of Corporate Entities<sup>40</sup> establishes the criminal liability of all legal persons, as well as organisations which do not have legal personality but are granted legal capacity by specific provisions. The liability of a legal person is contingent on the criminal liability of a natural person and takes place if the acts of the natural person benefited, or could potentially benefit, the legal person. The Act lists the types of offences that can give rise to corporate criminal liability and trafficking in human beings is specifically included. The penalties envisaged for corporate entities include, *inter alia*, a fine from 1 000 to 20 000 000 PLN (appr. 250 to 5 000 000 euros), but no higher than 10% of the revenue earned in the fiscal year in which the crime was committed, forfeiture or seizure of objects, forfeiture of pecuniary benefits, prohibition on carrying out business or prohibition on taking part in public procurements.

201. As noted in paragraph 119, Polish law does not establish as a criminal offence the use of services of a victim of THB with the knowledge that the person is a victim of THB.

202. Article 291(1) of the CCP envisages the possibility of asset freezing and seizure “in the event of the commission of an offence subject to a fine or forfeiture of material objects, or imposition of the obligation to redress damage or to pay supplementary payment to the injured or for a public purpose”. The decision is taken by a court or, during the preparatory proceedings, by a prosecutor. GRETA was informed that in 2011, asset freezing in THB cases amounted to 2.3 million PLN (i.e. appr. 575 000 euros). GRETA recalls that the confiscation of criminal assets, which requires as a prerequisite that the illegal assets are detected, identified and seized at the time of the criminal investigations and adequate procedures to do so, is crucial as a way of reinforcing the effect of the penalty, as well as ensuring the payment of compensation to the victim.

<sup>39</sup> Resolution of the Supreme Court of 24 April 1975, VI KZP 59/74, OSNKW 1975, issue 6, item 71.

<sup>40</sup> Journal of Laws 2002, No. 197, item 1661.

b. Non-punishment of victims of trafficking in human beings

203. Pursuant to Article 26 of the Convention, Parties must provide for the possibility of not imposing penalties on victims of trafficking for their involvement in unlawful activities, to the extent that they have been compelled to do so.

204. There are no express provisions in the Polish Criminal Code on relieving of responsibility someone who has been compelled to commit an offence. That said, according to the Polish authorities, there are several general provisions that can achieve the desired effect. The first of them is the institution of a state of greater necessity pursuant to Article 26 of the CC, which reads: "1. Whoever acts with the purpose of averting an immediate danger threatening any well-being protected by law, if the danger cannot otherwise be avoided but the well-being sacrificed has a lower value than that of the well-being rescued, shall be deemed to have not committed an offence. 2. Whoever rescues any well-being protected by law under the circumstances defined in paragraph 1, or sacrifices well-being which does not represent a value manifestly greater than the well-being being rescued, shall also be deemed to have not committed an offence." This means that a person who was threatened or forced into committing a crime would under the previously described circumstances not be criminally liable.

205. Furthermore, if the crime entails minor harm to the community and the maximum penalty is lower than three years of deprivation of liberty, the court may waive the imposition of a penalty pursuant to Article 59(1) of the CC. When deciding on the extent of the harm to the community, the court will take into account whether the offender was forced into committing an offence.

206. Finally, pursuant to Article 60(2) of the CC, "the court may apply an extraordinary mitigation of the penalty in particularly justified cases when even the lowest penalty stipulated for the offence in question would be incommensurate". According to the authorities, the case of a victim of THB being compelled to commit an offence would most probably be considered such a particularly justified case.

207. Reference should be made to the Methodological guidelines for prosecutors carrying out or supervising criminal procedures dealing with trafficking in human beings, which were developed in 2006 by the Department for Organised Crime and Corruption of the General Public Prosecutor's Office. The guidelines cover the issue of non-prosecution for acts committed by victims of trafficking in human beings, by taking advantage of the above-mentioned legal measures (i.e. discontinuance of penal proceedings, refusal to institute proceedings or extraordinary mitigation of the penalty). That said, GRETA has received reports from NGOs referring to cases of victims of trafficking who were arrested, prosecuted and convicted (e.g. for illegal cigarette production), which suggests that the non-punishment rule is not always followed.

208. The Ministry of the Interior has recently organised, in co-operation with Warsaw University, a meeting with the participation of the General Prosecutor's Office, the Ministry of Justice, the General Headquarters of Police, NGOs and academic experts, to discuss the application of the non-punishment clause. As a result of the discussions and an analysis of Polish and international law and practice, the experts concluded that there is no need to amend domestic legislation, but it is rather an issue of adequate training of prosecutors.

209. **GRETA stresses the importance of ensuring that the Methodological guidelines for prosecutors are fully applied in order to prevent imposing penalties on victims of trafficking for their involvement in unlawful activities to the extent that they were compelled to do so. While the identification procedure is ongoing, potential victims of trafficking should not be punished for immigration-related offences.**



c. Investigation, prosecution and procedural law

210. One of the purposes of the Convention is to ensure the effective investigation and prosecution of THB (Article 1(1)(b)). In this context, Parties are required to co-operate with each other regarding investigations and/or criminal proceedings related to THB (Article 32). Further, the Convention establishes that the investigation and prosecution of THB offences must not be dependent on victims' reports, and that associations or NGOs aimed at fighting THB or protecting human rights must be able to assist and support victims during criminal proceedings, in accordance with the conditions established in the internal law and with the victim's consent (Article 27).

211. According to the Polish authorities, Poland applies the doctrine of judicial legalism, which means that criminal proceedings, as a rule, are instituted *ex officio* and the public prosecutor has to initiate proceedings in every case where he/she becomes aware of a possible offence. If the public prosecutor finds no grounds to continue the proceedings and decides to discontinue them, the victim can appeal the decision in court. The court can overturn the discontinuation and require that the prosecutor perform certain further actions. If the prosecutor discontinues proceedings for a second time, the victim is entitled to file an indictment directly in court.

212. As a felony, THB is investigated by the Prosecutor's Office, with support from the Police and the Border Guard. The Police and Border Guard officers carry out operational activities to discover and collect evidence. On the basis of this, they apply to the Prosecutor's Office to open a formal investigation; however, many of the preparatory investigations do not lead to a formal investigation. If necessary, it is possible to engage forces at different levels in the case of investigations that require a comprehensive approach. As mentioned in paragraphs 29 and 32, the Police and the Border Guard have set up specialised structures to monitor and co-ordinate the investigation of THB cases.

213. All cases of THB detected by the Border Guard at the border have concerned foreign nationals. In 2011, the BG started five preparatory investigations on THB, two of which were transferred to the Prosecutor's Office, and the three remaining cases were conducted jointly by the Border Guard and the Police (these cases concerned some 50 victims of trafficking, forced begging and sexual exploitation). Currently the Border Guard take part in a project implemented by Warsaw University and financed by EU funds entitled "Filling gaps in the system of combating Trafficking in Poland – FIGAS".

214. When investigating serious offences such as THB, police officers are entitled to use, when authorised by the competent prosecutor and/or court, the following special investigation techniques: controlled delivery; controlled purchase; sting operation; wiretapping; surveillance of correspondence. Further, the Border Guard can employ wiretapping (with authorisation from a court); controlled purchase (upon decision of the regional commander of the Border Guard and agreement of the competent prosecutor); and secret supervision of trading of objects of crime. The Polish authorities have clarified that it is not possible to use controlled delivery and controlled purchase where a human beings is "the subject of the offence." However, these methods can be used when the Police is dealing with "multidisciplinary" organised crime groups, such as those dealing with drugs as well as THB. The General Prosecutor's Office has pointed to the need for starting a discussion on the creation of "a definition of a specific form of procedures involving a human being as a subject involuntary used by the perpetrators of the crime."

215. According to statistical information provided by the Police, the outcome of the preparatory proceedings in cases dealing with THB was as follows: in 2009, there were 109 completed cases, 39 of which resulted in bringing an indictment, with 79 persons being charged; in 2010, there were 117 completed cases, of which 40 resulted in indictments, with 78 persons being charged. It is noteworthy that, since the definition of THB was only introduced in the CC in September 2010, the data for 2009 and 2010 relate to forced prostitution of adults or minors (under Articles 253(1), 204(4), 204(3) and 203 of the CC).

216. As regards convictions, in 2009 there were 17 under Article 253(1) of the CC and two under Article 204(4) of the CC. In 2010, there were six convictions under the new Article 189a(1) of the CC, 13 under Article 253(1) of the CC, and one under Article 204(4) of the CC. Out of the 39 convictions handed down in 2009-2010, 23 involved imprisonment without suspension (nine under three years, 12 between three and five years, one between five and eight years, and one between 10 and 15 years). In 2011, there were a total of 11 first instance convictions under Article 189a(1) of the CC. In the first six months of 2012, there were 16 first instance convictions under Article 189a(1) of the CC; five of them involved imprisonment of between three and five years (however, the convictions were still not final).

217. It is clear from the above figures that there is a considerable gap between the number of identified victims of trafficking and the number of successful prosecutions and convictions. According to the Polish authorities, the reasons for this gap are manifold and are, *inter alia*, related to finding sufficient proof to support the victim's statements. According to civil society representatives met during GRETA's country visit, law enforcement officers are sometimes insensitive to the problems experienced by victims of THB and treat them as "prostitutes". Reference was made to cases when victims were taken in police cars, transported handcuffed and behind bars, and interviewed for 8-10 hours by police officers. Moreover, victims are sometimes afraid or reluctant to make depositions because of threats of revenge from the perpetrators or fear that they would lose the only source of income they have access to. It is therefore important to ensure that victims are prepared psychologically and agree to give statements, and NGOs which provide assistance to victims have an important role to play in this respect. It was also alleged that some judges treat victims of trafficking as "voluntarily exploited" or use the argument that the victim used to engage in prostitution in the past to reduce the sentence. The fact that legal proceedings against traffickers often take a long time (occasionally up to seven years) can have a dissuasive effect on victims.

218. Further, the GRETA delegation was informed of several cases of foreign victims of THB in which the perpetrators were prosecuted not for THB, even though there was reportedly evidence to that, but for exploitation of prostitution. The cases were thus finished quickly, resulting in suspended sentences, and the victims were deported.

219. NGOs can take part in judicial proceedings if there is a need to defend a community interest or a material individual interest and the matter of the proceedings falls within the NGO's statutory purposes (Article 90 of the CCP). The organisation has to declare its participation prior to the commencement of the judicial examinations and to designate a person to represent it in court. Once admitted, the organisation may participate in the trial, make statements and submit motions.

**220. GRETA encourages the Polish authorities to take measures to identify gaps in the investigation procedure and the presentation of cases in court, *inter alia*, with a view to ensuring that crimes related to THB are investigated and prosecuted promptly and effectively, leading to proportionate and dissuasive sanctions.**

**221. Further, GRETA considers that there is a need for improvement of the knowledge and sensitivity of judges, prosecutors, investigators and lawyers about THB and the human rights of victims. During the training, particular attention should be paid to overcoming potential entrenched negative attitudes and prejudices vis-à-vis victims of trafficking.**

d. Protection of victims and witnesses

222. By virtue of Article 28 the Convention, Parties must take measures to provide effective and appropriate protection from potential retaliation or intimidation in particular during and after the investigation and prosecution of perpetrators. This protection can be of various types (physical, relocation, identity change, etc.) and is to be provided to victims of trafficking, to those who report it or otherwise co-operate with the investigating or prosecuting authorities, to witnesses who give testimony and, when necessary, to members of the families of those listed above. Further, Article 30 of the Convention includes a provision requiring Parties to take measures to protect victims' private life and identity and to provide for their safety and protection from intimidation in the course of judicial proceedings, including special protection measures for child victims of THB.

223. In Poland, special protection is awarded to witnesses during proceedings. Such protection is granted to victims of crimes if they appear in court as witnesses. Once proceedings are instituted, the court or, in preparatory proceedings, the prosecutor may issue an order classifying as secret the identity of a witness, as well as any circumstances that might reveal his/her identity. Such an order may be issued if there is a justifiable concern for the safety, life, health, freedom or property of the witness (Article 184 of the CCP). If there are justified grounds for concern that violence or unlawful threat may be used against the witness or his/her family, the witness may declare that details of his/her place of residence are to be kept to the exclusive knowledge of the court or prosecutor (Article 191(3) of CCP).

224. Furthermore, the court must exclude the public from the trial in whole or in part, if the trial may, *inter alia*, infringe an important private interest (Article 230 of the CCP). The victim of the offence can also move to exclude the public from the trial if the victim was the person who brought the motion to prosecute.

225. Finally, if there is a concern that the presence of the accused may intimidate the witness and inhibit the witness' ability to testify, the presiding judge may remove the accused from the courtroom for the duration of the testimony (Article 390(2) of the CCP). The previously mentioned Methodological guidelines for prosecutors encourage prosecutors to use this provision in trafficking cases.

226. If the witness is a child under the age of 15, the examination may be carried out according to a special procedure that ensures the child's safety and minimal discomfort, if the offence was committed in conjunction with the use of force or threat (Article 185b of the CCP). This procedure involves only one questioning, in the presence of a psychologist, which takes place in specially equipped "blue rooms" established in Police headquarters. However, GRETA understands that these measures apply only to certain categories of crimes, namely crimes against sexual freedom and good morals, and crimes against the family and duty of care. There is no provision obliging the relevant organ to interrogate minors in a special "friendly place". The Polish authorities have referred to the draft CCP adopted by the Council of Ministers on 9 October 2012 and currently analysed by the Sejm, which introduces mandatory recording of image and sound during a hearing of a child under the age of 15, a single hearing of children over the age of 15, if there is justified fear that a hearing in other conditions might negatively affect their mental state, and a hearing of a child witness who is over the age of 15 without the participation of the accused, if there is fear that the presence of the accused may have a constraining effect on the witness or might negatively affect his/her mental state.

**227. GRETA considers that the Polish authorities should extend all special protection procedures to cover child victims of THB up to the age of 18.**

**228. GRETA also invites the Polish authorities to make full use of the available measures to protect victims and witnesses of THB and to prevent intimidation in the course of the investigation and during and after the court proceedings.**

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## 5. Concluding remarks

229. GRETA welcomes the steps taken by the Polish authorities to combat trafficking in human beings and support victims of trafficking, through the development of a comprehensive legal and policy framework and the setting up of specialised structures. The provision of public funding for victim support, the emphasis on training of relevant professionals and the involvement of NGOs in the identification of victims are positive features of Poland's anti-trafficking efforts. Moreover, GRETA commends the transparent approach adopted by the Polish authorities to the planning and financing of anti-trafficking activities.

230. That said, several important challenges remain to be tackled through legislative, policy or practical measures in order to meet the requirements of the human rights-based and victim-centred approach followed by the Convention (see paragraphs 40-43). It is incumbent on the authorities to ensure that all victims of trafficking are properly identified and can benefit from the assistance and protection measures provided for under the Convention and Polish law. Further, notwithstanding the legal possibility of granting a recovery and reflection period, issuing residence permits and awarding compensation to victims of human trafficking, the authorities must ensure the effective access to these entitlements.

231. GRETA also draws attention to the need for adapting the existing anti-trafficking policies with a view to strengthening action against trafficking for the purpose of labour exploitation and addressing the particular vulnerability of children to trafficking. Additional measures should be taken to strengthen prevention amongst groups vulnerable to human trafficking and promoting the changing of negative attitudes towards trafficking victims.

232. Strengthening the effectiveness of investigations and prosecutions of human trafficking-related offences with a view to securing proportionate and dissuasive sanctions is another area where further action is needed in order to fully apply the human rights-based and victim-centred approach promoted by the Convention.

233. All professionals who may come into contact with victims of human trafficking, including law enforcement officials, prosecutors, judges, labour inspectors and social workers, must be continuously informed and trained about the need to apply a human rights-based approach to action against human trafficking on the basis of the Convention and the case law of the European Court of Human Rights.

234. GRETA invites the Polish authorities to keep it informed on a regular basis of developments in the implementation of the Convention and looks forward to continuing the good co-operation in further efforts in achieving the purposes of the Convention.

## **Appendix I: List of GRETA's proposals**

### **Definition of "trafficking in human beings"**

1. GRETA urges the Polish authorities to enact a specific legislative prohibition of servitude so as to ensure greater certainty and clarity as to the scope of its domestic law.

### **Comprehensive approach and co-ordination**

2. GRETA considers that the Polish authorities should take further steps to ensure that the national action to combat THB is comprehensive, and in particular to:

- increase co-ordination at the regional level of the activities of public bodies and NGOs involved in the implementation of anti-trafficking measures;
- step up action to combat THB for the purpose of labour exploitation, in particular in the sectors of agriculture, construction, food processing and domestic help;
- pay increased attention to prevention and protection measures addressing the particular vulnerability of children to trafficking.

3. GRETA also invites the Polish authorities to ensure that the Unit against THB is put in a position to fulfil its mandate effectively by further investing in its human resources.

4. Further, GRETA invites the Polish authorities to introduce an independent evaluation of the implementation of the NAP as a tool for assessing the impact of the activities and for planning future policies and measures to combat THB, and to consider the establishment of an independent National Rapporteur or other mechanism for monitoring the anti-trafficking activities of State institutions (see Article 29, paragraph 4, of the Convention and paragraph 298 of the Explanatory Report).

### **Training of relevant professionals**

5. GRETA considers that the Polish authorities should take further steps to improve the knowledge and sensitivity of relevant professionals, in particular prosecutors and judges, about THB and the rights of victims. Future training programmes should be designed with a view to improving the knowledge and skills of relevant professionals which enable them to identify victims of trafficking, to assist and protect them, to facilitate compensation for victims and to secure convictions of traffickers.

### **Data collection and research**

6. GRETA considers that, for the purpose of preparing, monitoring and evaluating anti-trafficking policies, the Polish authorities should develop and maintain a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical information from all main actors and allowing disaggregation (concerning sex, age, type of exploitation, country of origin and/or destination, etc.). This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection, including when NGOs working with victims of trafficking are asked to provide information for the national database.

7. GRETA invites the Polish authorities to continue conducting and supporting research on THB-related issues as an important source of information for the evaluation of current programmes and for planning future policy measures. Areas where research may shed more light on the extent of the problem of THB include trafficking for the purpose of labour exploitation, trafficking in children and internal trafficking (i.e. within Poland).

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## **International co-operation**

8. GRETA invites the Polish authorities to continue developing the aspect of international co-operation with a view to preventing THB, assisting victims of trafficking and prosecuting offenders.

## **Measures to raise awareness and discourage demand**

9. GRETA considers that future actions in the area of awareness raising should be designed in the light of impact assessment of previous measures and research, and be focused on the needs identified. Awareness-raising campaigns, education in schools and training of relevant professionals should aim at promoting gender equality and eradicating gender-based violence and the stigmatisation of victims of trafficking.

10. Further, GRETA encourages the Polish authorities to strengthen their efforts to discourage demand for services from trafficked persons as regards all forms of exploitation.

11. GRETA also invites the Polish authorities to contribute to awareness-raising prevention activities in the main countries of origin of victims trafficked to Poland, in co-operation with these countries, in order to alert potential victims of THB-related risks.

## **Social, economic and other initiatives for groups vulnerable to THB**

12. GRETA considers that the Polish authorities should take further steps to identify persons and groups vulnerable to THB, and to address them through targeted social, economic and other initiatives.

## **Border measures to prevent THB and measures to enable legal migration**

13. GRETA considers that the Polish authorities should continue their efforts to provide written information to foreign nationals planning to travel to Poland, in a language that they can understand, in order to alert them to the risks of THB, inform them of where they can go for help and advice, and provide them with information on their rights.

## **Identification of victims of trafficking in human beings**

14. GRETA urges the Polish authorities to take further steps to secure that all victims of trafficking are properly identified and can benefit from all the assistance and protection measures provided for under the Convention. To this end, the Polish authorities should:

- strengthen multi-agency involvement in victim identification by introducing a national referral mechanism which defines the roles and procedures of all authorities competent to perform identification and frontline staff who may come into contact with victims of trafficking;
- provide frontline staff with operational indicators, guidance and toolkits to be used in the identification process; these indicators should be regularly updated in order to reflect the changing nature of human trafficking;
- ensure that law enforcement officials, social workers, labour inspectors and other relevant actors adopt a more proactive approach and increase their outreach work to identify potential victims of trafficking;
- adopt nation-wide procedures for the identification of child victims of trafficking;
- pay more attention to the identification of persons detained as irregular migrants and provide additional training to staff who come in contact with such persons.

## **Assistance to victims**

15. GRETA considers that the Polish authorities should take further steps to provide assistance to victims of trafficking, and in particular to:

- ensure that there is a sufficient number of places across the country offering adequate conditions and adapted to the victims' needs; when assistance is delegated to NGOs, the State has an obligation to provide adequate financing and ensure the quality of the services delivered by the NGOs;
- improve the system for providing assistance to child victims of trafficking, both in terms of accommodation and as regards medium and long-term support programmes tailored to the needs of the children;
- ensure that suitable accommodation is provided to male victims of trafficking and that they can fully benefit from the assistance measures provided for in law;
- guarantee access to public health care for victims of trafficking.

## **Recovery and reflection period**

16. GRETA urges the Polish authorities to ensure, in compliance with their obligations under Article 13 of the Convention, that all possible victims of trafficking, including European Economic Area nationals, are systematically informed of the possibility to have a recovery and reflection period and are effectively granted such a period regardless of whether or not they co-operate with the investigation.

17. Further, GRETA considers that the relevant legislation should be amended in order to reflect the Convention and the fact that Council Framework Decision of 19 July 2002 on combating trafficking in human beings had been replaced by Directive 2011/36/EU.

## **Residence permits**

18. GRETA urges the Polish authorities to ensure that victims of THB can take full advantage of the right to be granted a residence permit.

## **Compensation and legal redress**

19. GRETA urges the Polish authorities to adopt measures to facilitate and guarantee access to compensation for victims of trafficking, and in particular:

- ensure that victims of trafficking are systematically informed in a language that they can understand of the right to seek compensation and the procedures to be followed;
- enable victims of trafficking to exercise their right to compensation, by building the capacity of legal practitioners to support victims to claim compensation and including compensation into existing training programmes for law enforcement officials and the judiciary;
- encourage prosecutors to request compensation orders to the largest possible extent;
- include all victims of trafficking in the scope of the Act on State Compensation for Victims of Crimes, irrespective of their nationality and residence status or the type of injury sustained;
- enable victims of trafficking who have left Poland to benefit from the possibilities to claim compensation.

20. Further, GRETA invites the Polish authorities to further develop the system for recording compensation claims of and awards to victims of trafficking.

### **Non-punishment of victims of trafficking in human beings**

21. GRETA stresses the importance of ensuring that the Methodological guidelines for prosecutors are fully applied in order to prevent imposing penalties on victims of trafficking for their involvement in unlawful activities to the extent that they were compelled to do so. While the identification procedure is ongoing, potential victims of trafficking should not be punished for immigration-related offences.

### **Investigation, prosecution and procedural law**

22. GRETA encourages the Polish authorities to take measures to identify gaps in the investigation procedure and the presentation of cases in court, *inter alia*, with a view to ensuring that crimes related to THB are investigated and prosecuted effectively, leading to proportionate and dissuasive sanctions.

23. Further, GRETA considers that there is a need for improvement of the knowledge and sensitivity of judges, prosecutors, investigators and lawyers about THB and the human rights of victims. During the training, particular attention should be paid to overcoming potential entrenched negative attitudes and prejudices vis-à-vis victims of trafficking.

### **Protection of victims and witnesses**

24. GRETA considers that the Polish authorities should extend all special protection procedures to cover child victims of THB up to the age of 18.

25. GRETA also invites the Polish authorities to make full use of the available measures to protect victims and witnesses of THB and to prevent intimidation in the course of the investigation and during and after the court proceedings.



## **Appendix II: List of public bodies and intergovernmental and non-governmental organisations with which GRETA held consultations**

### **Public bodies**

- Ministry of the Interior
  - Unit against Trafficking in Human Beings, Migration Policy Department
  - Central Unit for Combating Trafficking in Human Beings, Central Investigation Bureau of the General Headquarters of the Police
  - Preventive Bureau of the General Headquarters of the Police
  - General Headquarters of the Border Guard
- Ministry of Justice
  - Criminal Law Department
  - International Cooperation and Human Rights Department
- Ministry of Foreign Affairs
- Ministry of Labour and Social Policy
- Ministry of Health
- Ministry of National Education
- Prosecutor's General Office
- National Labour Inspectorate
- Head of the Commission of Justice and Human Rights of the Polish Parliament

### **Intergovernmental organisations**

- International Organisation for Migration (IOM) Office in Poland
- Office for Democratic Institutions and Human Rights (ODIHR)
- United Nations High Commissioner for Refugees (UNHCR) Office in Poland

### **Non-governmental and civil society organisations**

- Halina Nieć Legal Aid Centre
- La Strada Foundation
- Nobody's Children Foundation
- PoMOC Mary Immaculate Association
- SAMSEL Law Office

## **Government's comments**

### **The following comments do not form part of GRETA's analysis concerning the situation in Poland**

GRETA engaged in a dialogue with the Polish authorities on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version.

The Convention requires that "the report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned." GRETA transmitted its final report to the Polish authorities on 3 April 2013 and invited them to submit any final comments. The Polish authorities' comments, submitted on 29 April 2013, are reproduced hereafter.

### Remarks of the Polish authorities to GRETA's report

Point in the Report / recommendation	Institution / Remark
<b>Point 45</b>	<p><b>Ministry of Justice:</b></p> <p>As it has already been mentioned, the Ministry of Justice does not have the statistics with regard to cases in which courts refer to Article 4 of the Council of Europe Convention on the Protection of Human Rights and Fundamental Freedoms. It does not mean that there are no such cases. Therefore, the last sentence of this point should read as follows:</p> <p><i>“Polish courts have reportedly invoked on numerous occasions provisions of the European Convention on Human Rights, but there are no <u>available</u> examples of cases in which they have passed a judgment on the basis of Article 4 of the ECHR in cases of trafficking in human beings.”</i></p>
<b>Point 49</b>	<p><b>Ministry of Justice:</b></p> <p>The Article 115 of the Penal Code is contained in the Chapter XIV – Clarification of statutory expressions, and not, as it has been indicated in the Report – in the Chapter XXIII. <b>Therefore, the first sentence of this point should be adequately amended.</b></p>
<p><b>Point 52 + recommendation 1</b> “GRETA urges the Polish authorities to enact a specific legislative prohibition of servitude so as to ensure greater certainty and clarity as to the scope of its domestic law”.</p>	<p><b>Ministry of Justice:</b></p> <p>The offence of trafficking in humans has been included in Article 189a of Penal Code. Moreover, the Act of 6 June 1997 - Provisions introducing the Penal Code – contains, as a separate provision, Article 8 that penalizes conducts which consist in submitting a person into slavery, keeping a person in the position of slavery or perpetrating trafficking in slaves. The doctrine indicates that the provision of Article 8 of the aforementioned Act makes <i>lex specialis</i> with regard to Article 189a of Penal Code, which means that it is a special case of trafficking in humans. Both offences are crimes subject to the penalty of imprisonment for at least 3 years.</p> <p>The distinctive elements of servitude, as explained in the jurisprudence of the ECHR, are covered by the provisions of Article 8. In particular, the element of “keeping a person in the position of slavery” addresses the specificity of servitude which, according to the ECHR (<i>Siliadin vs France</i>), consists in being “a prisoner of circumstances” who is not necessarily a subject of active</p>

	<p>coercion. Accordingly, the legal doctrine confirms that Article 8 carries a character of a “permanent offence” which is characterized by the combination of action and the denial to act (omission). In practice it means that in order to keep a person in a state of slavery it is not essential to actively exercise authority over a person, but also to induce a feeling of subordination, the dependence of a victim’s fate to a perpetrator, as well as its inability to change this situation. In order to effectively convince a victim of its state of dependence, no physical detention is needed (the physical detention is a separate offence under Article 189 CC).</p> <p>In effect, Poland already fulfils the positive obligation resulting from Article 4 ECHR by criminalizing also this form of trafficking in humans.</p> <p><b>Taking into account the above, the recommendation provided in this point should be deleted.</b></p>
<b>Point 104</b>	<p><b>General Prosecutor’s Office:</b></p> <p>General Prosecutor’s Office indicated that there is no problems in securing the co-operation of the relevant authorities in Belarus, the Russian Federation and the Republic of Moldova. The information presented during GRETA’s visit referred to the fact that of the change connected with the manner of dealing with the applications for the legal aid (change from direct system into central system what means that all applications have to be referred to the General’s Prosecutor Office).</p>
<b>Point 119 and 122 + recommendation 10.</b> “Further, GRETA encourages the Polish authorities to strengthen their efforts to discourage demand for services from trafficked persons as regards all forms of exploitation”.	<p><b>Ministry of Justice:</b></p> <p>Sentences 1 and 2 of this point are not completely true. Such a formulation results in their discrepancy with the rest of that point. As it has already been mentioned, criminal law does not contain the provision (single, general) that penalises the use of services provided by victims of trafficking in humans. However, it is not tantamount to the absence of provisions that would allow to prosecute persons using the services provided by such victims. The proof for that can be the aforementioned examples of provisions of the Penal Code and Act on the promotion of employment in labour market institutions, as well as the provisions of the Act on the effects of providing the employment to foreign nationals illegally residing on the Polish territory.</p> <p>Taking the aforementioned argument into account, this point should be supplemented as follows:</p> <p><i>“Some measures directly aimed at discouraging demand leading to (...),</i></p>

	<p><i>and admittedly the above-mentioned awareness-raising (...). The use of services of a victim of THB is not criminalized <u>in one specific article of the Polish law. However, the Polish authorities have referred to legal provisions which are relevant (...).</u></i></p> <p>Since Polish law stipulates the possibility of prosecuting perpetrators who make use of some services provided by victims of trafficking in humans, the recommendation (as contained in point 122) should refer to other forms of exploitation and not to all forms, as some of them have already been taken into account.</p> <p>The recommendation could be worded as follows:</p> <p><i>“Further, GRETA encourages the Polish authorities to strengthen their efforts to discourage demand for services from trafficked persons as regards all <u>remaining forms of exploitation.</u>”</i></p>
<p><b>Point 148</b>  “GRETA urges the Polish authorities to take further steps to secure that all victims of trafficking are properly identified and can benefit from all the assistance and protection measures provided for under the Convention. To this end, the Polish authorities should strengthen multi-agency involvement in victim identification by introducing a national referral mechanism which defines the roles and procedures of all authorities competent to perform identification and frontline staff who may come into contact with</p>	<p><b>Ministry of the Interior:</b></p> <p>The Ministry would like to propose the following <b><u>change in the recommendation:</u></b></p> <p>“To this end, the Polish authorities should strengthen multi-agency involvement in victim identification by <b>making</b> a national referral mechanism which defines the roles and procedures of all authorities competent to perform identification and frontline staff who may come into contact with victims of trafficking <b>more effective</b>”.</p> <p>The Polish authorities has been building the national referral mechanism since 2003. Since that time relevant structures or solutions at national and regional levels were established in order to better provide assistance to victims (for example public tasks dedicated to victims funded from public funds, relevant laws for social assistance, appointment of coordinators for social assistance in all regions of Poland) as well as combating this crime (for example appointment of coordinators for THB in Police, Border Guards and prosecutor’s offices).</p> <p>These units were equipped with specialized tools (for example: Algorithm for LEAs, Methodological guidelines for prosecutors) which are continuously analyzed by the Unit against THB of the MOI, General Prosecutor’s Office or LEAs.</p> <p>In 2011 the Methodological guidelines for prosecutors were amended.</p> <p>Currently there are ongoing works on amendment of Algorithm. In order to make this toll more practical there are many consultations undertaken with relevant actors, also at the regional level. The idea is to complete this tool</p>

<p>victims of trafficking” + <b>recommendation 14.1 – as mentioned.</b></p>	<p>with practical lists of indicators taking into account the existence of many forms of THB as well as child trafficking.</p> <p>The MOI would also like to highlight the fact of establishment in 2010 the specialized group of experts dedicated to analyze current problems connected with identification of victims and providing them support. This group is functioning as specialized group of the so-called Working Group of the inter-ministerial Committee for Combating and Preventing Trafficking in Human Beings. The results of the discussions carried out in this group result in ongoing process of making the national referral mechanism more effective.</p>
<p><b>Point 163</b></p>	<p><b>Ministry of the Interior:</b></p> <p>It should be added that the information presented in this point on public funds spend for shelters for victims is true in reference to period 2009-2012. Polish authorities would like to inform GRETA, that since January 2013 the task of running of the National Consultation and Intervention Centre for Polish and Foreign Victims of Trafficking is implemented by two NGOs – La Strada and PoMOC Association. Therefore, both organizations receive funds running shelters.</p>
<p><b>Point 167-170 + recommendation 16:</b> . „ GRETA urges the Polish authorities to ensure, in compliance with their obligations under Article 13 of the Convention, that all possible victims of trafficking, including European Economic Area nationals, are systematically informed of the possibility to have a recovery and reflection period and are effectively granted such a period regardless of whether or not</p>	<p><b>Office for Foreigners:</b></p> <p>Polish law (art. 53a (2)(4) of the Act on Foreigners O.J. of 2011, No 264 item 1575 with further amendments) does not require the obligation to cooperate with investigation or prosecution authorities in order to obtain a reflection or recovery period.</p> <p>As regards to the legalisation of the stay of European Economic Area nationals in the aspect of granting them recovery and reflection period, they are entitled to the freedom of movement of persons specified in Directive 2004/38 of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC. Abovementioned directive was implemented to Polish law by the act of 14 July 2006 on the entry into, residence in and departure from the Republic of Poland of nationals of the European Union Member States and their family members (Journal of Laws of 2006, No. 144, item 1043). According to the abovementioned act the EEA nationals are entitled to the stay for a period not exceeding 3 months without any additional requirements.</p>

<p>they co-operate with the investigation’.</p>	<p>Therefore EEA nationals are excluded from the scope of the Act on Foreigners, and there is no need to issue them residence permits covering the reflection period.</p>
<p><b>Point 170 + recommendation 17:</b> „Further, GRETA considers that the relevant legislation should be amended in order to reflect the Convention and the fact that Council Framework Decision of 19 July 2002 on combating trafficking in human beings had been replaced by Directive 2011/36/EU”.</p>	<p><b>Office for Foreigners:</b></p> <p>Act of 13 June 2003 on Foreigners has already been under the amendment process. The new Act on Foreigners is meant to enter into force on the 1st January 2014.</p> <p>Drafted regulation will refer to the definition of the victim of trafficking in human beings specified by art. 115 (22) of Criminal Code. The new Act on Foreigners is designed to reflect the provisions of the Convention and Directive 2011/38/EU in the aspect of the legalization of the stay.</p>
<p><b>Point 189 tiret 2 + recommendation 19.2</b> “GRETA urges the Polish authorities to adopt measures to facilitate and guarantee access to compensation for victims of trafficking, and in particular (...) enable victims of trafficking to exercise their right to compensation, by building the capacity of legal practitioners to</p>	<p><b>Ministry of Justice:</b></p> <p>The recommendation which refers to enhancing the capability of practitioners in order to support victims in claiming compensation is still unclear. First of all, the text of the report lacks the justification for its formulation. The text that precedes the recommendation does not imply what kind of reinforcement of the capability is meant (is it still about the issue of remuneration of lawyers, which Poland referred to in their comments, as unduly cited in this respect?) and what group of practitioners would be covered (whether all practitioners – judges, public prosecutors, or just lawyers). Moreover, it seems that the purpose of the recommendation is to further facilitate by using the existing possibilities and not to enable the realization of the right to compensation. So, if the purpose of the recommendation would be to make it more easy for victims to make use of their right to compensation, then the most important role here is that of public prosecutors and legal representatives who may forward motions for compensation on behalf of the injured. Thus, it does not seem right to cover all the aforementioned professional groups with the recommendation.</p>

<p>support victims to claim compensation and including compensation into existing training". programmes for law enforcement officials and the judiciary".</p>	<p>As regards public prosecutors, GRETA has proposed a relevant recommendation in point 189 tiret 3., i.e. to encourage prosecutors to request compensation to the largest possible extent. It seems sufficient as far as prosecutors are concerned. One could possibly consider the introduction of analogous recommendation as regards legal representatives if, according to GRETA, the data collected by them, which should be adequately reflected in the report, suggest that actually there is such a need. It should be emphasized that introducing such a recommendation should involve an adequate supplementation of the report itself. Possible adoption of a similar recommendation – like in the case of prosecutors – with regard to legal representatives instead of the recommendation in point 189 tiret 2. would allow to avoid doubts about its scope and necessary measures that must be taken in order to implement it.</p> <p><b>Therefore, it is suggested that <u>this recommendation either be deleted or another recommendation having the following wording be adopted:</u></b></p> <p><i>"- encourage legal representatives to request compensation orders to the largest possible extent;"</i></p>
<p><b>Point 189 tiret 4</b></p> <p><b>+</b></p> <p><b>recommendation</b></p> <p><b>19.4</b></p> <p>"GRETA urges the Polish authorities to adopt measures to facilitate and guarantee access to compensation for victims of trafficking, and in particular (...) include all victims of trafficking in the scope of the Act on State Compensation for Victims of Crimes, irrespective of their nationality and residence status or the type of injury</p>	<p><b>Ministry of Justice:</b></p> <p>First of all, attention should be paid to the fact that although Article 15 (4) of the Council of Europe Convention on Action Against Trafficking in Human Beings to which this recommendation refers obligates the states to ensure compensation for victims, it leaves the choice of a method to do this to their discretion. For example, it suggests alternatives like a special fund established by the states, measures or programmes aiming at social aid or social integration of victims. Thus, it is the states that should choose adequate measures. Therefore, no recommendation in this respect may impose an obligation to undertake certain actions, i.e. "covering all the victims of trafficking in human beings with the act on compensation". Moreover, the Convention does not provide for conditions according to which the injured would be entitled to compensation or other form of aid. However, the provision makes a reference to the requirements of the national law. Thus, the potential recommendation must not determine such conditions, i.e. "covering all the victims of trafficking, regardless of their nationality, status or harm suffered with the act on compensation", either.</p>



sustained”.

It does not seem possible for Poland to include all victims of trafficking in human beings, regardless of their status, nationality or harm suffered, in the provisions of the act on state compensation, not only for the aforementioned legal reasons but also for the practical ones.

First of all, as it has already been mentioned, the act implements the Directive 2004/80/EC. The mechanisms of cooperation between competent bodies it stipulates refer exclusively to the EU Member States. The absence of corresponding mechanisms in the third states would make it considerably more difficult and in some cases even impossible to process compensation requests filed by the injured.

Secondly, pursuant to statutory provisions, compensation covers only indemnity in the case of damage stipulated in the provisions of Penal Code. The necessity to refer to the concrete provisions of the Penal Code is inevitable in this respect in order to establish a connecting factor between the offence and damage it caused, which is necessary to obtain compensation. Moreover, the act does not stipulate a redress (which is a kind of compensation for moral harm suffered). Extending the act to cover redress would require remodelling of the whole system of awarding compensation, which would result not only in extended time of forwarding of requests (while the assumption is to proceed quickly in order to award means to cover certain expenses) but also in multiplication of the solutions that already exist within civil or criminal proceedings.

Thirdly, it should be emphasised that Poland sufficiently fulfil the obligations resulting from Article 15 (4) of the Convention, as it ensures the right to compensation (and in some cases – to redress) to victims of offences within civil and criminal procedures and, in certain situations, also in proceedings pursuant to the Act on state compensation. Moreover, it carries out social aid programmes (see point 151, 152, 158 of the report), as well as integration programmes.

**Taking into account the fact that in Poland the victims of trafficking in human beings may claim compensation within criminal or civil proceedings and some of them are also covered by the Act on state compensation on conditions it stipulates and that there are also**

	<p>programmes that ensure social aid and social integration, it should be assumed that Poland already fulfils Article 15 (4) Convention. Therefore, recommendation as provided in tirect 4. <u>should either be deleted or reformulated to be less strict, i.e.</u></p> <p><i>“Greta encourages the Polish authorities to consider the possibility to enlarge the scope of the Act on State Compensation for Victims of Crimes with a view to encompass other victims of THB.”</i></p>
<p><b>Point 189 tirect 5</b></p> <p><b>+</b></p> <p><b>recommendation</b></p> <p><b>19.5</b></p> <p>“GRETA urges the Polish authorities to adopt measures to facilitate and guarantee access to compensation for victims of trafficking, and in particular (...) enable victims of trafficking who have left Poland to benefit from the possibilities to claim compensation”.</p>	<p><b>Ministry of Justice:</b></p> <p>Persons injured with the offence of trafficking in human beings are not deprived of the possibility of claiming compensation even when they leave the Polish territory. Their rights in this respect may be executed by way of cooperation mechanisms as provided for in the Act on state compensation, as well as an adequate representation in the course of criminal or civil proceedings. Public prosecutor or legal representative may request compensation in proceedings on behalf of such persons. Thus, there are such possibilities already.</p> <p>So, the wording of the recommendation which suggests that there are no such mechanisms cannot be accepted. One might possibly consider how to improve the existing system. What seems proper here is to encourage public prosecutors to request compensation more often, which is stipulated in the recommendation in tirect 3.</p> <p><b>Therefore, the recommendation as contained in tirect 5. should either be deleted or reformulated as follows:</b></p> <p><i>“- further facilitate victims of trafficking who have left Poland to benefit from the possibilities to claim compensation.”</i></p>