

Committee of the Parties  
to the Council of Europe Convention  
on Action against Trafficking in Human Beings



CP(2015)19

**Report submitted by the Spanish authorities  
on measures taken to comply with  
Committee of the Parties Recommendation CP(2013)10  
on the implementation  
of the Council of Europe Convention  
on Action against Trafficking in Human Beings**

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CENTRO DE INTELIGENCIA CONTRA EL  
TERRORISMO Y EL CRIMEN ORGANIZADO  
(CITCO)



**REPLY OF THE SPANISH  
GOVERNMENT:  
GRETA'S RECOMMENDATIONS**

Madrid, 29<sup>th</sup> October 2015

# List of GRETA's proposals concerning the implementation of the Convention by Spain

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

1. GRETA encourages the Spanish authorities to strengthen their human rights approach to combating THB in the next human rights plan, including by addressing THB as a serious violation of the human rights of victims of trafficking.

The Spanish Government is working in this Plan. It will encompass a comprehensive and consistent strategy that will reinforce the means of protection of our rights through political commitment, adapting national legislation to the international commitments in the subject of Human Rights and making the Spanish institutional framework more specific.

### Definition of "trafficking in human beings"

2. GRETA considers that the Spanish authorities should include the means of "abduction" and "giving or receiving of payments or benefits to achieve the consent of a person having control over another person" in the legal definition of trafficking in human beings.

With the last modification of the **Spanish Criminal Code (through the Organic Law 1/2015 of 30 March 2015)** the concept of "giving or receiving of payments or benefits to achieve the consent of a person having control over a victim" of trafficking in human beings was included as one of the means of commission in this type of crime.

Concerning the concept of abduction, despite it is not specifically contained in the Criminal Code in force, this Code includes among the means of commission of THB the "use of violence, intimidation or deception", which means that, according to the Spanish criminal law, this violence and intimidation undoubtedly cover the use of force or other forms of coercion as well as kidnapping and abduction.

### Comprehensive approach and co-ordination

3. GRETA urges the Spanish authorities to take steps to ensure that national and regional action to combat THB is comprehensive, in particular by:
  - addressing all victims of trafficking for all forms of exploitation in the anti-trafficking legal and policy framework, while taking into account the gender-dimension of trafficking, including through a comprehensive national action plan against THB;
  - increasing efforts to prevent and detect THB within Spain, as well as addressing the situation of Spain as a country of transit;
  - strengthening prevention and protection measures that address the particular vulnerability of children to trafficking.

With regards to this recommendation, we would like to point out the following:

- The **Article 177 bis** of the **Criminal Code**:
  - Includes a wide concept of "victim", of the forms of exploitation a victim may suffer and the means to perpetrate this exploitation.
  - Includes gender perspective, specifically mentioning sexual exploitation, forced marriages and pregnant victims.
  - Explicitly refers to the situation of Spain as a transit country.
  - Includes an explicit definition of the "situation of need or vulnerability" where children are considered to be included. The crime of trafficking in human beings considers the use of children for exploitation even if the means covered in section 1 of Article 177 bis (violence, intimidation or deception, abuse of situation of superiority or the need or vulnerability of the victim, giving or

receiving of payments or benefits to achieve the consent of a person having control over the victim) have not been used. Further, the penalties increase in the case of child victims, as these could be up to 12 years of imprisonment due to the fact that the victim is under-age.

- **Royal Decree 3/2013 of 22 February, modifying the fee regime in the administration of justice and the system of free legal aid:** The right to free legal aid to victims of trafficking as well as other groups of victims is recognized without the need to prove their lack of resources to institute legal proceedings.
- The **Law 4/2015 of 17 April, on the Statute of Crime Victims** (Official Spanish Gazette num. 101, 28 April 2015) includes a general catalogue of the procedural and extra-procedural rights of all crime victims, providing a legal and social response to the victims and their families. It also covers the specific attention to the most vulnerable victims, as victims of THB and under-age victims.

Specifically, the needs of protection of victims of THB will be taken into consideration in the individual assessment to determine their special needs of protection and what measures are to be taken, which translates in the access to specific protective measures in order to avoid second victimization during the pre-trial and prosecution stages.

- **Organic Law 8/2015 of 22 July, on the modification of the system for the protection of children and adolescents, and Law 26/2015 of 28 July, on modification of the system for the protection of children and adolescents,** improve the attention and protection of children of women victims of gender-based violence as well as under-age victims of other forms of violence against women, including for the first time the protection of children against all forms of violence, THB included, among the guiding principles for the action of public powers concerning children.

Specifically, regarding the improvement of the protection of under-age victims of trafficking:

- It recognizes the right of foreign children who are in Spain to education, healthcare, social services and basic social benefits under the same conditions as Spanish children, stating that government authorities will safeguard especially vulnerable groups, such as child victims of trafficking in human beings.
- It establishes that, when the adulthood of a person cannot be determined, this person will be considered under-age for the purposes of the provisions set in the Law while the age is determined.
- When a child is under a situation of neglect or identified as victim of THB and there is a conflict of interests with their parents, legal guardians or guardians, their guardianship may be taken by the corresponding public institution by operation of law.
- As a requirement for the access and exercise of professions, jobs and activities that involve regular contact with children, the person in question must have not been convicted by final judgement for crimes such as prostitution and sexual exploitation and corruption of children or trafficking in human beings.

Moreover, these laws improve the protection that the Spanish legal system grants to victims of trafficking regardless of their age by increasing the minimum recovery and reflection period from 30 to 90 days and creating subsidies for companies hiring victims of trafficking.

- **Law 42/2015 of 5 October, reforming Law 1/2000 of 7 January, on Civil Procedure,** which keeps the right to free legal aid to victims of gender-based violence and trafficking in human beings, as well as their successors in case of death under the terms introduced by the Royal Decree-law 3/2013 of 22 February, modifying the fee regime in the administration of justice and the system of free legal aid and introduces improvements in the recognition of this right.

The new law recognizes that victims of gender-based violence and trafficking in human beings, as well as their successors, regardless of their resources to institute legal proceedings, have the right to free legal aid, which will be provided to them immediately for those legal proceedings that are related, stem from or are a consequence of their status of victims.

In the case of victims of gender-based violence and trafficking in human beings, the free legal aid will cover, apart from other provisions, free advice and guidance immediately before the filing of the complaint or lawsuit.

The bar associations will have a permanent on-call duty to provide prior counselling and assistance services.

- The General Secretariat for Migration and Immigration of the Ministry of Employment and Social Security approved in 2014 a **Protocol for Detection and Action for potential cases of trafficking in human beings for the purpose of sexual exploitation.**

The aim of this Protocol is providing guidelines for action to identify and intervene in potential cases of trafficking for the purpose of sexual exploitation that may arise in the Unit for Social Work under the Sub-directorate General for Integration of Immigrants in the Office of Asylum under the Ministry of the Interior, in the refugee reception centre or in the centres for temporary stay of immigrants, under the General Secretariat for Migration and Emigration, as well as in the centres for migration and care services of NGOs implementing programmes subsidized by the General Directorate for Migration.

Basic lines of this Protocol are:

- Identifying potential victims of trafficking in centres for migration, in assistance or social services run by the Administration or in resources of organizations and institutions that provide assistance to victims.
- Informing the State Security Forces about the detection of potential victims.
- Informing the victims and refer them to the assistance services.

Concerning the strengthening of preventive and protective measures that address the particular vulnerability of children to trafficking, we must point out that, the Minister of Justice; of Employment and Social Security; of Health, Social Services and Equality, the State Prosecutor, the Secretary of State for Security and the Under-Secretary of the Ministry of Foreign Affairs and Co-operation adopted on the 22<sup>nd</sup> of July 2014 the Agreement for the approval of the Framework Protocol on certain actions related to unaccompanied foreign children, published in Spain's Official Journal on the 16<sup>th</sup> of October 2014.

This text responds to a provision in Article 190.2 of the Regulation on Foreigners (Royal Decree 557/2011 of 20 April, approving Regulation of the Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration) (hereinafter, RELOEX) and complies international case law concerning unaccompanied foreign children, as well as that from the Constitutional Court, Supreme Court and State Prosecution Service.

Among the subjects regulated, the Protocol gathers aspects linked to the protection of potential foreign child victims of trafficking. Specifically, it establishes the duty for police authorities or staff working at public institutions for the protection of children to inform the potential victim, when the child is of enough age to understand, of the rights Spain grants to potential victims of trafficking in human beings, as well as children protection regulations.

Further, the Protocol includes a chapter addressing how to act in case of foreign children at risk which pays special attention to the use of these children in clandestine immigration and prevention of THB for the purpose of ascertaining the parent-child relationship with the people accompanying them and guaranteeing their protection in case of risk.

On the other hand, it emphasizes the provisions concerning the foreign child rejection to consent to age determination tests when their age cannot be ascertained. In those cases, the person will always be presumed to be under-age if there are grounds to think they could be victims of trafficking.

4. *Further, GRETA urges the Spanish authorities to strengthen co-ordination and cooperation:*
  - *between State and regional authorities, including between the National Police, Civil Guard and regional police forces;*
  - *between all competent authorities and civil society, in particular by clarifying the modalities of the participation of civil society in the development, implementation and evaluation of anti-trafficking measures and policies in Spain (at state level and in the autonomous communities), and by including civil society in the monitoring process established by the Framework Protocol for the Protection of Victims of Trafficking*

The phenomenon of trafficking in human beings is considered a strategic priority in the field of prevention and fight against this crime at national and international level, as is one of the serious threats gathered in the strategic lines of our **National Security Strategy 2013**.

The co-ordination and cooperation of police forces is one of the functions developed by the Intelligence Centre against Terrorism and Organized Crime (CITCO), as it is the agency in charge of, among other aspects, “establishing operational action and co-ordination criteria of the State Security Forces in the case of coincidence or concurrence of investigations on all types of organized crime” and trafficking in human beings is one of them.

In this context, it is under the process of integration by means of a Protocol of Co-ordination with regional police forces, which in country have full competences (Catalan Police, Basque Country Police and Navarra Police) with the purpose of incorporating operations in the field of prevention and fight against THB in their respective autonomous regions in the System of Co-ordination of Investigations and the Trafficking Data Management System (BDTRATA). It is estimated that this co-ordination instrument will be implemented very soon.

It is important to highlight that the State Security Forces (National Police and Civil Guard) are including information about this type of crime in the BDTRATA since 2009.

Beyond police co-ordination and cooperation, more related to the prosecution of the crime, it is relevant to mention a series of multidisciplinary co-ordination instruments and agencies:

- **Instruments for co-ordination:**

- **Framework Protocol for the Protection of Victims of Trafficking in Human Beings**, signed by the Ministries of Health, Social Services and Equality; the Interior; Justice; Employment and Social Security, the Prosecution Service and the General Council of the Judiciary. This mechanism for co-operation among institutions establishes for the first time systems of formal communication between public institutions competent in this subject and recognizes the work carried out by non-profit organizations specialized in victim support.
- **Regional protocols to develop the Framework Protocol**. Until now, three regional protocols have been approved: in Catalonia (17<sup>th</sup> of October 2013), Galicia (prior to the Framework Protocol and updated in March 2012 in order to adapt to its content) and **Extremadura** (29<sup>th</sup> of June 2015). Moreover, several autonomous regions have started the process to prepare protocols to develop the Framework Protocol and the Autonomous Region of Aragón has implemented an urgent procedure for the cases of identification of a potential victim of THB for the purpose of sexual exploitation and to guarantee that this person is referred to specialized services.
- **Protocol for reference among autonomous regions for the co-ordination of their networks of shelters for women victims of gender-based violence and their children**: adopted in the Sectoral Conference on the 21<sup>st</sup> of July 2014 by all autonomous regions, except for Catalonia, Basque Country and the Cities of Ceuta and Melilla.  
Its goal is to co-ordinate their network of shelters in order to improve protection and security of victims and children under their care and enable their integral recovery.  
Despite this is foreseen for cases of gender-based violence under the terms established in the Organic Law 1/2004 of 28 December, on Integral Protective Measures against Gender-Based Violence, some autonomous regions use the Protocol to refer victims of THB for the purpose of sexual exploitation. As a consequence, until now (24<sup>th</sup> of July 2015), three women were transferred.
- **Framework Protocol on certain actions related to unaccompanied foreign children (MENA)**: signed up on the 22<sup>nd</sup> of July 2014 by the Ministries of Justice; Employment and Social Security; Health, Social Services and Equality; the Prosecution Service, the Secretary of State for Security of the Ministry of the Interior and the Under-Secretary of the Ministry of Foreign Affairs and Co-operation, it was published in Spain’s Official Journal on the 16<sup>th</sup> of October 2014.  
The Protocol aims to establish co-ordination guidelines related to processes for identification, age determination and handing over to the public institution in charge of children protection, as well as the proper functioning of the Register of Unaccompanied Foreign Children (RMENA), focused on

guaranteeing the higher interest of the child. It also foresees, among other regulated matters, aspects related to the protection of potential under-age victims of THB.

- **Protocol for identification and action for potential cases of trafficking in human beings with purpose of sexual exploitation:** approved by the General Secretariat for Migration and Emigration of the Ministry of Employment and Social Security, aimed at professional staff working in centres for migration associated to the General Secretariat, as well as centres run by NGOs subsidized by the General Secretariat with the aim of promoting coordinated and homogenous intervention of those professionals, supporting the detection of potential victims of THB and their referral to appropriate assistance and protection services.
- **Communication procedure between the Asylum and Refugee Office and the State Security Forces:** since there were indications that THB cases were taking place in applications for international protection, a procedure was implemented whereby the Asylum and Refugee Office informs the Police Headquarters for Foreigners and Borders without prejudice to the processing of the application for international protection.

- **Co-ordination agencies:**

- **Committee to monitor the implementation of the Framework Protocol of Victims of trafficking,** created on the 7<sup>th</sup> of June 2012.
- **Inter-ministerial Committee on Equality:** The Council of Ministers approved in 2013 the modification of the Inter-ministerial Committee on Equality between women and men with the purpose to “serve as a channel for the central state administration to follow up and co-ordinate the application of the principle of gender mainstreaming in measures aimed at eradicating gender-based violence in all its forms, taking into account the specific needs and demands of the victims who find themselves in highly vulnerable situations”.
- **Social Forum to Combat THB for Sexual Exploitation:** created in 2009, its structure and operating system were modified by the approval of the new Internal Code of the Social Forum during its meeting on the 7<sup>th</sup> of May 2015.

Currently, the Social Forum is comprised of 11 representatives of the central state administration, 4 people representing autonomous regions and the cities of Ceuta and Melilla –rotating every two years-, the Spanish Federation of Municipalities and Provinces, the National Rapporteur against THB and several non-profit organizations assisting victims of THB for sexual exploitation, among which, the Spanish Network against Trafficking is present.

- Since its inception in April 2014, the **National Rapporteurship for trafficking in human beings** was focused in creating synergies and channels for co-ordination among all actors involved, establishing collaboration mechanisms and specially providing a greater role to civil society organizations in our country.

To do so, it has been supported by the Intelligence Centre against Terrorism and Organized Crime (CITCO), which is the focal point of the Rapporteurship at national and international level.

Among the initiatives carried out since its inception, we could highlight the following:

- **Organization of bimonthly meetings by the Rapporteurship.** In these meetings, the main actors of public administration and civil society involved in the fight against THB and the protection of victims (Ministry of Justice; the Interior; Health, Social Services and Equality; Employment and Social Security; Prosecutor on Foreigners and the Spanish Network against Trafficking) take a part.

The aim of these meetings is complying with Article 19 of the Directive 2011/36/EU of the European Parliament and of the Council of 5 April, on preventing and combating trafficking in human beings and protecting its victims. In order to do so, an analysis of the situation of THB in Spain was conducted and a research about the main obstacles for prosecuting and judging of the perpetrators, and for assisting and protecting the victims was carried out.

From these meetings, working groups were created to find solutions to those problems from an integral approach.

- **Bimonthly meetings of the National Rapporteur with civil society organizations.** In these meetings, the Rapporteur knows first-hand what is the situation like from the point of view of NGOs working on the ground with victims.

- Co-ordination in the territory: through several actions, among which we could highlight the collaboration of the autonomous regions through the Sectoral Conference on Equality, whose regulation was modified in May 2012, to include “the assistance to victims of THB for sexual exploitation”.
- Likewise, in June 2013 the **Joint Instruction** was issued. It establishes the tasks of the Unit for Co-ordination and Violence against Women in the Government Delegations and Sub-delegations and it covers competencies for the fight against THB for sexual exploitation.

It is important to mention that the Committee on Equality of the Spanish Parliament agreed in 2013 to create a Subcommittee to analyze and research THB for sexual exploitation in order to gather proposals to improve anti-trafficking policies and victims’ assistance and protection.

The Subcommittee was composed of three representatives belonging to each of the parliamentary groups with more than 100 MPs in the Parliament, two representatives belonging to each of the parliamentary groups with more than 10 MPs and one representative belonging to the rest of the parliamentary groups. It was created on the 20<sup>th</sup> of December 2013 with the following goals:

- Analysing the situation of THB for sexual exploitation.
- Studying gaps identified in all the Spanish territory for the effective fight against this deplorable and inhuman fact.
- Analysing the compliance with measures provided in the Integral Action Plan to Combat THB for Sexual Exploitation (2009-2012).
- Proposing necessary improvements in the field of assistance to guarantee the protection of victims of trafficking, as well as measures that must be implemented to end this practice in Spain, considered “the 21<sup>st</sup> century version of slavery”.
- Issuing a report and expert opinion and deliver them to the Government to improve anti-trafficking policies and assisting and protecting its victims.

Once the work of the Subcommittee was finished, the approved report as well as the individual votes presented were published on the 9<sup>th</sup> of July 2015.

[http://www.congreso.es/public\\_oficiales/L10/CONG/BOCG/D/BOCG-10-D-700.PDF](http://www.congreso.es/public_oficiales/L10/CONG/BOCG/D/BOCG-10-D-700.PDF)

5. *GRETA also considers that the Spanish authorities should analyse the implications of having different legal bases for the identification, referral and assistance of victims of trafficking depending on whether they are EU or third-country nationals, as this may negatively affect their rights under the Convention.*

By means of the **Article 140 of the Royal Decree 557/2011 of 20 April, approving the rules of application for the Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration, after its reform by the Organic Law 2/2009**; it is established that the Secretaries of State for Migration and Emigration, Justice, Security and Equality will promote the adoption of a **Framework Protocol for the Protection of Victims of Trafficking in Human Beings** setting the basis for co-ordination and action by institutions with competencies in this field.

The aforementioned protocol, approved by agreement on the 28<sup>th</sup> of October 2011, addresses the scope and participation of the non-governmental organizations, foundations and other non-profit associations that are specialized in sheltering and/or protecting victims of trafficking and which participate in programmes developed by public institutions for assistance and protection of victims.

Despite the Protocol stems from the rules of application of the Law on Foreigners, it regulates the process for any victim, either Spanish, EU or non-EU, regardless of their gender and age, as there is a specific process for under-age victims, and regardless of the final purpose of trafficking.



6. *GRETA invites the Spanish authorities to commission an independent evaluation of the Action Plan to Combat THB for Sexual Exploitation, as a tool for assessing the impact of its activities and for planning future policies and measures to combat THB.*

The **2<sup>nd</sup> Integral Plan to combat THB of women and girls for sexual exploitation (2015-18)** was approved by the Agreement of the Council of Ministers on the 18<sup>th</sup> of September 2015 and presented by the Ministry of Health, Social Services and Equality on the 23<sup>rd</sup> of September 2015.

It was created through a participation process including contributions of the ministries with competences in this matter, the Prosecution Service, the autonomous regions, the Spanish Federation of Municipalities and Provinces, organizations specialized in supporting victims of THB for sexual exploitation and the rest of social organizations members of the Social Forum to Combat THB for Sexual Exploitation.

For its preparation, the evaluations and reports by national (Ombudsperson) and international agencies (TIP report by the US Secretary of State and GRETA by the Council of Europe) were taken into account.

The Plan proposes a strategy based on seven pillars:

- Human rights approach
- Gender approach
- Primacy of best interests of the child
- Improving knowledge of situations of THB for sexual exploitation
- Victims as the focus throughout the process
- Prosecution of the crime
- Integral approach. Cooperation and participation.

The evaluation process of the Plan is conceived with the same spirit of participation as that used in its design, since the contributions by the organizations and the co-ordination mechanisms are fundamental for the information gathered to be duly verified conducting a realistic analysis that takes all aspects influencing the efficiency of operation and foreseen objectives into account.

Therefore, the follow-up and evaluation system of the Plan is based on the work of two bodies: the Sectoral Conference on Equality, body for meeting, deliberating and cooperating between the central state administration and the autonomous regions in equality policies, including assistance to victims of THB for sexual exploitation; and the Social Forum to Combat THB for Sexual Exploitation, which integrates representatives of the autonomous regions, the Spanish Federation of Municipalities and Provinces and organizations with experience in the assistance and protection to victims, apart from the ministerial departments responsible for implementing the Plan.

Considering the importance of the follow-up as a tool to correct Plan's actions not producing the desired results, a follow-up report will be prepared every year gathering information on the actions carried out for each of the priorities that were established, taking stock of the successes and the gaps with the purpose of proposing possible solutions to continue moving forward in each of these priorities.

In order to do so, a series of indicators will be set to assess the achievements in each of the Plan's priorities.

The report will be assessed by the Social Forum and its members will have the chance to contribute from their field of competence. Once the report is approved, it will be presented to the Council of Ministers for their information and it will also be sent to the Committee on Equality in the Parliament to inform about the progress made.

When the Plan comes to an end, a final evaluation will be conducted to sum up all the work carried out during 4 years using this same participatory methodology.

For further information about the Integral Plan, please click on the following links:

<http://www.msssi.gob.es/ssi/violenciaGenero/laDelegacionInforma/home.htm>

<http://www.msssi.gob.es/ssi/violenciaGenero/tratadeMujeres/planIntegral/home.htm>

7. *Further, GRETA invites the Spanish authorities to consider appointing a national rapporteur or other mechanism for monitoring the anti-trafficking activities of public authorities and the implementation of national legislation requirements (see Article 29, paragraph 4, of the Convention and paragraph 298 of the Explanatory Report).*

Due to its firm anti-trafficking commitment and taking into consideration that this fight is a key priority for the Ministry of the Interior, Spain has complied with this obligation thanks to the **Resolution of the Secretary of State for Security on the 3<sup>rd</sup> of April 2014**, appointing the Cabinet Director of the Secretary of State for Security as National Rapporteur for trafficking in human beings.

This appointment is linked to the designation of the Intelligence Centre against Terrorism and Organized Crime (CITCO) as focal point in the field of THB on the 27<sup>th</sup> May 2014 with the aim of supporting the National Rapporteur in his tasks.

With these appointments, Spain complies with the **Article 29.4 of the Council of Europe Convention on Action against Trafficking in Human Beings and Article 19 of the Directive 2011/36/EU of the European Parliament and of the Council of 5 April, on Preventing and Combating Trafficking in Human Beings and Protecting the Victims.**

### **Training of relevant professionals**

8. *GRETA considers that the Spanish authorities should take further steps to provide specialised and regular training about THB to all relevant professionals, in particular national and regional law enforcement agents (including border police), Employment inspectors, social workers, child protection officers, visa officers, asylum officials, judges and prosecutors. Such training should address THB as a serious violation of human rights and cover the rights of victims of trafficking, including the protection needs of child victims of trafficking. Future training programmes should be designed with a view to improving the knowledge and skills of relevant professionals to enable them to identify victims of trafficking, to assist and protect them, taking into consideration their gender and age, to facilitate compensation for victims, and to secure convictions of traffickers.*

In this sense, **Article 30 of the Law 4/2015 of 27 April, on the Statute of Crime Victims** requires: “1. The Ministry of Justice, the General Council of the Judiciary, the Prosecution Service and the autonomous regions, in their respective competencies, will ensure general and specific training on the protection of victims in criminal proceedings, in training courses for judges, prosecutors, legal secretaries, State Security Forces, forensic doctors, officers in the administration of justice, officers in the Victims Assistance Offices and, given the case, officers in the central state administration or autonomous regions with these competencies. In these training courses, special attention will be paid to the victims in need of special protection, those who are in especially vulnerable situations and under-age or disabled victims. 2. Bar associations will promote training and awareness among their members under the principles of protection to victims pursuant to this Law”.

For all this, the State Security Forces have made an enormous effort in the last years to increase training on THB among all its members in terms of basic as well as specialized training, according to their profile.

Retraining courses are offered regularly to staff specialised in the attention to victims of trafficking.

The experts who work in the field of trafficking in human beings receive training to specialize in several criminal areas (general training) and in each of these courses; they become acquainted with awareness, action and fight against THB. Alternatively, training is also provided to exclusively specialize in this field (specific training).

Specific training provides specialized knowledge about this topic. By this, the people in charge of investigating crimes of THB will always have general training and, in the most serious cases and for the purposes of assisting the victims, they will receive support from experts in all Spanish provinces.

These courses had an multidisciplinary approach, as recommended by the Ombudsperson, and are taught by specialized members of the State Security Forces and other experts from Europol, attachés of the Ministry of the Interior, staff from the Secretary of State for Equality, Ministry of Employment and Social Security, Ministry of Health, Social Services and Equality, NGOs, etc.

On the other hand, the Intelligence Centre against Terrorism and Organized Crime (CITCO) participates in seminars, conferences and forums at national level organized by several actors involved in our country every year, among others, the Ministry of the Interior, Justice, Health, Social Services and Equality, Employment and Social Security, Prosecutors on Foreigners and the Spanish Network against Trafficking, whose main goal is the specialized and continuous training of the professional staff involved, using a fundamental-rights approach and mainly focusing in women and children. In their development, the Framework Protocol for the Protection of Victims of Trafficking, approved in October 2011, plays a special role, since it establishes the action lines by several actors involved in detection, identification, protection, assistance and referral of victims of trafficking. Likewise, the CITCO has held informative conferences about the methodology to be used to transfer and assess data to the Trafficking Data Management System (BDTRATA) in 2015 in Santiago de Compostela and Zaragoza. These conferences addressed to officers in charge of the National Police Headquarters for Foreigners and Borders and the Organic Judicial Police Units of the Civil Guard at province level, which are units involved in prevention and fight against THB.

In the international sphere, in 2015 the CITCO, in collaboration with the Spanish Agency for International Cooperation (AECID), attached to the Ministry of Foreign Affairs and Cooperation, organized the Seminar "Trafficking in Human Beings: invisible victims between Latin America and the European Union. State Security Forces: detection, identification, assistance and protection to victims", in Cartagena de Indias (Colombia), with the participation of police experts in THB in Latin America with the purpose of exchanging best practices and procedures in terms of protection and assistance to victims of trafficking.

In the field of the Ministry of Justice, the Centre for Legal Studies provides complete training about this type of crime, its problems and how to conduct an investigation and the system for integral protection of victims in all its beginner courses (trainee prosecutors). Every year continuous training courses are held for the rest of the prosecutors in this Centre.

Therefore, there is a network of experts in all of Spain with specific preparation about this crime (52 deputy prosecutors for Foreigners Affairs and 60 support prosecutors).

Concerning the public officers posted abroad, the Office of Human Rights of the Ministry of Foreign Affairs and Cooperation agreed, together with the College of Diplomacy, to include the topic of trafficking in human beings in the training provided to officers who will carry out consul activities abroad.

The purpose is improving information, early detection and recognition of visa applications that may be associated to these situations, providing several basic and advanced courses throughout the year.

In the same way, taking into account the role of the labour Inspection concerning potential cases of THB, in February 2013 training on THB for sexual exploitation began to be provided.

This training had two stages: first, through two courses given in the headquarters of the College for Labour Inspection and Social Security in Madrid where one or two inspectors per province participated (the number of inspectors was determined based on the size of each province), totalling 60 people. Secondly, courses were given in the premises of province inspections by the inspectors who previously attended the courses in Madrid with the same contents to the inspectors and sub-inspectors who work in the field of irregular economy in each province.

The second stage was completed in March and April 2013.

Since 2014, the recently graduated Labour and Social Security Inspectors receive a specific training course on THB as part of the selection process to access the Inspection Service.

The General Secretariat for Migration and Immigration of the Ministry of Employment and Social Security addresses specialized training in THB with an integral approach, promoting the funding of training actions to specialized agencies and enabling exchange of information and training to professional staff in the field of application of the Protocol for Identification and Action for potential cases of THB for sexual exploitation.

Regarding the financing of training programmes, the General Directorate for Migration, under the General Secretariat for Migration and Immigration, grants subsidies to projects aimed at promoting specialized and regular training on THB to professional staff involved in direct attention to immigrants in vulnerable situations and seekers/beneficiaries of international protection.

Furthermore, the Sub-directorate General for Integration of Immigrants held a training session on the 16<sup>th</sup> of December 2014, for all reference professionals from centres and services affected by the application of the aforementioned (point 3 of) the Protocol for Identification and Action for potential cases of THB for sexual exploitation in all national territory.

Additionally, using the specific e-mail address [sgii.trata@meyss.es](mailto:sgii.trata@meyss.es), the Sub-directorate General for Integration of Immigrants is in touch with all those responsible for the Protocol of the General Directorate and Sub-directorate and substitutes, and information is disseminated about:

- Updated regulations.
- Training actions developed by specialized agencies and bodies.
- Other matters of interest affecting the field of THB.

#### **Data collection and research**

9. *GRETA urges the Spanish authorities to 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. The data collection system should contribute to the preparation, monitoring and evaluation of anti-trafficking policies.*

The **Trafficking Data Management System (BDTRATA)** held by CITCO is the tool compiling quantitative information concerning prevention and fight against this crime, either for sexual or for labour exploitation, and it gathers the variables established by GRETA, as well as others.

The processing of information about personal details collected in the BDTRATA is carried out according to the Organic Law 15/1999 of 15 December, on Personal Data Protection, whose aim is guaranteeing and protecting public freedoms and fundamental rights of natural persons, and specially their honour and personal and family privacy.

Since 2013, the CITCO is updating, improving and adapting the BDTRATA with the purpose of having wider and more trustworthy information that allows to know the different purposes of trafficking—apart from sexual and labour exploitation- taking place in our country, such as exploitation to commit crimes or hold forced marriages. These purposes have been included in our legislation, in the Article 177 bis of the Criminal Code through the Organic Law 1/2015 of 30 March, modifying the Law 10/1995 of 23 November, of the Criminal Code. It is estimated that the BDTRATA will soon be able to compile information about all the purposes of trafficking.

Likewise, it is important to mention that the information included in the BDTRATA is the basis for the preparation of the yearly report on THB for sexual exploitation in Spain by the CITCO. This report describes the phenomenon and assesses its evolution; new trends are established and strategic proposals are made to combat this crime.

Regarding the Prosecutor's Office, this role is assumed by the Unit for Foreign Affairs of the General Prosecutor's Office. The results are published every year for the public at [www.fiscal.es](http://www.fiscal.es) (under *Fiscal especialista/extranjería/Documentos y normativa*) under the title of "Notas informativas y seguimiento del delito de trata de seres humanos" (Informative notes and follow-up on the crime of trafficking in human beings).

Since January 2015, in compliance with the provisions established in the Protocol for Identification and Action in potential cases of trafficking in human beings for sexual exploitation, specifically in its Annex 2 (under experimental phase and subject to revision), the reference professionals of the Protocol are updating a digital database gathering information about detection of potential victims and the measures taken.

The information compiled includes the following variables:

- Identification data: initials and ID number, sex, age and nationality.
- Stages of action: detection, information to authorities, reception, legal aid, psychological assistance, identification by the State Security Forces, assisted return.
- Documentation.
- Observations.

Personal details of potential victims gathered by the various professionals are subject to the Organic Law 15/1999 of 13 December, on Personal Data Protection and systems for data protection established and in force in each centre, unit or agency.

*10. GRETA considers that the Spanish authorities should continue conducting and supporting research on THB-related issues as an important source of information for future policy measures. Areas where further research is needed in order to shed more light on the extent of THB in Spain include trafficking for the purpose of labour exploitation, internal trafficking, child trafficking and the incidence of trafficking among irregular migrants and asylum seekers.*

The Police Forces, National Rapporteurship for THB, Prosecution Service, Ministry of Justice, Ministry of Employment and Social Security, Ministry of Health, Social Services and Equality, etc. are collaborating on a regular and specialized basis in the field of THB with several Spanish universities. Some of them have a more institutional format (University Carlos III); others are more occasional or aimed at logistic support (University of Comillas, University of Granada, etc.). All of them have the objective of facilitating research in this field to provide new data and increase a wider and multidisciplinary knowledge of this phenomenon in all its versions.

In this sense, the organization *Mujeres en Zonas de Conflicto* has implemented in 2015 a research project called "Prevention, repression, protection, redress and assistance to victims of trafficking in the region of Andalusia", subsidized by the General Directorate for Migration (at the General Secretariat for Migration and Immigration) after winning the call for grant applications aimed at integrating immigrants and co-financed by the European Fund for Integration.

The purpose of the project is gathering information conducting interviews to key informants to analyse the phenomenon of THB and its psycho-social impact.

This research also aims at generating more understanding and knowledge on trafficking of women, girls and boys to facilitate the adoption of preventive measures.

### **International co-operation**

11. GRETA considers that the Spanish authorities should continue their efforts to strengthen international cooperation with governmental and non-governmental actors in order to prevent and combat all forms of THB, assist and protect victims of trafficking, and investigate and prosecute human trafficking cases.

Trafficking in human beings has an important transnational component. For that reason, international cooperation is necessary at all levels to fight against this crime and at the same time to provide better assistance and protection to victims.

Taking this approach as a starting point and in line with the EU Strategy towards the Eradication of Trafficking in Human Beings (2012–2016), Spain takes part in the main international cooperation and co-ordination initiatives. We could highlight the following:

- **Eurojust, Europol and the EMPACT Project:**

Through the CITCO and the State Security Forces, Spain participates in the EMPACT Project (European Multidisciplinary Platform against Criminal Threats-EMPACT) of Europol, where a series of priorities in the fight against organized crime and serious crimes have been set, one of them being THB.

During 2013, in the framework of the first Political Cycle of the EU in the fight against transnational organized crime (2011-2013), the CITCO participated in the preparation of strategic objectives to develop this priority for the new political cycle of the EU (2014-2017) and in the design of the Operational Action Plans-OAPs-2014.

In total, 18 Plans were set and Spain (CITCO) led, together with Belgium, 2 of them. Their aims were: exchanging information and knowledge between Member States concerning the existing tools to identify/detect victims of trafficking, as well as to prepare a list of operational contacts in the MS to establish a cross-border mechanism to protect victims.

The results of both actions were presented to Europol for their inclusion and dissemination in the European Platform for Experts (EPE) -technological tool to exchange strategic information.

It is important to mention that the Permanent Information and Co-ordination Centre (CEPIC) at the Secretary of State for Security, has been appointed as operational contact for Spain. It provides a 24-hour service and it will send the requests for information about victims of trafficking to the State Security Forces. Likewise, during 2014, in the framework of the second Political Cycle of the European Union in the fight against transnational organized crime (2014-2017), currently in force, the CITCO participated in the design of the corresponding Operational Action Plans-OAPs-2015.

A total of 15 Plans were defined and Spain (CITCO) led one of them together with Frontex. Its aims were: compiling information at EU level about the existing tools to identify under-age victims of trafficking and understanding the modus operandi criminal groups use in child trafficking.

Moreover, in the framework of the EMPACT project for THB, the CITCO and the State Security Forces are present in two subprojects. The first is called ETUTU, led by Germany, and it addresses the phenomenon of THB with Nigerian victims. The second is CHINA, led by the Netherlands, and it analyses the incidence of THB with victims coming from China. In summary, both subprojects have the following goals: improving knowledge and intelligence in this field, increasing identification of organized crime groups, increasing the number of investigations as well as the number of victims identified and protected.

At the Europol level (Analytical Work File Phoenix) and at the level of bilateral cooperation, relations and co-ordination among national and international agencies regarding the strategic and operational information flow and exchange allowing improved police action. In this field, the bilateral work carried out by Police forces from around the world is fundamental.

This cooperation framework led to the Common Action Days in Europol and to several joint operations and investigation teams where Europol and Eurojust participated actively.

- **European Network of National Rapporteurs:**

Due to its firm commitment in the fight against THB and taking into consideration that it is a key priority for the Ministry of the Interior, Spain has complied with the obligation established in the Directive 2011/36/EU, through the Resolution by the Secretary of State for Security of 3 April 2014, appointing the Cabinet Director of the Secretary of State for Security as National Rapporteur for trafficking in human beings. The

Intelligence Centre against Terrorism and Organized Crime (CITCO) was also appointed as focal point with the aim of supporting the National Rapporteur.

Because of this appointment, Spain is actively participating in the European Network of National Rapporteurs or equivalent mechanisms led by the Coordinator against THB in the European Union, such as a forum for follow-up and compliance of the said Directive as well as for the research and analysis of best practices to improve anti-trafficking policies, protection to victims and reduction of demand.

- **Legal field:**

As regards the Prosecution Service, international collaboration is developed through its Unit for International Cooperation in co-ordination with the Unit for Foreign Affairs. The collaboration in the framework of the Ibero-American Association of Public Prosecutors and its Network against Trafficking in Human Beings is especially relevant. In this field, two important actions were conducted: the dismantling of two organizations based in Paraguay and the regular meetings held by prosecutors specialized in THB.

We would like to remind that Article 33 of the Statute of the Victim establishes that public powers will promote cooperation with other States and especially with Member States of the European Union in the field of the rights of crime victims, particularly through the exchange of experiences, promotion of information, sharing of information to facilitate assistance to victims by the authorities in their place of residence, awareness, research and education, cooperation with civil society, assistance to networks on the rights of victims and other related activities.

12. *Further, GRETA invites the Spanish authorities to evaluate the international co-operation activities carried out so far in order to focus future action on key priorities with a view to maximising the impact of the reduced financial resources.*

In terms of evaluation, the Political Cycle of the European Union (2011-2017) establishes a review and evaluation mechanism of the EMPACTs. This review took place in the middle of the cycle, in parallel to the issue of the Serious and Organised Crime Threat Assessment Report (SOCTA 2013) and the second review will take place in the last quarter this year, in parallel to the issue of SOCTA 2015, in order to adopt, given the case, each of the priorities to the new reality that may have appeared in the field of organized crime and serious crimes, including trafficking in human beings.

Likewise, the National Rapporteur for THB analyzes and evaluates the situation of national and international cooperation during the bimonthly meetings held with the main public and private actors so that measures for improvement and development can be promoted.

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

13. *GRETA urges the Spanish authorities to develop measures to raise awareness of THB for the purpose of labour exploitation. Information and education activities should also be taken to raise awareness about THB among Spanish nationals, including children. The Spanish authorities should plan future information and awareness-raising and education campaigns with the involvement of civil society, on the basis of research and impact assessment of previous measures, and focusing on the needs identified.*

In this sense, the **Article 34 of the Law 4/2015 of 27 April, on the Statute of Crime Victims** establishes that *“Public powers will promote social awareness-raising campaigns for the victims, as well as the self-regulation of public and private social media in order to preserve privacy, dignity and the rest of the victims’ rights. These rights must be respected by social media”*.

Among the main actions carried out in Spain, we could highlight the following:

- Commemorative events on the International Days:
  - International Day against Sexual Exploitation and Trafficking of Women and Children (23<sup>rd</sup> of September).
  - European Day against Trafficking in Human Beings (18<sup>th</sup> of October).

- World Day against Trafficking in Persons (30<sup>th</sup> of July).
- Including the image of the Blue Heart campaign against THB by the United Nations in the ONCE lottery coupons and National Lottery in several days related to human rights.
- Informing professionals about the news and progress in the actions against trafficking of women with the purpose of sexual exploitation by sending a weekly newsletter called “La DGVG informa” (The General Directorate for Gender-based Violence informs). During 2014, 6 newsletters were sent with specific information about anti-trafficking actions and up to now in 2015, 4 more were sent.
- Promotion of the temporary exhibition “No seas Cómplice” (Do not be Accomplice) created by the Government Delegation against Gender-Based Violence in collaboration with the Institute for Women and Equal Opportunities, available to any public or private institutions that may wish to join their efforts in raising awareness about this serious violation of women’s rights. In 2014, the exhibition was transferred to the Aragon Institute for Women (from the 17<sup>th</sup> to the 28<sup>th</sup> of October) and the Extremadura Institute of Women (from the 3<sup>rd</sup> to the 27<sup>th</sup> of June).
- Raising awareness about THB for the purpose of sexual exploitation at schools by means of the Joint Plan with the Ministry of the Interior and the Ministry of Education, Culture and Sports.
- In the framework of the Police Plan against THB, several advertising campaigns were conducted in a variety of media, press, radio stations, etc. that also helped to gather information that led to fruitful investigations where even little victims were released.
- The State Security Forces have increased their presence in social media most used by Spanish population, which are Facebook, Twitter, Tuenti and Youtube. They provide updated information in order to warn the citizens and to make recommendations to prevent THB as well as raising awareness to the suffering of victims.
- There are specific websites as well as 24-hour telephone hotlines to contact the State Security Forces.
- The Police Forces participate in widely-spread forums at universities and education centres, and they reply to any request coming from the civil society or third sector.
- The State Security Forces publish informative brochures aimed at potential victims and prostitution clients where they establish indicators that help to identify victims, facilitating, in case a victim is identified, the information flow towards those in charge of anti-trafficking activities.
- Civil society organizations, in collaboration with public institutions, have carried out a series of initiatives in the last years including organizing seminars, conferences, publishing research, publishing books, recording feature and short films, etc.

14. GRETA also urges the Spanish authorities to:

- *continue efforts to discourage demand for the services of victims of trafficking for the purpose of sexual exploitation, bearing in mind that such measures should be balanced and not lead to the criminalisation of victims of trafficking;*
- *strengthen their efforts to discourage demand for the services of victims of trafficking for the purpose of Labour exploitation, including by reinforcing Labour Inspections, in particular in sectors at high risk such as agriculture, textile industry, domestic service, construction and the hotel/catering trade.*

One of the goals of the Second Stage of the Police Plan against THB is reducing demand of prostitution services. A leaflet has been issued for potential clients of those services explaining the indicators to identify a victim.

In the field of prevention, the State Security Forces have continued to make important efforts to identify victims of trafficking either for the purpose of sexual exploitation or for labour exploitation.

As the data from the database on trafficking (BDTRATA) shows, during 2014 there was an increase -in comparison to the previous year- in the number of administrative inspections in places for prostitution (night clubs, private houses, etc.) and in the workplace (construction, agriculture, hotel sector...) in the national territory, a 6 % and a 44 % respectively.



	2013	2014
Inspections conducted in places for prostitution	13.159	13.983
Inspections conducted in workplaces	2.811	4.042

In the field of trafficking for labour exploitation, the Labour and Social Security Inspection designs an annual Integral Action Plan including the goals at national and at regional and province level. For its preparation, it takes into account the agreements executed with the administration (central, regional and province level) as well as the bilateral agreements signed up with other administrations. The Plan encompasses the inspection activity in four groups considering the competences of the Inspection service in Spain: labour relations, prevention of occupational risks, Social Security and irregular employment and foreigners' employment. At the same time, it is subdivided in several programmes and these, in campaigns.

The planning of the last years is deeply affected by the approval of the Plan against Irregular Employment and Social Security fraud, approved by the Council of Ministers on the 27<sup>th</sup> of April 2012, whose main goal is combating behaviours that violate workers' rights and that negatively impact competition among companies which comply with their legal duties.

The inspection activity has been reinforced in sectors such as hotels and restaurants, shops or agriculture in the last years.

Additionally, the adoption of the collaboration agreement between the Ministry of Employment and Social Security and the Ministry of the Interior on co-ordination between Labour and Social Security Inspection and the State Security Forces in the fight against irregular employment and Social Security fraud is to be mentioned. One of its specific goals, as per its first instruction, is the collaboration against THB and THB for labour exploitation.

The statistical data regarding this activity by the Labour Inspection can be found in the following link:

[https://portalitss.meyss.es/portal/portal/sites/portal/Que\\_hacemos/Estadisticas/index.html](https://portalitss.meyss.es/portal/portal/sites/portal/Que_hacemos/Estadisticas/index.html)

*15. GRETA invites the Spanish authorities to consider adopting legislative and other measures to criminalise the use of services provided by victims of trafficking, with the knowledge that the person is such a victim.*

Under Spanish law, the use of services by a person enslaved in any work activity would involve a crime against workers' rights, as established in the **Articles 311 ff. of the Criminal Code**.

Additionally, the client having sexual access to a victim of trafficking with the knowledge that the person cannot reject because of being enslaved or trafficked could incur in a crime against sexual freedom –rape, sexual assault, sexual abuse, depending on the case- as set in the **Articles 178 ff. of the Criminal Code**.

The **reform of the Criminal Code by the Organic Law 1/2015 of 30 March**, establishes a clearer separation between exploitation of prostitution affecting people of legal age and that of under-age or disabled people. New aggravated subtypes in case of special vulnerability of the victim, undue influence of office, jeopardizing the victim's life or integrity and joint execution by two or more people, are included in order to combat the most serious cases of child prostitution. It also attempts to solve problems in the application of the crime of exploitation of prostitution. To do so, it defines exploitation and establishes that, in all cases, exploitation takes place when any of the following circumstances occurs:

- The victim is under a situation of personal or economic vulnerability.
- Burdensome, disproportionate or abusive terms are imposed for its exercise.

A very important step was taken thanks to the inclusion of a serious offence in the **Article 36.11 of the Organic Law 4/2015 of 30 March, on the protection of citizens' security**: *"The request or acceptance of paid sexual services by the client in public transit areas near places for children, educational centres, children parks or leisure areas accessible to children, or when these behaviours, due to the place they occur, may entail a risk for road safety (schools, parks...)"* as an approach to discourage demand.

*16. Further, GRETA invites the Spanish authorities to continue contributing to prevention activities to raise awareness of THB in the main countries of victims trafficked to Spain.*

The number of Spanish victims of trafficking may be considered symbolic; a higher incidence is found in cross-border THB. In the last years, more than 90 % of the victims identified came from other countries, mainly from Romania and countries such as Nigeria, Paraguay, Bulgaria and China.

In this context, the Intelligence Centre against Terrorism and Organized Crime (CITCO) holds regular meetings with counterpart centres or agencies from other countries and especially with those considered more sensitive in THB issues in order to share best practices and procedures in prevention as well as in fight, which may be implemented in the countries of origin. Examples of them would be carrying out advertising campaigns in social media about the ways the traffickers recruit (advertisements in newspapers, recruitment agencies, etc.) or awareness-raising campaigns at schools.

On the other hand, liaison offices, attachés and advisors for internal affairs in third countries are extensively used, as well as the deployment of joint teams of investigation and the work of police officers in international missions under the auspices of the UN, OSCE and their respective agencies.

In the field of training, members of the security forces in the countries of origin of the victims attend to activities (seminars, courses, etc.) that contribute greatly to early detection, prevention and identification in origin.

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

*17. GRETA urges the Spanish authorities to strengthen their efforts to detect cases of THB at the borders and when tackling irregular migration, in particular by providing specialised and regular training on THB, from a human rights and a victim-centred approach, to law enforcement officers, including border police, with clear instructions on how to proceed.*

The State Security Forces intensify their border controls and inspections of means of transport.

There is a close collaboration with international agencies such as Frontex, participating in the preparation and development of a guide of indicators to detect victims of trafficking at the border. This guide will be disseminated among all officers working at borders as a complement to the training the regularly receive.

Likewise, together with Frontex, Spain participates in specialized training programmes for police agents, always from the human-rights perspective and for the best interests of the victim. In these training sessions, action protocols are explained.

*18. GRETA also considers that Spanish authorities should:*

- *keep under review the application of the new instructions to register undocumented children arriving in Spain and check the relationship between the child and the accompanying adult(s);*
- *keep under review the issuing of visas and accreditations for domestic workers in diplomats' households;*
- *take further steps to provide written information to foreign nationals seeking employment in Spain, in a language that they can understand, in order to alert them about the risks of THB for sexual and labour exploitation, as well as to inform them of their rights and where to go for help and advice.*

In Spain all activities with undocumented children who arrive to Spain are regulated pursuant to the **Article 215 of the rules of application for the Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration** and in the **Framework on the Protection of Unaccompanied Children**. There is a **Registry of Foreign Children** under the co-ordination of the Prosecution Service regulated under the **Instruction of the General Prosecutor 1/2012**.

### Identification of victims of trafficking in human beings

19. GRETA urges the Spanish authorities to review the identification procedure of victims of trafficking with a view to ensuring that possible victims are treated, in the first place, as persons who have been exposed to human rights violations rather than as a source of evidence for criminal investigations. To this end, the Spanish authorities should:
- strengthen multi-agency involvement in the decision-making process leading to the identification of victims of trafficking, including giving a formal role in the identification process to other frontline actors, such as labour inspectors, social workers, medical staff and NGOs;
  - ensure appropriate co-ordination and exchange of information between all relevant actors involved in the identification procedure;
  - ensure that the indicators and other tools used for the identification of victims of trafficking cover all types of THB and that their application is duly monitored and evaluated;
  - allow enough time for the identification of victims of trafficking, taking into account the traumatic experience suffered and the need for sufficient time to gather all the necessary information and decide on the identification;
  - ensure the quality and availability of interpreters during the identification process, and provide the information document with the rights of victims of trafficking in a language that they can understand;
  - inform in writing the persons concerned, in a language that they understand, about the outcome of the identification procedure;
  - adopt a proactive approach to the identification of victims of trafficking for the purpose of labour exploitation, in particular in the sectors most at risk such as agriculture, construction, textile, restaurants, hotels and domestic work;
  - improve the detection and identification of victims of trafficking among irregular migrants through a proactive approach which requires regular training on THB and the rights of victims for immigration, border police and asylum officers, including staff working at the CIEs and CETIs;
  - take into account the special needs and circumstances for the identification of child victims of trafficking, which includes the setting up of a specific referral mechanism for children involving child specialists, child protection services, and specialised police and prosecutors

The process for identification of victims of trafficking is regulated in the Spanish legislation under the **Royal Decree 557/2001 of 20 April, approving the rules of application for the Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration, after its reform by the Organic Law 2/2009, specially in Articles 141.1, 141.2 and 142; and through the Framework Protocol for the Protection of Victims of Trafficking in Human Beings of 28 October 2011**, signed up by the General Prosecutor; Minister of the Interior; Justice; Employment and Social Security; Social Services and Equality; and a representative of the General Council of the Judiciary.

The **Framework Protocol** establishes the co-ordination mechanism in terms of detection, identification, assistance, protection and referral of victims, where several actors involved in our country participate, such as non-governmental organizations. This is a pioneer tool where, for the first time, formal communication systems among the competent administration institutions are set and it also recognizes the role of non-profit organizations specialized in the attention to victims.

The actions under this Framework Protocol are based on an approach for promoting and protecting human rights, prioritising assistance and protection to victims, avoiding secondary victimization and encouraging victims to collaborate in criminal proceedings against their traffickers.

The said actions are addressed from a gender-based perspective, guaranteeing that the measures taken follow an integral approach and are gender-sensitive, age-sensitive and that take into account vulnerability situations of the potential victims of trafficking, such as state of pregnancy, health conditions and disability.

Focusing in the **identification process**, first the competent authorities for identification (police units with specific training in prevention and fight against THB and in identification and assistance to victims) are determined. Afterwards, it is compulsory to conduct an interview with the victim. There is a set of indicators to facilitate the identification of the victim and the victims must be informed of their rights in a clear way and in a language they can understand, as well as protection and security measures and assistance services available.

Further, **regional protocols to develop the Framework Protocol** have been implemented due to the territorial structure of our country and the competencies held by autonomous regions. Until now, the following regional protocols have been approved: Catalonia (17<sup>th</sup> of October, 2013), Galicia (updated in March 2012 for its adaptation to the Framework Protocol) and Extremadura (29<sup>th</sup> of June, 2015).

Additionally, several autonomous regions have initiated the process to prepare protocols to develop the Framework Protocol. Madrid is one example.

In the case of children, the Framework Protocol explicitly establishes the process to follow as they are considered especially vulnerable, pursuant to paragraph XIV. It covers specific actions in case of child trafficking, among others, immediate assistance, protection and support, as well as co-ordination of all actions by the Prosecution Service.

Likewise, the **Framework Protocol on certain actions related to unaccompanied foreign children (MENA)**, 16 October 2014, establishes co-ordination guidelines related to the process for identification, age determination and handing over to the public institution in charge of children protection. The approach is guaranteeing the higher interest of the child and it foresees, among other regulated matters, aspects related to the protection of potential under-age victims of trafficking.

In order to improve detection and identification of victims for the different purposes of THB, the actors involved participated during 2012 and 2013 in the **ISEC project of the European Commission**, called Eurotrafguid, co-ordinated by the Secretary of State for Social Services and Equality (Government Delegation against Gender-based Violence). Its main goal was to provide tools for professionals who may be in contact with potential victims of trafficking (social services, healthcare services, migration and border centres, units for citizen security, etc.), regardless of the purpose of exploitation, promoting a higher detection of victims and increasing the identification by competent authorities, as well as the appropriate referral to specialized assistance and protection services.

In this context, the following tools were prepared:

- Handbook on common guidelines for the detection of victims of trafficking.
- Practical tool to detect victims of THB for sexual exploitation.
- Practical tool to detect victims of THB to carry out illegal activities.
- Practical tool to detect victims of THB for labour exploitation.

During 2014, 3.100 copies of these materials have been delivered to professional staff in the public and private sectors, as well as to embassies in the countries with a higher presence of nationals: Bolivia, Brazil, Bulgaria, Colombia, China, Dominican Republic, Ecuador, Morocco, Peru, Poland, Romania and Russia. Further, this material is available online in Spanish and other languages in the website of the Ministry of Health, Social Services and Equality.

<http://www.msssi.gob.es/ssi/violenciaGenero/tratadeMujeres/Deteccion/home.htm>

Further, the General Secretariat for Migration and Immigration of the Ministry of Employment and Social Security approved in 2014 the **Protocol for Detection and Action for potential cases of trafficking in human beings for the purpose of sexual exploitation** aimed at professionals working in centres for migration associated to the General Secretariat and those managed by NGOs subsidized by it. Its purpose is promoting co-ordinated and consistent intervention by professionals, facilitating detection of potential victims and their referral to appropriate assistance and protection services.

Professionals working in the temporary reception centres for immigrants (CETIs) in Ceuta and Melilla, which were organically and operationally dependant on the Sub-directorate General for Integration of Immigrants, under the General Secretariat for Migration and Immigration have provided specific training on THB. It is important to highlight the following:

- Internal training course on “Specific capacity building course for professionals working in centres for migration (CETI, centres for humanitarian help and refugee reception centres), to facilitate detection of victims of trafficking as well as their immediate protection and assistance”.
- Attendance by reference professionals in CETIs of Ceuta and Melilla to a conference on the application of the Protocol for Detection and Action for potential cases of trafficking in human beings for the purpose of sexual exploitation on the 16<sup>th</sup> of December 2014.
- Other training courses given by specialized institutions: Spanish Red Cross, APRAMP (association for prevention, reinsertion and attention to prostituted women), Mujeres en Zona de Conflicto, etc.
- Updated information concerning THB through the specific e-mail address [sgii.trata@meys.es](mailto:sgii.trata@meys.es)

Regarding the identification of victims of THB for labour exploitation, the Labour Inspection and the State Security Forces are conducting **joint inspections in risk-prone places** in order to facilitate a proactive approximation to potential victims. In this sense, during 2013 and 2014, a total of 2.811 and 4.420 inspections were carried out in workplaces, respectively, increasing in 44 % the number of labour inspections during 2014.

Finally, in 2015, in the framework of its role as focal point of the National Rapporteur on THB whose priority has been reinforcing cooperation of the actors involved in this topic, the CITCO has promoted the creation of a **Working Group** in order to complement the regulation on Foreigners and the Framework Protocol and formally determine the role of NGOs in the various stages of attention to victims in an Instruction of the Secretary of State for Security. In this Working Group there are representatives of the State Security Forces and the Spanish Network against Trafficking and it is foreseen that the Instruction will be issued by the end of this year.

### Assistance to victims

20. *GRETA considers that a specialisation of lawyers providing free legal assistance to victims and presumed victims of trafficking, not only in the case of sexual exploitation but all types of exploitation, should be reproduced in other parts of Spain.*

The right to free legal assistance to victims of trafficking for different purposes –not only for sexual exploitation– regardless of their resources to institute legal proceedings, in proceedings linked or consequence of their status of victims is regulated in our national legislation in the **Article 2 g) of the Law 1/1996 of 10 January, on free legal assistance**, modified by the **Royal Decree 2/2013 of 22 February**, modifying the fee regime in the administration of justice and the system of free legal aid.

The **General Council of Lawyers**, aware of the dimension of the problems linked to THB, has been holding **specific symposia on this topic** since 2012. In 2015, a specific symposium on THB has been included in the project Aula de Derechos Humanos (Human Rights Room) -project created by the Foundation of the General Council in collaboration with bar associations, whose goal is to organize informative and training symposia concerning the access to justice by groups of most vulnerable people-. On the 29<sup>th</sup> of September 2015, the first symposium on “The role of lawyers in detecting and defending victims of THB for the purposes of sexual exploitation” was held in collaboration with the bar association of Alcalá. In the coming months, this symposium will be organized in the bar associations of the following cities: Gijón, Oviedo, Valladolid, Pamplona and Ciudad Real. Each symposium is

adapted to the reality of each city, due to the differences in the modus operandi of mafias, nationalities and circumstances. The Foundation hires expert collaborators in this matter who run these symposia: one legal expert (lawyer specialized in THB), a representative from a social organization (for awareness raising), and a police officer. These speakers are accompanied by the chairperson and a person representing the Foundation.

Further, in the framework of the **annual Conference of Lawyers commemorating the Universal Declaration of Human Rights**, the Foundation holds a **congress on Human Rights**, which is an annual meeting point for discussion and reflection among the different actors involved in defending, respecting, protecting and promoting human rights. In 2015, the congress will focus on the fight against THB. It will include speakers from social organizations, police forces, the judiciary, Public Prosecutor's Office, Secretary of State for Social Services and Equality, media, etc. who will share their experience in roundtables and discussions.

In general terms, the aim of the General Council of Lawyers is to **improve legal assistance and protection systems provided by bar associations to child and women victims of THB** through this series of specific initiatives.

Some of the specific goals are:

- Introducing bar associations as an expert body in the assistance to child and women victims of trafficking.
- Adequately training lawyers in the process of identification of victims of trafficking.
- Raising awareness among lawyers of the reality of THB.
- Informing about specialized services by NGOs, public administration and Police.
- Offering training and tools to lawyers so they can provide adequate legal assistance to victims of trafficking.
- Improving co-ordination between social agents and lawyers specialized in THB.
- Raising awareness among bar associations of the suitability to create specific duty schemes, protocols or special procedures for THB or at least to count on colleagues for reference in this matter.

Moreover, the Law 42/2015 of 5 October, reforming Law 1/2000 of 7 January, on Criminal Procedure, continues to recognize free legal aid to gender violence and THB victims and their successors in case of death, and introduces improvements in terms of recognition. Among them, we could highlight:

In order to be granted free legal aid, the status of victim will be provided when a complaint or lawsuit is filed or when the legal proceedings start and the status will be kept while the legal proceedings continue or, after that, when a final conviction decision has been delivered.

Free legal aid will cover, apart from other benefits, free counselling and guidance immediately before filing the complaint or lawsuit.

The **bar associations will have a permanent duty** to provide prior guidance and assistance.

*21. GRETA urges the central and regional authorities in Spain to ensure that all victims of trafficking are provided with adequate support and assistance, from their identification through to their recovery, and in particular to:*

- *adopt minimum standards for assistance to all victims of trafficking, regardless of their sex, age, nationality and type of exploitation, and providing adequate funding to maintain these standards;*
- *ensure that safe and suitable temporary accommodation is provided to all victims of trafficking, adapted to their needs;*
- *ensure access to health services for all victims of trafficking in Spain;*
- *enable victims of trafficking lawfully resident in Spain to have access to the Employment market, vocational training and education as a form of rehabilitation;*
- *ensure that undocumented foreign victims of trafficking have effective access to assistance measures by providing them with temporary identity documents;*
- *ensure that child victims of trafficking benefit from the assistance measures provided by the Convention, in a way which is tailored to their needs;*

- *provide specialised training to all professionals responsible for the provision of assistance and protection measures to victims of trafficking, including to lawyers giving free legal assistance to victims of trafficking;*
- *monitor the system of assistance to victims of trafficking and adapt it accordingly to ensure that it corresponds to the victims' needs.*

The **Law 4/2015 of 17 April, on the Statute of Crime Victims**, covers in one single legislative text the general list of procedural and extra-procedural rights of all crime victims, serving as a response to victims and their families in legal and social terms and also includes specific attention to the most vulnerable victims, such as children.

Specifically, the protection needs of victims of trafficking will be taken into account in the individual assessment of the victims to determine their special protection needs and measures to be taken. This is all introduced in the access to specific protection measures aimed at avoiding secondary victimization during the pre-trial and trial stage.

In this sense, we could highlight:

- That victims have the right to be informed of the possibility to obtain an alternative accommodation (Art. 5);
- In the case of children, the Prosecution Service will safeguard the special compliance with protection laws (Art. 19);
- General and specific training in THB for all actors involved (Art. 30)
- The regular evaluation of the assistance system for victims of trafficking in Spain (first additional provision).

Focusing now in **child victims**, it must be mentioned that, apart from the aforesaid, the **Organic Law 8/2015 of 22 July, modifying the system for the protection of children and adolescents**, and the **Law 26/2015 of 28 July, modifying the system for the protection of children and adolescents**, have improved attention and protection of children of women victims of gender-based violence, as well as child victims of other forms of violence against women, highlighting that for the first time it includes their protection against all forms of violence, including trafficking, in the guiding principles of action by public powers concerning children.

Regarding the improvement of the protection of child victims of trafficking, the following aspects must be pointed out: the right of foreign children who are in Spain to education, healthcare and basic services and social benefits under the same conditions as Spanish children, where public administrations will protect especially vulnerable groups such as child victims of THB. In case the age of majority cannot be determined, this person will be considered a minor for the purposes of the law while their age is determined. The corresponding public body will assume the guardianship of a child in case of neglect and when there is conflict of interest with parents, guardians or carers, and in order to access and practice those professions or to carry out activities involving regular contact with children, it establishes as a requirement not to be convicted for crimes such as prostitution, corruption of minors, sexual exploitation and trafficking in human beings.

These laws improve the protection granted by the Spanish legal system to victims of trafficking regardless of their age, widening from 30 to 90 days the minimum recovery and reflection period on the one hand, and tax benefits for companies hiring victims of trafficking on the other hand.

Finally, the **Framework Protocol for the Protection of Victims of Trafficking in Human Beings and the regional protocols** establish that victims must receive support and protection under the same conditions in all national territory.

#### **Recovery and reflection period**

22. *GRETA urges the Spanish authorities to review the rules and application of the recovery and reflection period with a view to ensuring, in compliance with the obligations under Article 13 of the Convention, that*

*all possible victims of trafficking, including EU nationals, are systematically informed of the possibility to benefit from a recovery and reflection period, and offered one without having to apply for it. As part of this review, the authorities should establish clear criteria for determining the duration of the recovery and reflection, taking into account the personal situation and need to recover of the possible victim, and provide training to the competent authorities in order to ensure that these criteria are applied in a harmonised way throughout Spain. The Spanish authorities should also address the reasons why so few victims of trafficking apply for and are granted a recovery and reflection period.*

The right to a recovery and reflection period is a right of victims of foreign trafficking in irregular situation (offered to all victims) granted in the **Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration, and specifically its Art. 59 bis. Likewise, thanks to the Organic Law 8/2015 of 22 July, on the modification of the system for the protection of children and adolescents**, the minimum duration of this period has been increased from 30 to 90 days.

Further, the process to offer this recovery and reflection period and its processing is established in the **Framework Protocol for the Protection of Victims of Trafficking in Human Beings and the regional protocols, of 28 October 2011, in its section XIII A “Recovery and reflection period”**: terms, information that must be included in the proposal report to grant a recovery and reflection period, as well as the competent authority to grant it. The protocols to be developed by regional governments must go in line with the Framework Protocol.

It must be mentioned that the statement by the victim or their collaboration with Police forces or judicial authorities in the investigation and prosecution of the crime can never be a condition in order to grant a recovery and reflection period.

Finally, in Spain the recovery and reflection period has and is being offered to third-country nationals (non-EU) who are victims according to **Directive 2004/81/EC 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 cooperate with the competent authorities, and Directive 2011/36/EC on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.**

*23. Further, GRETA considers that the Spanish authorities should take additional steps to ensure that victims and possible victims of trafficking have access to all the assistance measures provided for in Article 12 (1) and (2) of the Convention during the recovery and reflection period.*

The assistance measures for victims are included in the following laws: **Law 4/2015 of 17 April, on the Statute of Crime Victims; Law 1/1996 of 10 January, on free legal assistance, modified by Royal Decree 2/2013 of 22 February**, modifying the fee regime in the administration of justice and the system of free legal aid; **Royal Decree 576/2013 of 26 July, establishing basic requirements for the provision healthcare assistance** to people who are not covered and who are not beneficiaries of the National Healthcare System. The **Royal Decree 1999/2012 of 3 August and the Law 19/1994 of 23 December, on the protection of witnesses and experts** in criminal proceedings are modified.

In **Royal Decrees 576/2013 and 1192/2012, the healthcare coverage to victims of trafficking is extended during the recovery and reflection period.** This regulation covers “healthcare assistance with a duration established in the common assistance services of the National Healthcare System, regulated in Article 8 bis of Law 16/2003 of 28 May”.

In this context, the Government Delegation against Gender-based Violence has requested the General Secretariat for Health to agree with the autonomous regions on a common interpretation so that “victim of trafficking” is understood as any individual who has been subject to trafficking, according to reasonable grounds, after an identification process by Police authorities in such a way that their status can be accredited with the general information report to potential victims of trafficking.



In the **Royal Decree 3/2013 of 22 February, modifying the fee regime in the administration of justice and the system of free legal aid, victims of trafficking are included as beneficiaries of free legal aid**, regardless of their resources to institute legal proceedings, in all proceedings related to or consequence of their status of victims.

As it was pointed out in recommendation 21, the **Law 4/2015 encompasses in one single legislative text the general list of procedural and extra-procedural rights** of all crime victims, serving as a response to victims and their families in legal and social terms and also includes specific attention to the most vulnerable victims, such as children.

In this regulation, the general rights of victims are explicitly included, among others: understand and be understood, and right to interpretation and translation regardless of whether the person is claimant or not (Articles 4 and 9), request to be notified on certain resolutions, such as rulings and dismissals regardless of whether the person is claimant or not (Articles 5-1-m and 7-1), access in a free and confidential manner to assistance and support services facilitated by public administrations, as well as to services provided by Victims Assistance Offices –this right can be extended to the victim’s family- (Article 10) and to have their statement be heard in conditions guaranteeing their life and their family’s life, physical and psychological integrity, freedom, privacy and dignity (Article 19) and prevent contact with the perpetrator (Article 20).

Moreover, for victims of trafficking, we highlight: the right to have their special protection needs assessed (Article 23-2) and the right to appeal certain rulings even if the person is not a party (Article 13-1).

The Law 19/1994 recognizes the right of the **victims to have their status of protected witness recognized**.

Finally, the important role of organizations specialized in attention and assistance to women and child victims of trafficking in human beings for the purpose of sexual exploitation in Spain is emphasized. In this context, the Government Delegation against Gender-Based Violence has financed two projects through call for tenders.

- Specific grant call for organizations specialized in attention to women victims of trafficking in human beings for sexual exploitation, with a budget of 2.000.000 Euros every year.
- Call for non-governmental organizations financed by the personal income tax for other purposes of social interest (the Directorate General against Gender-based Violence assesses the projects). Until now, around 1.5 million Euros have been allotted to financing programmes for assistance and protection of women victims of THB for sexual exploitation yearly.

#### **Residence permits**

24. *GRETA considers that the Spanish authorities should strengthen their efforts to ensure that victims of trafficking can take full advantage of the right to be granted a temporary residence permit for their personal situation and/or for co-operating with the authorities, in particular by:*
- *setting up clear criteria for granting a residence permit to victims of trafficking on the basis of their personal situation and for co-operation with the authorities;*
  - *ensuring that the competent authorities are provided with updated information and receive adequate training to ensure a harmonised application of those criteria across Spain;*
  - *setting a timeframe for the processing of applications for residence permits for victims of trafficking;*
  - *taking due account of the information submitted by specialised NGOs when considering applications for residence permits on the basis of the victim’s personal situation.*

The Organic Law 4/2000 **on the rights and freedoms of foreigners in Spain and their social integration, after its reform by the Organic Law 2/2009, of the Law on Foreigners (Article 59 bis) and its development regulation (Art. 14 ff.), Royal Decree 557/2011 of 20 April**, have gone a step further regarding minimum criteria requested by the Convention of the Council of Europe 2005 (Art. 14 - Residence permits), establishing that a residence permit can be granted considering the personal situation of the victim of trafficking or due to their collaboration with authorities, or in both cases. The Spanish laws not only acknowledge the possibility to grant authorization for residence **but also authorization to work**.

The aforementioned articles, among other cases, establish the **process to obtain authorizations to reside and to work**, as well as the competent authorities to issue those authorisations, for which the Secretariat of State for Security, in the Ministry of the Interior, and the General Secretariat for Migration and Immigration, in the Ministry of Employment and Social Security. We must emphasize that the additional provision of this Law establishes that the general maximum term to notify resolutions to the applications for these authorisations will be three months, from the day after the application was registered in the competent body.

In this context, during 2015, the Intelligence Centre against Terrorism and Organized Crime (CITCO), in its role as focal point of the National Rapporteur on THB, has promoted the creation of a Working Group in order to complement the said Royal Decree and to establish a Joint Instructions by the aforementioned secretariats including the specific requirements to grant authorisations. This **Working Group** is comprised of representatives of the ministries, Prosecutor on Foreigners, General Directorate of Police, General Council of the Judiciary and the Spanish Network against Trafficking, and it is estimated that the Instruction will be issued by the end of this year.

*25. Further, GRETA considers that the Spanish authorities should strengthen their efforts to ensure that measures taken to implement the Convention do not affect the rights of adult and child victims of trafficking under international human rights law, in particular regarding access to international protection and the respect of the principle of non-refoulement, in line with Articles 14(5) and 40(4) of the Convention.*

Concerning international protection, a **communication process has been established between the Asylum and Refugee Offices and the State Security Forces (Police Headquarters for Foreigners and Borders)** in case there are signs of trafficking in the applications for international protection, without prejudice to processing the application itself.

### **Compensation and legal redress**

*26. GRETA urges the Spanish authorities to systematically provide information to victims of trafficking, in a language that they can understand, on their right to compensation from the traffickers and/or the State and the procedures to be followed, and to ensure that victims have effective access to legal aid in this respect.*

Right to information is granted under Spanish legislation, among others, in **Law 4/2015 of 17 April, on the Statute of Crime Victims**, specifically in Article 5, as it includes the right of all victims, since the first contact with authorities and officers, without undue delays, to receive information adapted to the personal circumstances and conditions and to the nature of the crime committed and the damages sustained, about compensations the victim may be entitled to and, given the case, about the process to claim them. This information is also available at the Victims Assistance Offices, as stated in Article 28 of the aforementioned law. Further, this law modifies the Article 109 of the Criminal Procedure Code, in order to explicitly establish how a legal secretary must inform victims of their right to compensation.

Likewise, as pointed out in question 20, the right to free legal aid to victims of trafficking is guaranteed even without the need to prove lack of resources to institute legal proceedings, according to **Royal Decree-Law 3/2013 of 22 February, modifying the fee regime in the administration of justice and the system of free legal aid.**

*27. GRETA considers that the Spanish authorities should amend Law 35/1995 on the Assistance to Victims of Violent Crimes and Crimes against Sexual Freedom so that all victims of trafficking have access to State compensation, regardless of their nationality, type of exploitation and without needing to have sustained grievous bodily harm or serious physical or mental damage as a result of THB.*

Compensation to victims of trafficking in human beings is a right which, as previously explained, is provided for under the **Law 4/2015 of 27 April, on the Statute of Crime Victims**, responding to the victim's rehabilitation needs. It does not only include right to compensation in the framework of criminal proceedings but also other necessary measures to redress the victims, regardless of the result of the legal proceedings.

Given that this law uses a wide concept of victim, the right to compensation covers all types of victims of trafficking, regardless of its purpose of exploitation and without the need to have sustained grievous physical or mental damage. As a consequence, the rights of all victims are guaranteed pursuant to this law.

Further, before approving the Statute of Crime Victims, the articles 109 and 110 of the **Criminal Procedure Code** establish that victims of trafficking will have the right to be a party in the criminal proceedings against their traffickers and give up or not restitution of the thing, restoration of damage and compensation for the harm caused.

The Prosecution Service, in compliance with its protective role (guarding, protecting and defending of victims) assigned by the Spanish laws and according to its regulations in this matter, will ensure that victims of trafficking will be informed of their rights, among others, the right to compensation. The compensation will be calculated taking into consideration physical as well as mental damages according to the fully-settled doctrine of the Spanish Supreme Court.

*28. Further, GRETA considers that the Spanish authorities should strengthen their efforts to ensure that convicted traffickers pay compensation to victims of trafficking, including through appropriate training and co-ordination between the police, judges and prosecutors so that they can investigate, identify and freeze assets as well as verify the profits made by traffickers.*

The Spanish authorities have reinforced the civil liability system for committing a crime through the **Organic Law 1/2015 of 30 March, reforming the Criminal Code**.

The Article 109 specifically includes that the commission of a crime -described as crime in the law- forces to compensate, under the terms foreseen in the legislation, for damages caused.

The Article 116 establishes civil liability of all persons criminally liable to compensate for damages.

Likewise, Article 127 bis sets up reinforced mechanisms to seize goods, properties and gains of a person convicted for trafficking in human beings in case there are well-founded grounds of their illegal origin.

Further, the **Law 41/2015 of 5 October, modifying the Criminal Procedure Code to streamline criminal justice and reinforce procedural safeguards**, establishes a process for stand-alone confiscation that will enable deprivation of goods gained from crimes despite the perpetrator cannot be judged. This regulation will be put in context with the aforementioned modifications of the Criminal Code.

Finally, the **Royal Decree 948/2015 of 23 October**, regulating the Office for Asset Recovery and Management for assets gained from the commission of a crime or in their management. In the framework of the fight against corruption and organized crime, this Office will increase efficiency in combating this type of crime as it will prevent the offenders from keeping the assets illegally obtained and it will allow to return those amounts to the victims, among others, victims of trafficking, and it will prevent and fight against crime and reinforce institutions aimed at combating organized crime.

### **Repatriation and return of victims**

*29. GRETA urges the Spanish authorities to ensure that victims and possible victims of trafficking are not forcibly removed from the country and that the assisted voluntary return scheme is made available to them and adapted to their needs, with due regard for their rights, safety and dignity. This implies informing victims of trafficking about existing programmes, protecting them from re-victimisation and re-trafficking and, in the case of children, fully respecting the principle of the best interest of the child.*

In Spain, victims of trafficking are not forcibly removed from the country, as it is pointed out in recommendation 24 (Residence and work permits) and the **Organic Law 4/2000 on the rights and freedoms of foreigners in Spain**

**and their social integration, after its reform by the Organic Law 2/2009, Law on Foreigners** (Article 145) establishes that foreigners may apply for themselves and, given the case, their children, assisted return to their origin country at any moment where there are reasonable grounds about their status of victim of trafficking, without prejudice of the fact that competent authorities may determine their necessary stay in national territory due to the investigation of a crime or to criminal proceedings.

Assisted return will cover assessment before departure of the risks, security and transport, as well as assistance in the departure place, transit and facilitation of return.

In 2013, the General Secretariat for Migration Immigration (Sub-directorate General for Integration of Immigrants) created and implemented a specific Protocol for the Management of Voluntary Return of victims of trafficking to their countries of origin, whose goal was to improve safety and facilitate their return.

The Protocol is applied to the whole voluntary return process and specialized institutions managing voluntary return projects subsidized by this General Secretariat are forced to implement it.

*30. Further, GRETA considers that the Spanish authorities should take steps to develop co-operation with countries of origin of victims of trafficking in order to ensure proper risk assessment and safe return, as well as their effective reintegration.*

In Spain, victims of trafficking are not forcibly removed from the country. On the contrary, as pointed out in recommendation 24, Article 59 bis of the **Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration, after its reform by the Organic Law 2/2009, Law on Foreigners** establishes the possibility to grant victims of trafficking authorisation for residence and work due to their exceptional circumstances.

Moreover, non-EU victims may apply for assisted return to their countries of origin through the Secretary of State for Immigration and Emigration. Assisted return will cover pre-departure risk, security and transport assessment, as well as assistance in the departure, transit and destination places, as indicated in recommendation 29.

It is important to highlight that the Prosecution Service participates in the CARE project (International Organization for Migration), together with other countries such as United Kingdom, Austria, France and Portugal, on assisted return for third-country nationals victims of trafficking and on mechanisms for their effective reintegration in those countries.

At the same time, the Ministry of Economy, Employment and Social Security participates as a partner of the IOM in the TACT project (Transnational ACTION – Safe and sustainable return and reintegration for Victims of Trafficking) for the return of victims of trafficking, co-financed by the Asylum, Migration and Integration Fund (AMIF) in the framework of the EU Strategy towards the Eradication of Trafficking in Human Beings (2012-2016).

The general objective of the TACT project, headed by IOM-France, is contributing to the improvement of safe returns and to the reintegration of victims of trafficking that return from France, Greece, Italy, Poland and Spain to three priority countries: Albania, Morocco and Ukraine. The project tries to reinforce the capacities of the authorities in these three countries in the field of protection and assistance, giving particular emphasis on the return and assistance to victims of trafficking.

### **Substantive criminal law**

*31. GRETA consider that the Spanish authorities should review the legislation in order to fully reflect the substantive provisions of Article 20 of the Convention regarding the criminalisation of acts relating to travel or identity documents.*

Concerning the definition of crimes related to travel and identity document forgery, it must be pointed out that the **Spanish Criminal Code, Article 390 ff.**, classifies alteration, simulation and forgery of public documents by civil servants or individuals as a crime.

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

*32. GRETA urges the Spanish authorities to remove the reference to collaboration with the authorities for victims of trafficking to be exempted from the responsibility derived from their irregular stay in Spain.*

The irregular stay of a victim of trafficking is not a criminal offence under the Spanish laws, but an administrative offence according to the **Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration, after its reform by the Organic Law 2/2009**, which punishes with a fine or expulsion, but none of these punishments are applicable to victims of trafficking as provided for in **Articles 140 to 146 of the Regulation of Foreigners, Royal Decree 557/2011, of 20 April**.

Further, the Article 143 of the said regulation establishes that the Government Delegate or Sub-delegate may determine ex officio the liability exclusion, regardless of the collaboration of the victim with the investigation of the crime or the criminal proceedings.

*33. GRETA considers that the Spanish authorities should keep under review the application of the non-punishment provision in Article 177 bis, paragraph 11, of the CC and the guidance provided by Circular 5/2001 of the Prosecution Service, and draw attention to the non-punishment principle in the training provided to relevant professionals (in particular law enforcement officials, prosecutors and judges).*

The Spanish authorities **ensure the compliance of the non-punishment principle for criminal offences** that a victim of trafficking may have committed in relation to the exploitation suffered.

In this sense, co-ordination at national level in the field of prevention and prosecution of trafficking in human beings has been **entrusted to the Coordinating Prosecutor on Foreigners and, at province level, to the Province Coordinating Prosecutors**. These authorities have the duty to implement **Circular 5/2001 of the Prosecution Service** in their respective territories and, therefore, to monitor all investigations of trafficking in human beings, guaranteeing the due application of this non-punishment principle, among other aspects.

The update of State Security Forces, prosecutors and judges is consistent and they participate every year in training courses, collaborating with universities, bar associations, organizations and associations defending the rights of victims of trafficking, Prosecution Services of other States and programmes financed by the United Nations or the European Union.

Apart from that, the General Directorate for Relations with Justice Administration of the Ministry of Justice has implemented an online training plan to combat violence against women and trafficking in human beings, aimed at training and raising awareness among civil servants in the Justice Administration during this year and mainly focused on staff working at criminal courts.

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

*34. GRETA considers that the Spanish authorities should strengthen their efforts to ensure that crimes related to THB for all types of exploitation are investigated and prosecuted promptly and effectively.*

Trafficking in human beings in Spain is considered a priority at institutional level in preventing and combating this crime, as it is one of the most grievous attacks against human dignity and a violation of fundamental rights at national and international level. It represents one of the most serious threats included in the strategic lines of our **National Security Strategy 2013**.

In this context, regarding investigation, during the last years, State Security Forces -National Police and Civil Guard- have continued to reinforce anti-trafficking actions, including THB and protection of the most vulnerable groups as priority areas in their **Strategic Plans 2013-2016 to combat organized crime**.

Further, both law enforcement agencies have implemented the **Police Plan to fight against trafficking in human beings by the National Police, of 17 April 2013, and the Directive 40/2009 of the Civil Guard to combat trafficking in human beings, of 11 November 2009**. Both instruments encompass, among other goals, more active prosecution of members of criminal groups, protection of victims and increase of international cooperation.

These are the results obtained in the framework of these instruments:

	2013	2014
<b>Administrative inspections</b>	2.555	2.962
<b>Persons at risk</b>	13.159	13.983
<b>Police statements on THB for sexual exploitation</b>	97	75
<b>Arrested for THB for sexual exploitation</b>	345	201
<b>Victims of THB for sexual exploitation</b>	264	153
<b>Organizations and criminal groups THB</b>	72	63

In the field of justice, with the aim of reinforcing investigations developed in this area, the **Circular 2/2014 of the General Secretariat of Administration of Justice related to procedural actions for the protection of victims of trafficking and gender or domestic violence** was approved on the 1<sup>st</sup> of July 2014. This Circular develops the provisions of Annex 3 and section XI C.1 of the Framework Protocol for Protection of Victims of Trafficking. This Protocol establishes that the competencies of legal secretaries are, among others, informing the victims of these crimes and summoning representatives of the Prosecution Service well in advance prior to the testimonies of those arrested, accused and witnesses determined during the pre-trial stage. The effective compliance of this competence by the legal secretaries will enable the Prosecution Service to comply with the role ascribed by the Framework Protocol, which is ensuring that statements of victims during pre-trial stage are duly taken so that they may be used in the hearing as pre-constituted evidence when there are reasonable doubts about the victim's presence at the court hearing itself. At the same time, complying with this competence ascribed to legal secretaries will enable to adopt some of the measures foreseen under **Law 19/1994 of 23 December, on the Protection of Witnesses and Experts in criminal proceedings** or the adoption of any other protective measure for victims and witnesses by the Prosecution Service.

The Circular also requires the legal secretaries to inform the victims of violent crimes resulting in death, serious injuries against physical or mental integrity, as well as victims of crimes against sexual freedom and integrity, crimes of trafficking in human beings, victims of gender-based and domestic violence and child victims, about the Victim Assistance Offices, above all, in the case of the most vulnerable victims.

Moreover, the **State Prosecution Service, at its Unit on Foreigners, constantly monitors criminal proceedings** for THB crimes (all types of trafficking) thanks to a daily control and follow-up of police investigations.

This information is public and can be consulted in the website [www.fiscal.es](http://www.fiscal.es) (under Fiscal especialista/Extranjería/Documentos y normativa) under the title of "Notas informativas y seguimiento del delito de trata de seres humanos" (Informative notes and follow-up on the crime of trafficking in human beings).

Since the entry into force of the **Article 177 bis of the Spanish Criminal Code**, which defines the crime of trafficking in human beings, in December 2010, 27 conviction decisions were rendered for this type of crime and a similar number for offences responding to the definition of trafficking but which have not been punished under the current criminal law.

*35. Further, GRETA considers that there is need for continuing to improve the specialisation and training of judges, prosecutors, police investigators and lawyers regarding THB and the rights of victims of trafficking.*

This question regarding specialisation and training of the actors involved in the field of trafficking in human beings and rights of victims has been answered under recommendations 8 and 20 of this document.

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

*36. GRETA urges the Spanish authorities to ensure that victims and witnesses of human trafficking are effectively protected during the criminal proceedings and beyond, if necessary, in accordance with Article 28 of the Council of Europe Convention. To this end, the Spanish authorities should review the appropriateness of the current system for the protection of victims and witnesses of THB, both adults and children.*

The **Law 4/2015 of 27 April, on the Statute of Crime Victims**, compiles a series of procedural rights and protective measures for crime victims, including victims of trafficking.

The Article 3 of this Law establishes in general terms the victims' right to protection, information, support, assistance and attention, as well as to active participation in the criminal proceedings and to receive a respectful, professional, individualized and non-discriminatory treatment since their first contact with authorities or civil servants during the provision of assistance and support services and restorative justice throughout all the criminal process and for an appropriate period after it finishes, regardless of the result of the proceedings and whether the identity of the offender is known or not.

Title III of the Law expressly addresses protective measures. According to Article 19, authorities and civil servants in charge of the investigation, prosecution and judging of crimes will adopt the necessary measures, pursuant to the provisions of the Criminal Procedure Code, in order to guarantee the life of the victim and their family, their physical and mental integrity, freedom, security, sexual freedom and integrity, as well as to adequately protect their privacy and dignity, especially when they make a statement or testify in a trial and to avoid the risk of secondary or repeat victimization. This Article also foresees reinforced protection in case of under-age victims. Subsequent articles address the right to avoid contact between the victim and the perpetrator, the victim's right to protection during criminal investigation (statements before judicial authority without unreasonable delays, the minimum times possible and accompanied by a person chosen by the victim apart from his/her representative. It also foresees an individual assessment of the victims in order to determine their specific needs.

According to Article 31 of the Law, the State Government and the autonomous regions, in their respective competencies, as well as professional associations, in the field of their professional activity, will develop action protocols for an efficient implementation of protective measures for victims.



MINISTERIO  
DEL INTERIOR

SECRETARÍA DE ESTADO DE SEGURIDAD

CENTRO DE INTELIGENCIA CONTRA EL  
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