

G R E T A

Group of Experts on Action
against Trafficking in Human Beings



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

First evaluation round

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Preamble

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Executive summary

Since ratifying the Council of Europe Convention on Action against Trafficking in Human Beings, the Romanian authorities have taken commendable steps to prevent and combat human trafficking, through the adoption and periodic updating of anti-trafficking legislation, the establishment of the institutional framework for action against trafficking, and in particular the National Agency against Trafficking in Persons (hereinafter the NATP) and 15 regional centres, and the introduction of a National Identification and Referral Mechanism.

Following the adoption of several national strategies to combat trafficking in human beings since 2001 (the last one covering the period 2006-2010), the Romanian authorities have delayed the finalisation of a new national strategy. GRETA stresses the need for adopting as a matter of priority such a strategy and considers that co-ordination and co-operation between all the players concerned should be reinforced. GRETA also invites the authorities to ensure that all relevant professionals are provided with training which enables them to identify victims of trafficking and to assist and protect them.

In the area of prevention, substantial efforts have been made by the Romanian authorities and non-governmental and intergovernmental organisations active in the field of combating trafficking in human beings. That said, GRETA stresses the need to take measures to combat stereotypes and prejudices towards victims of trafficking, in particular women and Roma. GRETA also considers that efforts should be stepped up as part of a long-term approach aimed at tackling the root causes of trafficking, especially through fostering access to education and jobs for vulnerable groups.

As regards assistance and protection of victims of trafficking, despite the existence of legal provisions, in practice there are problems as regards victims' access to health care and suitable accommodation. GRETA is concerned that victims' access to assistance and protection appears to hinge on their readiness to co-operate with law enforcement agencies. GRETA urges the Romanian authorities to ensure that all the assistance measures provided for in law are guaranteed in practice by providing adequate financing for the assistance to victims of trafficking and ensuring the quality of the services delivered.

GRETA notes that there are shortcomings in the institutional and procedural framework for the repatriation and return of victims of trafficking and urges the Romanian authorities to take additional steps to ensure that returns take due regard of the victims' rights, safety and dignity, and in the case of children, taking into consideration the best interests of the child.

GRETA welcomes the efforts of the Romanian authorities in the area of investigation and prosecution of trafficking cases, and encourages them to prioritise the identification of gaps in the investigation procedure and the presentation of cases in court with a view to ensuring that THB-related offences are investigated and prosecuted effectively. Ensuring effective access to compensation and legal redress for victims of trafficking should also be a priority for the Romanian authorities.

GRETA also welcomes the introduction of a legal provision concerning the non-punishment of victims of trafficking for their involvement in unlawful activities to the extent that they have been compelled to do so. Finally, GRETA urges the Romanian authorities to reinforce the measures for protecting victims of trafficking, with due regard to the special situation of child victims, regardless of whether or not they have agreed to participate in criminal proceedings.

I. Introduction

1. Romania deposited the instrument of ratification of the Council of Europe Convention on Action against Trafficking in Human Beings ("the Convention") on 21 August 2006. The Convention as such entered into force on 1 February 2008, following its 10th ratification.

2. As established in Article 36(1) of the Convention, the Group of Experts on Action against Trafficking in Human Beings ("GRETA") monitors the implementation of the Convention by the Parties. GRETA does so in conformity with the procedure laid down in Article 38 of the Convention and the Rules on the evaluation procedure of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the parties. For the first evaluation round, GRETA drew up a monitoring timetable according to which the Parties to the Convention were divided into groups, Romania being in the first group of 10 Parties to be evaluated in 2010-2011.

3. In accordance with Article 38 of the Convention, GRETA proceeded with the examination of the measures taken by Romania to implement the provisions set out in the Convention. The "Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the parties - first evaluation round" was sent to Romania on 11 February 2010. The deadline for submitting the reply to the questionnaire was 1 September 2010. Romania submitted its reply on 31 August 2010.

4. In preparation of the present report, GRETA used the reply to the questionnaire by Romania, other information collected by GRETA and information received from civil society. A country visit to Romania took place from 23 to 27 May 2011. It was carried out by a delegation composed of:

- Ms Vessela Banova, member of GRETA
- Mr Robert Stratoberdha, member of GRETA
- Ms Claudia Lam, Administrator at the Secretariat of the Council of Europe Convention on Action against Trafficking in Human Beings.

5. During the country visit, the GRETA delegation held meetings with representatives of relevant ministries and other public bodies (see Appendix II). The GRETA delegation also met the local authorities involved in action against trafficking in human beings in Galati.

6. The GRETA delegation held separate meetings with representatives of non-governmental organisations (NGOs) and civil society active in the field of action against THB. GRETA is grateful for the information that they provided.

7. Further, the GRETA delegation visited a counselling centre for victims of trafficking in Bucharest and a shelter for victims of trafficking in Galati.

8. GRETA is grateful for the assistance provided by the contact person appointed by the Romanian authorities, Mr Mihai Serban, Police Officer in the National Agency against Trafficking in Persons, Ministry of Administration and Interior.

9. A draft version of the present report was adopted by GRETA at its 11th meeting (20-23 September 2011) and was submitted to the Romanian authorities on 28 October 2011 for comments. The Romanian authorities' comments were received after the one month deadline, on 10 December 2011, as a result of which GRETA was not in a position to adopt the final report at its 12th meeting (5-9 December 2011). GRETA adopted the final report at its 13th meeting (19-23 March 2012).

II. National framework in the field of action against trafficking in human beings in Romania

1. Overview of the current situation and trends in the area of trafficking in human beings in Romania

10. According to the Romanian authorities, Romania is essentially a country of origin for victims of trafficking in human beings (THB). Nearly all the victims of trafficking identified to date have been Romanian nationals, the majority of them being victims of transnational trafficking. The number of identified victims was 1 780 in 2007, 1 240 in 2008, 780 in 2009 and 1 154 in 2010. As regards 2010, 74% of the identified victims (849 persons) were subject to transnational trafficking, the main destination countries being Spain (234 victims), Italy (206 victims), the Czech Republic (87 victims), Cyprus (78 victims) and France (68 victims). National trafficking (i.e. within Romania) concerned 305 of the victims identified in 2010. The number of identified foreign victims of trafficking has been low: 18 in 2008 (10 male victims and eight female victims), one female victim in 2009 and two female victims in 2010. The Romanian authorities have indicated that the number of victims of Romanian nationality identified in the first half of 2011 (488) increased by 29% compared with the same period in 2010. Six foreign nationals were identified as victims of sexual exploitation and labour exploitation in agriculture in the first half of 2011¹.

11. In 2010, the main forms of exploitation were labour exploitation (503 identified victims, i.e. 43% of the total number) and sexual exploitation of trafficked persons (482 identified victims, i.e. 42%). Further, 112 victims were subjected to forced begging, six to forced stealing and six to pornography. Women have constituted the majority of identified victims (56%).

12. As regards child trafficking, 307 child victims were identified in 2010, 88% of whom were female. The vast majority of minor victims (239) were sexually exploited. The other children identified had been trafficked for the purposes of labour exploitation in agriculture and construction (17 victims), forced begging (19 victims), pornography (5 victims) or theft (3 victims). Whereas adults are mostly victims of transnational trafficking, the Romanian authorities have indicated that 71% of the minor victims of trafficking (217 victims) were trafficked nationally. For the other minor victims, the destination countries were mainly European Union countries, particularly Italy (45 victims), Spain (20 victims) and Germany (9 victims).

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

a. Legal framework

13. At the international level, in addition to the Council of Europe Anti-Trafficking Convention, Romania is Party to the United Nations (UN) Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, ratified on 4 December 2002. Romania is also Party to the UN Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, and the ILO Convention for the elimination of the worst forms of child labour. Further, Romania has acceded to a number of Council of Europe conventions in the criminal field which are relevant to action against THB.²

¹ See the Report by the National Agency against Trafficking in Persons, *Analiza privind situatia victimelor identificate in primul semestru 2011*, available on the Agency's website:

<http://anitp.mai.gov.ro/ro/docs/studii/Evaluarea%20sementrala%202011.pdf>

² In particular the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse; the European Convention on Mutual Assistance in Criminal Matters and its Additional Protocols; the European Convention on Extradition and its Additional Protocols; the European Convention on the International Validity of Criminal Judgments; the European Convention on Transfer of Convicted Persons and its Additional Protocol; the European Convention on the

14. Romania joined the European Union (EU) on 1 January 2007 and is bound by EU legislation in the field of combating THB, in particular Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims; Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, and who co-operate with the competent authorities; Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims; and Framework Decision 2001/220/JHA of 15 March 2001 of the Council of the European Union on the standing of victims in criminal proceedings.

15. It should be noted that Article 11(2) of the Constitution of Romania states that "treaties ratified by Parliament, in conformity with the law, are part of national law", while Article 20(2) provides that in case of any inconsistency between human rights treaties to which Romania is a party and national laws, the human rights treaties shall take precedence, unless the Romanian Constitution or laws contain more favourable provisions.

16. As far as national legislation is concerned, Law No. 678/2001 on Preventing and Combating Trafficking in Persons (hereinafter "the Anti-Trafficking Law") was adopted on 21 November 2001 and entered into force on 11 December 2001. Over the years, the provisions of this law have been amended and supplemented several times. The latest changes date from May 2011 (pursuant to Emergency Government Ordinance No. 41 of 3 May 2011)³. The Anti-Trafficking Law provides for measures to prevent THB and to protect and assist its victims, including the setting up of shelters for temporary housing of victims of trafficking. It also contains provisions to criminalise THB and other related offences. The new Criminal Code, which was adopted in 2009 but is not yet in force, contains provisions criminalising THB which will replace the provisions of the Anti-Trafficking Law (see paragraph 175).

17. A number of other internal legal acts have relevance to action against THB and the protection of its victims, in particular:

- Law No. 116/2002 for Preventing and Combating Social Marginalisation;
- Law No. 682/2002 on the Protection of Witnesses;
- Law No. 211/2004 on Measures to Ensure the Protection of Victims of Crime (hereinafter: "the Crime Victims Protection Law"), which specifies the rights of crime victims, including victims of THB (e.g. information on rights, legal redress, psychological counselling, free legal assistance);
- Law No. 39/2003 for Preventing and Combating Organised Crime;
- Law No. 272/2004 on the Protection and Promotion of Children's Rights;
- Law No. 508/2004 on the Organisation and Functioning of the Department for the Investigation of Organised Crime and Terrorism Offences within the Prosecutor's Office attached to the High Court of Cassation and Justice (pursuant to which THB falls under the responsibility of this Department);
- Law No. 302/2004 on International Judicial Co-operation in Criminal Matters.

Transfer of Proceedings in Criminal Matters; the European Convention of the Compensation of Victims of Violent Crimes; and the Council of Europe Convention on Cybercrime.

³ Changes to the Anti-Trafficking Law were also introduced by Emergency Government Ordinance (EGO) No. 143 of 24 October 2002, Law No. 39 of 21 January 2003, EGO No. 79 of 14 July 2005, Law No. 287 of 11 October 2005 and Law No. 230 of 30 November 2010.

18. As far as secondary legislation is concerned, the following texts are of relevance to the fight against THB:

- Government Decision No. 299/2003 regulating the application of the 2001 Anti-Trafficking Law;
- Government Decision No. 1443/2004 on the repatriation procedure of unaccompanied Romanian children and measures to act in their best interest;
- Government Decision No. 1584/2005 on the establishment, functioning and organisation of the National Agency against Trafficking in Persons;
- Government Decision No. 1238/2007 approving the national standards for specialised assistance services provided to victims of trafficking;
- Joint Order No. 286/2007 of 31 August 2007 on the to setting up, organisation and operation of the Thematic Working Group to co-ordinate national activities for the protection of and assistance to victims of trafficking;
- Joint Order No. 335/2007 of 29 October 2007 approving the National Identification and Referral Mechanism for Victims of Trafficking.

b. National strategies against trafficking in human beings

19. Since 2001, the Romanian Government has adopted a series of strategies to combat THB as well as to tackle the problem of child labour exploitation. A National Action Plan against Child Trafficking for the period 2004-2007 was adopted by Government Decision No. 1295/2004. In 2006, the Government adopted the National Strategy against Trafficking in Persons for 2006-2010, which was accompanied by a National Action Plan for 2006-2007 and another one for 2008-2010. The 2006-2010 Strategy had as objectives the setting up of an integrated national system for monitoring trafficking in persons, inter-institutional co-ordination, prevention of trafficking, protection, assistance and social reintegration of victims, investigating and prosecuting traffickers, and international co-operation.

20. A new strategy for action against trafficking was initially intended to cover the years 2011-2015 but is ultimately likely to cover the period 2012-2016. This strategy and the first action plan for implementing it are still in preparation. The Romanian authorities have announced that the themes of prevention, protection, assistance and reintegration of victims, monitoring, evaluation and information, as well as inter-institutional and international co-operation will form the priority thrusts of this strategy. At the time of writing this report, the draft strategy has yet to be finalised with a view to its adoption.

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

a. National Agency against Trafficking in Persons

21. The National Agency against Trafficking in Persons ("NATP") was set up in May 2006 by virtue of Government Decision No. 1584/2005 of 8 December 2005 (see paragraph 18). The NATP was created as a specialised public administration body with legal personality and replaced the former National Office on Prevention of Trafficking in Persons, which was subordinated to the General Directorate of the Romanian Police. By Government Decision No. 1083/2006 of 26 August 2006, the agency was renamed as the National Agency against Trafficking in Persons and its responsibilities were extended to cover other fields of action against trafficking in addition to prevention and monitoring of assistance provided to victims.

22. The NATP was initially directly subordinated to the Minister of Administration and Interior. However, by Government Decision No. 20/2009 of 11 March 2009, it was placed under the authority of the General Directorate of the Romanian Police within the Ministry of Administration and Interior. By Government Decision No. 460/2011 of 11 May 2011, the Agency has been re-installed in its former position, namely directly under the authority of the Minister of Administration and Interior.

23. The NATP co-ordinates, evaluates and oversees national policies in the field of combating trafficking and the measures taken for the protection of and assistance to victims. It also drafts national strategies which are approved by the Government and co-ordinates the implementation of action plans by public institutions and non governmental organisations (NGOs). The Agency collects, processes and analyses data by managing the national integrated system to monitor and assess THB (hereinafter referred to by its Romanian acronym "SIMEV"). It is also the national contact point for international organisations working in the field of action against trafficking. Further, the NATP is responsible for monitoring the functioning of the National Identification and Referral Mechanism (see paragraph 34).

24. The NATP has 15 regional centres (one for each court of appeal district) which monitor the implementation of national policies against THB at local level and support the Agency in designing preventive measures and assessing the situation of victims of trafficking at local level with a view to identifying means of specialised assistance. These regional centres also play the role of intermediary between law enforcement agencies and assistance providers in the National Identification and Referral Mechanism for Victims of Trafficking (see paragraph 117).

25. The Agency's staff comprises a Director and Vice-Director appointed by the Minister of Administration and Interior, as well as 88 staff members (police officers and civil servants). Government Decision No. 460/2011 fixes the number of staff employed by the Agency at 95 maximum (including staff of regional centres). The Agency is organised in several services: Monitoring, Assessment and Co-ordination of Victims of Trafficking Service, *inter alia* operating the SIMEV database; Inter-Institutional Co-operation and National Prevention Projects Service; Research and Public Information Centre; International Relations and Programme Implementation Unit; Information Technology Department; Finance and Human Resources, and a Secretariat. The funds necessary for the Agency's functioning and activities are provided by the State budget through the Ministry of Administration and Interior. The Agency can also receive funds from other sources, including donations.

26. The Research and Public Awareness Centre within the NATP is responsible for carrying out studies and analysing the human trafficking situation and trends. This centre is also the Agency's interface with the general public.

b. Inter-ministerial Working Group on Combating Trafficking in Persons

27. The Inter-ministerial Working Group for Co-ordination and Evaluation of the Prevention Activities against Trafficking in Persons was created by Government Decision No. 299/2003. It was subsequently renamed as the Inter-ministerial Working Group on Combating Trafficking in Persons (IWGCTP). Currently, the following institutions are members of the working group:

- Ministry of Justice
- Ministry of Foreign Affairs
- Ministry of Administration and Interior
- Public Ministry (Prosecutor General's Office)
- Ministry of Labour, Family and Social Protection
- Ministry of Health
- Ministry of Education, Research, Youth and Sport.

28. Other agencies, such as the National Agency for Roma, the Romanian Immigration Office within the Ministry of Administration and Interior and the National Agency for Equal Opportunities between Women and Men, can be invited to take part in meetings of the IWGCTP. The IWGCTP meets whenever necessary, for example in connection with reform projects or the preparation of a report by the national authorities or international bodies. National and international NGOs as well as intergovernmental organisations such as the International Organisation for Migration (IOM) and the International Labour Organisation (ILO) can also be invited to participate. According to the Romanian authorities, a procedure for amending the legal framework defining the Inter-ministerial Working Group's functions and aims will shortly be initiated.

c. Police

29. The Directorate for Countering Organised Crime within the General Inspectorate of the Romanian Police is the body responsible for carrying out investigations of organised crime as well as THB-related offences, regardless of whether the latter are part of organised criminality. There is a specific Department for Countering Trafficking in Persons within this Directorate, subdivided into two offices, one responsible for combating THB and the other for combating smuggling of migrants. Within this department, a Resource Centre for Combating THB is responsible for data gathering and information exchange.

30. Each local police unit corresponding to the territorial jurisdiction of the courts of appeal comprises a team for combating organised crime, which is responsible for the investigation of THB offences at local level.

31. The General Inspectorate of the Border Police, which is responsible for guarding the national borders and countering the smuggling of migrants, also exercises powers pertaining to the detection of the offence of trafficking and the identification of victims of trafficking (see paragraph 119).

d. Directorate for Investigating Organised Crime and Terrorism within the Prosecutor's Office attached to the High Court of Cassation and Justice

32. The Directorate for Investigating Organised Crime and Terrorism within the Prosecutor's Office attached to the High Court of Cassation and Justice (hereinafter: "DIOCT") was established by Law No. 508/2004 (see paragraph 17). It is responsible for investigating and prosecuting THB offences and has a central office as well as regional services for each court of appeal and each tribunal. At the central level, within the Service for Preventing and Combating Organised Crime, there is an Office for Combating Trafficking in Human Beings and Migrants with a number of specialised prosecutors. Co-operation activities between the DIOCT and the relevant authorities of other countries are carried out by the Office for Co-operation, Representation and International Judicial Assistance.

e. National Identification and Referral Mechanism

33. The National Identification and Referral Mechanism for Victims of Trafficking (hereinafter: "NIRM") was set up by Joint Order No. 335/2007 of 29 October 2007 adopted by the Ministers of Administration and Interior, Education, Research and Youth, Public Health, Labour, Family and Equal Opportunities, Foreign Affairs, Justice, Prosecutor General and the President of the (former) National Authority for the Protection of Child Rights.

34. The NIRM sets out the framework and general principles applying to the identification and referral of victims of trafficking. Pursuant to it, access to protection and assistance services should be provided to all victims of trafficking without any discrimination and regardless of the victim's decision to participate or not in criminal proceedings. The NATP is responsible for monitoring the functioning of the NIRM. In addition, in accordance with the NIRM and pursuant to Article 27(2) of the Anti-Trafficking Law, all institutions and organisations involved in the referral mechanism should co-operate and appoint for this purpose a representative whose contact details must be made available to all partners.

- f. Thematic Working Group to co-ordinate national activities for the protection of and assistance to victims of trafficking

35. The Thematic Working Group to co-ordinate national activities for the protection of and assistance to victims of trafficking was set up to analyse assistance programmes, solve practical problems in the implementation of assistance measures, make proposals for legislative changes and prepare regular activity reports.

36. The members of the Thematic Working Group are the NATP; the Ministry of Education, Research, Youth and Sport; the Ministry of Health; the Ministry of Labour, Family and Social Protection; the National Agency for Equal Opportunities between Women and Men; the National Agency for Employment; the Ministry of Justice; the Ministry of Foreign Affairs; and the Ministry of Administration and Interior.

- g. Public authorities responsible for the protection of children

37. The public authorities responsible for the protection of children play a key role in the prevention of child trafficking as well as in the assistance to and protection of child victims. The National Authority for the Protection of Child's Rights, which was established in 2004 and became in 2009 The National Authority for the Protection of Family and Child's Rights played an important role in all actions aimed at combating child trafficking. However, this authority was dissolved in 2010 in a process of reorganising the governmental structures for the protection of children and adopting a new integrated policy. Its role is now played by the General Directorate for Child Protection under the Ministry of Labour, Family and Social Protection⁴. This General Directorate comprises one unit specialised in action against child trafficking and another one specialised in action against child labour. In addition, the National Steering Committee on Child Labour is responsible for co-ordinating national policies against child trafficking.

- h. Non governmental organisations

38. In Romania, NGOs play a key role in the prevention of THB and the protection of and assistance to victims. A coalition of NGOs called "Antitrafic" was established in 2004. Some NGOs, such as AIDRom, Caritas Bucharest, Child Focus, Save the Children Romania and Terre des Hommes Romania, are mainly involved in prevention activities. Other NGOs are involved in assistance to victims' activities, such as ADPARE, Generatie Tanara Romania and Reaching Out. The latter two run shelters for victims of THB.

39. All legal and policy documents related to action against THB acknowledge the important role of NGOs. For instance, pursuant to Article 3 of the Anti-Trafficking Law, NGOs and other representatives of civil society shall develop, independently or in conjunction, activities aimed at preventing THB, especially in women and children, alongside the relevant public authorities. NGOs are not members of the NATP nor of the IWGCTP. That said, they can be invited to attend the meetings of the IWGCTP, as stipulated in Government Decision No. 299/2003 setting up the IWGCTP. Further, the NATP closely co-operates with NGOs active in the field of action against THB and can grant them some financial support, although this has apparently not happened since 2009 (see paragraph 139 for further details of public funding for NGOs).

⁴ Set up by the Government Decision n°728/21(July 2010)

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

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

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

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

41. THB constitutes an offence to the dignity and fundamental freedoms of the human being and thus a grave violation of human rights. GRETA emphasises the obligations of States to respect, fulfil and protect human rights, including by ensuring compliance by non-State actors, in accordance with the duty of due diligence. The human rights-based approach entails that a State that fails to fulfil these obligations may, for instance, be held accountable for violations of the European Convention on Human Rights. This has been confirmed by the ECHR in its judgment in the case of *Rantsev v. Cyprus and Russia*, where the Court concluded that THB within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the European Convention on Human Rights⁶ (which prohibits slavery, servitude and forced or compulsory labour). The Court further concluded that Article 4 entails a positive obligation to protect victims or potential victims, as well as a procedural obligation to investigate trafficking.

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

43. GRETA wishes to stress the need for States to also address THB as a form of violence against women and to take account of gender-specific types of exploitation, as well as the particular situation of child victims of trafficking, in line with the relevant international legal instruments⁷.

⁵ Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

⁶ *Rantsev v. Cyprus and Russia*, no. 25965/04, paragraph 282, ECHR 2010.

⁷ Such as the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the United Nations Convention on the Rights of the Child and the Optional Protocol thereto on the sale of children, child prostitution and child pornography, and the United Nations Convention on the Elimination of All Forms of Discrimination against Women.

44. As far as the situation in Romania is concerned, Article 1 of the Anti-Trafficking Law refers to trafficking in persons as a violation of human rights and an offence to the dignity and integrity of the person. Further, in accordance with the Constitution of Romania (see paragraph 15), the Council of Europe Anti-Trafficking Convention is part of the domestic legislation of Romania and its provisions take precedence over national provisions in case of contradiction, unless the national provision is more favourable in terms of human rights. The Romanian authorities have also indicated that in the new Criminal Code, adopted in 2009 but not yet in force, the offences related to THB are considered as being particularly serious in order to better protect the human rights of victims of trafficking (see paragraph 175).

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

b. Definitions of “trafficking in human beings” and “victim of THB” in Romanian law

i. *Definition of “trafficking in human beings”*

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

47. The Romanian Anti-Trafficking Law provides a definition of THB which is directly inspired by the definition in Article 3(a) of the Palermo Protocol (which also served as a basis for the definition in the Council of Europe Convention). Pursuant to Article 12(1) of the Anti-Trafficking Law “it is an offence for anyone who recruits, transports, transfers, harbours or receives a person, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or by taking advantage of that person’s inability to defend him-/herself or to express his/her will, or by giving, offering or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”

48. As regards trafficking in children, Article 13(1) of the Anti-Trafficking Law defines it as “the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation”. This definition contains only the action and the purpose of exploitation, irrespective of the means used, which is in line with the Convention.

49. Exploitation is defined in Article 2(2) of the Anti-Trafficking Law as follows:

- “(a) performing labour or services by force or by violating the legal norms regarding labour conditions, payment, health and security;
- (b) keeping such persons in a state of slavery or using other ways to deprive a person of his/her freedom or to force the person into submission;
- (c) compelling a person to engage in prostitution, begging, in pornographic performances for the production and distribution of pornographic material, or in other forms of sexual exploitation;
- (d) removal of human organs, tissues and cells in contradiction with the relevant legal provisions;
- (e) engaging in other such activities that violate fundamental human rights and liberties.”

50. The actions covered by the definition of THB in the Anti-Trafficking Law are identical to the one in Article 4(a) of the Council of Europe Convention. As regards the list of means in the Anti-Trafficking Law, GRETA notes that it includes "by taking advantage of the person's inability to defend him-/herself or to express his/her will". This can be interpreted as partly corresponding to "abuse of a position of vulnerability" provided for under the Convention. However, the term "vulnerability" can have a somewhat larger scope than the mere fact of being unable to defend oneself or to express one's will. As indicated in paragraph 83 of the Explanatory Report on the Convention, vulnerability could also comprise situations where a person expresses his/her will to be exploited or at least accepts the fact that he/she is exploited, but only because the person concerned is impelled to accept being exploited. GRETA recalls that it is important that such a situation, which is of particular relevance in a country of origin like Romania, is covered by the list of means in the Anti-Trafficking Law. In this respect, GRETA notes that the provision on THB in the new Criminal Code includes "taking advantage of a state of flagrant vulnerability" in the list of means.

51. As far as the definition of exploitation is concerned, GRETA notes that the Anti-Trafficking Law refers to a form of exploitation which is not specifically mentioned in the definition of the Convention, namely the removal of tissues and cells. This is consistent with the definition set out in the Convention as the list of forms of exploitation it contains is open-ended and allows national legislation to target other forms of exploitation⁸. In this respect, GRETA notes that Article 2(2)(e) of the Anti-Trafficking Law refers to "other activities that violate fundamental human rights and liberties", which, according to the case law cited by the Romanian authorities, has covered cases where a victim was compelled to engage in illegal activities and commit offences (theft, drug trafficking, etc.) and cases where young women were lured abroad by false offers of employment and compelled to be surrogate mothers.

ii. Definition of "victim of THB"

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

53. Before the revision of the Anti-Trafficking Law in 2010, Romanian law did not contain a definition of a victim of THB. The only definition contained in secondary legislation, namely the above-mentioned Joint Order No. 335/2007 of 29 October 2007 approving the NIRM (see paragraph 33). It defines victim of THB as "any natural person about whom there is information that he/she has suffered physical or psychological harm, emotional abuse, economic loss or a serious violation of his/her fundamental rights by actions or inactions which infringe criminal legislation in the field of combating and preventing trafficking in persons".

54. NGOs working in the field of action against THB have asked for a clearer status of the victim of THB, in particular because in practice the protection and assistance to victims depends too much on their participation in criminal proceedings⁹. This issue is considered under the section of the report on assistance to victims of THB (see paragraph 142).

⁸ See paragraph 85 of the Explanatory Report on the Convention. Concerning the removal of tissues and cells, see also the Joint Council of Europe/United Nations Study on trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs, 2009, p. 79. According to it, "national legislation can go further and include the purpose of removal of cells and tissues. This is not only consistent with the text of the definition, it is also in line with the spirit of the documents, especially as the means and actions employed are the same as for the removal of organs and the potential health consequences for the victims may be the same. For example, in the case of reproductive cells, exploitation takes place if they are removed in such quantities (once or on several occasions) that severe health problems may result for the donor. If the removal of organs or cells takes place for medical reasons (to re-establish or improve the health of the individual, in case of a tumour, etc.), no exploitation occurs. It therefore seems advisable to include the purpose of removal of cells and tissues in national legislation."

⁹ See also UNICEF, "Inter-ministerial Working Group for the Coordination and Assessment of the Activities to Prevent and Combat Trafficking of Human Beings, Report on the Evaluation of Anti-trafficking Policies in Romania", stressing the ambiguity of the term "victim", in particular the absence of a legal stipulation regarding the moment when a trafficked person is entitled to the application of assistance measures and to compensations, p. 100.

55. In 2010, a new Article 2(3) was introduced in the Anti-Trafficking Law, according to which “a victim of trafficking in persons shall mean any physical person who is a passive subject of the facts described in Article 12 (trafficking in human beings), Article 13 (trafficking in children), Article 15 (attempt to commit trafficking), Article 17 (facilitating the entry and stay of trafficked foreign nationals) and Article 18 (child pornography), regardless of whether he/she participates in criminal proceedings as an injured party”. This definition is consistent with the one in the Convention. GRETA wishes to stress that no further requirements should be put by officials responsible for the identification of victims of trafficking and for granting them the protection and assistance.

56. The Romanian authorities have stated that the new definition of victim of trafficking in the Anti-Trafficking Law is applicable for any lower-ranking legal text without any need to amend that text. However, in order to guarantee legal security, **GRETA considers that the Romanian authorities should adapt the relevant secondary legislation, including the provisions of the National Identification and Referral Mechanism, in order to ensure that the legal definition of victim of THB, and its application in practice, are fully in line with the definition set out in the Anti-Trafficking Convention. The authorities should also notify all the parties concerned of the content of the definition in the Anti-Trafficking Law.**

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

- i. *Comprehensive approach and co-ordination*

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

58. Following its setting up in May 2006, the NATP has been responsible for co-ordinating action against THB in Romania. The co-ordination of assistance to and protection of victims of THB is provided by the National Identification and Referral Mechanism (see paragraph 34) and through the establishment of the Thematic Working Group (see paragraph 35).

59. All governmental and non-governmental actors met by the GRETA delegation stressed the good co-operation provided by the NATP and that its co-ordinating role is essential both at central and local level. However, the change in the NATP's status between 2009 and 2011 (when it was placed under the General Directorate of the Romanian Police, see paragraph 22) reportedly made it more difficult for NATP to play a co-ordinating role. All relevant actors expressed satisfaction with the decision to place the NATP again directly under the Minister of Administration, thus giving it more autonomy and visibility. Bearing in mind the crucial role played by the NATP in identification, referral and assistance to victims of THB, it is important that it be perceived not as a law enforcement agency but rather as a body providing social assistance, protection and reintegration. In addition and notwithstanding these institutional changes, some of GRETA's interlocutors have stressed the need to ensure that the NATP is given adequate human and financial resources to accomplish its tasks.

60. In 2004, several entities were set up to co-ordinate action against child labour, dealing to some extent with child trafficking (see paragraph 37). Among these entities, the National Steering Committee on Child Labour, whose membership included a representative of the NATP, comprised a Sub-Group on Child Trafficking within the Working Group on Child Labour. The aim of this sub-group was to implement the National Action Plan on Child Trafficking (2004-2007). In 2008, the Romanian Government adopted an integrated approach to the protection of children, which is geared at tackling not only THB, but also other problems, such as domestic violence. The Romanian authorities have indicated that this approach is complementary to and does not replace a more specialised one against child trafficking.

61. Certain factors related to the country's economic and social situation and the lack of resources available to the authorities have adverse effects on the comprehensive effort against trafficking (see paragraph 170). In a context of a general decentralisation of public activities, including in the field of THB and the protection of children, GRETA was informed of significant differences in the quality of assistance granted to victims of THB by local actors such as regional centres of the NATP or regional directorates in charge of child protection.

62. The NATP publishes periodical reports on THB, as well as reports on the achievements of objectives set up in National Action Plans (see paragraph 19). In 2005, an Evaluation Report of Anti-trafficking Policies was published by the IWGCTP in co-operation with UNICEF.

63. At the time of adoption of this report, GRETA notes that the strategy for action against THB intended to cover the period 2012-2016 is still in preparation. **GRETA considers that the Romanian authorities should adopt as a matter of priority the new anti-trafficking strategy.**

64. **GRETA also considers that the Romanian authorities should:**

- **reinforce co-ordination and co-operation between governmental bodies, as well as between the central government and local authorities, with a view to ensuring that all aspects of trafficking and all parts of Romania are integrated in the efforts undertaken to combat THB;**
- **systematically invite NGO representatives to participate in meetings of the Inter-Ministerial Working Groups on Combating THB and involve them in the development of anti-trafficking policies.**

65. Further, bearing in mind the crucial role played by the NATP in the field of co-ordinating national activities in the fields of identification, referral and assistance to victims of THB, **GRETA urges the Romanian authorities to ensure that the NATP is allocated sufficient human and financial resources, enabling it to accomplish its different tasks in the most efficient way.**

66. **GRETA also encourages the Romanian authorities to take measures to allocate and secure appropriate funds in the central budget and the budgets of the local authorities dedicated to action against THB, in consultation with all relevant actors, and reflecting the actual needs.**

67. Moreover, **GRETA invites the Romanian authorities to introduce, in addition to the governmental reports on the implementation of the national anti-trafficking strategies, a periodic independent evaluation as a tool for assessing the impact of these activities and for planning future policies and measures to combat THB.**

ii. Training of relevant professionals

68. Over the years, training of professionals working in the field of prevention of THB, protection of its victims and prosecution of traffickers has been provided within the framework of many of the projects run by NGOs and financed by foreign donors as well as by the national authorities. To mention but one example of an NGO project, in 2009 and 2010, 200 professionals working in the rural counties of Iasi and Suceava were trained in the framework of a project run by Save the Children Romania, in order to improve knowledge of child protection and procedures for identifying and referring child victims of THB.

69. According to the Romanian authorities, the NATP provides training for other actors combating trafficking in human beings, both from its own budget and through external financing. NATP staff members also regularly participate in training sessions, including staff working at the regional level.

70. As regards training on THB-related issues for police officers, it is provided at the Police Academy both during initial training and in the context of in-service training. The Romanian authorities have reported that training sessions for police officers specialised in combating THB were organised and financed by the US embassy in 2009 with a budget of 40 000 USD.

71. Training on THB-related issues is also provided to staff working in diplomatic missions and consular offices by the training centre for the consular staff within the Ministry of Foreign Affairs.

72. Specialised training for magistrates on the crime of THB is organised as part of the initial and ongoing programme for judges. However, GRETA was informed that these training sessions are optional. This means that judges do not have the obligation to nor the opportunity of following multidisciplinary training sessions provided, for instance, by psychologists who could raise their awareness of the situation of trafficked victims.

73. GRETA welcomes the efforts made by the Romanian authorities to train relevant professionals working in the field of prevention of THB and protection of victims (however, see paragraphs 123 and 145). Despite these efforts, some NGOs have expressed concerns about the attitude of some law enforcement officials and judicial staff who reportedly treat victims of trafficking as “prostitutes” or “criminals” rather than as victims of a serious human rights violation. Furthermore, the discrimination and prejudice suffered by Roma have a knock-on effect on the attitude of certain public service staff regarding victims of Roma origin (see also paragraph 105). This highlights the need to sensitize law enforcement and judicial staff to the situation of victims of THB.

74. GRETA invites the Romanian authorities to design future training programmes with a view to improving the knowledge and skills of relevant professionals, which enable them to identify victims of trafficking and to assist and protect them by, placing a particular emphasis on multidisciplinary training sessions for law enforcement officials and judges. Training should also be provided to staff working in shelters for adult and child victims, as well as staff working with children in difficult situations or under institutional care.

75. GRETA also considers that during the training particular attention should be paid to overcoming entrenched negative attitudes and prejudices vis-à-vis victims of trafficking, including those of Roma origin.

76. As regards training for law enforcement officials, GRETA considers that the Romanian authorities should aim to develop skills for proactive investigative work, particularly in the field of THB for the purpose of labour exploitation (see also paragraph 122).

iii. *Data collection and research*

77. The National Integrated System to Monitor and Assess Trafficking in Persons (SIMEV), which is run by the NATP, became fully operational in 2007. This system is deemed to be an important tool for monitoring the assistance provided to victims of trafficking, understanding the scale and trends of trafficking in human beings in and from Romania, disseminating data to all interested institutions and designing new strategies. Only the staff of the NATP has full access to the system, whereas the Police and the DIOCT have access only to the data they need to perform their duties. Some data are shared with other institutions, such as the Ministry of Labour, Family and Social Protection, and statistical data is made public, in particular through quarterly reports. Bodies which provide data to be entered into the system include the Border Police, the Organised Crime Unit within the Police, the DIOCT, courts, the 15 regional centres of the NATP, shelters for victims of THB, local authorities, schools and school inspectorates, and relevant NGOs.

78. The data collected through the SIMEV concern mainly the identification of victims of THB and the protection and assistance provided to them. According to all relevant actors, the information gathered on victims of THB is complete and reliable, although more data should be collected on the compensation asked and obtained by victims of trafficking before courts (see also paragraph 163). The Directorate for Combating Organised Crime within the Police collects and analyses data under its competence. For its part, the Ministry of Justice gathers data on investigations, prosecutions and convictions relating to trafficking cases and passes them on to the NATP.

79. According to a report published in 2009¹⁰, initially data subjects were not asked to give their consent about entering data into the SIMEV database, which also contained the names of the victims. However, this has been changed and now consent is always asked and the data subjects remain anonymous if they so request, each person being assigned a number which is entered into the system.

80. The Public Research and Information Centre of the NATP is responsible for carrying out research on the phenomenon of THB, analysing the risks associated with identifying the new trends, destinations, factors and causes of THB. A number of research projects have been conducted by the NATP, often in co-operation with other bodies. For instance, in 2010, within the REACT Project (see paragraph 92) the NATP, in co-operation with Save the Children Italia published a "Child Friendly Research Report on Internet and Child Exploitation". In the framework of the Twinning Project Phare RO2006/IB/JH 08 (see paragraph 91), the "Sociological Research Handbook on Child Trafficking" and "Trafficking in Children in Romania - Study on Recruiting Process" were issued in 2009 in co-operation with the Ludwig Boltzmann Institute for Human Rights, Austria.

81. GRETA welcomes the setting up of a data collection mechanism on THB such as the SIMEV, which enables the compiling of statistical information and allows its disaggregation (concerning sex, age, type of exploitation, country of destination, etc.). **GRETA considers that the Romanian authorities should pursue their efforts in improving the collection of statistical data on compensation granted to victims of THB. Further, the Ministry of Justice should analyse the data collected on investigations, prosecutions and convictions. This should be accompanied by all necessary measures to respect the right of data subjects to personal data protection.**

82. **Further, GRETA considers that the Romanian authorities should continue to support research on THB-related issues, as an important source of information for future policy measures. Areas where research is needed include national trafficking, trafficking in men and trafficking of foreigners for the purpose of labour exploitation.**

¹⁰ Gatzke, Tretter, Hilken, Douvas, Vamvakaki, *Report on the improvement of the national identification and referral mechanism of victims of trafficking in human beings*, European Union Twinning Project RO2006/IB/JH 08, Final Report, Mission Bucharest 20-24 July 2009, p. 22.

iv. International co-operation

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

84. Romania’s international judicial co-operation in criminal matters is regulated by Law No. 302/2004 on the International Judicial Co-operation in Criminal Matters. Further, the Anti-Trafficking Law contains a provision pursuant to which a contact point shall be established within the Ministry of Administration and Interior and at the Prosecutor’s Office attached to the Supreme Court of Justice to develop exchanges of information regarding the investigation and prosecution of offences under the Law with counterpart institutions from other countries (Article 46). Within the General Police Directorate, there is a specialised Centre for International Co-operation responsible for the exchange of information within the framework of international police co-operation. Within the DIOCT, the Office for Co-operation, Representation and International Judicial Assistance plays this role.

85. In addition, Romania is party to a number of multilateral agreements on mutual legal assistance applying to the offence of THB¹¹. Exchange of information is also performed in the framework of Europol, INTERPOL and the Southeast European Law Enforcement Centre (SELEC)¹². Further, spontaneous transmission of information is possible under Article 179 of the Law No. 302/2004 on the International Judicial Co-operation in Criminal Matters. The Romanian Police also participates in the Analysis Work File on THB created and administrated by Europol (“Phoenix”), the purpose of which is to support EU member states in investigations on THB through the exchange of data from criminal investigations and criminal analysis.

86. As far as joint police and investigative actions are concerned, pursuant to the Anti-Trafficking Law, liaison officers are appointed at the Ministry of the Interior, as well as liaison magistrates at the level of prosecutors’ offices attached to tribunals, to ensure mutual consultation with liaison officers or magistrates from other countries for co-ordinated actions during the criminal procedures. Law No. 302/2004 on International Judicial Co-operation in Criminal Matters also provides for joint investigation teams (JITs). To mention but one example of international co-operation, a joint operation was organised in 2010 in co-operation with British law enforcement officials, Europol and Eurojust. It permitted the dismantling of a crime group involved in several illegal activities, including transnational THB from Romania to the United Kingdom. As a result, 17 suspects were arrested and 180 child victims were identified. Romania has also concluded a number of bilateral co-operation agreements, notably with France and Germany in 2010.

87. Concerning international co-operation in the field of prevention, a number of projects against THB are run by the NATP, in co-operation with international non-governmental and intergovernmental organisations. These projects involve awareness-raising measures among the Romanian population, and training sessions for relevant professionals (see also paragraph 92).

88. While acknowledging the efforts made by the Romanian authorities in the area of international co-operation, **GRETA considers that the Romanian authorities should step up their efforts to reinforce co-operation with trafficking destination countries in the areas of prevention, protection of victims and prosecution of perpetrators of trafficking, on the basis of existing mechanisms and by introducing further procedures wherever this proves necessary.**

¹¹ These agreements include the United Nations Convention against Transnational Organised Crime and the Protocol thereto to Prevent, Suppress and Punish Trafficking in Persons (Palermo Protocol) and the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and its first and second Additional Protocols. The authorities have also referred to the EU Plan on best practices, standards and procedures on combating and preventing trafficking, published in the Official Journal of the EU of 9 December 2005.

¹² Following the entry into force of the Convention of the Southeast European Law Enforcement Center on 7 October 2011, the Regional Center of the Southeast European Cooperative Initiative (SECI) became the Southeast European Law Enforcement Center (SELEC).

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

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

a. Measures to raise awareness and discourage demand

90. In accordance with the Convention, measures to discourage demand for the services of victims of trafficking, especially women and children, should be understood as a positive obligation on Parties to adopt and reinforce such measures as regards THB for the purpose of any form of exploitation (see paragraph 108 of the Explanatory Report of the Convention). As it is stated in the Recommended Principles and Guidelines on Human Rights and Human Trafficking, strategies aimed at preventing THB shall address demand as a root cause of trafficking¹³.

91. The Romanian authorities have paid particular attention to raising awareness about THB as a form of prevention, taking into account the fact that Romania is primarily a country of origin. A great number of campaigns and projects have taken place over the years, organised by the NATP and NGOs, sometimes in co-operation with foreign partners or international organisations. In some cases, NGOs have organised awareness-raising campaigns partially financed by the NATP. In the framework of the above-mentioned Phare Project (see paragraph 80), the NATP published in 2009 a "Practical Guidebook on Conducting Prevention Campaigns in the Field of Trafficking in Human Beings".

92. To mention but a few examples of projects in the area of prevention of THB:

- the ROBSI Project (2007-2010) entitled "Reducing the number of Romanian and Bulgarian victims trafficked into Italy and Spain", co-financed by the European Commission and implemented by the NATP with partners in Italy, Spain and Bulgaria, with an international campaign to prevent THB in the four partner countries and a different approach in each country depending on whether of origin or of destination;
- the REACT Project on raising awareness and empowerment against child trafficking, within the framework of the EU Daphné III Programme 2007-2013, implemented by the NATP;
- the AGIRE Project on action to strengthen the public-private partnership and assistance in identifying vulnerable children and victims of trafficking, co-ordinated by Save the Children Italy and concerning Austria, Greece, Italy and Romania;
- the campaign Euro 2008, organised by the NATP in co-operation with the border police and NGOs entitled "Trafficking may be a game with a huge stake ... even your life!" which informed through posters, brochures and leaflets women and children travelling to Austria and Switzerland in the context of the European Football championship;
- the campaign against sexual exploitation of children, organised by the NGO Save the Children and the NATP, entitled "Let the children live their childhoods" and aimed at informing and training professionals in order to help them prevent trafficking for sexual exploitation;
- the campaign "Trafficking in persons exists! Decide today ... not tomorrow" (June-September 2008), targeting touristic areas in Romania during summertime in order to inform tourists by posters, radio programmes and the organisation of contests of the problem of THB;

¹³ Principle 4 of Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

- the campaign organised by the NATP, IOM and the Czech Ministry of the Interior in May-September 2008 entitled "Work in the Czech Republic" and aimed at warning the public about the danger of trafficking for the purpose of sexual exploitation for those travelling to the Czech Republic to work (200 posters and 2 000 brochures were distributed and other awareness-raising activities were run in the areas identified as being places of origin of potential victims;
- the campaign launched by the NATP "Beware/Watch out for 'perfect' opportunities for 'perfect' jobs" (July 2007-February 2008) including TV spots and a brochures informing the population of possible dangers when offered a job abroad;
- the campaign in seaside resorts under the slogan "Free under the sun. Get informed. Trafficking in persons is unmerciful!", conducted in July and August 2010 by the NATP and Constanta Regional Centre. During the campaign the ANITP Regional Centre in Constanta and World Vision Foundation-Constanta Zonal Office conducted information activities for tourists relating to trafficking and its subsequent effects;
- the round table on the role of the media in the fight against THB, organised by the NATP in partnership with Save the Children Romania in Bucharest on 23 September 2011;
- the national campaign to prevent THB entitled "Open your eyes" and aimed at providing young women with information on the dangers of THB, launched on 20 May 2011 by the NATP with the Ratiu Centre for Democracy.

93. There have also been a number of campaigns organised locally by the regional centres of the NATP and local NGOs, such as the campaign entitled "Human Trafficking is Inhuman" in Timisoara in 2007.

94. Among the numerous prevention activities carried out by NGOs, particular mention should be made of the NGO Child Focus, specialised in combating disappearances and sexual exploitation of children, which implemented several awareness-raising and information campaigns. The NGO Save the Children Romania also runs information and education programmes aimed at preventing trafficking in human beings and, in particular, children.

95. In the field of education, pursuant to Article 8 of the Anti-Trafficking Law, the Ministry of Education, Research, Youth and Sport conducts educational programmes (awareness-raising, advisory and educational activities, as well as seminars) aimed at preventing THB and targeting university students, pupils and their parents, as well as teaching staff. The Romanian authorities have referred to several educational projects run in the schools which have chosen this subject matter in the framework of their optional activities. Pupils are sensitized about the importance of a gender-balanced approach and the danger of THB, particularly during civic education courses which are obligatory.

96. A campaign organised by the NATP between October 2008 and June 2009 and entitled "Your money enriches traffickers ... your money kills souls!" aimed at raising awareness among potential users of sexual services and cheap labour force, as well as people who give money to beggars, of the consequences of sexual and labour exploitation and informing about the legal framework penalising THB. There was also a national campaign entitled "The Two-Faced Man" aimed at raising awareness about THB for sexual exploitation and targeted at potential clients. This campaign, which ran for three months in 2009, consisted of TV and radio-spots and posters in public transports.

97. The National Strategy against Trafficking in Persons for 2006-2010 indicates that despite a high level of public awareness of THB, there is a collective prejudice towards victims, often considered to be "prostitutes", a prejudice which reportedly is frequent among police officers, prosecutors, judges, teachers and medical staff and which hampers the identification of victims of THB. GRETA notes that the evaluation of the impact of the information and awareness-raising campaign organised in the framework of the Phare Project "Improving the institutional capacity of agencies involved in preventing human trafficking in accordance with current European standards and best practice" recommended that new campaigns in Romania should emphasise the human rights violation aspect of THB, the gender perspective of this phenomenon as well as the discrimination against the Roma population.

98. One of the activities foreseen in the 2006-2007 Plan of Action against Trafficking in Persons was the development of an anti-trafficking campaign dedicated to disadvantaged groups, including the Roma population, who are particularly vulnerable to THB¹⁴. That said, the Romanian authorities have not referred to any recent awareness-raising measures targeting the Roma which are tailored to their specific situation. GRETA notes that in the context of the 2006-2007 campaign “Be careful! There is a price to pay”, the National Agency for Roma contributed by translating the campaign leaflet into Roma language and distributing these leaflets among Roma communities.

99. GRETA welcomes the efforts of the Romanian authorities in the area of prevention of THB. **GRETA considers that future action in the area of awareness raising should be designed in the light of the assessment of previous measures and focused on the needs identified. In this context, measures should be taken to combat stereotypes and prejudice towards victims of THB, in particular women and Roma. The Romanian authorities should also continue to raise public awareness on the question of equality between women and men and the principle of non-discrimination as a preventive measure against THB.**

100. Further, GRETA welcomes the measures taken by the Romanian authorities to discourage demand for services from trafficked persons, and **invites them to continue their efforts in this field by targeting, in particular, the most common forms of THB in the country.**

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

101. One of the strategic objectives of the National Strategy against Trafficking in Persons for 2006-2010 was to reduce the scale of THB by strengthening the self-protection capacity of citizens and society against this phenomenon. Under Article 6(1) of the Anti-Trafficking Law, the Ministry of Labour and Social Solidarity is responsible for enforcing special measures for the integration into the labour market of persons at high risk of being trafficked, especially women in very poor areas and social outcasts. Pursuant to this law, measures to offer incentives to companies which hire persons at high risk of being trafficked should be taken and victims of trafficking should benefit from access to the labour market as a form of prevention. Other measures, such as the development of information programmes concerning the labour market and vocational training, are intended for particularly vulnerable victims of trafficking and their potential employers, in order for the latter to grant priority for job placement. Further, pursuant to the Law on Social Marginalisation, priority should be given to young persons coming from social homes and centres for child victims of THB when it comes to helping them find a job.

102. Besides the measures targeting potential victims of THB, there are also a number of programmes which are intended for the poorer part of society. For instance, the Law on Social Marginalisation provides for facilitating access to housing by persons under 35 who cannot buy a house due to a lack of resources for helping mono-parental families.

103. Furthermore, children coming from very poor families or belonging to dysfunctional families (due to alcohol or drug abuse, domestic violence and other problems) as well as children placed in orphanages are considered as particularly vulnerable to trafficking and the Romanian authorities make efforts to protect them through different programmes and assistance measures.

104. NGOs have drawn GRETA's attention to other groups vulnerable to trafficking who should receive more attention. They include, in particular, children left behind by their parents who have gone to work abroad. Street children also constitute a group which is probably the most vulnerable target of traffickers, particularly as concerns trafficking for the purpose of sexual exploitation. While the number of street children in Romania is deemed to have diminished over the years (according to recent estimations, they are between 3 000 and 5 000), special measures of protection are required on the part of the authorities.

¹⁴ European Roma Rights Centre and People in Need, *Breaking the Silence: Trafficking in Romani Communities*, March 2011.

105. As indicated in the National Strategy against Trafficking in Persons for 2006-2010, the Roma are a vulnerable group, in particular due to the problem of social marginalisation linked to a high level of prejudice and discrimination. Among the problems encountered by the Roma population and which should be tackled as a form of prevention of THB is the issue of birth certificates. In this connection, Romanian legislation requires parents to declare the birth of children to the authorities and stipulates that the birth certificate shall be issued free of charge. GRETA must stress the importance of ensuring that every person is issued with a birth certificate at birth (or as soon as possible afterwards), as well as all other relevant identity papers that would prevent marginalisation and therefore the risk of being trafficked.

106. While emphasising the efforts made by the Romanian authorities to prevent trafficking, **GRETA considers that these efforts should be stepped up as part of a long-term approach aimed at tackling the root causes of trafficking, especially through fostering access to education and jobs for vulnerable groups, particularly women and Roma.**

107. **GRETA also considers that the Romanian authorities should pursue their efforts to strengthen the prevention of trafficking in children, particularly through the recording of all children in the civil status register and by finding solutions for children left behind by their parents who have gone abroad to work, as well as street children.**

- c. Border measures to prevent THB and measures to ensure the quality, security and integrity of travel and identity documents

108. Pursuant to Article 47 of the Anti-Trafficking Law, international transport companies have the obligation to check, on issuing a travel document, whether their passengers are in possession of the identity documents required for entry into the transit or receiving country. The Romanian authorities have referred to a number of measures aimed at reinforcing the quality, security and integrity of the identification and travel documents issued by them. As far as Romanian children are concerned, the authorities have regulated their travel abroad by requesting prior authorisation to travel by both parents. In addition, parents are obliged under Romanian law to alert the authorities within 24 hours in case of a child missing. Despite such measures, GRETA was informed that there have been cases where Romanian children were transported outside Romania for trafficking purposes with the help of falsified identity papers. It is therefore important to reinforce security measures to prevent the falsification of identity documents as well as border measures to prevent THB.

109. **GRETA considers that the Romanian authorities should make further efforts to detect cases of THB in the context of border control measures, as well as to reinforce the security of identity, visa and travel documents to prevent and detect trafficking.**

- d. Measures to enable legal migration

110. Under the Anti-Trafficking Law, the Ministry of Foreign Affairs, through its diplomatic missions and consular offices abroad, is required to disseminate information on the rights of victims of trafficking and to ensure that information concerning the relevant legislation in Romania and in the host country is available on its website.

111. Staff of the NATP attend job fairs, in order to provide information on the dangers of transnational THB for the purpose of labour exploitation. The toll-free round-the-clock helpline set up in August 2007 and run by the NATP serves several purposes, including giving advice and information to people who plan to work abroad. However, GRETA was informed that some recruitment companies based in Romania have been involved in THB cases (see also paragraph 196).

112. **GRETA considers that the Romanian authorities should continue to raise public awareness of the dangers of transnational trafficking.**

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

a. Identification of victims of trafficking in human beings

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

114. Before the creation of the National Identification and Referral Mechanism (NIRM) in 2007, the identification of victims in Romania was made on a case-by-case basis, without any formal procedure to be followed by the relevant actors. This identification was more reactive than proactive, relying mainly on the self-reporting of the victim and on the efficiency of the institutions or NGOs which might have come across a victim of trafficking.

115. In order to improve identification, the NATP, in consultation with relevant institutions and NGOs, drafted a set of standards for the identification and referral of victims of THB which led to the adoption of the NIRM by Governmental Decision No. 335/2007 of 29 October 2007 (see paragraph 33). The NIRM gives a detailed list of indicators to be used when identifying victims of THB. It describes the methods for interviewing victims of THB (based on the World Health Organisation Ethical and Safety Recommendations for Interviewing Trafficked Women), identifying and referring them for assistance and, as appropriate, repatriating them to or from Romania.

116. The NIRM distinguishes between two forms of identification of victims of THB. Formal victim identification can be carried out by the law enforcement and judicial authorities and results in recognising the person concerned as a victim of trafficking with all the rights attached to this status. Informal identification can be carried out by other actors who, by analysing all the relevant indicators, may conclude that the person concerned is a potential victim of THB and refer this person to the authorities carrying out formal identification.

117. The formal identification should be followed by the referral of the victim by a specialised anti-trafficking structure within the Police or the Prosecutor's Office (see paragraphs 29 and 32) to an appropriate institution responsible for the co-ordination of assistance, i.e. the relevant regional centre of the NATP. If a victim is identified by non-specialised police officers or prosecutors, they should refer the person to the relevant anti-trafficking body within their own structure. When a foreign victim is identified, the Romanian Immigration Office is involved in the procedure and the IOM can also help as far as the repatriation procedure is concerned. If the victim is a minor, a representative of the relevant General Directorate of Social Assistance and Child Protection (within the County Councils and District Councils of Bucharest) should be involved in the process.

118. There are a number of manuals and other tools which can help relevant professionals in identifying and referring victims of THB. For instance, police officers and border police officers have at their disposal a flyer with a summary of the main indicators of THB and the main differences between THB and smuggling of migrants.

119. Article 31 of the Anti-Trafficking Law provides for the presence of specially trained officers at all border check points. These border police officers exercise powers pertaining to the detection of THB and identification of victims of trafficking. The identification process is based on victim profiles established by a risk assessment unit of the Border Police, using its own database and documents supplied by anti-trafficking networks and the FRONTEX risk assessment network (FRAN). When a victim has been identified, border police officers draw up the necessary procedural documents, compile a file and send it to the prosecutor. The Border Police may also be contacted by any individual with information on potential cases of trafficking. GRETA notes that there is currently no specialised anti-trafficking unit within the border police. Several NGOs have stressed that this has a negative impact on the identification of victims at the borders, be they of Romanian or other nationality. **GRETA considers that the Romanian authorities should provide the Border Police with all necessary human and financial resources to ensure that it can duly play its role in the identification and referral of victims of THB. In particular, they should envisage the appointment of specially trained border police officers whose task would be to deal with THB cases and, among others, to identify victims and refer them to the adequate institutions.**

120. Informal identification can be carried out by diplomatic missions and consulates, labour inspectors, health-care professionals, staff of educational institutions, service providers, NGOs or citizens, by using the list of indicators set out in the NIRM. According to the NIRM, in the case of informal identification, the body carrying out the identification should refer the victim to the institutions/organisations involved in formal identification (see paragraph 31 and 34). However, if the (potential) victim does not wish to enter into contact with law enforcement officials and/or judicial authorities, he/she should be referred directly to the relevant regional centre of NATP.

121. Special mention should be made of the toll-free round-the-clock helpline run by the NATP, which is a tool for identifying and referring victims of THB and for offering counselling to victims, their families and witnesses.

122. As noted in paragraph 10, according to the Romanian authorities, Romania is primarily a country of origin. That said, NGOs have reported cases of foreign nationals who were apparently deported without a proper identification and risk assessment, despite there being indications that they might have been subjected to trafficking. There are also reports of foreign victims of THB being sent to Romania and sexually exploited there for a certain time before being moved to other European countries. A more proactive approach is therefore needed for the identification of foreign victims of THB, particularly in areas such as the textile industry, domestic work and tourism. The increased involvement of labour inspectors, as well as the work of the Romanian Office for Immigration (which is competent for checking the working conditions of foreign nationals) could help to combat the trafficking of foreign nationals into Romania for the purpose of labour exploitation.

123. While the Romanian authorities' efforts to improve the identification of victims of THB should be acknowledged, the NIRM does not seem to be sufficiently known by all actors concerned, in particular non-specialised police officers and other professionals likely to perform informal identification. Social workers, teachers, labour inspectors, medical staff and other professionals who may enter into contact with potential victims of THB should be made aware of the problem of trafficking and trained in the informal identification of victims of THB (including the list of indicators).

124. **GRETA considers that the Romanian authorities should pay more attention to the identification of foreign nationals who could be subject to THB and provide training of relevant staff in this respect.**

125. **GRETA also considers that the Romanian authorities should take steps to spread knowledge of the NIRM and ensure that all relevant professionals are trained to apply it, including those who are likely to carry out informal identification of victims. In addition, police officers who are not specialised in combating THB should be trained in the identification of victims of THB, in particular officers working in the local and rural police.**

b. Assistance to victims

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

127. In Romania, assistance to victims of trafficking is provided for in, *inter alia*, the Anti-Trafficking Law, the Crime Victims Protection Law, Government Decision No. 1238 of 10 October 2007 approving the national standards for specialised assistance services provided to victims of trafficking, and the NIRM. As regards in particular child victims of trafficking, the provision of assistance is also regulated by Law No. 272/2004 on the Protection and Promotion of Children's Rights. Article 27 of the Anti-Trafficking Law gives the NATP responsibility for monitoring assistance provided to victims of trafficking. In 2010, the relevant provisions of the Anti-Trafficking Law were amended and since then new rules and procedures as described below have been applicable in this area.

128. The Anti-Trafficking Law provides for two different forms of shelters for adult victims of trafficking who are Romanian nationals: "centres for protection of and assistance to victims of trafficking in human beings" or "sheltered accommodation". The second option is described as "social housing, not having legal personality, designed to provide the victim with the sense of a family life in a protected and supportive environment with a view to their reintegration into society". The Law also stipulates that shelters for victims of THB should provide them with decent living conditions, food, and psychological and medical care.

129. Pursuant to the Anti-Trafficking Law, the centres for victims of THB are financed by the county councils of nine of the 41 counties in Romania¹⁵. Depending on the evolution of the phenomenon of THB in Romania, other counties and the general Council of the City of Bucharest can also establish such centres in conformity with the standards laid down in the Anti-Trafficking Law and other relevant texts. Sheltered accommodation should also be financed by the respective county's budget. Any additional costs relating to the assistance, accommodation and protection of victims are to be borne by the respective county.

130. Romanian children victims of trafficking who cannot be entrusted to their parents are accommodated in one of the six "transit centres" currently functioning (out of the 11 provided for in the Programme of National Interest Law no. 415/2004) or in an emergency shelter for child victims of abuse (of which there is one in each county and one in each of the six districts of the City of Bucharest). All shelters for adults and child victims of THB are run by the General Directorate of Social Welfare and the Protection of Children.

131. In addition to public shelters, there are currently two shelters run by NGOs. One is operated by Generatie Tanara, based in the county of Timisoara, and the other by Reaching Out, in the county of Arges. According to the Romanian authorities, these two shelters participate in the NIRM.

132. The provisions applying to the accommodation of trafficking victims of Romanian nationality extend to trafficking victims holding the nationality of a member state of the European Union or the European Economic Area.

¹⁵ Arad, Botosani, Galati, Giurgiu, Iasi, Ilfov, Mehedinti, Satu Mare and Timis.

133. Pursuant to Article 38(1) of the Anti-Trafficking Law, foreign nationals trafficked to or through Romania can be accommodated in special centres established by Government Decision No. 194/2002 on Aliens, without being the subject of an administrative detention order due to their irregular situation. According to the Romanian authorities, there are special facilities in the administrative detention centres where victims of trafficking would be placed separately from detained foreign nationals. Foreign nationals who have applied for protection can be accommodated in centres for asylum seekers established under Government Decision No. 122/2006.

134. Pursuant to amendments to the Anti-Trafficking Law passed in 2010, upon their request, victims of trafficking can be accommodated in shelters for a period of up to 90 days with the possibility of extending this period to up to six months, depending on the duration of the criminal proceedings. Prior to the 2010 amendments, the period of accommodation in a shelter was up to 10 days, with a possibility of extension of up to three months. The extension of the period of accommodation in a shelter should hopefully enable the recovery and reintegration of victims. However, the duration of the stay of victims in a shelter remains very much linked to the criminal proceedings, as the extension is to be requested by the judicial authorities. GRETA recalls that the assistance provided to the victims should not depend on willingness to co-operate with the authorities and that the victim's need for secure accommodation is not necessarily linked to the criminal proceedings.

135. A number of issues have been raised by NGOs concerning the efficiency of the current system for accommodating victims of trafficking. On the basis of the information gathered before and during the visit, including a visit to a public shelter for adult victims in Galati, GRETA concludes that the current situation of shelters for victims of THB is far from being satisfactory. The main problems identified are described below.

136. The first problem lies in the absence of a specialised shelter for adult victims of THB in Bucharest following the closing down at the end of 2010 of the shelter run by the NGO ADPARE due to the lack of financial resources. This means that adult victims of THB identified in Bucharest or arriving at Bucharest airport will have to be accommodated outside the capital city, the shelter in Giurgiu apparently being the closest one.

137. Since 2001, a certain number of shelters have been opened for adult and child victims of trafficking, but some of them have closed down in the meantime. Those which have continued to operate reportedly accommodate a very limited number of victims. For instance, as regards child victims of trafficking, the Romanian authorities have informed GRETA that they are reconsidering the system of assistance, after having concluded that the 11 "transit centres" for child victims set up in 2004/2005, with a total capacity of 130 beds, are not adapted to the actual situation in Romania. These centres were created close to the borders with the intention of addressing the needs of children identified at the border or coming from these regions. However, children are often identified abroad and repatriated to Romania by airplane, via the main airport of Bucharest. As a result, at the time of the visit, only six out of the 11 transit centres were operational.

138. The decentralisation of the financing and operation of shelters does not seem to have been accompanied with the necessary measures to ensure that the needs of victims are being taken care of. There are apparently important divergences in the assistance provided at different shelters. There also appears to be a lack of clarity as to where a victim is placed following his/her identification. According to some reports, certain counties do not accept to accommodate in their shelters victims who did not live in the county in question before being trafficked. This goes against the fact that the choice of location of accommodation should be in accordance with the risk assessment rather than prior living place. For example, in some cases, a victim of THB needs to be accommodated in a place far from where complicit actors in her/his recruitment process may live.

139. While the Anti-Trafficking Law stipulates that associations and foundations certified as providers of social services to victims of trafficking (e.g. accommodation, food, psychological and legal counselling, medical care) shall receive financial aid from the state or local authorities, the lack of financial means prevents these providers from ensuring an adequate level of assistance to victims of THB. The Romanian authorities have stated that, under the national interest programme for improving activities geared to protecting and assisting the victims of trafficking, the NATP received public funding of around 90 000 and 250 000 € in 2007 and 2008 respectively. That funding was intended to be distributed to NGOs with a view to improving the assistance and protection services provided to victims of trafficking; there is no further detail of the amounts actually allocated to NGOs. The funding was given to NGOs selected on the basis of project proposals; in 2007, three NGOs received funding enabling them to assist 109 victims, and in 2008, four NGOs used the funds allocated to them to assist 241 victims of trafficking. However, GRETA has received information indicating that, since 2009, there has been a substantial drop in the funding received by NGOs from foreign donors and the Romanian Government.

140. Pursuant to Article 26 of the Anti-Trafficking Law, persons who have suffered directly or indirectly from crimes covered by the Law shall be granted physical, psychological, medical legal and social protection and assistance. Romanian citizens victims of trafficking are to be granted priority access to social housing in their residential areas. Further, victims under the age of 18 and female victims should be granted special assistance. The Anti-Trafficking Law also provides for free of charge short-term vocational training programmes for victims accommodated in shelters and priority access for victims of trafficking to labour counselling and mediation services. Under the Anti-Trafficking Law, it is for the NATP, in co-operation with the relevant institutions, NGOs, international organisations and representatives of civil society, to ensure that victims of THB are given psychological support and the necessary assistance to integrate into society. The NATP is also responsible for monitoring all forms of assistance granted to victims of THB. A number of NGOs provide psychological, legal and other forms of support to victims of trafficking. The NGO ADPARE, for instance, runs a day-centre in Bucharest for victims of trafficking where they can receive psychological assistance and participate in reintegration programmes.

141. The Law on Assistance and Financial Compensation of Crime Victims also contains provisions on the assistance to victims of crimes (including victims of THB), such as medical treatment in emergency situations, psychological counselling, free legal aid and practical help. The NIRM stresses that not only those victims of trafficking who have been formally identified, but also potential victims of trafficking should have immediate access to support programmes and services.

142. Notwithstanding the above-mentioned legal provisions, GRETA notes that there are problems in the provision of assistance to victims of THB. According to many NGOs, assistance provided to victims of THB by State-run shelters or other public services depends to a large extent on their co-operation with the law enforcement agencies. Under the NIRM, the Police plays a key role in the identification and referral of victims of THB. As mentioned in paragraph 22, between 2009 and May 2011, the NATP was under the authority of the General Directorate of the Police. These two factors may have been instrumental in the link being made between assistance and co-operation. From its discussions during its country visit to Romania, both with the authorities and NGOs, the GRETA delegation got the impression that the assistance granted to victims is very much dependent on decisions taken by the police. Further, the duration of the stay of a victim in a public shelter seems to depend on the duration of the criminal proceedings, rather than on the assessment of the victim's actual needs and the degree of reintegration and autonomy obtained by the victim¹⁶.

¹⁶ See Gatzke, Tretter, Hilken, Douvas, Vamvakaki, *Report on the improvement of the national identification and referral mechanism of victims of trafficking in human beings*, European Union Twinning Project RO2006/IB/JH 08, Final Report, Mission Bucharest 20-24 July 2009, p. 16 and p.21

143. Further, according to a recent NGO report, only a low number of trafficked members of the Roma population benefit from assistance in Romania, one of the explanations being that they do not trust the officials responsible for granting assistance and prefer to avoid any contact with them¹⁷. GRETA was informed that the lack of trust in the system of assistance and protection is a more general problem for all victims of THB, regardless of their ethnic origin. Some victims identified abroad by the authorities of the destination country have reportedly received assistance there and prefer not to have contact with the Romanian authorities. Further, some foreign NGOs reportedly prefer referring victims directly to Romanian NGOs, thus avoiding contact with Romanian officials (see paragraph 170). This is also apparently mainly due to a lack of trust in the Romanian public repatriation and assistance system. Some NGOs have also indicated encountering difficulties in obtaining the necessary identity or other documents for their clients, a factor which prevents victims from accessing basic services, for instance from registering in schools.

144. The Romanian authorities have pointed out that, by law, victims of trafficking may benefit from medical services; within the limits set by the national health insurance scheme. However, as regards access to health care, GRETA has been informed that, in practice, victims cannot benefit from it. As a result, NGOs running accommodation facilities for victims have to cover the costs of health care.

145. Some members of staff working in public shelters or social services are allegedly not always sufficiently trained to respond to the needs of trafficked persons. A significant turnover rate and a lack of incentives due to low salaries also play a role in the inadequate quality of the services, to the detriment of the reintegration of the victims. In particular, the psychological assistance victims are entitled to is allegedly not always adapted to their needs.

146. When it comes to the reintegration of victims of trafficking, the main difficulty lies in the prejudice and stereotypes persisting in society against victims of trafficking and in particular those who have suffered from sexual exploitation or who are of Roma origin. This has implications for access to school, vocational training and, particularly in times of dire economic conditions, the job market. For instance, GRETA was informed by NGOs providing services to victims that, regardless of the law, in practice it is almost impossible to find a job for former victims of trafficking unless their trafficking experience was hidden from the employers. Opportunities for employment and long-term income for victims of THB are thus missing. It is also worrying to note that it is very difficult to reintegrate a trafficked child into the school system despite the creation of "second chance" classes which are intended to facilitate the reintegration of children who have dropped out of school.

147. GRETA considers that all of the above issues require immediate attention from the Romanian authorities. In particular, GRETA considers that the current system of assistance for victims of trafficking is not sufficiently effective, as it risks leaving out those who do not want to co-operate with the authorities and take part in judicial proceedings against the alleged traffickers.

148. GRETA urges the Romanian authorities to step up their efforts to provide assistance to victims of trafficking, and in particular to:

- **review the system of shelters for victims of trafficking, with a view to assessing, in co-operation with relevant members of civil society, victims' needs in relation to the services currently provided, and to take all necessary measures to ensure that these needs are met throughout Romania, and in particular in Bucharest, for all categories of victims of THB;**
- **ensure the quality of the services delivered in all state-run shelters;**

¹⁷ European Roma Rights Centre and People in Need, *Breaking the Silence: Trafficking in Romani Communities*, March 2011.

- ensure that all assistance measures provided for in law, including access to health care, are guaranteed in practice; when assistance is delegated to NGOs as service providers, the state has an obligation to provide adequate financing and to ensure the quality of the services delivered;
- ensure that assistance measures provided for in law are not made, in practice, dependent on the victims' willingness to co-operate with law enforcement agencies;
- facilitate the reintegration of victims of trafficking into society and avoid re-trafficking by providing them with access to education and vocational training, as well as access to the labour market.

c. Recovery and reflection period

149. As victims of trafficking are extremely vulnerable after the trauma they have experienced, Article 13 of the Convention introduces the obligation for Parties to provide in their internal law for a recovery and reflection period of at least 30 days. The minimum 30-day period constitutes an important guarantee for victims and potential victims and it serves a number of purposes, including to allow them to recover and escape the influence of traffickers and/or to take a decision on co-operating with the competent authorities. During this period, Parties must authorise the person concerned to stay on their territory and expulsion orders cannot be enforced.

150. Article 39¹ of the Anti-Trafficking Law provides for a "reflection period" of up to 90 days for foreigners about whom there are good reasons to believe that they are victims of THB, for the purpose of recovering, escaping from the influence of traffickers or taking a decision regarding their co-operation with the competent authorities. Upon request by the prosecution authorities, the Romanian Office for Immigration should grant a temporary residence permit during this period. The persons concerned are entitled to benefit from the same assistance measures as identified victims. Article 39² of the Anti-Trafficking Law provides for a similar reflection period for Romanian citizens except for the question of residence permit. For both categories of presumed victims, the period is interrupted in the following cases: the victim has entered into contact with the traffickers, there is a danger for public order and the national security, or the status of the victim has been invoked in an unjustified manner.

151. While the Convention introduces the obligation for Parties to provide for a recovery and reflection period of at least 30 days, Romanian law sets a maximum period of 90 days without requiring any minimum duration. In GRETA's view, the Anti-Trafficking Law does not sufficiently emphasise the fact that the recovery and reflection period should last at least 30 days.

152. GRETA invites the Romanian authorities to review the legislation, in order to ensure that a minimum period of at least 30 days is clearly established in the Anti-Trafficking Law regarding the recovery and reflection period, as requested in Article 13 of the Convention.

153. The Romanian authorities do not have information on the number of Romanian or foreign nationals who have benefited from a recovery and reflexion period. It should be recalled that 18 foreign victims of trafficking were identified in 2008, one in 2009, two in 2010 and six in the first half of 2011. In view of the above allegations that assistance to victims is made dependent on their willingness to co-operate with the authorities, GRETA concludes that further clarification is needed concerning the scope of the recovery and reflexion period and the rights attached to it. In particular, presumed victims and officials who are in contact with them should be made aware of this period enshrined in law and the fact that it allows the person concerned the possibility to reflect before taking a decision regarding her/his co-operation with the competent authorities.

154. GRETA urges the Romanian authorities to ensure that presumed victims of THB and relevant officials are systematically informed of the possibility of a recovery and reflection period and that such a period should be effectively granted.

d. Residence permits

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

156. Pursuant to Article 39¹(2) of the Anti-Trafficking Law, during the reflection period or after its expiry, foreign victims of trafficking in human beings may be granted, upon personal request, a temporary residence permit as established in Governmental Decision No. 194/2002. This permit has a maximum duration of six months (without any minimum) and can be renewed. It can be revoked for the same reasons as for the recovery and reflection period (see paragraph 150) or if the relevant authorities dealing with the criminal case make a reference to Article 10 of the CCP concerning the interruption of criminal law proceedings for various reasons¹⁸. The granting of the temporary residence permit depends, therefore, not only on the co-operation of the victim with the law enforcement authorities, but also on the progress of the criminal proceedings, which can be interrupted for reasons having nothing to do with the victim's situation. This suggests that, under Romanian law, the residence permit is seen as a tool for facilitating the authorities' work and not as a means of protecting and assisting the victim.

157. In practice, as already noted, a number of foreign victims of trafficking were identified in 2008-2011. The Romanian authorities do not compile information on the number of residence permits issued, whether for a recovery and reflection period or on other grounds, to identified or potential victims of trafficking. It is therefore difficult to comment on the actual practice in this field.

158. GRETA considers that the Romanian authorities should take steps to ensure that victims of THB can take full advantage of the right to be granted a temporary residence permit.

159. GRETA also encourages the Romanian authorities to consider granting temporary residence permits to victims who, for various reasons, do not co-operate with the competent authorities or when the conditions for carrying out criminal law proceedings are not met, for reasons which have nothing to do with the situation of the victim.

e. Compensation and legal redress

160. Article 15 of the Convention establishes the obligation for Parties to provide in their internal law for the right of victims of trafficking to legal assistance and free legal aid. Parties must also provide for the right of victims of trafficking to compensation from the perpetrators as well as adopt legislative or other measures to guarantee compensation for victims from the State. Further, Article 15(1) of the Convention establishes that victims of trafficking must have access to information on relevant judicial and administrative proceedings in a language which they can understand.

161. Under Article 43 of the Anti-Trafficking Law, victims shall receive information on the applicable legal and administrative procedures. The Romanian authorities have indicated that, pursuant to Article 4 of the Crime Victims Protection Law, from the first moment of contact with a victim of trafficking, the police, prosecution and judicial authorities should provide victims with full information on their rights and on the judicial and administrative procedures to be followed, including the right to compensation, in a language that the victim understands. Further, the NIRM defines the responsibilities of the different services tasked with informing and assisting victims.

¹⁸ Under Article 10 of the CCP, criminal action cannot be initiated, or carried out in case it has already been initiated, in several situations including when: the deed was not been committed by the accused person or defendant; the deed lacks one of the constitutive elements of an offence; one of the cases that annul the criminal nature of the deed is present; the preliminary complaint of the injured person, the authorisation or notification of the competent body, or any other condition stipulated by law, necessary for the initiation of the criminal action, is missing; amnesty, prescription or death of the perpetrator have occurred; there is motivation for non-punishment provided by law; etc.

162. Under Article 44 of the Anti-Trafficking Law, victims are entitled to assistance to enable them to exercise their rights throughout the criminal proceedings and to enable them to pursue civil applications and claims against perpetrators. The Crime Victims Protection Law provides for free legal aid for victims of THB who apply for it and whose income is below the national minimal salary, if the crime was committed on Romanian territory. Free legal aid is also available if the victim is a Romanian national or a foreigner residing legally in Romania when the crime was committed abroad, but the criminal proceedings are carried out in Romania. However, in principle the victim must apply for free legal aid within 60 days from the date of commission of the offence. The legal aid takes the form of funds granted for paying the costs of fees and legal representation and can also include the designation of an ex officio lawyer. However, free legal aid is said to be difficult to obtain in practice or to be ineffective.

163. As far as compensation is concerned, a victim of THB can participate in criminal proceedings as an injured party and claim compensation from the perpetrator. A victim can also claim damages before civil courts against the perpetrator, following the general rules applicable to civil claims. That said, the Romanian authorities do not collect information on the compensation awarded to victims of THB. NGOs have underlined the difficulties encountered by victims claiming compensation from perpetrators, due to stereotypes and prejudice among judicial staff who do not evaluate in an appropriate way the extent of the damages caused to the victims (see also paragraph 73).

164. Following an amendment made in 2007 to the Crime Victims Protection Law, victims of THB can benefit under certain conditions from a state financial compensation. Victims must lodge their claim for compensation with the court in their place of residence. Each court has a Crime Victim Compensation Board responsible for examining such claims, consisting of two judges. The crime must have been committed on the territory of Romania and the victim must be Romanian, a foreign national having a residence permit in Romania or in another EU member state, or a national from an EU member state staying legally in Romania. The victim must, as a rule, apply for state compensation within 60 days after the commission of the offence. According to the information provided by the Romanian authorities, four courts granted compensation amounting to a total of 3 765 euros in the period 2009-2010 (there is no indication of the number of victims who received compensation).

165. GRETA urges the Romanian authorities to increase their efforts to provide information to victims of THB about their right to compensation and the ways to access it, and to ensure that victims have effective access to legal aid in this respect.

166. Further, GRETA urges the Romanian authorities to ensure that victims of trafficking can effectively exercise their right to claim compensation from the perpetrators.

f. Repatriation and return of victims

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

168. The Anti-Trafficking Law provides that upon request, Romanian citizens who are victims of trafficking in other countries shall be granted assistance by Romanian diplomatic missions and consular offices (Article 28(1)), including the issuance of identification documents necessary for their repatriation (Article 29). In 2010, a new provision was added to the Anti-Trafficking Law, pursuant to which the Ministry of Foreign Affairs shall provide transportation for the purpose of repatriating Romanian citizens who are victims of trafficking (Article 28(2)). Under the NIRM, the relevant diplomatic mission shall inform the NATP and the border police of the return of victims, in order for them to take over at the Romanian border.

169. The IOM mission in Romania has also been involved in the repatriation procedure within the framework of the NIRM. If a victim is repatriated to Romania with the involvement of the IOM, it is the IOM mission in Romania which receives the victim and refers him/her to a shelter while keeping the NATP informed of the situation of the victim.

170. GRETA was informed of certain problems concerning repatriation of victims of THB in Romania. NGOs have referred to cases where victims returned without support from the authorities either because the authorities were not informed or because they did not finance the costs of the travel. There have also been cases where, due to a lack of co-ordination, the authorities have not organised the reception of victims (including child victims) at the border. In many cases, the lack of human and particularly financial resources reportedly prevents the Romanian authorities from co-operating in the best possible manner, which means that travel costs are covered either by the victim or by assistance organisations. NGOs have indicated that they are sometimes contacted by foreign NGOs directly, in the context of a victim returning to Romania, without following the official procedure which should involve the Ministry of Foreign Affairs and the NATP (see paragraph 143).

171. As concerns the return of foreigners from Romania to their country of origin, under Article 37 of the Anti-Trafficking Law, foreign citizens victim of THB shall be assisted by the Romanian authorities by providing safe transportation to the Romanian border. However, when victims of THB have been brought to Romania by an illicit transportation company, it is incumbent upon this company to cover the costs of their stay in Romania and the victims' transportation to the Romania border. In cases where foreign victims of trafficking have no identification documents or they have been lost, stolen or destroyed, the Ministry of Administration and Interior shall contact the relevant embassy to request a new passports or travel documents, as appropriate.

172. As already indicated in paragraph 10, only a few foreign victims of THB have been identified over the last years in Romania. The information provided by the Romanian authorities does not indicate the number of foreign victims of trafficking repatriated to other countries and the procedures followed.

173. **GRETA urges the Romanian authorities to take additional steps to improve the current institutional and procedural framework for the repatriation and return of victims of THB, with due regard to their safety, dignity and protection and, in the case of children, by fully respecting the principle of the best interest of the child and making an appropriate risk assessment prior to their return. Particular attention should be paid to ensuring financial means for the travel of victims of THB.**

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

a. Substantive criminal law

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

175. The Anti-Trafficking Law contains several provisions prohibiting the offence of THB, as well as other THB-related offences. According to the Romanian authorities, the new Criminal Code (CC), adopted in 2009, should enter into force in 2013. The Romanian authorities have indicated that the offences set forth in the Anti-Trafficking Law will be replaced by the corresponding offences of the new CC once it enters into force, without any ramifications for the application of those provisions. GRETA notes that although the provisions of the new CC concerning trafficking in human beings are not completely identical in their formulation to those laid down in the Anti-Trafficking Law, they are identical in substance. GRETA notes in particular that the provision on THB of the new CC states that the victim's consent does not exonerate the offender from criminal liability, as it is stated in Article 16 of the Anti-Trafficking Law.

176. Article 12 of the Anti-Trafficking Law prohibits trafficking in persons. It provides for an imprisonment sentence of three to 10 years and the interdiction of certain rights. Before the changes brought to the Anti-Trafficking Law in 2010, the imprisonment sentence was from three to 12 years. Article 12(2) provides for imprisonment of five to 15 years, if one of the following aggravating circumstances is present: when the offence is committed by more than two perpetrators; if the victim sustains grievous bodily or mental harm; when the offence is committed by a public official while performing his/her duties. The envisaged penalty is from 15 to 25 years imprisonment in case the offence resulted in the victim's death or suicide. GRETA is not aware of the existence of a provision under Romanian law which establishes as an aggravating circumstance deliberately or by gross negligence endangering the life of the victim when committing the offence of THB, as provided for in Article 24(a) of the Convention.

177. Pursuant to Article 13 of the Anti-Trafficking Law, trafficking in children is punished by imprisonment from five to 15 years and the interdiction of certain rights. The aggravating circumstances include those contained in Article 12(2), as well as the use of threats, violence or other forms of coercion, and the offence being committed by a family member. The penalties are respectively increased (e.g. from seven to 18 years of imprisonment for the aggravating circumstances stipulated in Article 12(2); from 15 to 25 years of imprisonment in case the offence resulted in the victim's death or suicide).

178. Pursuant to Article 15(1) of the Anti-Trafficking Law, an attempt to commit the offences set out in Articles 12 and 13 is also punishable.

179. In addition, Article 17 and 18 of the Anti-Trafficking Law provide for the prohibition of "offences related to trafficking in persons". Article 17 stipulates that "the act of knowingly inducing, or directly or indirectly facilitating, the entry or stay in the country's territory of a non-national in a trafficking situation as established in accordance with this law: a) by use of fraudulent means, violence or threats or other forms of coercion, or b) by the abuse of a position of vulnerability of a person due to his/her illegal entry or stay in Romania, pregnancy, disease and physical or mental disability, shall be regarded as a criminal offence and shall be punishable by the same sanctions as those established for trafficking in person offences". Article 18(1) punishes child pornography with an imprisonment sentence of three to 10 years.

180. For all offences foreseen in the Anti-Trafficking Law, any proceeds generated or property obtained through committing them, or which have been used to commit them, are subject to seizure. Means of transportation used to transport victims and real estate employed to accommodate them shall be regarded as property used to commit the offence (Article 19 of the Anti-Trafficking Law).

181. Under Article 329(2) of the CC, the act of recruiting a person for prostitution or the act of trafficking persons for this purpose, as well as that of coercing a person to practice prostitution, are punished by imprisonment from three to 10 years and the prohibition of certain rights. When this offence is committed against a minor, the imprisonment foreseen is from five to 18 years with the prohibition of certain rights (Article 329(3) of the CC). Further, Article 329(4) of the CC provides for the possibility of confiscating money, valuables or any other assets that served in or were obtained from the commission of the offence. According to a decision of the High Court of Cassation issued in 2007, the difference between Article 329 of the CC and the Anti-Trafficking Law resides in the element of coercion. GRETA notes, however, that Article 329 of the CC makes explicit reference to trafficking in human beings, and considers that the co-existence of the provisions of the Anti-Trafficking Law and Article 329 of the CC could be confusing¹⁹. GRETA also notes that there is a difference in the penalties envisaged in the case of child trafficking for the purpose of prostitution: up to 15 years under Article 13 of the Anti-Trafficking Law and up to 18 years under Article 329(3) of the CC.

182. Following amendments to the Anti-Trafficking Law in December 2010, the knowing use of services of trafficked persons is criminalised under Article 14¹. The penalty envisaged is an imprisonment sentence of six months to three years or a fine, if the act does not constitute a more serious offence. GRETA welcomes the introduction of the criminalisation of the knowing use of services of trafficked persons. According to information provided by the Romanian authorities, there have been no prosecutions under this relatively new provision.

183. As far as criminalisation of acts relating to travel or identity document is concerned, Article 24 of the Emergency Government Ordinance n° 97/2005 relating to identity documents stipulates that if someone who is not authorised to do so gives, receives or asks for an identity document as a means of guaranteeing the providing of a service, the transfer of assets or values, or the payment of debts is punished by a contravention fine of 17 to 35 euros. In the case the document is a passport, the fact for a person who is not authorised to do so of retaining it is punished by a fine of 70 to 115 euros under Article 20(3) of Law No° 248/2005 on the Regime of Free Movement of Romanian Citizens. **GRETA considers that the Romanian authorities should review the legislation, with a view to establishing as criminal offences all acts related to travel or identity documents as provided for in Article 20 of the Convention.**

184. The CC was modified in 2006 in order to introduce the criminal liability of legal persons (Article 19), which also applies to THB-related offences. The sanctions foreseen are a fine, dissolution of the legal entity, closing down of its activities, prohibition of participation in tender procedures, and obligation to publish the sentence convicting the legal person. However, GRETA understands that this provision has very rarely been applied and, in particular, there have been no cases of application for THB-related offences. The Romanian authorities have indicated that they are currently reviewing the relevant criminal law provisions with a view to improving their efficiency. GRETA wishes to stress the particular importance of such a review in view of reports concerning recruitment companies based in Romania which have been involved in trafficking of Romanian citizens abroad (see paragraphs 111 and 196). **GRETA considers that the Romanian authorities should explore the reasons why no legal entities have been punished for trafficking-related acts and, in the light of their findings, take the necessary measures to ensure that the liability of legal entities can be acted upon in practice.**

185. Further, **GRETA considers that the Romanian authorities should review the criminal law provisions concerning THB, as well as those establishing THB-related offences, by conducting a thorough and comprehensive assessment of their effectiveness. The Romanian authorities should be prepared to review, on the basis of such an assessment, the content and/or the application of the relevant provisions, with a view to addressing any shortcomings and/or inconsistencies identified. In particular, the authorities should ensure that all the aggravating circumstances provided for in Article 24 of the Convention are reflected.**

¹⁹ See UNICEF, Interministerial Working Group for the Coordination and Assessment of Activities to Prevent and Combat Trafficking of Human Beings, *Report on the Evaluation of Anti-trafficking Policies in Romania*, p. 95.

186. In addition, GRETA considers that law enforcement officials, prosecutors and judges should be adequately trained on the criminal law provisions applicable to THB-related offences, notably on changes brought to them, such as the criminalisation of the knowing use of service of victims of THB and the criminal responsibility of legal persons.

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

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

188. In Romania, both prostitution and begging are considered as criminal offences. However, Article 20 of the Anti-Trafficking Law (which was amended in 2010) stipulates that a trafficked victim, who, as a result of his/her exploitation, has committed the offence of prostitution, begging, crossing the border illegally or giving organs, tissues or cells of human origin shall not be punished. GRETA welcomes the presence of this provision in the Anti-Trafficking Law. According to the Romanian authorities, this provision is being applied, but GRETA has not been provided with any examples of its application in practice.

189. While it is true that the offences generally concerned by the non-punishment principle are those likely to be directly connected to the exploitation (e.g. prostitution, begging), GRETA underlines that the non-punishment provision could also concern other offences than the ones foreseen in Article 20(1), such as destroying an identity document when they have been committed by victims of trafficking to the extent that they have been compelled to. In this respect, the Romanian authorities have pointed out the more general provision of Article 46 of the CC, according to which the criminal character of the deed is not constituted in the case of physical constraint the perpetrator could not resist or, in the case of moral constraint resulting from a threat of a serious danger for the perpetrator or anyone else. In such cases, pursuant to Article 10 of the CC (see footnote 17), the prosecutor would be prevented from initiating a criminal action. The Romanian authorities have indicated that they do not collect data on the application of Articles 10 and 46 of the CC, which would make it possible to know whether these provisions have been applied in respect of victims of THB.

190. GRETA welcomes the inclusion of the non-punishment provision in the Romanian Anti-Trafficking Law and **considers that the Romanian authorities should assess the implementation of Article 26 of the Convention by the judicial and other relevant authorities. The Romanian authorities should be prepared to review, on the basis of such an assessment, the content and/or the application of the relevant provisions, with a view to addressing any shortcoming identified. GRETA would like to be kept informed of the outcome of this assessment.**

c. Investigation, prosecution and procedural law

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

192. As noted in paragraphs 29 and 32, the Department for Countering Trafficking in Persons within the Police and the Directorate for Investigating Organised Crime and Terrorism (DIOCT) within the Prosecutor's Office attached to the High Court of Cassation and Justice are specialised in investigating THB cases. According to the Romanian authorities, 329 persons were prosecuted for trafficking in 2008 and 187 of them were convicted, the imprisonment terms ranging from one to five years as regards 64 people, and from five and 10 years concerning 76 people. In 2009, 1 397 persons suspected of committing trafficking-related offences were investigated; 262 of them were prosecuted and there were 183 convictions. Of those, 72 persons received a prison sentence of between one and five years, 64 received a prison sentence of between five and 10 years, and one person was sentenced to over 15 years in prison. In 2010, 2 038 people were investigated, 415 were prosecuted and there were 203 convictions. Of these, 65 persons were sentenced to between one and five years imprisonment, 63 to between five and 10 years imprisonment, and 17 to between 10 and 15 years imprisonment. In 23 cases, the sentence was suspended with supervision, and in 30 cases, the sentence was suspended with probation. GRETA welcomes the efforts of the Romanian authorities and **encourages them to prioritise the identification of gaps in the investigation procedure and the presentation of cases in court, with a view to ensuring that THB-related offences are investigated and prosecuted effectively, leading to proportionate and dissuasive sanctions.**

193. As regards special investigation techniques to investigate THB offences, Law No. 508/2004 allows the DIOCT to use recordings of phone conversations, audio-video recordings, identification and location of GPS services, undercover investigators, collaborators of justice or informants, access to computer systems, and bank account surveillance. There are also provisions on special investigation techniques in the Anti-Trafficking Law (Article 22 on undercover investigators, and Article 23 on surveillance of telecommunication systems). All these provisions apply alongside the more general provisions set out in the Code of Criminal Procedure (Articles 91⁴¹ to 91⁴⁵).

194. Article 23(3) of the Convention requires Parties to adopt such legislative and other measures as may be necessary to enable them to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences related to THB or property the value of which corresponds to such proceeds. In Romania, Article 118 of the CC and Article 19 the Anti-Trafficking Law provide for the possibility to confiscate assets. According to information provided by the Romanian authorities, there have been some cases of traffickers' assets being seized and confiscated. That said, GRETA notes that there are some weaknesses in the system of confiscation of assets, in particular due to the limited confiscation powers which have a negative impact on confiscations of assets for THB-related offences, and problems in the practical implementation of the confiscation provision by the judicial authorities²⁰. GRETA recalls that the confiscation of criminal assets, which requires as a prerequisite to detect, identify and seize the illegal assets at the time of the criminal investigations and to have adequate procedures to do so, is crucial as a way of reinforcing the effect of the penalty, as well as ensuring the payment of compensation to the victim. **GRETA invites the Romanian authorities to review the system of confiscation of assets in order to reinforce its effective implementation to THB-related offences.**

195. The Romanian authorities have referred to the case of a police officer who is currently being investigated for possible involvement in trafficking of children for the purpose of sexual exploitation; the officer in question has been dismissed while the criminal investigation is ongoing. GRETA has received information about other cases of possible involvement of police officers or other public officials in THB or corruption in connection with THB. If such cases are not effectively investigated and prosecuted, the trust in the institutional and legal framework for combating THB will be undermined. **GRETA urges the Romanian authorities to investigate any reports of alleged involvement of public officials in THB-related offences or corruption in connection with THB, and to take additional steps to prevent such acts.**

²⁰ See, for instance, the Report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism, SEC(2011) 968 final, Brussels, 20.7.2011, COM(2011) 460 final, p. 3

196. Further, GRETA has received reports according to which certain recruitment agencies have been involved in trafficking cases. The Romanian authorities have not provided GRETA with information on the regulations applicable to recruitment agencies in respect of work abroad or on the steps taken to ensure compliance with those regulations. **GRETA urges the Romanian authorities, including the entities responsible in the field of ensuring respect of the labour legislation, to conduct proactive investigations concerning THB for the purpose of labour exploitation.**

d. Protection of witnesses and victims

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

198. Under Romanian law, if a victim of trafficking agrees to co-operate with the authorities as a witness, he/she may benefit from special protection as provided for in Law No. 682/2002 on the Protection of Witnesses. This special protection, which is provided by the Office of the National Witness Protection Service, includes measures such as new identity and change of residence. The Romanian authorities have not provided GRETA with information on the number of victims of trafficking who benefited from the special protection programme in 2008, 2009 and 2010. In practice, only a few victims of trafficking have benefited from it (according to the NATP annual reports, four victims in 2006 and two victims and their families, in 2007). NGOs involved in protecting victims of trafficking have stressed the need to make more use of this possibility.

199. In addition to the above-mentioned law, provisions concerning the protection of witnesses and victims during proceedings are contained in the Anti-Trafficking Law and the CCP. The Anti-Trafficking Law provides, *inter alia*, for hearings in camera to protect witnesses, particularly minors. It also provides for the questioning of minors under the age of 14 in the presence of a relative or psychologist.

200. While the law allows for the protection of the identity of witnesses in criminal cases against traffickers, it seems that a victim of THB who would like to take part in the proceedings as injured party in order to obtain compensation cannot benefit from anonymity. This situation sometimes obliges a victim to opt for acting as a witness for fear of reprisals. Solutions should therefore be found to reinforce the level of protection of injured parties during trial.

201. GRETA was informed that in some cases, traffickers manage to threaten their victims even when the traffickers are in detention or during court hearings, a factor which discourages victims from maintaining their statements before courts or from asking for compensation. While the law provides for physically separating the defender and the victim where necessary to protect the latter, it seems that not all court rooms are provided with the appropriate equipment. Solutions should be found to make full use of the possibility of testifying anonymously and not in the presence of the accused party. In general, the protection of victims of THB needs to be better guaranteed before, during and after the trial, but also in the absence of any criminal proceedings (e.g. when the traffickers have not been identified). Finally, it is important to take measures to avoid re-traumatising victims, including by shortening the time during which they are involved in the court procedure.

202. GRETA notes that in 2010 the provision stipulating that physical protection shall be guaranteed for victims of THB at the request of the judicial authorities was extended to also cover members of groups and associations providing victims with assistance. **GRETA welcomes the new provision in the Anti-Trafficking Law extending the physical protection to members of the NGOs assisting victims of THB and invites the Romanian authorities to adopt the secondary legislation necessary for its enforcement as soon as possible.**

203. **Further, GRETA urges the Romanian authorities to reinforce measures for protecting victims of trafficking, with due regard to the special situation of child victims, regardless of whether or not they have agreed to participate in criminal proceedings. For those who agree to co-operate, the authorities should ensure that full use is made of the special protection measures provided for in the law, in order to afford maximum protection to victims/witnesses. The Romanian authorities should also envisage reviewing the legislation on protection of persons participating in criminal proceedings, in order to ensure that not only witnesses, but also injured parties are adequately protected.**

5. Concluding remarks

204. GRETA welcomes the efforts made by the Romanian authorities to combat THB both before and after ratifying the Council of Europe Anti-Trafficking Convention. These efforts have included the setting up of the legal and institutional framework for combating THB in the areas of prevention, protection and prosecution, the establishment of the National Agency against Trafficking in Persons and its 15 regional centres, and the introduction of a National Identification and Referral Mechanism.

205. That said, GRETA considers that the Romanian authorities should take further steps to ensure that the human rights-based and victim-centred approach underpinning the Convention is fully reflected and applied in the national policy to combat THB, from prevention to protection, prosecution and redress.

206. GRETA concludes that in the field of prevention, significant efforts have been made by the NATP itself or in co-operation with national and international NGOs and intergovernmental organisations. It notes, however, that while research is carried out and data are being collected on the phenomenon of THB in Romania, allowing for the Romanian authorities and particularly the NATP to gain a good understanding of the overall situation, this information is not sufficiently used to develop new policies or adapt measures to the new trends observed. This includes taking measures to strengthen the aspect of prevention amongst groups vulnerable to THB, and changing negative social attitudes towards trafficking victims and particularly Roma victims.

207. In the field of assistance and protection, the provisions of relevant legislation and in particular the Anti-Trafficking Law are satisfactory, even if, in some cases, the provisions could be further harmonised, clarified and/or complemented. However, too many of the relevant provisions, for instance as regards victims' access to health care and appropriate accommodation, are not implemented in practice. GRETA stresses that the principle according to which the assistance and protection of victims of trafficking should not be made dependent on their co-operation with the authorities should be fully implemented.

208. In the field of prosecution of traffickers, while the Romanian authorities have achieved some positive results as concerns prosecutions and convictions, GRETA considers that there is a need to review the criminal law provisions and practice, with a view to ensuring that a victim-centred approach is followed. To guarantee the human rights of victims, they should be protected and assisted before, during and after the criminal proceedings. Effective access to compensation and legal redress for victims of THB should also be a priority for the Romanian authorities. It is therefore important that all relevant officials and other actors in the fight against THB are sensitised to the fact that THB is a serious human right violation and that victims need to be duly protected. The human rights dimension of action against THB should be reflected in all relevant training, education and awareness-raising activities carried out by the Romanian authorities.

209. GRETA invites the Romanian authorities to keep it regularly informed of developments as regards the implementation of the Council of Europe Anti-Trafficking Convention and looks forward to continuing its good co-operation with the Romanian Government for achieving the purposes of this Convention.

Appendix I: List of GRETA's proposals

Core concepts and definitions

1. GRETA considers that the Romanian authorities should adapt the relevant secondary legislation, including the provisions of the National Identification and Referral Mechanism, in order to ensure that the legal definition of victim of THB, and its application in practice, are fully in line with the definition set out in the Anti-Trafficking Convention. The authorities should also notify all the parties concerned of the content of the definition in the Anti-Trafficking Law.

Comprehensive approach and co-ordination

2. GRETA considers that the Romanian authorities should adopt as a matter of priority the new anti-trafficking strategy.

3. GRETA also considers that the Romanian authorities should:

- reinforce co-ordination and co-operation between governmental bodies, as well as between the central government and local authorities, with a view to ensuring that all aspects of trafficking and all parts of Romania are integrated in the efforts undertaken to combat THB;
- systematically invite NGO representatives to participate in the meetings of the Inter-Ministerial Working Groups on Combating THB and involve them in the development of anti-trafficking policies.

4. GRETA urges the Romanian authorities to ensure that the NATP is allocated sufficient human and financial resources, enabling it to accomplish its different tasks in the most efficient way.

5. GRETA also encourages the Romanian authorities to take measures to allocate and secure appropriate funds in the central budget and the budgets of the local authorities dedicated to action against THB, in consultation with all relevant actors, and reflecting the actual needs.

6. Moreover, GRETA invites the Romanian authorities to introduce, in addition to the governmental reports on the implementation of the national anti-trafficking strategies, a periodic independent evaluation as a tool for assessing the impact of these activities and for planning future policies and measures to combat THB.

Training of relevant professionals

7. GRETA invites the Romanian authorities to design future training programmes with a view to improving the knowledge and skills of relevant professionals, which enable them to identify victims of trafficking and to assist and protect them, by placing a particular emphasis on multidisciplinary training sessions for law enforcement officials and judges. Training should also be provided to staff working in shelters for adult and child victims, as well as staff working with children in difficult situations or under institutional care.

8. GRETA also considers that during the training particular attention should be paid to overcoming entrenched negative attitudes and prejudices vis-à-vis victims of trafficking, including those of Roma origin.

9. As regards training for law enforcement officials, GRETA considers that the Romanian authorities should aim at developing skills for proactive investigative work, particularly in the field of THB for the purpose of labour exploitation.

Data collection and research

10. GRETA considers that the Romanian authorities should pursue their efforts in improving the collection of statistical data on compensation granted to victims of THB. Further, the Ministry of Justice should analyse the data collected on investigations, prosecutions and convictions. This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection.

11. Further, GRETA considers that the Romanian authorities should continue to support research on THB-related issues as an important source of information for future policy measures. Areas where research is needed include national trafficking, trafficking in men and trafficking of foreigners for the purpose of labour exploitation.

International co-operation

12. GRETA considers that the Romanian authorities should step up their efforts to reinforce co-operation with trafficking destination countries in the areas of prevention, protection of victims and prosecution of perpetrators of trafficking, on the basis of existing mechanisms and by introducing further procedures wherever this proves necessary.

Measures to raise awareness

13. GRETA considers that future action in the area of awareness raising should be designed in the light of the assessment of previous measures and focused on the needs identified. In this context, measures should be taken to combat stereotypes and prejudice towards victims of THB, in particular women and Roma. The Romanian authorities should also continue to raise public awareness on the question of equality between women and men and the principle of non-discrimination as a preventive measure against THB.

14. GRETA invites the Romanian authorities to continue their efforts to discourage demand for services from trafficked persons by targeting, in particular, the most common forms of THB in the country.

Social, economic and other initiatives for groups vulnerable to THB

15. GRETA considers that efforts to prevent trafficking should be stepped up as part of a long-term approach aimed at tackling the root causes of trafficking, especially through fostering access to education and jobs for vulnerable groups, particularly women and Roma.

16. GRETA also considers that the Romanian authorities should pursue their efforts to strengthen the prevention of trafficking in children, particularly through the recording of all children in the civil status register and by finding solutions for children left behind by their parents who have gone abroad to work, as well as street children.

Border measures to prevent THB

17. GRETA considers that the Romanian authorities should make further efforts to detect cases of THB in the context of border control measures as well as to reinforce the security of identity, visa and travel documents to prevent and detect trafficking.

18. GRETA considers that the Romanian authorities should continue to raise public awareness of the dangers of transnational trafficking.

Identification of victims of trafficking in human beings

19. GRETA considers that the Romanian authorities should provide the Border Police with all necessary human and financial resources to ensure that it can duly play its role in the identification and referral of victims of THB. In particular, they should envisage the appointment of specially trained border police officers whose task would be to deal with THB cases and, among others, to identify victims and refer them to the adequate institutions.

20. GRETA considers that the Romanian authorities should pay more attention to the identification of foreign nationals who could be subject to THB and provide training of relevant staff in this respect.

21. GRETA also considers that the Romanian authorities should take steps to spread knowledge of the NIRM and ensure that all relevant professionals are trained to apply it, including those who are likely to carry out an informal identification of victims. In addition, police officers who are not specialised in combating THB should be trained in the identification of victims of THB, in particular officers working in the local and rural police.

Assistance measures

22. GRETA urges the Romanian authorities to step up their efforts to provide assistance to victims of trafficking, and in particular to:

- review the system of shelters for victims of trafficking, with a view to assessing, in co-operation with relevant members of civil society, victims' needs in relation to the services currently provided, and to take all necessary measures to ensure that these needs are met throughout Romania, and in particular in Bucharest, for all categories of victims of THB;
- ensure the quality of the services delivered in all state-run shelters;
- ensure that all assistance measures provided for in law, including access to health care, are guaranteed in practice; when assistance is delegated to NGOs as service providers, the state has an obligation to provide adequate financing and to ensure the quality of the services delivered;
- ensure that assistance measures provided for in law are not made, in practice, dependent on the victims' willingness to co-operate with law enforcement agencies;
- facilitate the reintegration of victims of trafficking into society and avoid re-trafficking by providing them with access to education and vocational training, as well as access to the labour market.

Recovery and reflection period

23. GRETA invites the Romanian authorities to review the legislation, in order to ensure that a minimum period of at least 30 days is clearly established in the Anti-Trafficking Law regarding the recovery and reflection period, as requested in Article 13 of the Convention.

24. GRETA urges the Romanian authorities to ensure that presumed victims of THB and relevant officials are systematically informed of the possibility of a recovery and reflection period and that such a period should be effectively granted.

Residence permits

25. GRETA considers that the Romanian authorities should take steps to ensure that victims of THB can take full advantage of the right to be granted a temporary residence permit.

26. GRETA also encourages the Romanian authorities to consider granting temporary residence permits to victims who, for various reasons, do not co-operate with the competent authorities or when the conditions for carrying out criminal law proceedings are not met, for reasons which have nothing to do with the situation of the victim.

Compensation and legal redress

27. GRETA urges the Romanian authorities to increase their efforts to provide information to victims of THB about their right to compensation and the ways to access it, and to ensure that victims have effective access to legal aid in this respect.

28. Further, GRETA urges the Romanian authorities to ensure that victims of trafficking can effectively exercise their right to claim compensation from the perpetrators.

Repatriation and return of victims

29. GRETA urges the Romanian authorities to take additional steps to improve the current institutional and procedural framework for the repatriation and return of victims of THB, with due regard to their safety, dignity and protection and, in the case of children, by fully respecting the principle of the best interest of the child and making an appropriate risk assessment prior to their return. Particular attention should be paid to ensuring financial means for the travel of victims of THB.

Substantive criminal law

30. GRETA considers that the Romanian authorities should review the legislation, with a view to establishing as criminal offences all acts related to travel or identity documents provided for in Article 20 of the Convention.

31. GRETA considers that the Romanian authorities should explore the reasons why no legal entities have been punished for trafficking-related acts and, in the light of their findings, take the necessary measures to ensure that the liability of legal entities can be acted upon in practice.

32. Further, GRETA considers that the Romanian authorities should review the criminal law provisions concerning THB, as well as those establishing THB-related offences, by conducting a thorough and comprehensive assessment of their effectiveness. The Romanian authorities should be prepared to review, on the basis of such an assessment, the content and/or the application of the relevant provisions, with a view to addressing any shortcomings and/or inconsistencies identified. In particular, the authorities should ensure that all aggravating circumstances provided for in Article 24 of the Convention are reflected.

33. In addition, GRETA considers that law enforcement officials, prosecutors and judges should be adequately trained on the criminal law provisions applicable to THB-related offence, notably on changes brought to them, such as the criminalisation of the knowing use of service of victims of THB and the criminal responsibility of legal persons.

Non-punishment of victims of trafficking in human beings

34. GRETA considers that the Romanian authorities should assess the implementation of Article 26 of the Convention by the judicial and other relevant authorities. The Romanian authorities should be prepared to review, on the basis of such an assessment, the content and/or the application of the relevant provisions, with a view to addressing any shortcoming identified. GRETA would like to be kept informed of the outcome of this assessment.

Investigation, prosecution and procedural law

35. GRETA encourages the Romanian authorities to prioritise the identification of gaps in the investigation procedure and the presentation of cases in court, with a view to ensuring that THB-related offences are investigated and prosecuted effectively, leading to proportionate and dissuasive sanctions.

36. GRETA invites the Romanian authorities to review the system of confiscation of assets, in order to reinforce its effective implementation to THB-related offences.

37. GRETA urges the Romanian authorities to investigate any reports of alleged involvement of public officials in THB-related offences or corruption in connection with THB, and to take additional steps to prevent such acts.

38. GRETA urges the Romanian authorities, including the entities responsible in the field of ensuring respect of the labour legislation, to conduct proactive investigations concerning THB for the purpose of labour exploitation.

39. GRETA invites the Romanian authorities to adopt, as soon as possible, the secondary legislation necessary for the enforcement of the new provision in the Anti-Trafficking Law extending physical protection to members of the NGOs assisting victims of THB.

40. Further, GRETA urges the Romanian authorities to reinforce measures for protecting victims of trafficking, with due regard to the special situation of child victims, regardless of whether or not they have agreed to participate in criminal proceedings. For those who agree to co-operate, the authorities should ensure that full use is made of the special protection measures provided for in the law, in order to afford maximum protection to victims/witnesses. The Romanian authorities should also envisage reviewing the legislation on protection of persons participating in criminal proceedings, in order to ensure that not only witnesses, but also injured parties are adequately protected.

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

Public bodies

- Ministry of Administration and Interior
- Ministry of Justice
- Ministry of Foreign Affairs
- Ministry of Education and Research
- Ministry of Labour, Social Solidarity and Family
- Directorate for Investigating Organised Crime and Terrorism within the Prosecutor's Office attached to the High Court of Cassation and Justice
- Police Academy
- School of Magistrates
- National Agency for Employment
- National Agency for Roma
- National Agency for Equal Opportunities between Women and Men
- Galati County Council
- Galati Regional Centre of the National Agency against Trafficking In Persons
- Galati Regional Directorate for Child Social Assistance and Protection

Intergovernmental organisations

- IOM Bucharest

Non-governmental organisations

- ADPARE (The Association for Developing Alternative Practices for Reintegration and Education)
- AIDRom (The Ecumenical Association of Churches in Romania)
- Caritas Bucharest Association
- Generatie Tanara
- Reaching out
- Terre des hommes Foundation, Romania Delegation

Government's comments

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

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

The Convention requires that "the report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned." GRETA transmitted its final report to the Romanian authorities on 5 April 2012 and invited them to submit any final comments within one month. The Romanian authorities' comments, submitted on 4 May 2012, are reproduced hereafter.



ANSWER
of the Romanian authorities
on the Report concerning the implementation of
the Council of Europe Convention on Action
against Trafficking in Human beings by Romania,
prepared by the Council of Europe – GRETA¹

¹ According to Article 36 of the Convention, the Group of experts on action against trafficking in human beings (GRETA) was established to monitor the implementation of this Convention by the Parties. GRETA is currently composed of 13 members (one member being a Romanian citizen), elected from among applications submitted and participation in the 5 and 8 December 2008 selection sessions in accordance with the [*Resolution CM/Res\(2008\)7 on rules on the election procedure of the GRETA members.*](#)



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The Report prepared by GRETA reflects the situation in Romania with regard to the implementation of the Convention from the perspectives of major responsible institutions at national level. The following observations and additional remarks have been made in relation to the Report contents:

Paragraphs 63, 20 of the GRETA Report. It is more appropriate to speak not of a „delay” in developing the National Strategy against Trafficking in Persons (SNITP), but of a judicial and institutional process governed by specific rules on drafting public policies that subsumes a logic of the steps to be followed for the preparation, submission and adoption, by way of legislative regulation, of the final document containing the Strategy and the Action Plan for its implementation. There was a plan of work for the elaboration of the project SNITP, which included a review of the effectiveness of the old strategy, the quality of the objectives carried out, the impact of individual and interinstitutional action etc. Time consumption for the preparation of SNITP is driven by:

- the duration of the inter-institutional consultations organized by ANITP, with the participation of all public institutions and civil society organizations. Points of view and institutional and multidisciplinary perspectives have been analyzed and debated in several working and consultative meetings reserved to a few subdomains: combating trafficking in persons, prevention of and assistance to victims, all having as starting point the evaluation results of the implementation of the previous strategy, but especially the sharp growth of the phenomenon of trafficking in persons in recent years. A thematic group was reserved for the consultation of NGOs working in the field, with a view to add the perspective of civil society to the Strategy.
- consultation of the national strategies of the EU Member States in the field;
- the need for integration of the European perspective into the philosophy and contents of SNITP 2012-2016. This was possible through the analysis of the provisions of Directive No. 36/2011 of the European Parliament and of the Council on preventing and combating trafficking in persons and protecting its victims;
- the need to assess the results of the implementation of the previous strategy, which allowed to identify not only those objectives and actions that have led to significant progress, but also weaknesses for which the new strategy identifies and proposes objectives and actions geared to the realities of the dynamics of the phenomenon of trafficking in persons in recent years. This process has consumed almost one year under the conditions of interinstitutional consultation, through the mediation of a questionnaire-based survey;
- ANITP took into account as a reference, the adoption of the EU strategy against trafficking in human beings. Delay in the adoption of this legal instrument of reference for all EU Member States was another reason why Romania's strategy remained in waiting.

Romania is essentially a country of origin for trafficking victims. The psycho-social, economic and criminal dimensions of the phenomenon of trafficking in persons require the social body a certain type of ongoing adaptation to the increasing dynamics of the phenomenon. It is for this reason that the National Strategy, through general objectives and specific actions, establishes a general framework which shall enable the national anti-trafficking mechanism to mobilize resources, multiple and coordinated actions to combat, to prevent and assist victims of trafficking in persons.



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SNITP is currently in the procedural stage of approval by the Romanian Government.

Second paragraph of the executive summary. With reference to the training of specialists, this remains one of the important dimensions that the Romanian authorities take into consideration. In 2011²², a series of initial and advanced training courses were also organized within structures and educational units of the Romanian police; the courses focused on areas relating to the prevention and combating of trafficking in persons, as well as the assistance provided to victims.

To this context, between 27 June and 5 October 2011, the Schengen Multifunctional Training Center, subordinated to the Ministry of Administration and Interior, hosted the *Intensive Course on Combating Trafficking in Persons in the Schengen Area*, with joint participation of Romanian police and border police officers.

The course was held for a total of 15 series, each series consisting of 16 students. The total number of beneficiaries was 240 students. The objectives of the course were:

- to identify factors of vulnerability and risks to become a victim of trafficking in human beings;
- the development of skills to collect data of interest in the field of trafficking in human beings;
- Knowledge of the provisions of the national identification and referral mechanism;
- Implementation of the Schengen Acquis relevant issues such as trafficking in human beings.

Fourth paragraph of the executive summary. As previously stated, according to the legislation in force, the victims of trafficking in persons may not be required to cooperate with the judicial authorities against their will. The provision of specialized assistance services is not conditional upon the victims' cooperation with the judicial authorities.

At the time of their identification, the victims of trafficking are informed that they may benefit from medical, psychological and/or legal assistance (the latter during the trial), **regardless** the victim's decision to participate or not in the context of criminal proceedings or to assist competent authorities in identifying traffickers or other casualties. Thus, depending on the victims' options and needs, the State or the non-governmental organizations shall provide them access to those services, in accordance with the legal provisions.

Fifth paragraph of the executive summary. According to the Joint Order no. 335/2008 concerning the **National Identification and Referral Mechanism (MNIR)**, a system of proactive identification, interviewing and referral of victims of trafficking have been made available to the law enforcement structures.

The approval of *MNIR* has established an official identification system for victims of trafficking or persons at high risk of victimization. The Order is being enforced by all the issuing institutions: Ministry of Administration and Interior, Ministry of Education, Research and Youth, Ministry of Health, Ministry of Labor, Family and Social Protection, National Authority for the Protection of Child Rights, Ministry of Foreign Affairs, and Public Prosecutions Department attached to the High Court of Cassation and Justice and Ministry of Justice.

²² Source: Directorate for Countering Organized Crime (DCOC).



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By virtue of MNIR, the identification of victims of trafficking represents the first stage in the identification and referral mechanism in order to determine whether an individual is in fact a victim of trafficking and, if case may be, to ensure his/her access to specialized support and protection services.

GRETA ascertained fact is well-grounded. Consequently, ANITP is currently reviewing the standard operating procedures for victims' repatriation (*Operational Standard – Repatriation of victims of trafficking* – Order no. 8030) applicable to each Romanian citizen identified as victim.

On the other hand, a careful analysis of the way in which this mechanism is being put into practice shows that, at the level of the institutions responsible with the MNIR implementation, the provisions contained in the document are not sufficiently recognized or there are some difficulties in understanding the victim identification and referral related responsibilities. It is for this reason that one of the objectives of the SNITP 2012-2016 takes into account to explicitly review the mechanism and to promote its provisions in a highly visible way, particularly through mediation of continuous training programs for specialists in all the fields concerned.

²³According to the proficiency in this field of work and, particularly, with reference to the procedures of repatriation to the country of origin of alleged victims of trafficking, the Romanian Ministry of Foreign Affairs (MAE) initiated, in 2011, the following additional steps:

- In collaboration with the National Agency against Trafficking in Persons (ANITP), MAE developed and published a guide for public information with the title "Guidelines on Trafficking in Persons". The document is posted on both MAE and diplomatic and consular missions web sites and, upon request, can be made available in print;
- Arranged a list of contact centers and structures/points that can provide assistance in the country of residence or in the areas of responsibility of the respective Romanian diplomatic and consular offices. The list contains also contact information of local authorities or NGOs working in the field of trafficking;
- Took part in the public prevention and information campaigns by supplying booklets;
- Maintained a close cooperation relationship between the diplomatic and consular offices and the national authorities and relevant NGOs in the country of residence. On the same lines with the need to improve the MNIR, ANITP assists as partner to the implementation of the *Enhancing Transnational Cooperation on Trafficking Cases in South-Eastern Europe (TRM-II) project*, financed by USAID (United States Agency for International Development) and implemented by ICMPD (International Centre for Migration Policy Development).

The project is currently in its third phase and initially had in view the development of a ***Transnational Referral Mechanism for Victims of Trafficking between Countries of Origin and Destination (MTR-UE)***. MTR adds in the MNIR philosophy, where MNIR acted as the premise for the development of the *transnational mechanism*.

Sixth paragraph of the executive summary. The improvement of procedures for granting financial compensations to victims of trafficking is stipulated as an objectif of the National Strategy in the field of Prevention, Victim Support and Fight against Trafficking in Persons.

By virtue of the Victims of Crime Protection Law, applications for financial compensation shall be forwarded to the tribunal that has jurisdiction over the victim's domicile and shall be solved by 2

²³Source: Ministry of Foreign Affairs (MAE), 19.04.2012.



judges from the Victims of Crime Financial Compensation Board, set up within each tribunal. This Board consists of two judges, elected by the General Assembly of the Tribunal's Judges for a 3 year mandate. We consider that the legal provisions in this respect are very clear and the procedure for granting such financial compensation is also expressly provided. The funds are coming from the state budget, through Ministry of Justice budget.

Concurrently, increased effectiveness of measures to support trafficking victims' access to various financial compensation categories is explicitly stipulated within objectif 2 of SNITP "To improve the quality of protection and assistance provided to victims of trafficking with a view to their social reintegration".

Seventh paragraph of the executive summary. The legal provisions concerning victims of trafficking set up a **non-punishment clause** for certain crimes committed while in a trafficking situation, as well as the elimination of the criminal aspect of the act under the conditions of vitiation of the perpetrator's intention. To date, there haven't been recorded any cases involving victims arrested or prosecuted for crimes committed while in the trafficking process.

As concerns the protection and assistance provided to victims of trafficking, they run in two ways: the social protection is provided by social services (in child cases through services operated by Directorates General for Social Assistance and Child Protection at county level), while the physical protection is conducted on a risk evaluation basis for each individual victim.

Paragraph 16. ²⁴Law no. 300/2006 to ratify the Council of Europe Convention on Action against Trafficking in Human Beings, (Warsaw 16.V.2005) could also be included.

Paragraph 18. ²⁵GRETA Report specifies only one legal instrument related to child trafficking (G.D. no. 1443/2004 on repatriation procedures for children on a foreign country unaccompanied by any adult). It is necessary that other legal documents should also be mentioned towards a more exact and clear definition of the legal coordinates according to which the protection of child victims of trafficking and children at risk of being trafficked is carried out in Romania.

Therefore, we suggest that the section should be supplemented with the following selection of child trafficking related legal instruments which, inclusively or exclusively, are relevant to child trafficking issues. In the context of the overall problem of human trafficking, child trafficking represents a significant and particular component:

- Government Decision no. 728/2010 to amend and supplement Government Decision no. 11/2009 concerning the organization and operation of the Ministry of Labor, Family and Social Protection (MMFPS) – relevant for the MMFPS/DGPC responsibilities to control the legal framework, to coordinate the methodology of activities carried out at national level in the field of child protection and to monitor the observance of the rights of the child in Romania;

- Government Decision no. 1434/2004 of organization and operation with regard to the responsibilities and the framework for the organization and operation of general directorates for social assistance and child protection (DGASPC), subsequently amended and supplemented, relevant for the

²⁴ Source: Ministry of Justice.

²⁵ Source: Ministry of Labor, Family, and Social protection – Directorate General for Child Protection, 20.04.2012.

responsibilities of DGASPC, as specialized service suppliers in respect of protection and assistance provided to all children in need, including child victims of trafficking;

- Government Decision no. 617/2004 concerning the organization and operation of the National Directorial Committee to prevent and combat child labor exploitation, subsequently amended and supplemented, relevant to the inter-institutional coordination at national level in the field of prevention and combat of child exploitation, child trafficking included;

- ANPDC Order no. 295/2005 subsequently amended and supplemented, regarding the establishment of the Child Trafficking Specialized Unit within ANPDC – the unit is currently operational within MMFPS-DGPC;

- ANPDC Order no. 294/2005 subsequently amended and supplemented, regarding the establishment of the Child Labor Specialized Unit within ANPDC – the unit is currently operational within MMFPS-DGPC;

- Government Decision no. 49/29.01.2011 to approve the Methodology framework on prevention and intervention through multidisciplinary teamwork and networking in situations of violence against children and domestic violence and the Methodology on multidisciplinary and interinstitutional intervention regarding exploited children and children at risk of labor exploitation, **child victims of trafficking**, as well as Romanian migrant children victims of other forms of violence committed on foreign soils – recent legislation, related to the new national policy on integrated prevention and fight against all forms of violence on the child, including trafficking in children and violence in the home. In the field of child trafficking, the provisions are in addition to those contained in National Identification and Referral Mechanism for Victims of Trafficking in Persons and are particularly pertinent to the interinstitutional cooperation in the field from aspects relating to prevention to the rehabilitation of child victims, including the monitoring component of observance of the rights of the child and information management.

Paragraph 37. ²⁶As the paragraph relates also to the public Authorities responsible for child protection, it is our consideration that the information contained in the Report is incomplete both in terms of the responsible public authorities, as well as their minimum powers in relation to the issue of trafficking in children.

For the reasons mentioned, we suggest that the following information should be included:

In Romania, the public authorities responsible for child protection, including child victims of trafficking and children vulnerable to trafficking, are as follows:

- At central level - Ministry of Labor, Family and Social Protection through the Directorate General for Child Protection. The MMFPS/DGPC responsibilities in the context of prevention of child trafficking and the protection of and assistance to child victims are consequential to its global institutional mission stipulated in art. 100 of Law no. 272/2004 on the protection and promotion of child rights, respectively “monitoring of compliance with the principles and rights established by this law and by the UN Convention on the rights of the child, and the coordination and control of the activities to protect and promote the rights of the child”.

These responsibilities are essentially embodied in the following tasks: regulation of the organisation and operation of prevention and special protection services intended also for child

²⁶ Source: Ministry of Labor, Family and Social Protection – Directorate General for Child Protection, 20.04.2012.



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victims of trafficking; methodological coordination of activities performed in the field of child rights protection by the Directorates General for Social Assistance and Child Protection (DGASPC) - operating under the subordination of county councils and local councils within the 6 sectors of Bucharest municipality - the Public Services for Social Assistance (SPAS) - operating under the coordination of local councils in towns and municipalities – and the child social services – operating under the authority of local councils in the rural areas.

- At local level – the public authorities responsible are the General Directorates of Social Assistance and Child Protection, established in each county, including Bucharest districts which have under their authority the whole of the residential and family services intended for children for which special protection measures outside their own families have been established under the law. In addition, protection and assistance for all children reported as victims/potential victims of a form of violence, including child victims/potential victims of trafficking in minors, enter into the direct competence of DGASPC (all instances of abuse, neglect, exploitation, trafficking in children, repatriated unaccompanied children, children returned with the family).

Paragraph 56. ²⁷We state again that the definition of „victims” expressed in the Anti-trafficking Law is applicable to all secondary legislation, because it is provided by the Law, more exactly, the primary legislation. In this respect, implicitly, without being necessary to modify the secondary legislation as a result of the new introduced definition, this applies to norms and all other secondary normative acts, even if it is adopted before the definition expressed in the Law.

Paragraph 81. ²⁸Each year the Ministry of Justice reviews the data regarding investigations, prosecutions and convictions in THB cases, DIOCT being the only structure to conduct prosecution and convictions in THB cases. The minister of justice supervises the activity of the entire Public Ministry, as the prosecutors are working under the authority of the minister. This review is conducted annually and the minister attends the annual reports presented by the General Prosecutor of Romania and the chief prosecutors of DIOCT and DNA, making general recommendations for crime prevention. All reviews are carried out in accordance with the legal provisions regarding the protection of personal data.

Paragraph 84. ²⁹Law no. 302/2004 on international judicial cooperation in criminal matters refers to various institutions which may become applicable to international judicial cooperation in the fight against trafficking in human beings: extradition, European Arrest Warrant, mutual legal assistance (including modern forms such as videoconference and covert investigations) transfer of sentenced persons, transfer of procedures, freezing and confiscation orders etc. Art. 10 of the same law establishes also the central authorities for international judicial cooperation in criminal matters: the Ministry of Justice and the Prosecutor's Office attached to the High Court of Cassation and Justice. We need to stress that the Romanian judicial authorities, at least in the EU Member-States, make use, to the fullest extent, of direct contacts, as long as the EU instrument allows it.

²⁷ Source: Ministry of Justice, 19.04.2012.

²⁸ Source: Ministry of Justice, 19.04.2012.

²⁹ Ibidem 9.

In its capacity as central authority, the Romanian Ministry of Justice has encountered a significant number of international judicial cooperation requests related to trafficking in human beings. The European Arrest Warrants for example, whether active or passive, are frequently used in order to surrender perpetrators of THB offences. Letters rogatory are also encountered. Countries that appear most often in such applications are in Europe, such as Italy, Spain, Germany, France, United Kingdom etc. In the light of the fact that trafficking in human beings is one of the crimes constantly encountered in requests for judicial cooperation, treated by Romania as a State which issues and executes, it is proof that there is close cooperation between prosecutors and judges of our country and their colleagues from other European countries.

Paragraph 85. ³⁰To understand exactly the problem, footnote no. 11 must be supplemented by footnote no. 2: ("In particular the Convention on Protection of Children against Sexual Exploitation and Sexual Abuse; European Convention on Mutual Assistance in Criminal Matters and its additional protocols, European Convention on Extradition and its additional protocols, European Convention on the International criminal judgments; Convention on transfer of Sentenced Persons and its Additional Protocol, the European Convention on transfer of Proceedings in Criminal Matters, European Convention for compensating victims of violent crimes, and Council of Europe Convention on Cybercrime").

Paragraph 117. ³¹Also, in the Romanian legislation (G.D. no. 49/2011, Annex 2) it is required that any child victim or alleged victim of trafficking be referred to the Directorate General of Social Assistance and Child Protection, regardless of the institution or person who carried out the initial identification.

Paragraph 120. ³²The paragraph does not include procedural details on children victims of trafficking and erroneously states the necessity that any victim, major or minor, to be referred to competent territorial ANITP Regional Center.

To correct further confusion, we suggest specific reference to the fact that, in the case of child victims, they require compulsory referral to the Directorate General of Social Assistance and Child Protection with territorial competence or which corresponds to the immediate interest of the child, in order to ensure its protection as a priority, as well as the mandatory involvement in the process of referral of a representative of ANITP structures (G.D. no. 49/2011, Annex 2).

Paragraph 127. ³³Taking into account that, in Romania, protection and assistance to children in need are governed primarily by Law no. 272/2004 on the protection and promotion of the child rights, and the fact that this law is accompanied by a whole series of complementary legislation, including recent provisions relating to the protection of child victims of trafficking (GD no. 49/2011), we propose replacing the sentence "*As regards the particular child victims of trafficking, the provision of assistance is regulated by Law no. 272/2004 on the Protection and Promotion of Children's Rights*"

³⁰ Source: Ministry of Justice, 19.04.2012.

³¹ Source: Ministry of Labour, Family and Social Protection - Directorate General of Child Protection, 20/04/2012.

³² Ibidem 18.

³³ Ibidem 11.



with the following: "In particular, in terms of children victims of trafficking, protection and assistance shall be governed mainly by Law no. 272/2004 on the protection and promotion of child rights and by the additional secondary legislation in the field of child protection, being applicable to all relevant provisions of specific legislation on preventing and combating trafficking in persons.

Paragraph 130. ³⁴We ask for the rephrasing of the text, indicating the priority of emergency reception centers for children victims of abuse, neglect and exploitation, followed by transit centers. In addition, we propose to supplement the text with details of placement centers for children and foster care system, ensuring, in the framework of the national system, the medium and long-term protection of child victims who cannot be integrated in their own families.

Paragraphs 54, 142. As repeatedly mentioned before in the replies sent to GRETA at their request, under the Romanian law, assistance provided to victims of trafficking is not conditional upon their participation in criminal proceedings or judicial cooperation with whatever these institutions are (police, prosecution or the courts).

The Police is not competent to decide and does not have statutory responsibilities with regard to assisting the victims of trafficking in persons. These services are provided on the basis of the initial risk assessment and the situation specific to each of the victims of trafficking in persons conducted either by public services providers (as mentioned in details in the initial report submitted to GRETA in late August 2010) or by NGOs. ANITP has only limited competence to carry out the risk assessment, on the basis of which directs victims to specialized service providers

Paragraph 59. ANITP is not a provider of assistance, protection and reintegration services for the victims of trafficking in persons. ANITP responsibilities in this regard are limited to: identifying victims, participation in the process of their repatriation, making the initial revictimization risk assessment, referring victims to specialized assistance service providers and monitoring of these services on the basis of national standards of quality for assisting the victims of trafficking in persons.

Paragraph 64. As stated on many occasions, Romanian NGOs usually attend the Interministerial Working Group (IWG) meetings and participate in the anti-trafficking policy development. Moreover, secondary legislation contains provisions specifically relating to the Romanian NGO involvement and responsibilities in the areas of prevention of trafficking in persons and provision of specialized services to assist such victims.

By way of example, several NGOs were invited and participated in the IWG meetings in 2010, meetings that took as central theme the preparation and compilation of replies to the GRETA questionnaire on the implementation, by Romania of the CoE Convention on Action against Trafficking in human beings.

Several NGOs also participated in the working groups for drafting the National Strategy against Trafficking in Persons 2012 to 2016.

³⁴ Source: Ministry of Labour, Family and Social Protection - Directorate General of Child Protection, 20/04/2012.

Paragraph 67. In the spirit of ensuring periodic independent evaluations, the National Strategy against Trafficking in Persons foresees the establishment of the National Rapporteur Institution, being able to provide high objectivity and independence in the national policies evaluation and their way of implementing.

Paragraph 74. ³⁵In addition to data previously provided, in 2011 in educational institutions and structures of the Romanian Police were organized a series of training courses, training and development courses, whose subject is part of the prevention and combating trafficking.

In the *Curriculum for the qualification of police agent advanced level for the 2010-2012* were foreseen explicit anti-trafficking aspects and related matters:

³⁶The educational process in the Police Agents Schools addresses basic training in public order, so that in this context correlation of training topics should be extended on the issue of trafficking. As the number of people receiving the initial training in the two schools, we state that the class of 2010-2012 is consisting of 1680 pupils.

Police training is achieved both at work and by attending career courses, among which we mention the courses of initiation in the police officer career, courses for changing the specialty/job profile, ability classes, specializing/training courses and training courses in foreign languages.

1. *The Courses of initiation in the police officers career* took places, for the structures within the organizational competence of the Romanian Police, in the Education and Training Police Center N. Golescu, Slatina, both in modular and compact system. The course curriculum covers a range of topics related to trafficking, such as:

- Knowledge of police operational situation;
- Investigation into police work;
- Prevention of crime and other antisocial acts;
- Types of suspicious people who may be subject to police attention;
- Tracking of groups of people and goods. Execution of European Arrest Warrant;
- Police tactical elements;
- Concepts of criminal law (offense, criminal attempt and participation, plurality of offenses, the evidence and means of evidence, collecting objects and documents, the statements of persons);
- Specific procedure of tracking flagrant crimes;
- Elements of forensic;
- Police conduct in relation to victims of crime.

2. Specializing/training courses:

- At the initiative of ANITP, in the Multifunctional Schengen Training Center, subordinated to the Ministry of Administration and Interior, were organized from 27.06 - 10.05.2011, with joint participation of Romanian Police and the Romanian Border Police, 10 series related to intensively Schengen Courses on combating trafficking in persons. Each series lasted three days, benefiting from the presence of 30 police officers from the Inspectorate General of the

³⁵ Source: DCOC.

³⁶ Source: DCOC.



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Romanian Police (19 police officers and 11 police agents). ANITP provided specialists as trainers.

- Also, in this education institution were organized in the period 10.10-02.11.2011, 4 series related to the intensively Schengen Courses on preventing and combating illegal migration, in collaboration with the Romanian Border Police. From the Inspectorate General of the Romanian Police participated 49 police officers (26 police officers and 23 police agents).

³⁷In 2011, the Romanian Ministry of Foreign Affairs (MFA), through its Training Center for Consular Personnel, continued to organize and include in the general curricula, special programs related to the trafficking in human beings (including trafficking in children). Training the consular personnel in this area of activity represents an obligation, according to the relevant legislation and to the policy orientations set out by the inter-ministerial working group in which the MFA is permanently represented. The training is carried out by specialized lecturers, in close cooperation with the competent authorities in this field, such as the National Agency against Trafficking in Persons.

Paragraph 88. The cooperation with destination countries for Romanian victims of trafficking is developing under the auspices of good partnership practice, through various means and channels, both on prevention and combating trafficking in persons and that of victim's assistance.

In the prevention of the victimization and the victim's assistance subfield, the cooperation is taking place between public institutions and NGOs in Romania and in some countries of destination or within transnational/European projects or in connection with the victims' repatriation procedures or the subsequent prevention, training or research activities, as the cooperation in the combating domain goes to law enforcement agencies in Romania and in the destination countries.

Although the cooperation with destination countries is, in general, very good, there are weaknesses in the register of victims' repatriation. Romania is seeking, together with partner countries to identify effective ways to minimize the disruption in the cooperation with destination countries in the returns. It is necessary however a greater openness from some of these MS. For example, there are cases in which ANITP does not receive enough relevant information about the victimization history of a Romanian citizen to be repatriated, fact which sometimes hinders the assistance process- starting with the destination country authorities' decision to return a victim.

³⁸As we have mentioned in our comments to the previous paragraphs, we believe that as regards the prosecution of perpetrators of trafficking there was a continuous enhancement of the efforts undertaken by the Romanian judicial authorities in the area of international cooperation. This is proven by the numerous types of requests undertaken by the Romanian authorities, no matter the typology. Of course, the international judicial cooperation in this field is not a process which goes smoothly, the transnational character of the THB offences, makes it quite difficult especially as regards the positive conflicts of jurisdiction which emerge as a consequence of parallel investigations. Analysis undertaken within the framework of the specialized directorate within the Romanian Ministry of Justice have shown the necessity of further study of judicial cooperation in criminal matters with regard to trafficking in human beings.

³⁷ Source: MFA, 19.04.2012

³⁸ Source: Ministry of Justice, 19.04.2012.



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To this end, the Romanian Ministry of Justice in partnership with relevant institutions from Germany and France launched a programme entitled “Strengthening judicial cooperation in combating trafficking in the European Union”, within the EU Criminal Justice Programme.

Through this programme, an assessment of the current legal framework from a practical point of view will be made; practical cases and scenarios will be discussed in order to identify, as previously mentioned, best practices and solutions. The programme will also be useful for training purposes of the judges and prosecutors, as at the final stage a manual on this topic will be elaborated.

Paragraph 125. In 2010, it was implemented a training program with the help of foreign experts in the project "*Strengthening the judicial authorities capacity to prosecute and investigate cases of trafficking in persons (identifying, interviewing, victim's testimony, sentencing traffickers)*", funded by EU.

The project contributed to specialise the professionals within the judicial authorities, in identifying trafficking victims, investigation and handling the cases of trafficking. 235 specialists within the structures of Romanian Police (Traffic Directorate, Rural Police Service), Gendarmerie and Ministry of Justice were trained.

Paragraph 139. As stated explicitly in the content of the document submitted to GRETA in late August 2010, The National Interest Program (PIN) supported activities aimed at recovery and socio-professional reintegration of victims assisted. Eligible applicants of funds offered by the program were only NGOs in Romania which conducted activities in assisting victims of trafficking. So not only "part" of the funds allocated to the PIN has funded victim assistance programs run by NGOs, but the entire amount was allocated to the NGOs who have won the tender organized within the program funding.

Paragraph 137. The current territorial arrangement of residential centers for adult victims of trafficking is ineffective in covering their individual needs. The residence of the person in need, one of the eligibility criteria which determines access to social services provided by local authorities, is a key factor hindering the protection and assistance for victims of trafficking in specialized centers.

The transit centers for protection and assistance of repatriated children and/or victims of trafficking do not respond only to a limited extent to their original mission, almost half of them are now closed or are in conservation status, and those existing are operating below capacity.

For these reasons, one of the specific objectives of the National Strategy against Trafficking in Persons is considering to reconfigure the services system to protect and assist victims of trafficking. The process takes time and will be achieved through: evaluating specialized victim assistance services, developing and promoting proposals for reorganization and operation of these services, modifying and completion of the regulatory framework governing the organization and operation services, as well as development and implementation of the National Interest Programme for assisting victims of trafficking.



Paragraph 78. ³⁹At the national police level are currently conducted a series of activities aimed at developing a system for monitoring and evaluating such data. As an example we mention that it has been applied the project proposal "Information and Communication System for Monitoring and Evaluation of Human Trafficking", with financial contribution from the European funds, under the "Prevention of and Fight against Crime Programme (ISEC)" in 2010 and in 2011.

Paragraph 163. ⁴⁰Ministry of Justice (MoJ) is collecting the data on compensation granted to THB victims, because MoJ is the institution paying these amounts. During the 1st quarter of 2012, MoJ started to collect more complex statistical data regarding compensations granted to victims: how many victims received compensation, in how many files, requests not accepted etc. This complex statistics will allow us to prepare analysis on victims' compensation and to explore the reasons why the amounts are so low.

Paragraph 168. ⁴¹Since the paragraph does not include the repatriation of children, victims of trafficking in persons, we propose the introduction of informing, in the terms of child trafficking, in addition to ANITP and Border Police, the diplomatic missions are obliged to inform the Directorate General of Child Protection (DGCP) within MLFSP, into taking legal steps for taking over the children by the representative under the jurisdiction of the General Social Assistance and Child Protection. The procedure is set out including in the National Mechanism for Identification and Referral of Victims of Trafficking.

Paragraph 169. As within previous paragraph (168), we consider necessary to mention the obligation to inform the Directorate General of Child Protection (DGCP) within MLFSP, into taking legal steps for taking over the children at the border by the representative under the jurisdiction of the General Social Assistance and Child Protection.

Paragraph 170. ⁴²Greta report records information from NGOs according to which there have been cases of children, victims of trafficking, where Romanian authorities, for have not ensured the receiving and referral of the victims at the border to DGCP, with the proper territorial jurisdiction.

The existence of such situations may be possible only if the competent Romanian authorities (diplomatic missions or central government authorities) have not been notified to the situation of these children by competent foreign authorities.

Romania has a very clear law in this area (GD 1443/2004 on methodology for the repatriation of unaccompanied Romanian children and provide special protection measures in their favor), which establishes procedures and clear ways of collaboration between the central and local authorities, so that every repatriated child to benefit from the support and appropriate services.

MLFSP-DGPC has no such information about children.

³⁹ Source: DCOC.

⁴⁰ Source: Ministry of Justice, 19.04.2012.

⁴¹ Source: Ministry of Labour, Family and Social Protection - Directorate General of Child Protection, 20/04/2012.

⁴² Source: ibidem 29.

Paragraph 174. ⁴³Law on application of the new Criminal Code (CC) is being debated in Parliament. The law was developed in order to correlate all legal criminal provisions of the Penal Code articles.

Paragraph 175. ⁴⁴The entry into force of the Criminal Code is provided to occur in 2013. In this regard, the Ministry of Justice, in partnership with relevant institutions from Germany and France have launched a program entitled “Strengthening judicial cooperation in combating trafficking in the European Union”, within the EU Criminal Justice Programme.

Through this programme, an assessment of the current legal framework from a practical point of view will be made; practical cases and scenarios will be discussed in order to identify, as previously mentioned, best practices and solutions. The programme will also be useful for training purposes of the judges and prosecutors, as at the final stage a manual on this topic will be elaborated.

Paragraph 181. ⁴⁵Considering the elements of difference between THB and procuring (art. 329 para 2 of the CC), the court decisions did not make confusions between the mentioned offences. The most important differentiating elements are:

- In the case of procuring, recruiting and exploitation are not done with a view to force a person to prostitute herself; the person, without any constraint, is doing that at her own will;
- In the case of THB, the constraint is seen as an essential mean of committing the offence, is part of *verbum regens* in all cases: recruiting, transporting, harboring or receipt of a person;
- In the case of procuring, the exploitation of a person resumes only to sexual exploitation, but in THB case, there are also other forms of exploitation, defined in Article 2 para. (2) of the Anti-Trafficking Law.

Paragraph 184. ⁴⁶ The reasons why no legal entities have been punished for trafficking-related cases is not a consequence of a deficient legal framework. There are other cases (e.g. money laundering, corruption cases) when legal persons were sent to trial and convicted.

Paragraph 185. ⁴⁷All the aggravating circumstances provided by the Convention in art. 24 are covered by Anti-trafficking Law and the Law no. 39/2003 on preventing and countering organized crime:

a. the offence deliberately or by gross negligence endangered the life of the victim - art. 12 para 2 let. b from Anti-trafficking Law.

Also when the THB offence is concurrent with “serious bodily harm” (art. 182 CC, which includes putting in jeopardy person’s life, also deliberately) or “bodily harm by negligence” (art. 184 CC), the courts may decide that THB is concurrent with one of the offences mentioned. In this case, we appreciate that also this aggravating circumstance is *de lege lata* covered by domestic legislation. In

⁴³ Source: Ministry of Justice, 19.04.2012.

⁴⁴ Source: Ministry of Justice, 19.04.2012.

⁴⁵ Source: Ministry of Justice, 19.04.2012.

⁴⁶ Source: Ministry of Justice, 19.04.2012

⁴⁷ Source: Ministry of Justice, 19.04.2012



such cases, the highest imprisonment penalty shall be applied, which can be increased up to its special maximum, and when this maximum is not sufficient, an increase of up to 5 years can be added.

b. the offence was committed against a child – this is a separate offence, namely trafficking of minors, art. 13 from Anti-Trafficking Law, which is punished, in the basic form, with imprisonment from 5 to 15 years and interdiction of certain rights.

c. the offence was committed by a public official in the performance of her/his duties – art. 12 para 2 let. c from Anti-trafficking Law.

d. the offence was committed within the framework of a criminal organization – the organization of THB offences is provided in art. 15 para 2 of the Anti-Trafficking Law. On the other hand, Law no. 39/2003 on preventing and countering organized crime incriminates in art. 7 para 1 the initiation or constitution of an organized criminal group, or joining or supporting in any way such a group. Para 3 of the same article provides that if the deeds stipulated in paragraph (1) have been followed by a serious offence, including THB, the rules on the concurrence of several offenses shall be applied.

Paragraph 194. ⁴⁸MoJ promoted in Parliament two important legislative initiatives covering extended confiscation and assets management:

1. Draft Law for amending and completing some normative acts with a view to improving the recovery activity of seized assets or, as the case may be, entered, according to the law, in the state's property. The draft Law was approved by the Chamber of Deputies, decisional chamber, on February 21, 2012 and became Law 28/2012, published in the Official Gazette on 22nd of March 2012.
2. Draft Law for amending and completing the Criminal Code and law no. 286/2009 on the Criminal Code, which will regulate in the internal law the extended confiscation, aims at transposing in the Romanian law art. 3 of the Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property, published in the Official Journal of the European Union L 68 from March 15, 2005. The draft Law was approved by the Chamber of Deputies, decisional chamber, on 27th of March 2012, and promulgated by the President of Romania on 17th of April. The extended confiscation shall also apply to THB offences.

Paragraph 86. ⁴⁹It is important to stress the role played by Eurojust and the EJN (European Judicial Network) as well as the PC-OC contact points which are used frequently in matters related to international judicial cooperation, including trafficking in human beings.

⁴⁸ Source: Ministry of Justice, 19.04.2012

⁴⁹ Source: Ministry of Justice.