



EVALUATION REPORT

MALTA

Third evaluation round

GRETA

Group of Experts
on Action against
Trafficking
in Human Beings

Access to justice
and effective remedies
for victims of trafficking
in human beings

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Executive summary

Since the second round of evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, Malta has continued to develop the legislative and policy framework relevant to action against trafficking in human beings. The legislation has been amended to increase the penalty for trafficking in human beings, exclude from public procurement procedures companies involved in trafficking, and strengthen trafficking victims' access to assistance. A new National Action Plan on Combatting Trafficking in Human Beings, covering the period 2020-2023, was adopted.

Malta remains primarily a country of destination for trafficked persons. During the period 2017-2020, 44 persons were formally identified as victims of THB. Trafficking for the purpose of labour exploitation was the predominant form of exploitation (77% of identified victims), followed by trafficking for the purpose of sexual exploitation.

The focus of the third evaluation round of the Convention being on trafficking victims' access to justice and effective remedies, the report analyses in detail the implementation of provisions of the Convention establishing substantive and procedural obligations relevant to this topic.

GRETA considers that the Maltese authorities should take further steps to ensure that presumed and formally identified victims of trafficking are given information in a proactive manner regarding their rights, including by developing a specific leaflet and making it available in the languages of the main countries of origin of victims.

Pursuant to the Maltese legislation, a victim of trafficking who does not have sufficient financial resources shall be provided with free legal aid during the reflection period and for the duration of the residence permit. All victims of trafficking have so far been represented by NGO lawyers who are funded through projects. GRETA considers that the Maltese authorities should strengthen their efforts to ensure that victims of trafficking receive legal assistance and free legal aid at an early stage, including by putting in place a system through the Legal Aid Agency to identify lawyers who are qualified to provide legal aid to victims of trafficking.

GRETA welcomes the fact that in 2018 the Maltese Government waived residence and work permit application fees for victims of trafficking, as well as the initiatives taken by the authorities to mitigate the risks of trafficking of migrants by facilitating their access to the labour market. However, GRETA considers that the Maltese authorities should strengthen effective access to the labour market for victims of trafficking and their economic and social inclusion.

Despite the possibilities existing in Maltese law to claim compensation, no victim of trafficking has ever been granted compensation in Malta, be it from the perpetrators or the State. While welcoming the introduction of moral damages for victims of THB in Maltese law, GRETA urges the authorities to make efforts to guarantee effective access to compensation for victims of trafficking, including by reviewing the eligibility criteria for state compensation and adding compensation to training programmes for judges and prosecutors.

In the period 2017-2020, 16 investigations were conducted into human trafficking cases. Judgments were issued in five cases, resulting mostly in acquittals of the accused. GRETA stresses that failure to convict traffickers and the absence of effective, proportionate and dissuasive sanctions undermines efforts to combat human trafficking and guarantee victims' access to justice. GRETA is also concerned that the length of criminal proceedings impacts negatively on victims of trafficking, who might be exposed to repeated confrontation with perpetrators and re-victimisation. GRETA urges the Maltese authorities to take measures to ensure that human trafficking cases are investigated proactively and lead to effective, proportionate, and dissuasive sanctions. Regular training on human trafficking should be provided to judges, members of the Attorney General's office and police officers.

There is no specific legal provision in Maltese law concerning 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, nor is there any guidance on the non-punishment principle. GRETA considers that the Maltese authorities should step up their efforts to ensure the application of the non-punishment provision in practice, not only by judges but by all actors in the criminal justice system and at as early a stage as possible.

Further, GRETA urges the Maltese authorities to review the Criminal Code with a view to ensuring that all child victims of human trafficking, including children older than 16, are afforded special protection measures and to take additional steps to build the awareness of all actors in the criminal justice system on how to avoid re-victimisation and stigmatisation of victims of trafficking.

The report also examines progress made on the implementation of previous GRETA recommendations on selected topics. While commending the efforts made since the second evaluation to prevent and combat trafficking for the purpose of labour exploitation, GRETA considers that the Maltese authorities should encourage law-enforcement officers, labour inspectors and other relevant actors to increase their outreach work to identify victims of trafficking for the purpose of labour exploitation. The authorities should raise awareness among the general public as well as, in a targeted manner, among migrant workers recruited through private employment agencies, about the risks of trafficking for the purpose of labour exploitation and the rights of victims of trafficking.

In the period 2018-2020, a significant number of asylum seekers arrived by boat from Libya in Malta. GRETA urges the Maltese authorities to take additional steps to proactively identify victims of trafficking by screening asylum seekers for indicators of trafficking upon or swiftly after their arrival in Malta.

GRETA welcomes the increase in funding for victim assistance and the setting up of a safe house for victims of trafficking. However, GRETA considers that the Maltese authorities should continue to make efforts to ensure that all presumed and identified victims of trafficking receive unconditional and timely assistance and support, according to their needs, including by providing funding to NGOs which act as service providers.

Moreover, GRETA welcomes the work underway on the setting up of a referral system for child victims of trafficking and the awareness-raising and training activities undertaken on child trafficking. Nevertheless, GRETA considers that the authorities should accelerate the procedures for age assessment and appointment of legal guardians, and ensure that when there are reasonable grounds to believe that an asylum seeker is a child, he/she is immediately separated from unrelated adults and promptly transferred to a specialised accommodation.

Finally, GRETA considers that the Maltese authorities should strengthen access to residence permits for trafficked persons by reviewing the process and requirements of issuing/renewing the permits.

Preamble

The Group of Experts on Action against Trafficking in Human Beings (GRETA) was established pursuant to Article 36 of the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”), which entered into force on 1 February 2008. GRETA is responsible for monitoring the implementation of the Convention by the parties and for drawing up reports evaluating the measures taken by each party.

In accordance with Article 38, paragraph 1, of the Convention, GRETA evaluates the implementation of the Convention following a procedure divided into rounds. At the beginning of each round, GRETA selects the specific provisions of the Convention on which the evaluation procedure is based.

The first round of monitoring of the Convention provided an overview of its implementation by State Parties. The second evaluation round of the Convention examined the impact of legislative, policy and practical measures on the prevention of trafficking in human beings, the protection of the rights of victims of trafficking, and the prosecution of traffickers, paying particular attention to measures taken to address new trends in human trafficking and the vulnerability of children to trafficking.

GRETA has decided that the third evaluation round of the Convention will focus on trafficking victims’ access to justice and effective remedies, which is essential for victims’ rehabilitation and reinstatement of rights, and reflects a victim-centred and human-rights based approach to the fight against human trafficking. A number of provisions of the Convention establishing substantive and procedural obligations are relevant to this topic, in particular articles 12, 15, 23, 26, 27, 28, 29, 30 and 32.

Access to justice and effective remedies is contingent on the fulfilment of a number of preconditions, including prompt and accurate identification of victims of trafficking, the provision of a recovery and reflection period, the availability of material, psychological, medical and legal assistance, access to translation and interpretation, when appropriate, regularisation of the victim’s stay, the right to seek and enjoy asylum, and full respect for the principle of *non-refoulement*. These preconditions, corresponding to various provisions of the Convention, have been examined at length during the first and second evaluation rounds of monitoring of the Convention. Consequently, GRETA has decided to ask each State Party for an update on the implementation of GRETA’s previous recommendations on selected topics through a separate country-specific part of the questionnaire. GRETA’s findings and analysis of these topics are presented in a separate chapter.

I. Introduction

1. The Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) entered into force for Malta on 1 May 2008. GRETA’s first evaluation report¹ on Malta was published on 24 January 2013, and the second evaluation report² on 16 March 2017.

2. On the basis of GRETA’s second report, on 10 March 2017 the Committee of the Parties to the Convention adopted a recommendation to the Maltese authorities, requesting them to inform the Committee within a one-year period of measures taken to comply with the recommendation. The report submitted by the Maltese authorities was considered at the 23rd meeting of the Committee of the Parties (6 November 2018), and was made public.³

3. On 2 October 2019, GRETA launched the third round of evaluation of the Convention in respect of Malta by sending the questionnaire for this round to the Maltese authorities. The deadline for submitting the reply to the questionnaire was 1 February 2020 and the authorities’ reply was received on 3 February 2020.

4. In preparation of the present report, GRETA used the reply to the third round questionnaire by the Maltese authorities⁴ and the above-mentioned report submitted by them in reply to the Committee of the Parties’ recommendation. An evaluation visit to Malta took place from 28 September to 1 October 2020 in order to hold meetings with relevant governmental and non-governmental actors, collect additional information and examine the practical implementation of adopted measures. The visit was carried out by a delegation composed of:

- Mr Kevin Hyland, member of GRETA;⁵
- Ms Julia Planitzer, member of GRETA;
- Mr Mesut Bedirhanoglu, Administrator in the Secretariat of the Convention.

5. During the visit, the GRETA delegation met Ms Rosianne Cutajar, Parliamentary Secretary for Equality and Reforms, and officials from relevant ministries and agencies, in particular the Ministry for Home Affairs, National Security and Law Enforcement, the Ministry for Health, the Department for Industrial and Employment Relations, the Foundation for Social Welfare Services, Jobsplus, the International Protection Agency, the Human Rights Directorate, the Identity Malta Agency, and the Legal Aid Agency. Meetings were also held with the Attorney General, representatives of the judiciary and relevant police services. Further, the GRETA delegation met the Commissioner for Children and members of the Maltese Parliament’s Social Affairs Committee.

6. Separate meetings were held with representatives of non-governmental organisations (NGOs) and lawyers representing victims of trafficking. Discussions were also held with representatives of the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR).

7. In the course of the visit, the GRETA delegation visited the Safi Barracks detention centre for immigrants.

8. The list of the national authorities, NGOs and other organisations with which the delegation held consultations is set out in Appendix 2 to this report. GRETA is grateful for the information provided by them.

¹ <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806863cc>

² <https://rm.coe.int/greta-2017-3-fgr-mlt-en-w-cmts/1680782abd>

³ <https://rm.coe.int/cp-2018-11-rr2-mlt-en/1680790e9e>

⁴ <https://rm.coe.int/greta-2018-26-mlt-rep/16809e0fe2>

⁵ Due to the travel restrictions imposed by the COVID-19 pandemic, Mr Hyland joined the meetings via videoconference.

9. GRETA wishes to place on record the co-operation provided by the Maltese authorities and in particular by the contact person appointed by the Maltese authorities to liaise with GRETA, Ms Joyce Damato of the Ministry for Home Affairs and National Security.

10. The draft version of the present report was approved by GRETA at its 40th meeting (22-26 March 2021) and was submitted to the Maltese authorities for comments. The authorities' comments were received on 14 June 2021 and were taken into account by GRETA when adopting the final report at its 41st meeting (5-8 July 2021). The report covers the situation up to 8 July 2021; developments since that date are not taken into account in the following analysis and conclusions. GRETA's conclusions and proposals for action are summarised in Appendix 1.

II. Overview of the current situation and trends in the area of trafficking in human beings in Malta

11. Malta continues to be primarily a country of destination for trafficked persons. According to statistics provided by the Maltese authorities, the total number of formally identified victims of trafficking in human beings (THB) in 2017-2020 was 44: five in 2017 (all women); 35 in 2018 (13 men, 22 women, one child); none in 2019; and four in 2020 (one woman and three children).⁶ There were four formally identified child victims (one in 2018⁷ and three in 2020), trafficked for the purpose of sexual exploitation and drug trafficking (see paragraph 186).

12. During the reporting period, THB for the purpose of labour exploitation was the predominant form of exploitation (77% of identified victims), followed by trafficking for the purpose of sexual exploitation. All identified adult victims were foreigners. The main countries of origin of the victims were Ukraine (19 victims) and the Philippines (16 victims). The remainder of the victims originated from China (three) and Hungary (two). The Maltese authorities consider that migrant workers from Asia, in particular the Philippines, are at risk of trafficking and exploitation, especially in the sectors of construction, cleaning, domestic work and fishing. When services such as cleaning are outsourced, the risk of exploitation is higher. Further, women working in so-called "gentlemen's clubs" and massage parlours are exposed to risks of sexual exploitation.

13. GRETA notes that in addition to the above statistics on formally identified victims, there are a number of presumed victims of THB who have refused to enter into contact with the police and have been assisted by NGOs (see paragraphs 54 and 182).

14. According to UNHCR,⁸ the number of persons rescued at sea and disembarked in Malta amounted to 1 445 in 2018, 3 406 in 2019 and 2 281 in 2020, which indicates a sharp increase compared to the period 2015-2017, when there were only 152 such persons.⁹ In 2020, 25% of the persons rescued at sea were unaccompanied and separated children. The increase in new arrivals has placed greater demand on the Maltese immigration and asylum system and has led to a significant deterioration of the reception conditions of asylum seekers, exacerbated by the COVID-19 pandemic (see paragraph 169). While a number of those arriving have been transferred to other EU countries following *ad hoc* agreements with other EU Member States, the majority of migrants remain in Malta where they claim asylum. No data is available on the number of the victims of THB who were identified among asylum seekers.

⁶ By way of comparison, in the period covered by GRETA's second report, a total of 67 victims and presumed victims of trafficking were identified (3 in 2012, 10 in 2013, 20 in 2014, 3 in 2015 and 31 in 2016).

⁷ This was the first formally identified child victim of trafficking in Malta and the second case of internal trafficking after a Maltese woman was identified as a victim in 2013.

⁸ <https://reliefweb.int/report/malta/unhcr-malta-factsheet-31-march-2021>

⁹ This rapid increase was caused by the withdrawal of the Italian Government from the informal agreement concluded between Italy and Malta in 2014 on the basis of which all migrants rescued in Maltese territorial or search and rescue waters were being disembarked in Italy. See https://asylumineurope.org/reports/country/malta/overview-main-changes-previous-report-update/#_ftn1

III. Developments in the legislative, institutional and policy framework for action against human trafficking

15. Since GRETA's second report, the legislative framework related to action against THB has evolved considerably. By Act XXVIII, adopted in June 2016,¹⁰ Article 248C of the Criminal Code (CC) criminalising THB for the purpose of organ removal was amended to clarify the circumstances under which that offence is sanctioned, and new aggravating circumstances for trafficking offences described in Articles 248A to 248D of the CC were introduced (see paragraph 87).

16. Moreover, through Act XIII, adopted in April 2018,¹¹ the minimum penalty for THB was increased from four to six years' imprisonment (the maximum penalty remains 12 years' imprisonment). Further, compensation for moral damages of victims of trafficking was introduced to the Criminal and Civil Codes. The Victims of Crime Act (VCA) was also amended, with a new Article 14A being introduced, allowing a judge to appoint a specially trained expert as a support person to assist a child victim throughout the court proceedings and for a suitable period of time following their conclusion (see paragraphs 138 and 139).

17. The VCA was further amended in December 2018 by Act XLII.¹² Two new services were added to the list of minimum services for victims of crimes in Article 12: medical treatment and protection measures against the risks of intimidation and retaliation. The amendments also clarified that these services are to be provided to victims even when the offence was committed in another EU Member State.

18. Furthermore, in July 2019 the Child Protection (Alternative Care) Act was substituted by the Minor Protection (Alternative Care) Act,¹³ which covers various aspects of child protection, including a review of the childcare system, protection of children during judicial procedures, the availability of children's advocates, and issues related to foster care.

19. A further development is the adoption in October 2016 of Subsidiary Legislation (S.L.) 601.03 on Public Procurement Regulations,¹⁴ which provides in Article 192 for the exclusion from public procurement procedures of companies involved in human trafficking (see paragraph 143).

20. Another legislative development was the adoption in December 2016 of the Human Organs, Tissues and Cell Donation Act, which was followed by the ratification in November 2017 of the Council of Europe Convention against Trafficking in Human Organs. In addition, in February 2019, Malta ratified the 2014 Protocol to the 1930 Forced Labour Convention. GRETA welcomes the previously mentioned legislative amendments.

21. The Anti-Human Trafficking Monitoring Committee, which is responsible for drawing up and monitoring the implementation of anti-trafficking policies, has continued to meet twice a year. On the other hand, the Anti-Trafficking Stakeholders Task Force, which is supposed to co-ordinate anti-trafficking efforts at operational level, has been meeting rarely.

22. During the reporting period, the Monitoring Committee adopted the fourth and fifth National Action Plans on Combating Trafficking in Human Beings, respectively for 2017-2019 and 2020-2023. These plans include measures under the pillars of co-ordination, prevention, awareness, evaluation and monitoring.

¹⁰ <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=27753&l=1>

¹¹ <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=29057&l=1>

¹² <https://legislation.mt/eli/act/2018/42/eng/pdf>

¹³ <https://legislation.mt/eli/act/2019/23/eng/pdf>

¹⁴ <https://legislation.mt/eli/sl/601.3/eng/pdf>

23. There is no dedicated budget for the implementation of the National Action Plans, but all responsible authorities are expected to finance the tasks assigned to them from their own budgets. The budget of the Anti-Trafficking Monitoring Committee, which is responsible for monitoring the implementation of the plan, was €20 000 in 2017 and 2018, but was reduced to €16 000 in 2019 and 2020. This budget is used mainly for training and awareness-raising activities whereas operational costs, such as the accommodation of victims, are covered by the budget of the National Social Welfare Agency, Appoġġ (see paragraph 181). In addition, the Parliamentary Secretariat for Equality and Reforms within the Ministry of Equality, Research and Innovation was allocated a budget of €120 000 in 2019 and €300 000 in 2020 to carry out a reform on human trafficking and prostitution (see paragraph 25). The 2019 budget was used to organise a national campaign on human trafficking (“Human, Like You”), whereas the 2020 budget was planned to be used partly for the implementation of a programme to assist persons to exit from prostitution.

24. The 2018 and 2019 internal evaluation reports on the implementation of the National Action Plan were limited to the enumeration of actions rather than providing an independent evaluation of the anti-THB activities of the authorities.¹⁵ GRETA was informed that there were no plans to designate a separate organisational entity or other independent mechanism to fulfil the role of National Rapporteur. **GRETA reiterates the recommendation made in the second evaluation report and considers that the Maltese authorities should examine the possibility of establishing an independent National Rapporteur, designating another existing independent mechanism for monitoring the anti-trafficking activities of state institutions or commissioning the monitoring to an external, independent evaluator.**

25. The Government of Malta launched in September 2019 a public consultation with a view to carrying out a reform on human trafficking and prostitution. As part of this process, the Government intends to develop a comprehensive National Strategy and a new Action Plan on Combatting Trafficking in Human Beings and determine the necessary policy and legislative changes related to prostitution. A temporary technical committee set up as part of the reform process is currently preparing a draft law on adult entertainment venues aimed at ensuring better protection for persons working in those premises, and another technical committee is dealing with the new National Strategy and Action Plan on Combatting Trafficking in Human Beings. Further, GRETA was informed of the Government’s decision to reintroduce the licence obligation for massage parlours.

26. GRETA was also informed by the Maltese authorities that a unit had been set up within the Human Rights Directorate of the Ministry of Equality, Research and Innovation to monitor the implementation of the above-mentioned National Strategy and co-ordinate the work of stakeholders involved in the fight against human trafficking. It is not clear how this new structure will co-operate with or incorporate the Anti-Human Trafficking Monitoring Committee and the Anti-Trafficking Stakeholders Task Force.

¹⁵ The 2018 internal report is available at: <https://homeaffairs.gov.mt/en/MHAS-Information/Documents/Trafficking.pdf>

IV. Access to justice and effective remedies for victims of human trafficking

1. Introduction

27. Victims of human trafficking, by virtue of their status as victims of crime and victims of human rights violations, have the right to access to justice and effective remedies for any harm committed against them. These rights must be guaranteed, in a gender- and age-sensitive manner, to all victims of trafficking subject to the jurisdiction of parties to the Convention, irrespective of their immigration status or presence on the national territory, and notwithstanding their capacity or willingness to co-operate in any criminal investigation.

28. The right to effective remedies is a reflection of the human-rights based approach underpinning the Convention. Regardless of whether a State is implicated in the trafficking or directly responsible for the harm, the positive obligations arising from international human rights law require States to facilitate and guarantee effective access to remedies if they have failed to take reasonable steps to prevent human trafficking, protect potential or actual victims of trafficking, and effectively investigate trafficking offences.¹⁶

29. According to the Basic Principles on the Right to an Effective Remedy for Victims of Trafficking in Persons,¹⁷ the right to an effective remedy is considered to include restitution,¹⁸ compensation,¹⁹ rehabilitation,²⁰ satisfaction²¹ and guarantees of non-repetition.²² All victims of trafficking require access to appropriate and effective remedies, starting with access to justice. The provision of effective remedies serves multiple purposes. The remedy of compensation, for instance, for any injury, loss or harm sustained, can provide critical support in victims' recovery and empowerment, help their social inclusion and prevent re-victimisation. The remedy of rehabilitation can similarly help in victims' recovery, as well as social inclusion. Of relevance in this respect is also the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which outlines the main steps to be taken to improve access to justice, and fair treatment, restitution, compensation and social assistance for victims of crime.²³

¹⁶ *Rantsev v. Cyprus and Russia*, application no. 25965/04, judgment of 7 January 2010; *L.E. v. Greece*, application No. 71545/12, judgment of 21 January 2016; *Chowdury and Others v. Greece*, application No. 21884/15, judgement 30 March 2017.

¹⁷ UN General Assembly, Basic principles on the right to an effective remedy for victims of trafficking in persons, Annex to the Report by the Special Rapporteur on trafficking in persons, especially women and children, 28 July 2014, A/69/33797.

¹⁸ Restitution includes restoration of liberty, including release of the victim from detention; enjoyment of human rights and family life, including reunification and contact with family members; safe and voluntary repatriation; temporary or permanent residence status, refugee status, complementary/subsidiary protection or third-country resettlement; recognition of the victim's legal identity and citizenship; restoration of the victim's employment; assistance and support to facilitate social integration or reintegration; return of property, such as identity and travel documents and other personal belongings.

¹⁹ Compensation may cover damages for physical or mental harm; damages for lost opportunities, including employment, education and social benefits; reimbursement of costs of necessary transportation, child care or temporary housing; material damages and loss of earnings; moral or non-material damages; reimbursement of legal fees and other costs relating to the participation of the victim in the criminal justice process; reimbursement of costs incurred for legal, medical or other assistance.

²⁰ Rehabilitation includes medical and psychological care, legal and social services, shelter, counselling and linguistic support, independently of the capacity or willingness of the victims to co-operate in legal proceedings.

²¹ Satisfaction includes effective measures aimed at the cessation of continuing violations; verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety, privacy and other interests of the victims or their families; an official declaration or a judicial decision restoring the dignity, reputation and rights of the victim; public apologies; judicial and administrative sanction against the perpetrators.

²² Guarantees of non-repetition include ensuring the effective investigation, prosecution and sanctioning of traffickers; all measures necessary to protect victims from re-trafficking; providing or strengthening training of relevant officials; strengthening the independence of the judiciary; modifying practices that cause, sustain or promote tolerance to trafficking, including gender-based discrimination and situations of conflict and post-conflict; effectively addressing the root causes of trafficking; promoting codes of conduct and ethical norms for public and private actors; protecting legal, medical and other professionals and human rights defenders who assist victims.

²³ United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by General Assembly resolution 40/34 of 29 November 1985, available at: https://www.unicef-irc.org/portfolios/documents/472_un-declaration-crime.htm

30. The Convention provides specifically for the substantive right of victims of trafficking to compensation and legal redress, as well as for a number of procedural rights necessary to ensure access to these entitlements. These include the rights to be identified as a victim of trafficking, to be granted a recovery and reflection period, as well as a residence permit (to enable a victim to remain in the country and seek access to remedies), and to receive counselling, information, legal assistance and free legal aid. Another important procedural right is provided by the non-punishment provision of the Convention (Article 26), according to which victims of human trafficking must not be imposed penalties for their involvement in unlawful activities committed while they were being trafficked. Further, the Convention requires State Parties to enable the seizure and confirmation of the assets of traffickers, which could be used to fund State compensation schemes for victims.

31. Children need special support to access remedies, the best interests of the child being the primary consideration in all actions concerning trafficked children. The appointment of legal guardians to represent unaccompanied or separated children plays a vital role in enabling child victims of trafficking to access justice and remedies. Further, facilitating family reunification can be an important element of restitution.²⁴

32. Civil society, including NGOs, trade unions, diaspora organisations and employer organisations, plays a vital role in enabling victims of THB to claim compensation and other remedies.²⁵ In this context, reference should be made to the international projects COMP.ACT - European Action on Compensation for Trafficked Persons²⁶ and Justice at Last - European Action for Compensation of Victims of Crime,²⁷ which aim to enhance access to compensation for trafficked persons.

33. The private sector should also play a role in enabling access to, as well as providing, remedies for trafficked persons, in accordance with the UN 'Protect, Respect and Remedy' Framework and the United Nations Guiding Principles on Business and Human Rights.²⁸ The role of businesses includes steps to ensure that their supply chains are free of trafficked labour, as well as the adoption and implementation of measures to facilitate access to remedies for victims for any harm that occurs. Further, businesses have the potential to help trafficked persons regain economic autonomy.²⁹ States should therefore ensure that business enterprises implicated in human trafficking are held responsible and take steps to reduce barriers that could lead to a denial of access to remedies.

34. Because human trafficking is often a transnational crime, effective international co-operation is essential for fulfilling the obligations with regard to the right to justice and effective remedies. This includes co-operation in tracing and seizing criminal assets, and in returning confiscated proceeds for the purpose of compensation.

2. Right to information (Articles 12 and 15)

35. Victims who are no longer under their traffickers' control generally find themselves in a position of great insecurity and vulnerability. Two common features of victims' situation are helplessness and submissiveness to the traffickers, due to fear and lack of information about how to address their situation. Article 12, paragraph 1, sub-paragraph d, of the Convention provides that victims are to be given counselling and information, in particular as regards their legal rights and the services available to them, in a language that they understand. Further, pursuant to Article 15, paragraph 1, of the Convention, Parties must ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings, in a language they can understand.

²⁴ UNODC, ICAT Issue Paper, Providing Effective Remedies for Victims of Trafficking in Persons, 2016, pp. 7-8. Available at: http://icat.network/sites/default/files/publications/documents/Ebook%20ENG_0.pdf

²⁵ OSCE Compensation for Trafficked and Exploited Persons in the OSCE Region, 2008, pp. 48-53.

²⁶ <http://www.compactproject.org/>

²⁷ <http://lastradainternational.org/about-lsi/projects/justice-at-last>

²⁸ United Nations Guiding Principles on Business and Human Rights, implementing the UN 'Protect, Respect and Remedy' Framework, Doc. A/HRC/17/31 (2011).

²⁹ UNODC, ICAT Issue Paper, Providing Effective Remedies for Victims of Trafficking in Persons, 2016, pp. 8-9.

36. The information that victims of trafficking must be provided with deals with essential matters, including availability of protection and assistance arrangements, the various options open to the victim, the risks they run, the requirements for legalising their presence in the Party's territory, the various possible forms of legal redress, how the criminal-law system operates (including the consequences of an investigation or trial, the length of a trial, witnesses' duties, the possibilities of obtaining compensation from persons found guilty of offences or from other persons or entities, and the chances of a judgment being fully and effectively enforced). The information and counselling should enable victims to evaluate their situation and make an informed choice from the various possibilities open to them.³⁰

37. Many victims do not speak, or barely speak, the language of the country they have been brought to for exploitation. Ignorance of the language adds to their isolation and is one of the factors preventing them from claiming their rights. The provision of translation and interpretation, where needed, is an essential measure for guaranteeing access to rights, which is a prerequisite for access to justice. GRETA has stressed the need for ensuring the availability, quality and independence of interpreters.³¹

38. Pursuant to Article 4 of the Victims of Crime Act (VCA), a victim shall be offered without undue delay and from his/her first contact with a competent authority (such as the Police Vice Squad or the Agency Appoġġ), information on how and under which conditions he/she can have access to the existing support services, in particular medical care, accommodation, legal aid, interpretation and translation services, protection measures and compensation. Victims should also be informed of the procedures for filing a complaint to the police, the victim's role in criminal proceedings, remedies in the event that their rights are not respected in criminal proceedings, contact details for communications about their case, and any special measures, procedures or arrangements available to protect their interests in Malta if they leave the country. Further, pursuant to Article 6 of the VCA, if criminal proceedings are instituted as a result of a complaint lodged by the victim, the latter shall receive, upon request, information on: "(a) any decision not to proceed with or end an investigation or not prosecute the offender; (b) the time and place of the trial, and the nature of the charges against the offender; (c) any final judgement in a trial; (d) information enabling the victim to know about the state of the criminal proceedings". GRETA notes with concern that even when victims have filed a complaint, they need to make a request to be informed of the progress in the criminal proceedings and important decisions that they may wish to challenge. GRETA stresses that because of the trauma they have been through, lack of knowledge of the criminal justice system of the country concerned and language barriers, victims of trafficking are not always in a position to ask the competent authority for information.

39. Police officers interviewing victims of THB inform them orally about their rights and hand them a leaflet on the rights of victims of crime and support services. The leaflet explains briefly the procedure to report a crime, the possibility to request the court to issue a temporary protection order, and the right to be informed of the progress in the police investigation and criminal proceedings. It contains contact details of the Victim Support Unit of the police and refers to the VCA for additional details about the rights of victims of crime. The leaflet is available only in Maltese and English. Police officers also inform victims of the opportunity to be referred to the Victim Support Unit of the police. This Unit was established in 2017 to provide counselling, information on the progress of the criminal case, and referral services to victims of all crimes; it was transformed in November 2020 into an agency. GRETA was informed that three victims of trafficking have so far been assisted by the Victim Support Unit.

40. If a victim contacts directly the Agency Appoġġ, a social worker informs him/her of the possibility to report the case to the police. If the victim does not want to report the case to the police, an arrangement is made with a lawyer working for the NGO Jesuits Refugee Services to provide information about victims' rights, with assistance of an interpreter provided by Appoġġ, if necessary.

³⁰ See Explanatory Report on the Convention, paragraphs 160-162.

³¹ 8th General report on GRETA's activities.

41. GRETA notes that in the above-mentioned provisions of the VCA concerning information to victims there is no reference to the recovery and reflection period which presumed victims of trafficking are entitled to. Pursuant to Article 3 (1) of S.L. 217.07 on "Permission to reside for victims of trafficking or illegal immigration who co-operate with the Maltese Authorities' Regulations", the Principal Immigration Officer shall inform a third-country national of the possibilities offered under that law, namely granting a reflection period and subsequently a residence permit, "when it appears (...) that the third-country national is co-operating in the fight against human trafficking or, where applicable, against action to facilitate illegal immigration". According to the Standard Operating Procedures (SOPs), police officers who come into contact with potential victims of trafficking should inform them of the possibility to avail themselves of a recovery and reflection period (see also paragraph 162).

42. In criminal proceedings, victims have the right to an interpreter and translation of information essential to the exercise of their rights (Article 7 of the VCA). Pursuant to Article 534AE of CC, these services should be provided by qualified interpreters registered by the court. GRETA was not made aware of any specific training provided to registered interpreters on how to deal with victims of trafficking.

43. As regards the provision of information to presumed victims of THB who are accommodated in asylum reception centres or immigration detention centres, according to civil society actors, there are no information materials on THB and support services for victims of trafficking, and interpretation services are lacking. UNHCR teams monitor the disembarkation of migrants while providing interpretation support to the authorities and giving basic information on reception and asylum procedures to new arrivals. UNHCR staff and specialised NGOs sometimes visit asylum reception centres and detention centres with the aim of informing migrants of their rights and existing services.³² Nevertheless, they have encountered difficulties in accessing such centres,³³ in particular following the outbreak of the COVID-19 pandemic. UNHCR representatives met by GRETA explained that after the first cases of COVID-19 were detected amongst asylum seekers, all asylum reception centres and immigration detention centres were closed, and asylum seekers could only contact UNHCR through a hotline. However, most asylum seekers do not have access to telephone and cannot call the hotline. According to the latest information provided by the UNHCR, access to centres has improved, subject to COVID-19 health regulations, and it is possible to conduct information sessions and identify vulnerable persons amongst asylum seekers. NGOs' access to immigration detention centres is subject to the approval of the competent authorities and has remained limited to individual counselling. However, NGOs have been visiting open reception centres to provide support and services without any problems. In their comments to GRETA's draft report, the Maltese authorities informed GRETA of the preparation of a booklet which will be available in a range of languages to inform newly arriving migrants of their rights. Further, GRETA was informed that the Agency for Welfare of Asylum Seekers (AWAS) had set up a Migrants Advice Unit operating within the immigration centres, and in January 2021 four interpreters and a cultural mediator were recruited to increase its efficiency.

44. GRETA stresses that victims should be provided with information on rights in a manner which takes into account their cognitive skills and psychological state. For example, victims who are traumatised may have difficulties in adequately understanding and analysing the information before taking a decision. This is why it is important that information on rights be provided repeatedly by different professionals, including psychologists, social workers and lawyers, while ensuring that the provision of information is structured and consistent throughout the victims' pathway of engaging with different agencies and organisations.

³² By way of example, just before the outbreak of the COVID-19 pandemic in Malta, the association KOPIN organised information sessions on THB for different language groups of asylum seekers in asylum centres. See <http://kopin.org/awareness-on-thb/>

³³ See [Lawyers denied access to Safi detention centre \(timesofmalta.com\)](https://www.timesofmalta.com/articles/view/malta/2020/08/20/See_Lawyers_denied_access_to_Safi_detention_centre_(timesofmalta.com)_and_NGOs_denied_access_to_Safi_migrant_centre_since_August_(timesofmalta.com)) and [NGOs denied access to Safi migrant centre since August \(timesofmalta.com\)](https://www.timesofmalta.com/articles/view/malta/2020/08/20/NGOs_denied_access_to_Safi_migrant_centre_since_August_(timesofmalta.com))

45. **GRETA considers that the Maltese authorities should take further steps to ensure that presumed and formally identified victims of THB are given information in a proactive manner regarding their rights, including the right to a recovery and reflection period, the services and assistance measures available, how to access them, as well as the implications of being recognised as a victim of trafficking, irrespective of their capacity or willingness to co-operate in criminal proceedings, including by:**

- **developing a specific leaflet on the rights of victims of trafficking or adding to the existing leaflet on victims' rights specific information about the implications of being recognised as a victim of trafficking, and making the leaflet available in the languages of the main countries of origin of victims;**
- **sensitising interpreters to the issue of human trafficking and the vulnerabilities of victims, including by providing them with training.**

46. **Further, GRETA urges the Maltese authorities to ensure the provision of information to presumed victims of THB in asylum reception centres and immigration detention centres, including by developing and disseminating information materials on the rights of victims of trafficking, the services and assistance measures available and how to access them, and ensuring access to interpretation.**

3. Legal assistance and free legal aid (Article 15)

47. Article 15(2) 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. As court and administrative procedure is often very complex, legal assistance is necessary for victims to be able to claim their rights. It is for each Party to decide the requirements for obtaining such free legal aid. Parties must have regard not only to Article 15(2) of the Convention, but also to Article 6 of the ECHR. Even though Article 6(3)(c) of the ECHR provides for free assistance from an officially appointed lawyer only in criminal proceedings, European Court of Human Rights case-law³⁴ also recognises, in certain circumstances, the right to free legal assistance in a civil matter on the basis of Article 6(1) of the ECHR. Thus, even in the absence of legislation granting free legal assistance in civil matters, it is for the courts to assess whether, in the interest of justice, an applicant who is without financial means should be granted legal assistance if unable to afford a lawyer.

48. GRETA's reports highlight the value of a lawyer being appointed as soon as there are reasonable grounds for believing that a person is a victim of trafficking, before the person makes an official statement and/or decides whether to co-operate with the authorities. Early access to legal assistance is also important to enable victims to undertake civil actions for compensation and redress.³⁵

49. Pursuant to Articles 3 (5) and 5 (3) of S.L. 217.07 on "Permission to reside for victims of trafficking or illegal immigration who co-operate with the Maltese Authorities' Regulations", a victim of trafficking who does not have sufficient financial resources shall be provided with free legal aid during the reflection period and for the duration of the residence permit. As for child victims, under Article 14 of the VCA, in cases when a child is unaccompanied or separated from his/her family or the Court considers that this is in the best interests of the child, the Court should appoint a children's advocate or a legal aid lawyer, to represent the child's interests. This provision applies also in cases where it is not clear if the victim is a minor.

³⁴ *Airey v. Ireland* judgment, 9 October 1979.

³⁵ 8th General report on GRETA's activities.

50. Free legal aid is provided in accordance with S.L. 595.11 on the Legal Aid Agency (Establishment) Order through Legal Aid Malta and is funded from the national budget. In criminal cases, no means testing is conducted for victims of crime.³⁶ In civil cases, the Legal Aid Agency carries out merit and means tests to decide if a person is eligible for free legal aid. Pursuant to Article 912 of the Code of Organisation and Civil Procedure (COCP), free legal aid is not granted to an applicant whose average monthly income is above the minimum wage and whose total assets exceed €6 988.³⁷ As for the merit criterion, the Agency must conclude that the applicant "has reasonable grounds for taking or defending, continuing or being a party to proceedings". The decision of the Agency to refuse legal aid is examined by the Civil Court which can decide to grant legal aid (Articles 912 (a) and 917 of the COCP).

51. In both civil and criminal cases, once a party is granted the benefit of legal aid, a legal aid lawyer is appointed, and all court proceedings are cost-free. It is possible to have free legal aid for civil claims for compensation and for the enforcement of compensation judgments. However, reports indicate that the legal aid provided in civil proceedings does not apply to pre-litigation legal advice.³⁸

52. There is currently one legal aid roster on which there are 21 lawyers. GRETA was informed by the authorities that steps were being taken to establish two lists of legal aid lawyers: one covering civil cases and another one for criminal cases. In March 2019, the Legal Aid Agency organised a mandatory training seminar on human trafficking for all legal aid lawyers.³⁹ Additionally, GRETA was informed that the transforming of the Victim Support Unit of the police into an agency includes the recruitment of a lawyer providing legal assistance to victims of trafficking (see also paragraph 75).

53. Notwithstanding the above provisions, GRETA was informed that all victims of trafficking have so far been represented by NGO lawyers who are funded through projects, especially by the lawyers of the Women's Rights Foundation (WRF). According to the authorities, it is in the victims' interest to be represented by WRF lawyers who, unlike legal aid lawyers, are specialised on THB cases. Another drawback of being represented by a legal aid lawyer is the fact that unlike NGO lawyers, legal aid lawyers are assigned for a specific legal duty and do not represent victims in all sorts of proceedings.

54. The Aditus Foundation and the Jesuit Refugee Service Malta (JRS) also provide *pro bono* legal assistance to victims of THB. Thus, under a project carried out between April 2015 and September 2018, the JRS provided legal support to 92 presumed and formally identified victims of THB, including legal advice and legal assistance for court proceedings and the renewal of victims' documentation. Civil society actors have highlighted that no state funding is provided to NGOs for the provision of legal assistance and legal aid.

55. Asylum seekers are entitled to free legal aid to challenge any detention order issued against them and to appeal the first instance decision on their applications for asylum.⁴⁰ However, the provision of interpreters for legal aid lawyers is reportedly problematic, as this needs to be organised and paid for by the lawyer.⁴¹ Moreover, free legal aid is not provided with respect to the procedure preceding the appeal, not even for unaccompanied children. Although some NGOs provide free legal assistance at both the first instance and appeal stages, not all applicants are aware of these services. Moreover, there is a limited number of NGO lawyers providing such a service in relation to the number of asylum seekers requiring it.⁴²

³⁶ See the website of the Legal Aid Malta Agency <https://justice.gov.mt/en/legalaidmalta/Pages/Criminal-Legal-Aid-Cases.aspx>

³⁷ A Justice Reform Commission set up by the Government recommended in November 2013 that the amount of total assets should be increased to €10 000. <https://justice.gov.mt/en/justice/ReportoftheCommissionforHolisticReforminJustice.pdf>, p. 119.

³⁸ See https://aditus.org.mt/Publications/atlas/atlasreport_2017.pdf, p. 31.

³⁹ <https://newsbook.com.mt/en/legal-aid-professionals-receive-human-trafficking-training/>.

⁴⁰ Articles 6(2) and 6(5) of the [Reception of Asylum Seekers Regulations](#); Article 7 (4) of the [International Protection Act](#).

⁴¹ See [2019 Update - APRIL 2020 \(1.15 MB\) \(asylumineurope.org\)](#), p. 30.

⁴² *Ibidem*, p. 29.

56. **GRETA considers that the Maltese authorities should strengthen their efforts to facilitate and guarantee access to justice for victims of THB irrespective of their immigration status by ensuring that they receive legal assistance and free legal aid at an early stage, including by:**

- **appointing a lawyer as soon as there are reasonable grounds for believing that a person is a victim of human trafficking, including in the case of asylum seekers and persons placed in detention prior to deportation, before the person concerned has to decide whether or not he/she wishes to co-operate with the authorities and/or make an official statement;**
- **ensuring that all victims of THB are represented by a lawyer in court proceedings;**
- **putting in place a system through the Legal Aid Agency to identify lawyers who are qualified to provide legal aid to victims of trafficking;**
- **ensuring adequate funding for legal assistance and free legal aid for all victims of THB and in all judicial proceedings, including when they are provided by NGO lawyers.**

4. Psychological assistance (Article 12)

57. Human trafficking and exploitation may have serious psychological and physical consequences for the victims, including mental health problems and loss of self-esteem. Psychological assistance is needed to help victims of trafficking deal with the trauma they have been through and achieve a sustained recovery and social inclusion. Some victims require long-term therapeutic attention due to the violence they have suffered. Every victim of trafficking should have a clinical assessment tailored to include an evaluation of their particular readiness for therapy conducted by an experienced clinician.⁴³

58. In Malta, pursuant to Articles 12 and 15 of the VCA, both adult and child victims of THB are entitled to psychological support for as long as necessary and irrespective of the victim's willingness to co-operate in the investigation or criminal proceedings. However, GRETA notes that pursuant to Articles 3(5) and 5(3) of S.L. 217.07, access to free-of-charge psychological support for victims who are third-country nationals is subject to the condition that they do not have sufficient resources.

59. The authorities have indicated that following a psycho-social assessment of the victim by social workers of the Agency Appoġġ, a victim may be referred to Appoġġ's Health Division for psychological assistance or, in more serious cases, to public hospitals for a free-of-charge long-term therapeutic treatment. GRETA was informed that three victims of trafficking are currently provided by Appoġġ with psychological assistance in order to help them overcome their trauma (one of them with the assistance of an interpreter).

60. Appoġġ recently received substantial funding from the EU Asylum, Migration and Integration Funds (AMIF)⁴⁴ under the project "All Equal: Supporting Victims of Human Trafficking" (2019-2022) to offer professional services to victims of trafficking, including psycho-social assistance, and to this end a tender has been organised to contract psychological counsellors. Funds from the AMIF have also been allocated to the Agency for Welfare of Asylum Seekers (AWAS) and the Ministry for Health for the period of 2018 to 2022 to provide sustainable mental health care service to beneficiaries of international protection and asylum seekers. Currently 14 psychological officers/counsellors work in the AWAS Therapeutic Unit. The Unit conducts screening of asylum seekers at asylum centres and provide psychological assistance to persons in need of therapy.

⁴³ OSCE, *Trafficking in Human Beings Amounting to Torture and Other Forms of Ill-Treatment* (2013), Vienna, p. 115.
⁴⁴ See <https://eufunds.gov.mt/en/EUAMIF.pdf>

61. NGOs such as Victim Support Malta and JRS provide psychological support to THB victims. For instance, between April 2015 and September 2018, JRS delivered psychological therapy to four victims of THB, one of whom received long-term treatment.

62. GRETA considers that the Maltese authorities should strengthen their efforts to ensure that victims of all forms of THB, including trafficking for the purpose of labour exploitation, are provided with free psychological assistance to help them overcome the trauma they have been through, and achieve a sustained recovery and social inclusion.

5. Access to work, vocational training and education (Article 12)

63. Article 12, paragraph 4, of the Convention requires State Parties to enable victims of trafficking who are lawfully present in the country to have access to the labour market, vocational training and education. An important element of the recovery and successful social inclusion of trafficked persons is their economic empowerment, which can be achieved through job placement, microbusinesses and social enterprises.⁴⁵ GRETA has stressed the need to develop public-private partnerships with a view to creating appropriate work opportunities for victims of trafficking.⁴⁶

64. GRETA welcomes the fact that in 2018 the Maltese Government waived work permit application fees for victims of trafficking. According to the Maltese authorities, the number of work permits issued to victims of trafficking was 30 in 2018, 46 in 2019 and 40 in 2020.⁴⁷

65. The State employment agency, Jobsplus, organises courses aimed at helping registered unemployed persons acquire skills to enhance their employability.⁴⁸ However, no data is available on the number of the victims of THB registered as unemployed with Jobsplus.

66. The authorities launched in December 2017 the Migrant Integration Strategy and Action Plan (Vision 2020),⁴⁹ which includes measures to promote migrant integration through free-of-charge language courses (in Maltese and English), cultural and societal orientation courses, as well as support to access the labour market and mainstream services, such as education, health care and social services. This programme is open to all migrants, including victims of trafficking as well as asylum seekers whose asylum requests are being processed. GRETA was informed that one of the officers in charge of the programme received training on THB, and one of the participants of the programme was identified in 2019 as a victim of trafficking during the interviews conducted under the integration process.

67. In addition, a number of projects⁵⁰ aimed at facilitating integration of migrants through language and cultural orientation courses, and dissemination of information among migrants on job and education opportunities are in process of implementation by NGOs and Jobsplus with financial support from the AMIF.

68. GRETA welcomes these initiatives as they mitigate risks of trafficking of migrants by facilitating their access to the labour market. Nevertheless, according to a UNHCR report published in December 2019, despite the positive actions undertaken by the Government and civil society, migrants still face a number of major challenges, such as language barriers, limited academic or professional background, and discrimination which often lead to exploitation and abuses, e.g. long working hours, low wages and unsafe working conditions.⁵¹ The report highlights the lack of clarity and information, as well as administrative

⁴⁵ Rebecca Surtees, NEXUS Institute, *Re/integration of trafficked persons: supporting economic empowerment*, Issue paper No. 4, King Baudouin Foundation (2012).

⁴⁶ 8th General report on GRETA's activities.

⁴⁷ The Maltese authorities explained that a victim may be granted more than one work permit in the same year; for instance, to change his/her employer an employee needs to apply for a new work permit.

⁴⁸ See the website of Jobsplus: <https://jobsplus.gov.mt/courses/all-course-list>

⁴⁹ <https://meae.gov.mt/en/Documents/migrant%20integration-EN.pdf>.

⁵⁰ <https://eufunds.gov.mt/en/EUAMIF.pdf>

⁵¹ '[Working Together – A UNHCR report on the employment of refugees and asylum seekers in Malta](#)', pp. 24 and 26.

challenges, such as constant need to renew work permits accompanied by long delays, as significant obstacles for migrants' employment.

69. **GRETA considers that the Maltese authorities should strengthen effective access to the labour market for victims of THB and their economic and social inclusion through the provision of vocational training, language courses and job placement, raising awareness among potential employers, and the promotion of micro-businesses, social enterprises and public-private partnerships with a view to creating appropriate work opportunities for victims of trafficking and preventing their re-victimisation.**

6. Compensation (Article 15)

70. Article 15(3) of the Convention establishes a right of victims to compensation. The compensation is pecuniary and covers both material injury (such as the cost of medical treatment) and non-material damage (the suffering experienced). However, even though it is the trafficker who is liable to compensate the victim, in practice there is rarely full compensation whether because the trafficker has not been found, has disappeared or has declared him/herself bankrupt. Article 15(4) therefore requires that Parties take steps to guarantee compensation of victims. The means of guaranteeing compensation are left to the Parties, which are responsible for establishing the legal basis of compensation, the administrative framework and the operational arrangements for compensation schemes. In this connection, Article 15(4) suggests setting up a compensation fund or introducing measures or programmes for social assistance to, and social integration of, victims that could be funded by assets of criminal origin. Of relevance in this respect is the European Convention on the Compensation of Victims of Violent Crimes, pursuant to which, when compensation is not fully available from other sources the State shall contribute to compensate those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence, as well as the dependents of persons who have died as a result of such crime, even if the offender cannot be prosecuted or punished.

71. Compensation fulfils multiple purposes: payment of reparation for injury, loss or harm caused by the offender, access to justice, empowerment of victims, as well as being seen as a form of punishment and deterrence of traffickers. As such, compensation plays a crucial role in the fight against human trafficking, not only as an instrument of restorative justice, but also by way of prevention and recognition by States of their failure to meet their human rights obligations.

72. Victims often leave the country where they were exploited at the end of the criminal proceedings. This creates obstacles to making civil claims for compensation, which in addition are associated with a number of other barriers, such as high costs, unavailability of free legal aid and victim-support services, as well as the claimant bearing the burden of proof of the amount of the damage. Therefore, state parties should consider adopting a procedure through which victims are entitled to obtain a decision on compensation by the offender as part of the criminal trial, within a reasonable time.

73. Under Maltese law, when an offender is convicted by a criminal court, even if the sentence is suspended, the court may order the offender to pay material damages to the victim.⁵² The victim is also entitled, under Articles 1031, 1045 and 1046 of the Civil Code, to claim damages in a separate civil procedure. In April 2018, the possibility of being awarded moral damages up to a maximum amount of €10 000 in THB cases was introduced to the Criminal and Civil Codes.

⁵² See Articles 15A (1), 28H (1) and 532A of the CC.

74. Pursuant to Articles 1045 and 1046 of the Civil Code, pecuniary damages consist “in the actual loss which the act shall have directly caused to the injured party, in the expenses which the latter may have been compelled to incur in consequence of the damage, in the loss of actual wages or other earnings, and in the loss of future earnings arising from any permanent incapacity, total or partial, which the act may have caused.” The sum to be awarded in respect of a permanent incapacity is assessed by the court, having regard to the circumstances of the case, the nature and degree of incapacity caused, and the condition of the injured party.

75. No victim of trafficking has ever been granted compensation in Malta, be it in criminal or civil proceedings. The Maltese authorities were not aware of any cases of trafficking where a victim’s lawyer or the prosecution have requested compensation. That said, judges met by GRETA explained that Article 15A (1) of the CC allows a criminal court to *ex officio* order the offender to pay damages. There appears to be very limited awareness amongst lawyers and judicial authorities on the possibility for compensation of victims in criminal proceedings. GRETA was informed by the Maltese authorities that judges and prosecutors had not received any training on victim compensation. In this respect, GRETA refers to the recommendations concerning legal assistance and free legal aid (paragraph 56) and welcomes the recent transformation of the Victim Support Unit of the police into an agency, as well as the recruitment of a lawyer to assist victims in criminal proceedings, including in respect of their access to compensation.

76. As noted in GRETA’s second report, Maltese legislation does not allow compensation to injured parties through funds derived from confiscated criminal assets (see paragraph 92). Compensation orders issued in criminal or civil proceedings are enforced in accordance with Articles 252 to 395 of the COCP. A court of first instance can declare a judgment which does not constitute a *res judicata* to be provisionally enforceable. Judgments providing remedies against forced labour are in all cases provisionally enforceable (Article 267 (b) of the COCP).

77. A victim of human trafficking in irregular employment can claim unpaid wages and other damages by virtue of Article 5 of S.L. 217.14 on the Minimum Standards on Sanctions and Measures against Employers of Illegally Staying Third-Country Nationals Regulations. Pursuant to that article, an employer must pay any outstanding wages at least to the equivalent of the national minimum wage, in the absence of proof of a different agreement, to an employee who is an illegally staying third-country national, and cover the cost of sending the outstanding wages to the country to which the employee has returned. Pursuant to Article 20 of the Employment and Industrial Relations Act, claims for unpaid wages, bonuses and other compensation, for example for outstanding leave, constitute privileged ones over the assets of the employer and shall be paid in preference to all other claims whether privileged or hypothecary, provided that the maximum amount of the claim does not exceed the equivalent of the national minimum wage payable over a period of six months.

78. GRETA was informed that in case of non-payment of wages, victims are referred to the Department for Industrial and Employment Relations (DIER) and, in most cases, after having been contacted by the DIER, the employer pays the wage in the official contract or the minimum wage if there is no contract. Failing this, pursuant to Article 44 of the Employment and Industrial Relations Act, the DIER may institute criminal proceedings against the employer. In addition, victims or the prosecution can request the payment of unpaid wages in criminal proceedings. GRETA was informed that in the reporting period, victims of THB have received back-payment of wages in three cases.

79. State compensation is regulated under S.L. 9.12 on Criminal Injuries Compensation Scheme Regulations, which explicitly mentions THB among the offences for which a victim may claim compensation. The offence giving rise to compensation should have been the subject of criminal proceedings or have been reported to the police without delay. Maltese citizens, other EU citizens and persons who are habitual residents of Malta are entitled to state compensation. The victim must submit an application along with a police report to the Claims Officer, i.e. the Attorney General, through the Justice Unit of the Ministry for Justice and Governance. As it is expressly laid out in S.L. 9.12 that an applicant may be accompanied by his/her legal adviser at his/her own cost (Article 14), no free legal aid is available for compensation claims.

80. The Attorney General has a wide discretion in deciding whether to grant compensation and determining its amount. According to the compensation application form annexed to S.L. 9.12, in determining the amount of state compensation, the Attorney General takes account of physical and mental damages, medical and hospitalisation expenses, loss or reduction of earnings resulting from temporary or permanent inability to work, etc. The Attorney General can reject an application or reduce the amount of compensation on the grounds that the victim failed to take, without delay, all reasonable steps to inform the authorities of the crime, or to co-operate with the authorities for the purpose of bringing the perpetrators to justice, or that the conduct of the victim, his/her character or way of life make it inappropriate to grant any or a full award (Articles 10 and 11). As stressed in GRETA's second report, such an individual assessment of the victim's conduct, character or way of life risks arbitrary restrictions of compensation where the Attorney General disagrees with certain lifestyles and may raise questions of compatibility with the right to respect for private life.

81. S.L. 9.12 allows for a maximum payment of €23 300 to any individual victim or group of victims of the same crime (Article 18). GRETA notes that in cases where there are many victims, the application of Article 18 may result in awarding derisory amounts of compensation for each victim. The authorities informed GRETA that state compensation awards are not subject to taxation and the receipt of compensation has no consequences for access to social security or other benefits.

82. The Maltese authorities are not aware of any cases of victims of trafficking having received state compensation. GRETA was informed that the few applications submitted by NGOs on behalf of victims of trafficking had been rejected on the ground that the criminal proceedings were ongoing. Pursuant to Article 11 (b) of S.L. 9.12, the Attorney General may reject an application if the perpetrator is not indigent unless the applicant produces proof that "legal action to claim compensation has proved to be fruitless". While the Attorney General met during the visit underlined that to be awarded state compensation, there is no legal obligation to wait until the end of criminal proceedings or bring a civil case against the offender, Article 11 allows the rejection of a compensation request on such a ground. GRETA notes that waiting until the end of judicial proceedings to claim state compensation is not a realistic option as, pursuant to Article 4, paragraph 3, of S.L. 9.12, the application for the state compensation should be submitted not later than one year after the violent intentional crime was committed, whereas judicial proceedings usually take more than one year.

83. GRETA welcomes the introduction of moral damages for victims of THB in Maltese law. However, GRETA is very concerned that no victim of THB has received compensation in Malta, be it from the perpetrators or the State. **GRETA urges the Maltese authorities to make efforts to guarantee effective access to compensation for victims of THB, in line with Article 15 (4) of the Convention, including by:**

- **ensuring that the collection of evidence about the harm the victim has suffered, including the financial gain from the exploitation of the victim, is part of the criminal investigation, with a view to supporting compensation claims in court;**
- **enabling victims of trafficking to effectively exercise their right to compensation, by ensuring access to legal assistance and free legal aid;**
- **building the capacity of lawyers to support victims in claiming compensation;**

- **including compensation in training programmes for judges and prosecutors, encouraging them to use all the possibilities the law offers to uphold compensation claims by victims of THB and requiring courts to state, where applicable, why compensation is not considered;**
- **reviewing the legislation to allow the use of confiscated assets to secure compensation to victims of THB;**
- **removing the maximum limit of €10 000 of compensation for moral damages;**
- **reviewing the eligibility criteria for state compensation with a view to making it available to all victims of trafficking when the offence was committed in Malta, regardless of their nationality and residence status, and ensuring that it is not conditional on failure to obtain compensation from the perpetrator. This should involve reviewing Article 4, paragraph 3, and Article 11 (b) of S.L. 9.12. The eligibility or amount of state compensation should not be affected by the failure of the victim to inform the authorities of the crime or to co-operate with them or by his/her conduct, character or way of life. Further, the limit of €23 300 should apply to one victim, and not to a group of victims.**

7. Investigations, prosecutions, sanctions and measures (Articles 22, 23 and 27)

84. One of the purposes of the Convention is to ensure the effective investigation and prosecution of THB. Article 27(1) of the Convention establishes that the investigation or prosecution of THB offences must not depend on victims' reports. The aim is to avoid traffickers' subjecting victims to pressure and threats in attempts to deter them from complaining to the authorities. Pursuant to Article 27(2), if the competent authority with which the complaint has been lodged decides that it does not itself have jurisdiction in the matter, then it must forward the complaint without delay to the competent authority of the Party in whose territory the offence was committed. Further, under Article 27(3), each Party shall ensure to non-governmental organisations and other associations which aims at fighting trafficking in human beings or protection of human rights, the possibility to assist and/or support the victim with his or her consent during criminal proceedings concerning the offence of trafficking in human beings.

85. Article 23 requires Parties to match their action to the seriousness of the offences and lay down criminal penalties which are "effective, proportionate and dissuasive". Further, paragraph 3 of Article 23 places a general obligation on Parties to adopt appropriate legal instruments enabling them to confiscate or otherwise deprive offenders (e.g. by so called "civil" confiscation) of the instrumentalities and proceeds of human trafficking criminal offences. As trafficking in human beings is nearly always engaged in for financial profit, measures depriving offenders of assets linked to or resulting from the offence are an effective anti-crime weapon. The confiscation of criminal assets is crucial for reinforcing the effect of the penalty, as well as ensuring the payment of compensation to the victim. It 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. The identified, seized and confiscated illegal profits of trafficking should be used to compensate victims of trafficking, directly or through a victim compensation fund.

86. Further, Article 22 of the Convention requires Parties to ensure that legal persons can be held liable for human trafficking offences committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person who has a leading position within the legal person. Liability under this article may be criminal, civil or administrative.

87. Following amendments made to the CC in 2018, the minimum penalty for the offence of trafficking an adult person for the purpose of exploitation in the production of goods or provision of services in Article 248A was increased from four to six years' imprisonment. The maximum penalty is 12 years' imprisonment, which may be increased in case of aggravating circumstances to up to 20 years. Further, by Act XXVIII adopted in June 2016, three new aggravating circumstances for trafficking offences were introduced to the CC: "when the offender has been previously convicted of an offence" of trafficking; when the offence "has resulted in harm to the psychological health of the victim"; and when it "is committed by a member of the child's family, a person cohabiting with the child or a person who has abused a recognised position of trust or authority". The Maltese authorities consider that the penalties for THB offences are commensurate with those prescribed for other serious crimes.

88. GRETA welcomes the above-mentioned amendments. However, GRETA notes that trafficking in children is considered as an aggravating circumstance only when any of the means mentioned in Article 248A(2) have been used.⁵³ In the opinion of the Maltese authorities, the current legislation is sufficiently dissuasive to prevent the commission of human trafficking against children. Nevertheless, GRETA stresses that the Convention considers an offence of THB committed against a child to be an aggravating circumstance, regardless of the means used. Therefore, **GRETA recalls the recommendation of its second report and once again urges the Maltese authorities to introduce as an aggravating circumstance the offence of THB committed against a child, regardless of the means used.**

89. The plea-bargaining procedure is regulated in Articles 392A and 435A of the CC, pursuant to which, at any stage of the proceedings, the accused and the Attorney General may request the court, in the eventuality of a plea of guilty, to apply sanction(s) and/or measure(s) agreed between them. GRETA notes with satisfaction that the CC provides safeguards for the protection of the interests of victims: not only is the court not bound by the plea-bargaining agreement, but the court that approves such an agreement may, at the same time, place the offender under the supervision of a supervising or probation officer for a certain period, order the forfeiture of his/her property, order him/her to conduct a community service and to pay to the victim pecuniary and moral damages. GRETA was informed by the authorities that to date the plea-bargaining procedure has never been used in a THB case.

90. Articles 23 to 23D, 355P to 355U, 435C and 435D of the CC regulate the identification, seizure, temporary freezing, forfeiture and confiscation of assets, fines imposed upon perpetrators as well as the enforcement of confiscation orders made by foreign courts. The police may seize anything which is on the premises to which they entered lawfully if they have reasonable grounds for believing that it has been obtained as a consequence of the commission of an offence or that it is necessary to seize to prevent it from being concealed, lost, damaged, altered or destroyed. Freezing orders are issued by the courts upon a request by the prosecution. Identification and tracing of assets to be confiscated are carried out by the Asset Recovery Bureau.

91. The court can order, as part of the punishment for the crime or in certain circumstances without a conviction, the forfeiture of the proceeds of crime, described in Article 23B (3) of the CC, or the equivalent value property. Pursuant to Article 23B (1A) of the CC, all properties in the possession or under the control of any person convicted of a crime are, unless proved to the contrary, deemed to be derived from the crime concerned and are therefore subject to confiscation or forfeiture by the court. This measure applies also to a legal entity liable for a crime in accordance with Article 121 D of the CC (see paragraph 142). The CC also allows the tracing of property to be frozen and confiscated after a final conviction (Article 23C (5)) as well as the enforcement in Malta of foreign freezing and confiscation orders (Articles 435C and 435D).

⁵³ See paragraphs 136 and 139 of GRETA's second report on Malta.

92. The confiscated property is transferred to the state budget. The Maltese authorities have informed GRETA that in two THB cases the offenders' properties were confiscated: in the Police vs Lin Han case (see paragraph 100), €24 000 in cash found in a massage parlour were confiscated by a judgment delivered on 24 September 2020. In the Police vs Robert Attila Majlat case (see paragraph 98), by a judgement of 22 November 2019, all exhibited assets of the offender were confiscated. Further, in some other THB cases, the courts have ordered the seizure of the assets of the accused, but no confiscations have taken place as there have been no conviction judgments. By way of example, in the Police vs Han Bin case, known as the "Leisure Clothing factory case", which was described in GRETA's second report, the money of the director of the company in an offshore bank account in Guernsey was frozen in 2018 through a European Investigation Order.

93. The authorities have pointed out that financial investigations are not systematically carried out in THB cases and their use depends on the nature of the trafficking offence being investigated: they are used especially in the cases of labour exploitation involving several victims and/or a large organised crime group. GRETA was informed by civil society actors that special investigation techniques, whose use is regulated by the Security Service Act, are rarely used in THB cases. GRETA notes that proactive investigations, extended use of special investigation techniques, financial investigations and the seizure of proceeds of crime or property used for it, including as evidence, would improve the prosecution of THB offences.

94. The Maltese authorities reported that in the period 2017-2020, a total of 16 investigations were conducted into THB cases: seven cases of trafficking for the purpose of sexual exploitation and nine cases of THB for the purpose of labour exploitation. At the time of GRETA's visit, four more investigations were ongoing.

95. According to the authorities, in 2017, four persons were prosecuted for labour exploitation. In 2018, nine defendants were prosecuted: four with charges of forced labour, four of sexual exploitation, and one of domestic servitude. In 2020 as of the date of GRETA's evaluation visit, two defendants had been prosecuted in two cases. One of these cases concerns a Somalian national arrested in February 2020 for having trafficked three children (aged 13, 14 and 14 years) for the purposes of prostitution and drug trafficking (see paragraph 186). The other case concerns a Filipino woman who had arrived in Malta to take care of a Maltese cancer patient, but ended up being sexually abused and subjected to domestic servitude.

96. In 2019, four cases involving THB charges were finalised. In the first case,⁵⁴ in which the investigation had been initiated in 2006, a Romanian woman, charged with recruiting girls for the traffickers who had been convicted in the Police vs Josef Camilleri case,⁵⁵ was acquitted on 28 February 2019 due to lack of sufficient evidence. The testimonies given by the victim were declared inadmissible by the Court on the grounds that the accused had not been given an opportunity to question the witness. The victim had returned to Romania after having testified in the Josef Camilleri case and could not be found for further questioning.

⁵⁴ Court of Magistrates, [Case 1325/06 Police vs Simona Ortansa Bostan](#), 28 February 2019.

⁵⁵ Court of Magistrates, [Case 1240/2006 Police vs Josef Camilleri](#), 28 October 2016.

97. In the second case,⁵⁶ the complainant, an Indonesian woman, was recruited as the carer of the father of the accused. Upon arrival in Malta on 6 June 2013, the victim's passport was taken from her by the accused, and she was allegedly subjected to physical and verbal assault, restrictions to movement and long working hours with no pay and without a day off. One year later the victim fled the residence of the accused and filed a complaint with the assistance of an NGO. She was accommodated in a state-run shelter and represented by an NGO lawyer. On 11 November 2019, the accused was sentenced to two years' imprisonment and a fine of €5 000. However, on 1 September 2020,⁵⁷ the Court of Criminal Appeal acquitted the accused due to an error committed by the prosecution in the charge sheet.⁵⁸

98. In the third case,⁵⁹ on 22 November 2019, two years after the initiation of the investigation, two Hungarian men were sentenced to 12 years' imprisonment and a fine for having trafficked two Hungarian women for the purpose of sexual exploitation.⁶⁰ On 1 September 2020 the judgement was overturned by the Court of Criminal Appeal on the ground that the defence had not been allowed to cross-examine the victims.⁶¹ The case was pending before the Court of Magistrates for cross-examination. The lawyer representing victims in that case criticised the appeal judgment for not having taken into account the opinion of the psychiatrist appointed by the Court of Magistrates according to whom due to the trauma suffered by the victims they should not be cross-examined.

99. In the fourth case,⁶² a Chinese national was hired to work in a massage parlour. Upon her arrival in Malta in 2015, her passport was taken away and she was allegedly forced to perform sexual acts. In March 2015, a Maltese man and a Chinese woman were charged, *inter alia*, with counts of trafficking for the purpose of prostitution. By a judgment of 11 November 2019 of the Court of Magistrates, the two accused were acquitted of THB charges due to insufficient evidence, but were found guilty of charges associated with possession of a firearm, issuing insults and threats and the confinement of a person, and were sentenced to fines.

100. In 2020, at the time of GRETA's evaluation visit, only one new case of THB (Police vs Lin Han⁶³) had been concluded. In that case, three Chinese victims had arrived in Malta with the promise of work as masseuses, but had been subjected to sexual exploitation. The investigation started in November 2012 and, by a judgement of the Court of Magistrates delivered on 24 September 2020, the perpetrator was sentenced to five years' imprisonment. The case was appealed by the defendant and is pending at the appeal stage. The three victims were given a reflection period and were assisted by the Agency Appogg for a very short time as they decided to return to China with the assistance of the Vice Squad once their testimonies were collected. They did not want to take part in the criminal proceedings after their return to China.

101. During the period 2017-2020, there was no conviction or criminal proceedings against legal entities related to THB.

⁵⁶ Court of Magistrates, [Case 692/2014 Police vs Daswani Harish](#), 11 November 2019.

⁵⁷ Court of Criminal Appeal, [Appeal No 315/2019 Police vs Daswani Harish](#), 1 September 2020.

⁵⁸ The prosecution had mentioned in the charge sheet that allegations regarding THB had taken place "on 8 June 2014 and in the preceding months". In view of this formulation, the Appeal Court decided that the act of trafficking and all the elements making up the THB offence had to take place between 8 June 2013 (shortly after the arrival of the victim to Malta) and 8 June 2014. However, the behaviour which facilitates the entry into and residence in Malta, which is a constitutive element of the THB offence criminalised in Article 248E (1) of the CC, took place before the arrival of the victim in Malta on 6 June 2013.

⁵⁹ Court of Magistrates, [Case 511/2017 Police vs Robert Attila Majlat](#), 22 November 2019 (in Maltese).

⁶⁰ To GRETA's knowledge, this is the longest sentence passed by a Maltese Court in a THB case to date.

⁶¹ Court of Criminal Appeal, [Appeal No 330/2019 Police vs Robert Attila Majlat](#), 1 September 2020 (in Maltese).

⁶² Court of Magistrates, [Case 257/2015 Police vs Grixti Domenic](#), 11 November 2019.

⁶³ Court of Magistrates, [Case 111/2013 Police vs Lin Han](#), 24 September 2020.

102. GRETA refers to an analysis of 22 judgments passed by the Court of Magistrates and the Court of Criminal Appeal in 12 cases of THB in 2004-2012, which was conducted under the project **“Improve Quality of Prosecution and Protection of Victims of Trafficking through the Justice System in the Republic of Malta”**, implemented by IOM Malta.⁶⁴ All analysed cases concerned trafficking of women who had arrived in Malta with the promise of employment and ended up being forced into prostitution. GRETA notes with concern the leniency of the sanctions imposed on traffickers. In seven cases the perpetrators were sentenced to two years’ suspended imprisonment, with a four-year probation period.⁶⁵ In one case, two defendants were sentenced to three years’ effective imprisonment and one defendant to two years’ suspended imprisonment. In three cases, the perpetrators were sentenced to effective imprisonment (respectively three, three and two and half years) by the Court of Criminal Appeal, after it overruled the judgments by which the Court of Magistrates had either sentenced them to a suspended prison sentence or released them from all the charges. One of the cases, *Police vs Raymond Mifsud*⁶⁶ stands out in terms of severity of the punishment imposed on the perpetrator, a Maltese man who was sentenced to 11 years’ imprisonment for having trafficked three women for the purpose of sexual exploitation. In this case, a police officer assisted the trafficker with issuing visas for foreign women, and a separate case was opened against the police officer in question, which is still ongoing (*Police vs Kevin Amato case*).⁶⁷

103. In Malta, there is no time limit for the prosecution of a case. The Maltese authorities have explained that the duration of criminal proceedings in THB cases depends on the complexity of the case, in particular on the number of accused and victims. It transpires from the above-mentioned cases that criminal proceedings in THB cases can be very lengthy. By way of illustration, in the *Police vs Kevin Amato* case the criminal proceedings are still ongoing although 16 years have passed since the criminal investigation was launched. The situation was exacerbated in 2020 due to postponements of court proceedings related to the COVID-19 pandemic. Civil society actors have referred to a labour exploitation case involving 32 victims in which the trial had to start three times from the beginning as each new magistrate assigned to the case wanted to review the evidence. Therefore, although the trial started in 2015, it is still at the stage of submission of evidence at the first instance. The issue of the length of criminal proceedings is apparently not specific to cases of THB. GRETA was informed that court hearings are postponed for reasons such as workload of courts, lack of interpreters, and unavailability of police officers who are in charge of conducting the prosecution in THB cases. Although victims are entitled to apply to the first Hall of the Civil Court to be compensated for undue delay in the prosecution, the Maltese authorities were not aware of any compensation received or application submitted to this end by a victim of THB.

104. GRETA stresses that failure to convict traffickers and the absence of effective, proportionate and dissuasive sanctions undermines efforts to combat THB and guarantee victims’ access to justice. The case referred to in paragraph 97 is an illustration of failure to convict offenders. If proceedings are built solely upon the victim’s testimony, this puts an exorbitant amount of pressure upon the victim, who is often vulnerable and possibly traumatised. GRETA is also concerned that the length of criminal proceedings impacts negatively on victims of trafficking, who might be exposed to repeated confrontation with perpetrators and re-victimisation, as well as on the outcome of prosecution. This can only contribute to the lack of trust of victims in the criminal justice system.

105. As regards the training provided to law enforcement officials, prosecutors and judges on THB, see the section on specialised authorities and co-ordinating bodies (paragraphs 123-126).

⁶⁴ [Counter-Trafficking Training Modules | IOM Malta](#), pp. 101-140

⁶⁵ Article 28A of the CC allows the suspension of sentences of not more than two years’ imprisonment. As the minimum penalty for THB was raised in 2013 from two to four years’ imprisonment (which is currently from six to twelve years) Article 28A is no longer applicable for THB.

⁶⁶ Court of Magistrates, [Case 454/2004 Police vs Raymond Mifsud](#), 1 March 2012 (in Maltese).

⁶⁷ [Court: Man Jailed 11 years over sex trafficking - The Malta Independent](#)

106. **GRETA urges the Maltese authorities to take measures to strengthen the criminal justice response to THB and ensure that THB cases lead to effective, proportionate and dissuasive sanctions, including by:**

- **providing regular training to judges, members of the Attorney General’s office and police officers on THB (see also paragraph 126) and the rights of victims, and encouraging the development of specialisation amongst prosecutors and judges to deal with THB cases;**
- **strengthening the proactive investigation of cases of all forms of THB, including internal trafficking, regardless of whether a complaint about the reported crime has been submitted or not, making use of special investigation techniques in order to gather evidence and not having to exclusively rely on the testimony by victims;**
- **requiring consideration of allocation of specialist financial investigators to every THB case;**
- **ensuring that the length of court proceedings in cases of trafficking of human beings is reasonable, in line with the case-law of the European Court of Human Rights (related to Article 6, paragraph 1 of the ECHR) and the standards set by the European Commission for the Efficiency of Justice (CEPEJ).⁶⁸**

8. Non-punishment provision (Article 26)

107. Pursuant to Article 26 of the Convention, Parties must provide for the possibility of not imposing penalties upon victims of THB for their involvement in unlawful activities, to the extent that they have been compelled to do so. As previously stressed by GRETA, the criminalisation of victims of THB not only contravenes the state’s obligation to provide services and assistance to victims, but also discourages victims from coming forward and co-operating with law-enforcement agencies, thereby also interfering with the state’s obligation to investigate and prosecute those responsible for THB.⁶⁹ Furthermore, GRETA has noted that the absence of a specific provision on the non-punishment of victims of trafficking entails a risk of differential treatment, depending on the prosecutor in charge of the case.

108. The legislation providing for the non-punishment of victims of THB has not changed since GRETA’s second report. Article 248E(6) of the CC establishes that “the offences committed under this sub-title (i.e. trafficking in human beings) shall not be liable to punishment if the offender was compelled thereto by another person, where the provisions of Article 33(b) do not apply”. Article 33(b) exonerates a person from criminal responsibility provided that the elements of coercion (“irresistible external force”) are proved to the court’s satisfaction and in accordance with the law.

109. The Maltese authorities have reported that no identified victim of trafficking has been prosecuted for offences he/she was compelled to commit. They also explained that while no guidance has been issued to police officers and no training has been conducted as regards the application of the non-punishment principle, the Vice Squad police officers have been sensitised about it during various training activities organised in the reporting period (see paragraphs 123 and 124).

110. However, civil society actors reported that possible victims of THB for sexual exploitation, including children, are punished for the offence of loitering and soliciting in a public place for the purpose of prostitution, while being under the control of their traffickers. GRETA stresses that lack of proactive identification amongst persons engaged in prostitution (see paragraph 167) increases the risk for victims of trafficking being prosecuted and punished.

⁶⁸ <https://rm.coe.int/cepej-2018-26-en-rapport-calvez-regis-en-length-of-court-proceedings-e/16808ffc7b>

⁶⁹ See GRETA’s 2nd General Report.

111. **GRETA considers that the Maltese authorities should step up their efforts to ensure the application of the non-punishment provision in practice, including through training of police officers, prosecutors and judges, and the issuing of guidance.⁷⁰ The principle of non-punishment should not be applied only by judges but by all actors in the criminal justice system and at as early a stage as possible.**

9. Protection of victims and witnesses (Articles 28 and 30)

112. Under Article 28 of the Convention, Parties must take the necessary measures to provide effective and appropriate protection from potential retaliation or intimidation to victims and witnesses of human trafficking, as well as to members of civil society organisations supporting victims during criminal proceedings and, where appropriate, to victims' family members. Intimidation of victims and witnesses is nearly always aimed at suppressing evidence against defendants. Effective protection can be of various types (physical protection, relocation, identity change...) and depends on the assessment of the risks that victims and witnesses run. In addition, Article 28(3) provides that a child victim shall be afforded special protection measures, taking into account the best interests of the child. Regarding the period during which the protection measures are to be provided, the Convention aims in a non-exhaustive manner at the period of investigation and of the proceedings or the period following them. The period in which protection measures have to be provided depends on the threats to the persons concerned. Moreover, because trafficking in human beings is often international and some countries are small, Article 28(5) encourages Parties to enter into agreements or arrangements with other countries so as to implement Article 28.

113. Further, Article 30 of the Convention requires Parties to adapt their judicial procedure so as to protect victims' privacy and ensure their safety, including special protection measures for child victims. While the measures provided for in Article 28 address extra-judicial protection, the measures referred to in Article 30 are concerned with the procedural measures to be introduced. The following means can be used, in accordance with the European Convention on Human Rights and the case-law of the European Court of Human Rights, to achieve the objectives of Article 30: non-public hearings, audio-visual technology, recordings of testimony, and anonymous testimony.

114. According to information provided by the authorities, when a presumed victim of trafficking gets into contact with the authorities, a social worker from the Agency Appoġġ and a police officer carry out an assessment of the victim's safety and protection needs. Appoġġ offers victims accommodation in a safe house whose address is known only to Appoġġ staff, the police and the regulatory authority for shelters. Appoġġ concludes an agreement with residents of the safe house and monitors it to ensure that security rules are followed. While the investigation or court proceedings are underway, THB victims who so request are escorted to court by a police officer and a social worker to ensure that they do not come into contact with their traffickers on their way or while waiting for the hearing. However, there are no separate waiting areas at the courts for victims and perpetrators and, according to civil society representatives, no standardised procedure is in place to avoid contacts at court.

115. Pursuant to Article 540A (2) of the CC, if from the risk assessment of the victim and the police investigation it emerges that a person is at serious risk of harm, the police should ask a magistrate to issue a temporary protection order (TPO), a measure that was introduced into the CC in April 2018. A TPO remains in force until the police institute criminal proceedings against the alleged offender. It may then be replaced by a protection order (PO) to be issued under Article 412C of the CC. The latter usually remains in force throughout the criminal proceedings and also forms part of the court judgement. In almost all THB cases in which perpetrators were convicted in the reporting period, the victims were issued with POs. Both TPOs and POs are restraining orders prohibiting a person from approaching the person at risk of harm, rather than active protective measures. The maximum term of punishment for the breach of a

⁷⁰ See OSCE, Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking, 2013, available at: <https://www.osce.org/secretariat/101002?download=true>. With regard to the non-punishment provision, see also ECtHR, *V.C.L. and A.N. v. the United Kingdom* (nos 77587/12 et 74603/12), 16 February 2021.

TPO/PO is a fine of €7 000 or two-years' imprisonment. In their reply to the draft report, the Maltese authorities informed GRETA that the centralised reporting system of the police had been recently amended to include the issue and breach of a TPO/PO.

116. A victim of crime may be protected under the Witness Protection Programme, in accordance with Articles 40-54 of the Police Act. The programme includes the resettlement of victims in other countries under a new identity, protection of their life and property, as well as of their family members, and payment of a subsistence allowance. The Maltese authorities have informed GRETA that no victim of THB has been granted protection under the Witness Protection Programme.

117. Pursuant to Article 405 (3) of the CC, the examination of victims and witnesses should in principle be conducted in the presence of the accused so that the latter has the opportunity of cross-examining them. However, the court may allow for the audio- or video-recording of the testimony of a witness and the witness to testify via video conference from a place chosen by the court (Article 647A of the CC). Article 55(1) of the Police Act stipulates that "Any minor, any victim of any crime against the sexual integrity of persons, any vulnerable victim or witness shall give evidence *viva voce* during the trial by contemporaneous television transmission." GRETA welcomes this provision which provides a better protection to witnesses compared to Article 90(1) of the previous Police Act, pursuant to which video-conferencing facilities could be used for certain witnesses.

118. GRETA was informed that while the examination of the child victims is always conducted via video conference and is recorded in order to avoid re-examination, the examination through video conference is not always allowed by the court for adult victims of trafficking. Civil society actors met by GRETA stressed the need for judges and magistrates to be provided with training on how to proceed with the cross-examination of victims of crimes.⁷¹

119. Details concerning the protection of children in court proceedings are provided in a separate section below (paragraph 135-140).

120. **GRETA urges the Maltese authorities to take additional steps to ensure that victims and witnesses of human trafficking are provided with effective and appropriate protection from potential retaliation or intimidation, including by:**

- **avoiding cross-examination in the presence to defendants, and giving preference to testifying through video-conference;**
- **building the awareness of all actors in the criminal justice system on how to avoid re-victimisation and stigmatisation of victims of THB, as well as prioritising the rights, needs and interests of victims.**

10. Specialised authorities and co-ordinating bodies (Article 29)

121. Under Article 29(1) of the Convention, Parties have to adopt the necessary measures to promote specialisation of persons or entities in anti-human-trafficking action and victim protection. Each country must have anti-trafficking specialists in sufficient numbers and endowed with appropriate resources. The staff of specialised authorities and coordinating bodies should, as far as possible, be composed of women and men. To combat trafficking effectively and protect its victims, it is essential that proper training is provided to relevant officials.

⁷¹ See on the matter of cross-examination also the case described above in paragraph 98.

122. The investigation and prosecution of THB offences fall under the responsibility of the Vice Squad, which is also responsible for sexual offence, child abuse and domestic violence cases. In August 2020, two new inspectors joined the Vice Squad, which is currently made up of five inspectors, five sergeants and eight constables. The Vice Squad is assisted by the Economic Crime Unit and liaises with private financial institutions as well as relevant public authorities, such as Malta Security Service, immigration police, Jobsplus, and Identity Malta.⁷² GRETA was informed of steps taken by the Vice Squad to engage the money laundering section of the police on an *ad hoc* basis to assist with financial aspects of the ongoing THB investigations.

123. GRETA was informed by the authorities that the police officers receive training on THB as part of the three-month induction course for new recruits and the annual two-week in-service training. By way of example, the authorities have referred to training on human trafficking given in September 2018 to about 100 new police recruits as part of the induction course. However, civil society actors indicated that efforts invested in capacity-building of police officers are often lost due to the high staff turnover in the police.

124. In November 2016, a two-day training session was provided by two foreign trainers from IOM and Frontex, together with local experts to 50 officials from the Immigration Police, the Police Vice Squad, the Office of the Refugee Commissioner, the Agency Appoġġ and the Agency for Welfare of Asylum Seekers (AWAS). The training aimed to enhance the capacity of officials to identify and support THB victims, to counteract more effectively the crime of trafficking, and to facilitate interinstitutional information sharing and cooperation. Further, in 2017, a training event on THB consisting of separate sessions for different groups of participants was provided by a UK charity organisation. Prosecutors, police officers and officials from Court services, the Agency Appoġġ, Jobsplus, the DIER, Identity Malta, the Office of the Commissioner for Children, AWAS, the Health Transcultural Nursing Services, and the Community Mental Health Services attended the event. In addition, in January 2019 a five-day training activity on THB was provided by the International Centre for Parliamentary Studies.⁷³ The training brought together officials from the Vice Squad, the Police Immigration Office, the Agency Appoġġ, the DIER, Identity Malta, Jobsplus, the Office of the Attorney General, primary health service as well as representatives of NGOs.

125. As for judges, their last specific training on THB dates back to June 2016 and was referred to in GRETA's second report. GRETA was informed by the Maltese authorities that all judges are given in-house training that covers THB. The law-enforcement officers met by GRETA highlighted the need for the specialisation of judges dealing with THB cases.

126. GRETA welcomes the recent increase in the number of inspectors of the Police Vice Squad, as well as the training provided to the relevant professionals, and considers that training on THB should be integrated into the regular training curricula of all relevant professional groups, including law-enforcement officials, prosecutors, judges, forensic experts, labour inspectors, social workers, child welfare staff, health-care staff, and diplomatic and consular staff.

⁷² Identity Malta executes the functions and duties of the public administration in matters relating to citizenship, passports, visa, identity documents, work and residence permits, and registration of public deeds and acts of civil status.

⁷³ See <https://www.renate-europe.net/wp-content/uploads/2019/03/Course-Tackling-HT-outline-from-International-Centre-for-Parliamentary-Studies-.pdf>.

11. International co-operation (Article 32)

127. Article 32 of the Convention requires parties to co-operate to the widest extent possible to prevent and combat THB, to protect and to provide assistance to victims, and to investigate and prosecute cases of THB. International co-operation between State Parties to the Convention is also essential for enabling access to effective remedies for victims of trafficking. Parties must co-operate with one another “to the widest extent possible”. This principle requires them to provide extensive co-operation to one another and to minimise impediments to the smooth and rapid flow of information and evidence internationally. As regards international co-operation in criminal matters for the purposes of investigations or proceedings, the provisions of the Convention neither cancel nor replace the provisions of relevant international or regional instruments⁷⁴ on mutual legal assistance and extradition, reciprocal arrangements between Parties to such instruments and relevant provisions of domestic law concerning international co-operation.

128. In May and June 2017, Malta’s Police Force and courts co-operated with the Italian authorities to extradite five Ukrainians accused of smuggling migrants between Turkey and Europe, who were facing charges of human trafficking and migrant smuggling in Italy. In 2019, Spain, Finland, the Netherlands, Romania and Malta established a Joint Investigation Team (JIT) to investigate an international online prostitution case, with THB and money laundering implications involving criminals from various EU countries, which resulted in the arrest and extradition to Spain of the main suspect. During the reporting period, the Maltese authorities also participated in operations organised in the framework of the implementation of the EMPACT (European Multidisciplinary Platform against Criminal Threats) THB Project.

129. A Memorandum of Understanding (MoU) was signed in December 2018 with the British High Commission in Malta, with a view to improving the capacity of the Maltese authorities to prevent trafficking, identify and support victims. The MoU expired in December 2020. GRETA was informed by the Maltese authorities that while the MoU was not renewed, there is an agreement between the two parties that their co-operation on combating trafficking will continue beyond the timeframe of the MoU.

130. **GRETA welcomes the Maltese authorities’ participation in multilateral and bilateral international co-operation, including by means of JITs, and invites the Maltese authorities to strengthen their efforts, in particular when it comes to sharing information to ensure the protection of victims of THB and effective conviction of traffickers.**

12. Cross-cutting issues

- a. gender-sensitive criminal, civil, labour and administrative proceedings

131. As noted in CEDAW General recommendation No. 33 on women’s access to justice, discrimination against women, based on gender stereotypes, stigma, harmful and patriarchal cultural norms and gender-based violence, which affects women in particular, has an adverse impact on the ability of women to gain access to justice on an equal basis with men.⁷⁵

⁷⁴ For example, the European Convention on Extradition, the European Convention on Mutual Assistance in Criminal Matters and its protocols, Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member states, and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

⁷⁵ CEDAW General recommendation No. 33 on women’s access to justice, CEDAW/C/GC/33, 3 August 2015, paragraph 8.

132. GRETA notes that in general, women encounter obstacles with respect to access to justice within and outside the legal system. Some of these obstacles are of a legal or institutional nature, while others have socio-economic and cultural grounds. The legal and institutional barriers include discriminatory or insensitive legal frameworks, including legal provisions that are explicitly discriminatory; gender blind provisions that do not take into account women's social position; and gaps in legislation concerning issues that disproportionately affect women. On the socio-economic level the obstacles include lack of awareness of one's legal rights and legal procedures or of how to access legal aid, which can stem from gender differences in educational levels, and access to information. A further obstacle may be the lack of financial resources, including the means to pay for legal representation, legal fees, judicial taxes, transportation to courts or childcare.⁷⁶ Such obstacles, and remedies to them, are listed in a Council of Europe training manual for judges and prosecutors on ensuring women's access to justice, as well as in the publication "Women's Access to Justice: Guide for Legal Professionals".⁷⁷

133. According to information provided by the Maltese authorities and confirmed by specialised lawyers, during contacts with THB victims, the Vice Squad police officers and the Appoġġ social workers ensure a gender-sensitive approach. The Vice Squad tries to have as far as possible a female officer present at interviews of female victims. In conducting the individual assessment of victims' needs, the social workers take into account the specificities arising from age, gender and gender identity, in compliance with Article 12 (a) of the VCA. According to a guidance note of the International Protection Agency (IPA), which is the national authority responsible for the examination of asylum applications (see paragraph 171), asylum seekers who have been subjected to serious forms of violence, such as victims of trafficking, can ask for a same-sex case officer and/or interpreter and such requests should be accommodated whenever possible. Further, pursuant to Article 14A (1) of the VCA, a court shall take into consideration the gender of a child in the appointment of a support person to assist the child during the judicial proceedings.

134. GRETA refers to the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) report on Malta,⁷⁸ published in November 2020, according to which the authorities should strengthen their efforts to facilitate women's access to justice by making legal aid in civil proceedings more accessible for women victims of violence, and increasing awareness of members of the law enforcement authorities and the judiciary on issues related to violence against women.

b. child-sensitive procedures for obtaining access to justice and remedies

135. The principle of the best interests of the child is incorporated in several legislative texts in Malta, such as the Minor Protection Act, the VCA, the CC and the Civil Code. In June 2019, the UN Committee on the Rights of the Child recommended the incorporation of this principle in all Maltese legislation that has an impact on children (e.g. the Immigration Act); that additional efforts be made to ensure respect for the right of all children to be heard and due weight be given to their views in all matters affecting them; and that training be provided to all relevant persons in authority on how to effectively assess the child's best interests, and hear and take into account the child's views.⁷⁹

⁷⁶ Council of Europe training manual for judges and prosecutors on ensuring women's access to justice, page 13, available at <https://rm.coe.int/training-manual-women-access-to-justice/16808d78c5>

⁷⁷ Available at: <https://rm.coe.int/factsheet-womens-access-to-justice/16808ff44e>

⁷⁸ [GREVIO/Inf\(2020\)17](https://rm.coe.int/grevio-inf(2020)17), (Baseline) Evaluation report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, Malta.

⁷⁹ UN Committee on the Rights of the Child's [Concluding observations on the combined third to sixth periodic reports of Malta](https://www.unhcr.org/refugees/journal/2019/06/20190601-concluding-observations-on-the-combined-third-to-sixth-periodic-reports-of-malta), June 2019.

136. The interviewing of child victims of abuse is conducted by the police in a specially adapted room. Pursuant to Articles 391 (3) and 646 (2) of the CC, a child witness who is under the age of 16 shall be questioned only once, via video conference, and his/her testimony shall be recorded. The court may authorise a re-examination only for special and exceptional reasons which arise after the child has given his/her testimony. According to specialised lawyers met by GRETA, the authorities take all the necessary measures so that child victims do not come across perpetrators in the court building, for example by making sure that the child enters the court through a different entrance from the defendant. The examination is conducted by a magistrate specialised in cases involving child abuse in a specially equipped room within the court building and the questions are put to the child by the magistrate or a psychologist in a child-friendly way. The child does not see the defendant and his/her lawyer. The child is usually accompanied by his/her parents or guardian, a social worker, a lawyer and, if necessary, a psychologist. In the case of children between 16 and 18 years of age, the application of these special interviewing conditions is at the discretion of the magistrate.

137. In November 2017, Malta issued its first National Children's Policy⁸⁰ to be implemented by 2024. In line with its three main principles of protection, provision and participation, the Policy promulgates a series of objectives, including the promotion of a child-friendly justice system. In line with this objective, the Minor Protection Act stipulates in its Article 63 (3) (a) that a minor in alternative care has the right to be consulted on any decision affecting him/her in a manner appropriate to his/her age and understanding.

138. A new Article 14A of the VCA, introduced in April 2018, allows a judge to appoint a specially trained expert as a support person to guide and assist a child victim of crime throughout the court proceedings, as well as for a suitable period of time following their conclusion. Furthermore, pursuant to Articles 14 and 17 (1) of the VCA, a children's advocate with family law experience shall be appointed to assist and represent the interests of a child victim of trafficking in civil proceedings. The children's advocate has to, *inter alia*, submit the views of the child in court and provide the child with explanations on the possible consequences of his/her decision and any other relevant information. However, reports indicate that the three children's advocates currently available work on a part-time basis and have not received any training on psychology or interactions with children.⁸¹

139. Whilst welcoming the steps taken to promote a child-friendly justice system, GRETA invites the Maltese authorities to create a panel of sufficient number of adequately trained persons, such as children's advocates and support persons, to guide and assist child victims of trafficking during court proceedings.

140. Further, GRETA urges the Maltese authorities to review the Criminal Code with a view to ensuring that all child victims of THB, including children older than 16, are afforded special protection measures. In this context, GRETA refers to the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.⁸²

c. role of businesses

141. An awareness-raising event was organised for private sector stakeholders within the project "Supporting efforts to counteract trafficking in persons in Malta: engagement with the private sector", implemented by the Ministry for Home Affairs and National Security and IOM between November 2018 and January 2019. The project aimed at raising awareness of THB and eliminating exploitation from companies' operations and supply chains. Under this project, a checklist to assist companies in avoiding trafficking like situations was drawn up and disseminated.

⁸⁰ Available at: <https://family.gov.mt/en/Documents/National%20Children%27s%20Policy%202017.pdf>

⁸¹ See [GREVIO/Inf\(2020\)17](#), (Baseline) Evaluation report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, Malta, paragraph 155.

⁸² [Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice](#) (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies).

142. As described in GRETA's previous reports,⁸³ a company whose liability for THB is established is sanctioned with a fine of between €20,000 and €2,000,000 (Articles 121 D and 248E (3) of the CC). S.L. 217.14 lays down sanctions and measures to be imposed to an employer employing an illegally staying third-country national. The offence is aggravated if it is related to a child or is accompanied by particularly exploitative working conditions or if it is committed by an employer who uses work or services exacted from an illegally staying third-country national with the knowledge that s/he is a victim of THB (Article 7).

143. An employer convicted for employing an illegally staying third-country national may be excluded for up to five years from entitlement to public benefits, aid or subsidies, and from public procurement procedures. Where the employer is a subcontractor, the contractor may be liable to pay a financial sanction imposed on the subcontractor, unless the contractor has undertaken due diligence obligations (Article 6 of S.L. 217.14). Moreover, on 28 October 2016, Malta adopted S.L. 601.03 on Public Procurement Regulations, which provides for the exclusion of a company from public procurement procedures for a period of five years if the company or a member of its administrative, management or supervisory body or a person who has powers of representation, decision or control therein, was convicted by final judgment for THB (Article 192). GRETA was not provided with any examples of the application of these provisions in THB cases.

144. GRETA considers that the Maltese authorities should strengthen engagement with the private sector, in line with the UN Guiding Principles on Business and Human Rights⁸⁴ and Council of Europe Committee of Ministers Recommendation CM/Rec(2016)3 on human rights and business,⁸⁵ with a view to raising awareness of the important role and responsibility of businesses to prevent human trafficking, support the rehabilitation and recovery of victims, and provide access to effective remedies.

145. Further, GRETA considers that the Maltese authorities should extend the application of Article 6 of S.L. 217.14 to persons employing a trafficked person, and allow the use of financial sanctions paid by those employers to secure compensation to victims of human trafficking.

d. measures to prevent and detect corruption

146. Trafficking in human beings may be engaged in by organised criminal groups, which frequently use corruption to circumvent the law and money laundering to conceal their profits. Consequently, other Council of Europe legal instruments are also relevant to combating human trafficking, in particular those designed to combat corruption, money laundering and cybercrime. The Council of Europe Group of States against Corruption (GRECO) recommended in its 5th report on Malta⁸⁶ that the fight against corruption within the police be strengthened by: (i) establishing an anti-corruption strategy based on proper risk assessments so as to promote a culture of integrity and to restore public trust in the Malta Police Force; (ii) carrying out training and awareness-raising measures on integrity and professional ethics for law-enforcement bodies; (iii) fostering the mechanism for reporting of suspicions of corruption within the Police Force; and (iv) establishing for the Police Force a policy to communicate at regular interval about its work.

⁸³ See paragraph 168 of GRETA's first report and paragraph 141 of GRETA's second report.

⁸⁴ http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁸⁵ [Recommendation CM/Rec\(2016\)3](https://rm.coe.int/cmrec20163) of the Committee of Ministers to member States on human rights and business, adopted by the Committee of Ministers on 2 March 2016 at the 1249th meeting of the Ministers' Deputies.

⁸⁶ See GRECO's 5th evaluation round report on Malta, published on 3 April 2019, available at: <https://rm.coe.int/grecoeval5rep-2018-6-fifth-evaluation-round-preventing-corruption-and-/168093bda3>

147. According to the special Eurobarometer 470 on corruption published in December 2017,⁸⁷ 79% of Maltese respondents see corruption as widespread in Malta, which is above the EU average (68%). The police and courts are amongst the institutions perceived as mostly affected by bribes and abuse of power.

148. In October 2018, Malta adopted the Standards in Public Life Act, which applies to Members of the House of Representatives and any other officials as determined by the Government. It establishes a Commissioner to check declarations of interests and assets, investigate breaches of the ethical and other relevant rules, and refer the findings, depending on the case, to the Commissioner of Police or the Permanent Commission Against Corruption.

149. As noted in paragraph 102, the prosecution of a police officer who allegedly acted as an accomplice to a convicted trafficker is still ongoing. The Maltese authorities are not aware of any new investigation or prosecution of public officials complicit of trafficking offenses. Pursuant to Article 248E (2) of the CC, the penalty of the THB offence is increased if committed by a public officer in the course of the exercise of his/her duties.

150. **GRETA invites the Maltese authorities to include and effectively implement measures against corruption in a THB context in its anti-corruption policies and initiatives.**

V. Follow-up topics specific to Malta

1. Measures to prevent and combat trafficking for the purpose of labour exploitation

151. In its second evaluation report, GRETA considered that the Maltese authorities should intensify their efforts to prevent THB for the purpose of labour exploitation, including by further sensitising relevant officials about THB and the rights of victims, and working closely with the private sector.

152. The Maltese authorities have referred to several measures adopted in the reporting period to minimise the risk of labour exploitation. As of 2016, third-country nationals applying for a work and residence permit (single permit) are requested to provide an employment contract signed by their employers to ensure that they are fully aware of the nature of their prospective employment conditions before entering Malta. Third-country nationals are allowed to change their employers and such requests are processed in a confidential manner. Under Article 40 of the Employment and Training Services Act, an employer has to notify Jobsplus within four days of an employment termination, which should, according to the authorities, make it easier for employees to change employers. S.L. 452.116 on Itemised Payslip Regulations, adopted in August 2018, requires employers to issue detailed payslips to employees. This new obligation is expected to facilitate the collection of evidence during the investigation of potential cases of labour trafficking.

153. Civil society actors reported an increasing number of cases of labour exploitation in various sectors, in particular health, construction, care, cleaning, domestic work and fishing. Victims originate mainly from Asian countries, in particular the Philippines. In this context, NGOs criticised the insufficiency of control by the authorities over the work of employment agencies, which reportedly sometimes charge fees to employees, and on the working conditions of persons recruited through them.

154. The activities of employment agencies are regulated by the Employment Agencies Regulations Law, which contains provisions aimed at protecting workers recruited through these agencies. For example, its Article 10 prohibits employment agencies from charging fees to employees or making any deductions from their wages. The law also provides for inspection of employment agencies by the Department for Industrial and Employment Relations (DIER), which may lead to the withdrawal of an agency's operating licence and the imposition of a fine.

⁸⁷ [Special Eurobarometer 470: Corruption - Datasets \(europa.eu\)](https://ec.europa.eu/eurobarometer/surveys/index.cfm?id=632)

155. Labour inspections are conducted by Jobsplus, which replaced the Employment and Training Corporation in 2019, and the DIER. The DIER's inspectors are known as EIRA inspectors after the Employment and Industrial Relations Act. As already explained in GRETA's second report, EIRA inspectors inspect working conditions, while Jobsplus' inspectors supervise adherence to employment legislation by checking the existence of employment contracts and their conformity with relevant legislation. In their comments to the draft report, the Maltese authorities informed GRETA that the DIER had increased the number of inspectors and random inspections.

156. Since 2016, Jobsplus inspectors have referred to the police five possible human trafficking cases. In 2016, two cases of labour exploitation concerning 24 Filipino victims were identified by the police as a result of the EIRA inspectors' referrals. However, NGO representatives met by GRETA criticised the absence of regular labour inspections in massage parlours, which are places of work carrying a heightened risk of sexual exploitation.

157. Malta has adopted a new procedure for the inspection of illegally staying and illegally employed third-country nationals through the Legal Notice 112, which came into force on 4 June 2019. By virtue of this Legal Notice, a new reporting unit was set up within Identity Malta Agency with a view to inspecting the illegally staying and illegally employed third-country nationals, in accordance with S.L. 217.14. The new unit, composed of five reporting officers and five assistant officers, is authorised to inspect without prior notice any premises where third-country nationals are employed, residing or studying. At the time of GRETA's visit, the officers of the unit were waiting for training to be conducted, which was said to cover indicators of trafficking.

158. During the reporting period, Jobsplus and DIER staff have continued to receive training about human trafficking. They attended a training event organised by the Ministry for Home Affairs and National Security in 2017. Further, in January 2019, a five-day training was provided by the London-based International Centre for Parliamentary Studies, and in March 2019, a two-day training seminar was delivered by UK's Gangmasters and Labour Abuse Authority (GLAA).

159. **While commending the efforts made since the second evaluation to prevent and combat trafficking for the purpose of labour exploitation, GRETA considers that the Maltese authorities should:**

- **encourage law-enforcement officers, labour inspectors and other relevant actors to increase their outreach work to identify victims of trafficking for the purpose of labour exploitation, paying particular attention to at-risk sectors, such as construction, cleaning, domestic work, care work, fishing, massage parlours and adult entertainment, and develop specific guidelines for each at-risk sector to facilitate the identification of victims of trafficking;**
- **ensure that sufficient financial and human resources are made available to labour inspectors to fulfil their mandate and be actively engaged in the prevention of THB;**
- **strengthen the monitoring of recruitment and private employment agencies and companies' supply chains;**
- **continue training labour inspectors as well as law enforcement officers, prosecutors and judges on combating THB for the purpose of labour exploitation and the rights of victims;**
- **raise awareness among the general public as well as, in a targeted manner, among migrant workers recruited through private employment agencies, about the risks of THB for the purpose of labour exploitation and the rights of victims of trafficking.**

160. **Further, GRETA invites the Maltese authorities to develop co-operation with other countries' agencies, such as the Philippine Overseas Labour Office, to prevent trafficking of migrant workers.**

2. Identification of victims of trafficking

161. In its second report, while welcoming the creation of a National Referral Mechanism (NRM) and the related Standard Operating Procedures (SOPs), GRETA considered that the Maltese authorities should ensure the regular training of relevant officials in the use of trafficking indicators.

162. As explained in the second report, the NRM has been in use since 2014 following its adoption by the Anti-Human Trafficking Monitoring Committee. It defines the stakeholders (both governmental and non-governmental) who can be involved in the identification of victims of trafficking and can refer them to assistance and support. The NRM is accompanied by a list of national indicators for identifying victims and SOPs which provide detailed information on the steps to be taken from the identification stage through to assisted voluntary return of victims.⁸⁸ Pursuant to the NRM, a victim of trafficking may be formally identified only by the Police Vice Squad. The decision is not officially notified to the victim and cannot be challenged.

163. Contrary to the procedure indicated in the SOPs, civil society actors have indicated that formal identification of victims is sometimes dependent on the possibility to institute criminal proceedings against the trafficker. By way of example, an NGO representative met by GRETA referred to the case of a Nigerian woman seeking asylum in Malta who was not formally identified as a victim of THB, despite the presence of indicators of trafficking, on the ground that the presumed trafficker was not in Malta and therefore no one could be prosecuted in Malta. At the same time, GRETA was informed of two cases where the victims were issued with a reflection period and a temporary residence permit in accordance with S.L. 217.07, even though no prosecution could be brought against the traffickers due to their diplomatic status.

164. In January 2018, all officials of the Expatriates Unit and the Central Visa Unit of Identity Malta followed compulsory training on how to recognise signs of human trafficking and deal with potential victims.⁸⁹ In March 2019, Identity Malta staff followed the two-day training on the identification of THB victims provided by the UK's Gangmasters and Labour Abuse Authority (GLAA). Further, in the framework of the Memorandum of Understanding with the British High Commission Malta, in February and December 2019, a British immigration expert provided training on THB to Air Malta's pilot and cabin crew members.⁹⁰ Nevertheless, GRETA noted that some of the civil society actors and representatives of the public authorities included in the SOPs were not aware of the existence of the NRM and SOPs. While many interlocutors have acknowledged the progress made by the authorities in term of identification and referral of victims since the second evaluation, some interlocutors from civil society stressed the need to update and further develop the NRM and the list of trafficking indicators, and widely disseminate them. The NRM would need to be updated for instance concerning the new reporting unit that was set up within the Identity Malta Agency (see paragraph 157).

165. The current Action Plan envisages measures to strengthen the identification and referral of victims. Plans are being made under a project funded by the Government and implemented by the Ministry for Home Affairs and National Security and IOM, to set up a multiagency working group to be entrusted the task to review and, if necessary, revise the NRM and trafficking indicators. Under that project a training was delivered to stakeholders working in the field of counter-trafficking, including NGOs, on trafficking indicators, the NRM, child trafficking, new trends and the impact of the COVID-19 pandemic on the trafficking situation in Malta.

⁸⁸ Available at: https://homeaffairs.gov.mt/en/MHAS/Trafficking_in_Human_Beings/Booklet_for_Professionals_Malta_202014.pdf

⁸⁹ See <https://www.tvn.com.mt/en/news/identity-malta-staff-trained-identify-cases-human-trafficking/>.

⁹⁰ See <https://www.transport.gov.mt/news/first-malta-cabin-crew-meeting-3385>

166. In July 2019, the Government launched an awareness-raising campaign on human trafficking as part of which a new anti-human trafficking website, available in six languages, was set up and a leaflet was distributed in different languages with information about the rights of workers in Malta. Notwithstanding these efforts, civil society have indicated that there is a lack of knowledge among presumed trafficking about their rights and where to seek assistance.

167. During the evaluation visit, civil society actors stressed the need to strengthen the proactive identification of victims of trafficking in massage parlours.⁹¹ The authorities informed GRETA that in 2018, seven cases involving alleged trafficking in massage parlours were investigated, but no evidence of trafficking was found, and the defendants were charged with living off the earnings of prostitution and/or for running a brothel. It would appear that while the police have recently started to put some emphasis on the identification of possible victims of trafficking among Maltese nationals, the general perception is that victims of THB are foreigners. GRETA is concerned by NGO reports that the police turn a blind eye to the situation of women and girls who might be forced into prostitution in private residences.⁹²

168. The Maltese authorities referred to a case where 55 Indian men were recruited by a subcontractor to work in the energy sector in Malta with the promise of receiving the minimum wage. Once in Malta, their documents were taken away and they were forced to work in exchange for half the minimum wage. They were referred in April 2019 by the police to the Agency Appoġġ which provided them with accommodation and interpretation and referred them to the DIER. After having been contacted by a DIER officer, the employer started to pay them the minimum wage.

169. As noted in paragraph 14, in the reporting period a significant number of asylum seekers arrived by boat from Libya in Malta, which placed greater demand on the Maltese reception system. Reports point to a serious deterioration of reception conditions in recent years.⁹³ There is an urgent need to increase the staff capacity of the asylum reception centres and detention centres, and to sensitise their staff on human trafficking.

170. Vulnerable individuals may be referred to the Agency for the Welfare of Asylum Seekers (AWAS), the state authority managing reception facilities for asylum seekers, by any person and at any point of their stay in asylum reception centres and detention centres. However, there is no systematic and thorough screening to identify THB victims upon arrival and during detention.⁹⁴ The initial vulnerability assessment conducted by AWAS upon disembarkation of migrants is limited to the identification of cases where vulnerability is immediately obvious, such as unaccompanied children and disabled persons. GRETA notes that persons placed in asylum reception centres and immigration detention centres have limited possibilities to report that they might be trafficked due to lack of awareness on THB, absence of information materials and difficulties to have assistance of an interpreter and a lawyer (see also paragraphs 43 and 55).

⁹¹ In 2016 there were nearly 200 registered massage parlours in Malta. Figures are not available for the following years as in 2016 the Government removed licensing requirement for those establishments. Concerns have been expressed that many massage parlors are used for prostitution and human trafficking. See, for example, <https://timesofmalta.com/articles/view/massage-parlours-blamed-for-sti-rise-in-older-men.602300> and <https://timesofmalta.com/articles/view/more-than-500-men-infected-by-sex-workers-in-massage-parlours.730699>

⁹² Prostitution is legal in Malta but loitering and soliciting clients as well as brothel running are criminalised under the White Slave Traffic (Suppression) Ordinance.

⁹³ See [Report](#) on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 22 September 2020, paragraphs 24-46. See also Times Malta, [1,400 migrants detained 'illegally' at Marsa and Safi - UNHCR \(timesofmalta.com\)](#), 4 January 2020; Malta Today, [University academics call for appropriate conditions for child asylum seekers \(maltatoday.com.mt\)](#), 24 October 2019; Times of Malta, [Police raid open centre, arrest ringleaders, after Hal Far riot](#), 21 October 2019; Times of Malta, [No food for three days for Hal Far migrants](#), 24 October 2019; Times of Malta, [Rats and cramped conditions: life inside the Hal Far open centre](#), 28 October 2019.

⁹⁴ See [Special reception needs of vulnerable groups - Asylum Information Database | European Council on Refugees and Exiles \(asylumineurope.org\)](https://asylumineurope.org/)

171. GRETA was informed that since 2017, IPA has been carrying out, in compliance with Articles 6 (8) and 7 of S.L. 420.07 on the Procedural Standards for Granting and Withdrawing International Protection Regulations, a preliminary vulnerability assessment of all new applicants for international protection. This assessment is based on readily apparent signs or the applicant's own declarations. Through this assessment IPA has identified several cases of suspected exploitation. GRETA was informed by the authorities that all IPA staff attended in 2020 a training seminar on THB organised by IOM, and several IPA officers also attended EASO training sessions on THB. Further, in September 2020, IPA prepared a guidance note on the procedure to identify vulnerable cases, including potential victims of trafficking, and prioritise their asylum application.

172. Further, several measures have been taken to improve the reception of asylum seekers and the assessment of vulnerabilities. As of July 2019, EASO deployed around 50 staff to support the Maltese authorities to cope with the increasing flow of asylum seekers and signed an agreement with Malta in December 2019⁹⁵ which foresees increasing EASO support in the field of reception, vulnerability screening, referral and age assessment. Under that plan, a team of 13 persons have been set with the specific task to conduct vulnerability assessment of all asylum seekers in reception and detention facilities who have not been assessed yet. At the time of GRETA's visit, the screening had already started with the priority being given to persons with serious physical or mental problems.

173. GRETA's delegation visited the Safi Barracks immigration detention centre, where around 1,400 migrants were being held at the time of the visit. According to the Head of the centre, migrants usually stay up to three months at the centre and are then transferred to an open asylum centre if no alternative accommodation arrangements are available to them. In summer 2020, additional social workers were employed in the Safi detention centre in order to identify vulnerable migrants.

174. GRETA is extremely concerned by reports about asylum seekers rescued or intercepted at sea and disembarked in Libya,⁹⁶ where they are at serious risk of being (re-)trafficked.⁹⁷ GRETA refers to the Report of the UN Special Rapporteur on trafficking in persons, especially women and children, which states that: "No migrant should, after rescue operations, be forcibly returned to Libya, where gross violations of human rights, including torture, sexual violence, trafficking and slavery, are systematically perpetrated in detention centres and 'connection houses'".⁹⁸ Recalling the European Court of Human Rights' judgment in *Hirsi Jamaa and others v. Italy*, GRETA notes that the obligation of *non-refoulement* applies also to operations in Libyan territorial waters. While recognising the serious challenges Malta faces in relation to the considerable number of asylum seekers, **GRETA urges the authorities to respect the principle of *non-refoulement* of victims of trafficking. In this respect, reference is made to GRETA's Guidance note on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection.**⁹⁹

⁹⁵ 2020 Operational and Technical Assistance Plan Agreed by EASO and Malta, 12 December 2019, available at: <https://bit.ly/3abiYfn>

⁹⁶ By way of example, on 9 April 2020, the day when Malta closed, due to the COVID-19 pandemic, its ports to boats carrying rescued asylum seekers, a boat carrying 60 asylum seekers was allegedly returned to Libya after some of them being found death dehydrated due to the delay in rescuing. See [Malta shuts its ports to asylum seekers, citing COVID-19 pandemic \(timesofmalta.com\)](#), 9 April 2020; [Updated \(3\): Migrants taken back to Libya; five dead bodies recovered from sea - The Malta Independent](#), 15 April 2020; [Neville Gafà reveals controversial secret migration pact with Libya \(maltatoday.com.mt\)](#); and the letter addressed by the Commissioner of Human Rights to the Prime Minister of Malta, Robert Abela, available at: [Commissioner urges Malta to meet its obligations to save lives at sea, ensure prompt and safe disembarkation, and investigate allegations of delay or non-response to situations of distress - View \(coe.int\)](#)

⁹⁷ See UN Human Rights Council, Thirty-eighth session, Report of the Special Rapporteur on trafficking in persons, especially women and children, A/HRC/38/45, 14 May 2018, p. 6, available at: <https://www.gla.gov.uk/media/3588/un-report-on-trafficking-and-human-rights.pdf>

⁹⁸ *Ibidem*.

⁹⁹ <https://rm.coe.int/guidance-note-on-the-entitlement-of-victims-of-trafficking-and-persons/16809ebf44>

175. While noting the steps taken since the second evaluation to strengthen the identification of victims of trafficking, **GRETA urges the Maltese authorities to take additional steps to proactively identify victims of trafficking, including by screening asylum seekers, in particular all unaccompanied children, for indicators of THB upon or swiftly after their arrival in Malta, and enabling specialised NGOs to have regular access to facilities for asylum seekers and detained migrants in order to proactively identify victims of trafficking. This involves providing information on the rights of victims of trafficking, the services and assistance measures available and how to access them** (see paragraph 46).

176. **Further, GRETA considers that the Maltese authorities should:**

- **review the National Referral Mechanism and the Standard Operating Procedures, in particular by introducing a multi-disciplinary approach to the identification process of victims of trafficking, and ensure their application in practice through the provision of appropriate training and their dissemination;**
- **provide the Police Vice Squad with further human resources and training required in order to proactively identify victims of trafficking for the purpose of sexual exploitation, including in massage parlours and amongst Maltese nationals;**
- **provide systematic training to asylum officials, migration officials, as well as social workers, medical and other staff working at facilities for asylum seekers and detained migrants on the identification of victims of trafficking and the procedures to be followed.**

3. Assistance to victims

177. In its second evaluation report, GRETA urged the Maltese authorities to step up their efforts to provide assistance, including safe accommodation, which is adapted to the specific needs of victims of trafficking, including to male victims.

178. The Agency Appoġġ remains the main provider of assistance to victims of trafficking. The human trafficking team of Appoġġ consists of two full-time social workers, one of whom was recruited in 2019, a co-ordinator and a service area leader. In addition, thanks to funding received from the AMIF, two support workers, one executive worker and one premises co-ordinator recently joined the team.

179. GRETA was informed that Appoġġ assisted 28 victims of trafficking in 2017, 48 in 2018, 48 in 2019 and 25 in 2020. Most of them were victims of labour exploitation. Appoġġ's representative pointed out that most of the assisted victims wish to stay in Malta and Appoġġ helps them to find quickly a new job. Nevertheless, GRETA was informed by civil society representatives of a case in which assistance by Appoġġ would not be sufficient for the victim to sustain a livelihood.

180. Since 2017 Appoġġ has been renting apartments to accommodate victims of THB. Victims at high risk are accommodated in an Appoġġ emergency shelter for female victims of domestic violence. GRETA was informed that a safe house specifically dedicated to victims of trafficking (women, men and any children they may have) was set up in April 2021, with funding from the AMIF. It can accommodate up to nine persons, but no victim has been accommodated there yet. According to the authorities, victims will be allowed to spend up to six months at the safe house, unless exceptional circumstances require a longer stay. Three staff members will be present during the day and a security guard after office hours.

181. In addition to free accommodation and daily necessities, Appoġġ assists victims with personal and legal counselling, interpretation, obtaining residence/work permits, job searches, and accompanies them to court, medical and legal aid appointments, and job interviews. Each victim of trafficking has a social worker designated by Appoġġ to assist them to access support services. Appoġġ has indicated that the amount spent per year by its human trafficking service was around €210,000, which is a considerable increase compared with €35,000 spent in 2015. This amount, mostly spent for employee salaries, does not include the counselling and psychological help offered to victims.

182. Additionally, NGOs provide assistance to victims of THB. By way of example, between April 2015 and September 2018, the JRS provided services to 15 presumed and 77 formally identified victims of trafficking; 70% of them were referred to the JRS by Appoġġ and the Police Vice Squad.

183. GRETA welcomes the increase in funding for victim assistance as well as the setting up of a safe house for victims of trafficking. **GRETA considers that the Maltese authorities should continue to make efforts to comply with their obligations under Article 12 of the Convention and ensure that all presumed and identified victims of trafficking receive unconditional and timely assistance and support, according to their needs, including by providing funding to NGOs which act as service providers in respect of presumed or identified victims of THB.**

4. Prevention of child trafficking and identification of, and assistance to, child victims of trafficking

184. In its second evaluation report, GRETA urged the Maltese authorities to develop a specific referral mechanism for children and ensure that child victims of THB benefit from the assistance measures provided for under the Convention. It also called on the Maltese authorities to step up their efforts to increase the training of relevant officials on the identification of child victims of trafficking and to raise awareness of child trafficking.

185. At the time of GRETA's third evaluation visit, the authorities were in the process of setting up a multidisciplinary working group with a view to, *inter alia*, elaborating a specific referral mechanism for child victims of trafficking and drawing up a list of indicators of child trafficking.

186. In 2018, the Maltese authorities formally identified for the first time a child victim of trafficking who had arrived in Malta in 2018 as an unaccompanied child and was subsequently sexually exploited. Furthermore, in 2020, three Maltese children were identified as victims of trafficking. While the children were under a care order and accommodated in a house run by a foundation, they were groomed by a Somalian national and forced into prostitution and drug trafficking. The authorities have indicated that the victims were provided accommodation and psychological assistance, and criminal proceedings were ongoing.

187. GRETA was informed that Appoġġ operates an online reporting system which receives online reports related to child sexual abuse material and handles calls received through a state-run helpline related to the same topic. In December 2018, seven full-time employees were recruited to strengthen this helpline service.

188. In the reporting period, the authorities have conducted several awareness-raising activities as part of a national education campaign ("Human, Like You") launched in July 2019, such as a drama performance for secondary school students and a book for primary school pupils which features the story of a number of fairy-tale characters who experienced different ordeals, including deceit and exploitation. Furthermore, in 2017, a training session, supported by state funding, was delivered by a UK charity specialised in child trafficking, for about 100 frontline public officials and NGO representatives.¹⁰⁰

¹⁰⁰

See <https://fsws.gov.mt/en/fsws/Documents/FSWS%20Publications/FSWS%20Report%202017.pdf>, p. 43.

189. Article 18 of S.L. 420.07 foresees special guarantees for unaccompanied children, such as the assignment of legal guardians having knowledge of the special needs of children to represent and assist them during the asylum procedure. The asylum interview shall be conducted, and the decision prepared, by a person who has the necessary knowledge of the special needs of children. However, GRETA was informed that, in practice, legal guardians appointed to unaccompanied children are usually AWAS social workers who are responsible for a large number of children. NGOs have highlighted the need for additional human resources and further training for AWAS staff, including legal guardians, about the specific needs of children.¹⁰¹

190. NGOs have also reported delays of several months in conducting age assessments and appointing legal guardians as well as delays in transferring asylum seekers found to be minors to a centre for unaccompanied children.¹⁰² Delays in legal guardian appointments prevent children from lodging their application for asylum and adversely affect their access to education.¹⁰³ Moreover, pending age determination, unaccompanied children are detained in the initial reception centre or the Safi Barracks immigration detention centre together with adult asylum seekers, which puts them at risk of exploitation and abuse.¹⁰⁴ GRETA was informed during the visit that children aged 16 had spent some nine months in the detention centre. According to information provided by NGOs, some unaccompanied children detained in the closed section of the initial reception centre reported acts of violence, including sexual violence, perpetrated against them by other detainees.¹⁰⁵

191. While welcoming the work underway on the setting up of a referral system for child victims of THB and the awareness-raising and training activities undertaken, GRETA considers that the Maltese authorities should strengthen their efforts to prevent and combat child trafficking, and in particular:

- **finalise the national referral mechanism for children and the indicators of child trafficking, and ensure their application in practice;**
- **increase the training of relevant officials on the identification of child victims of trafficking, including AWAS staff, and awareness raising on child trafficking;**
- **accelerate the procedures for age assessment and appointment of legal guardians;**
- **ensure that when there are reasonable grounds to believe that an asylum seeker is a child, he/she is immediately separated from unrelated adults and promptly transferred to a specialised accommodation and not kept in detention centres.**

¹⁰¹ See [Legal representation of unaccompanied children - Asylum Information Database | European Council on Refugees and Exiles \(asylumineurope.org\)](https://asylumineurope.org/).

¹⁰² See [Report](#) on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 22 September 2020, paragraph 58. See also [Identification - Asylum Information Database | European Council on Refugees and Exiles \(asylumineurope.org\)](https://asylumineurope.org/).

¹⁰³ See UN Committee on the Rights of the Child's [Concluding observations on the combined third to sixth periodic reports of Malta](#), 26 June 2019, paragraph 38.

¹⁰⁴ See Times Malta, [1,400 migrants detained 'illegally' at Marsa and Safi - UNHCR \(timesofmalta.com\)](#), 4 January 2020; [Identification - Asylum Information Database | European Council on Refugees and Exiles \(asylumineurope.org\)](https://asylumineurope.org/); FRA: [Migration: Key fundamental rights concerns - Quarterly bulletin 2 - 2020](#) (1.1.2020 - 31.3.2020), p. 29. See also the judgment [Adullahi Elmi and Aweys Abubakar v. Malta](#), (Application Nos 25794/13 and 28151/13, 22 November 2016) in which the ECtHR criticised the length of the age assessment procedure. The applicants had been detained for eight months in Safi Barracks Detention Centre pending the outcome of the procedure.

¹⁰⁵ See [Legal representation of unaccompanied children - Asylum Information Database | European Council on Refugees and Exiles \(asylumineurope.org\)](https://asylumineurope.org/).

5. Residence permits

192. In its second evaluation report, GRETA invited the Maltese authorities to consider expanding the grounds for granting temporary residence permits to victims of THB on the basis of their personal situation, in addition to the residence permit on the basis of the victim's co-operation in the investigation or criminal proceedings.

193. Conditions for issuing residence permits to victims of trafficking, as described in the first report of GRETA,¹⁰⁶ have remained unchanged. Pursuant to Article 5 of S.L. 217.07, a victim of trafficking may be granted a renewable residence permit for six months, which is in practice accompanied by a work permit when certain conditions are fulfilled, including absence of contacts with the perpetrators and the intention to co-operate in the investigation or the judicial proceedings. Further, victims of trafficking may be granted a residence permit on humanitarian grounds based on Article 3 (7) of S.L. 217.12 on common standards and procedures for returning illegally staying third-country nationals. THB victims are also given the opportunity to apply for other types of residence permits, such as specific residence authorisation, which entitle the beneficiary to access the labour market.

194. The authorities have increased the collaboration between different entities to accelerate the process of issuing residence permits to victims of trafficking. By way of example, the authorities have indicated that in a case involving labour trafficking which was investigated in March 2018, 14 persons were granted the status of victims of trafficking and residence permits were issued to them one week after the discovery of the case. Further, in 2018 the Maltese Government waived the residence permit application fees for victims of trafficking. GRETA welcomes these initiatives.

195. GRETA was informed by civil society actors that in practice the renewal of a residence permit for trafficked persons may be challenging due to the requirement of providing evidence of residence. In case of rejection of an application to a permit, an appeal can be filed, but the board assessing the appeal apparently faces a huge workload. Moreover, according to information received from civil society, sometimes the process of renewing the permit may be particularly challenging. Identity Malta, the authority responsible for issuing residence permits, may reportedly withdraw applications instead of officially rejecting them without informing the applicants, putting the persons in an uncertain situation concerning their status as identified trafficked person as the decision on identification is not officially notified to the victim (see paragraph 162).

196. **GRETA considers that the Maltese authorities should strengthen access to residence permits for trafficked persons by reviewing the process and requirements of issuing/renewing the permits.**

¹⁰⁶ Paragraph 141 of the first GRETA report on Malta.

Appendix 1 - List of GRETA's conclusions and proposals for action

The position of the proposals for action in the text of the report is shown in parentheses.

Topics related to the third evaluation round of the Convention

Right to information

- GRETA considers that the Maltese authorities should take further steps to ensure that presumed and formally identified victims of THB are given information in a proactive manner regarding their rights, including the right to a recovery and reflection period, the services and assistance measures available, how to access them, as well as the implications of being recognised as a victim of trafficking, irrespective of their capacity or willingness to co-operate in criminal proceedings, including by:
 - developing a specific leaflet on the rights of victims of trafficking or adding to the existing leaflet on victims' rights specific information about the implications of being recognised as a victim of trafficking, and making the leaflet available in the languages of the main countries of origin of victims;
 - sensitising interpreters to the issue of human trafficking and the vulnerabilities of victims, including by providing them with training (paragraph 45).
- Further, GRETA urges the Maltese authorities to ensure the provision of information to presumed victims of THB in asylum reception centres and immigration detention centres, including by developing and disseminating information materials on the rights of victims of trafficking, the services and assistance measures available and how to access them, and ensuring access to interpretation (paragraph 46).

Legal assistance and free legal aid

- GRETA considers that the Maltese authorities should strengthen their efforts to facilitate and guarantee access to justice for victims of THB irrespective of their immigration status by ensuring that they receive legal assistance and free legal aid at an early stage, including by:
 - appointing a lawyer as soon as there are reasonable grounds for believing that a person is a victim of human trafficking, including in the case of asylum seekers and persons placed in detention prior to deportation, before the person concerned has to decide whether or not he/she wishes to co-operate with the authorities and/or make an official statement;
 - ensuring that all victims of THB are represented by a lawyer in court proceedings;
 - putting in place a system through the Legal Aid Agency to identify lawyers who are qualified to provide legal aid to victims of trafficking;
 - ensuring adequate funding for legal assistance and free legal aid for all victims of THB and in all judicial proceedings, including when they are provided by NGO lawyers (paragraph 56).

Psychological assistance

- GRETA considers that the Maltese authorities should strengthen their efforts to ensure that victims of all forms of THB, including trafficking for the purpose of labour exploitation, are provided with free psychological assistance to help them overcome the trauma they have been through, and achieve a sustained recovery and social inclusion (paragraph 62).

Access to work, vocational training and education

- GRETA considers that the Maltese authorities should strengthen effective access to the labour market for victims of THB and their economic and social inclusion through the provision of vocational training, language courses and job placement, raising awareness among potential employers, and the promotion of micro-businesses, social enterprises and public-private partnerships with a view to creating appropriate work opportunities for victims of trafficking and preventing their re-victimisation (paragraph 69).

Compensation

- GRETA urges the Maltese authorities to make efforts to guarantee effective access to compensation for victims of THB, in line with Article 15 (4) of the Convention, including by:
 - ensuring that the collection of evidence about the harm the victim has suffered, including the financial gain from the exploitation of the victim, is part of the criminal investigation, with a view to supporting compensation claims in court;
 - enabling victims of trafficking to effectively exercise their right to compensation, by ensuring access to legal assistance and free legal aid;
 - building the capacity of lawyers to support victims in claiming compensation;
 - including compensation in training programmes for judges and prosecutors, encouraging them to use all the possibilities the law offers to uphold compensation claims by victims of THB and requiring courts to state, where applicable, why compensation is not considered;
 - reviewing the legislation to allow the use of confiscated assets to secure compensation to victims of THB;
 - removing the maximum limit of €10,000 of compensation for moral damages;
 - reviewing the eligibility criteria for state compensation with a view to making it available to all victims of trafficking when the offence was committed in Malta, regardless of their nationality and residence status, and ensuring that it is not conditional on failure to obtain compensation from the perpetrator. This should involve reviewing Article 4, paragraph 3, and Article 11 (b) of S.L. 9.12. The eligibility or amount of state compensation should not be affected by the failure of the victim to inform the authorities of the crime or to co-operate with them or by his/her conduct, character or way of life. Further, the limit of €23,300 should apply to one victim, and not to a group of victims (paragraph 83).

Investigations, prosecutions, sanctions and measures

- GRETA recalls the recommendation of its second report and once again urges the Maltese authorities to introduce as an aggravating circumstance the offence of THB committed against a child, regardless of the means used (paragraph 88).
- GRETA urges the Maltese authorities to take measures to strengthen the criminal justice response to THB and ensure that THB cases lead to effective, proportionate and dissuasive sanctions, including by:

- providing regular training to judges, members of the Attorney General's office and police officers on THB (see also paragraph 126) and the rights of victims, and encouraging the development of specialisation amongst prosecutors and judges to deal with THB cases;
- strengthening the proactive investigation of cases of all forms of THB, including internal trafficking, regardless of whether a complaint about the reported crime has been submitted or not, making use of special investigation techniques in order to gather evidence and not having to exclusively rely on the testimony by victims;
- requiring consideration of allocation of specialist financial investigators to every THB case;
- ensuring that the length of court proceedings in cases of trafficking of human beings is reasonable, in line with the case-law of the European Court of Human Rights (related to Article 6, paragraph 1 of the ECHR) and the standards set by the European Commission for the Efficiency of Justice (CEPEJ) (paragraph 106).

Non-punishment provision

- GRETA considers that the Maltese authorities should step up their efforts to ensure the application of the non-punishment provision in practice, including through training of police officers, prosecutors and judges, and the issuing of guidance. The principle of non-punishment should not be applied only by judges but by all actors in the criminal justice system and at as early a stage as possible (paragraph 111).

Protection of victims and witnesses

- GRETA urges the Maltese authorities to take additional steps to ensure that victims and witnesses of human trafficking are provided with effective and appropriate protection from potential retaliation or intimidation, including by:
 - avoiding cross-examination in the presence to defendants, and giving preference to testifying through video-conference;
 - building the awareness of all actors in the criminal justice system on how to avoid re-victimisation and stigmatisation of victims of THB, as well as prioritising the rights, needs and interests of victims (paragraph 120).

Specialised authorities and co-ordinating bodies

- GRETA welcomes the recent increase of the number of inspectors of the Police Vice Squad, as well as the training provided to the relevant professionals, and considers that training on THB should be integrated into the regular training curricula of all relevant professional groups, including law-enforcement officials, prosecutors, judges, forensic experts, labour inspectors, social workers, child welfare staff, health-care staff, and diplomatic and consular staff (paragraph 126).

International co-operation

- GRETA welcomes the Maltese authorities' participation in multilateral and bilateral international co-operation, including by means of JITs, and invites the Maltese authorities to strengthen their efforts, in particular when it comes to sharing information to ensure the protection of victims of THB and effective conviction of traffickers (paragraph 130).

Cross-cutting issues

- Whilst welcoming the steps taken to promote a child-friendly justice system, GRETA invites the Maltese authorities to create a panel of sufficient number of adequately trained persons, such as children's advocates and support persons, to guide and assist child victims of trafficking during court proceedings (paragraph 139).
- GRETA urges the Maltese authorities to review the Criminal Code with a view to ensuring that all child victims of THB, including children older than 16, are afforded special protection measures. In this context, GRETA refers to the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (paragraph 140).
- GRETA considers that the Maltese authorities should strengthen engagement with the private sector, in line with the UN Guiding Principles on Business and Human Rights¹⁰⁷ and Council of Europe Committee of Ministers Recommendation CM/Rec(2016)3 on human rights and business, with a view to raising awareness of the important role and responsibility of businesses to prevent human trafficking, support the rehabilitation and recovery of victims, and provide access to effective remedies (paragraph 144).
- GRETA considers that the Maltese authorities should extend the application of Article 6 of S.L. 217.14 to persons employing a trafficked person, and allow the use of financial sanctions paid by those employers to secure compensation to victims of human trafficking (paragraph 145).
- GRETA invites the Maltese authorities to include and effectively implement measures against corruption in a THB context in its anti-corruption policies and initiatives (paragraph 150).

Follow-up topics specific to Malta

Developments in the legal, institutional and policy framework for action against human trafficking

- GRETA reiterates the recommendation made in the second evaluation report and considers that the Maltese authorities should examine the possibility of establishing an independent National Rapporteur, designating another existing independent mechanism for monitoring the anti-trafficking activities of state institutions or commissioning the monitoring to an external, independent evaluator (paragraph 24).

Measures to prevent, identify and combat THB for the purpose of labour exploitation

- While commending the efforts made since the second evaluation to prevent and combat trafficking for the purpose of labour exploitation, GRETA considers that the Maltese authorities should:
 - encourage law-enforcement officers, labour inspectors and other relevant actors to increase their outreach work to identify victims of trafficking for the purpose of labour exploitation, paying particular attention to at-risk sectors, such as construction, cleaning, domestic work, care work, fishing, massage parlours and adult entertainment, and develop specific guidelines for each at-risk sector to facilitate the identification of victims of trafficking;
 - ensure that sufficient financial and human resources are made available to labour inspectors to fulfil their mandate and be actively engaged in the prevention of THB;

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http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

- strengthen the monitoring of recruitment and private employment agencies and companies' supply chains;
 - continue training labour inspectors as well as law enforcement officers, prosecutors and judges on combating THB for the purpose of labour exploitation and the rights of victims;
 - raise awareness among the general public as well as, in a targeted manner, among migrant workers recruited through private employment agencies, about the risks of THB for the purpose of labour exploitation and the rights of victims of trafficking (paragraph 159).
- GRETA invites the Maltese authorities to develop co-operation with other countries' agencies, such as the Philippine Overseas Labour Office, to prevent trafficking of migrant workers (paragraph 160).

Identification of victims of trafficking

- GRETA urges the authorities to respect the principle of *non-refoulement* of victims of trafficking. In this respect, reference is made to GRETA's Guidance note on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection (paragraph 174).
- GRETA urges the Maltese authorities to take additional steps to proactively identify victims of trafficking, including by screening asylum seekers, in particular all unaccompanied children, for indicators of THB upon or swiftly after their arrival in Malta, and enabling specialised NGOs to have regular access to facilities for asylum seekers and detained migrants in order to proactively identify victims of trafficking. This involves providing information on the rights of victims of trafficking, the services and assistance measures available and how to access them (paragraph 175).
- GRETA considers that the Maltese authorities should:
- review the National Referral Mechanism and the Standard Operating Procedures, in particular by introducing a multi-disciplinary approach to the identification process of victims of trafficking, and ensure their application in practice through the provision of appropriate training and their dissemination;
 - provide the Police Vice Squad with further human resources and training required in order to proactively identify victims of trafficking for the purpose of sexual exploitation, including in massage parlours and amongst Maltese nationals;
 - provide systematic training to asylum officials, migration officials, as well as social workers, medical and other staff working at facilities for asylum seekers and detained migrants on the identification of victims of trafficking and the procedures to be followed (paragraph 176).

Assistance to victims

- GRETA considers that the Maltese authorities should continue to make efforts to comply with their obligations under Article 12 of the Convention and ensure that all presumed and identified victims of trafficking receive unconditional and timely assistance and support, according to their needs, including by providing funding to NGOs which act as service providers in respect of presumed or identified victims of THB (paragraph 183).

Prevention of child trafficking and identification of, and assistance to, child victims of trafficking

- While welcoming the work underway on the setting up of a referral system for child victims of THB and the awareness-raising and training activities undertaken, GRETA considers that the Maltese authorities should strengthen their efforts to prevent and combat child trafficking, and in particular:
 - finalise the national referral mechanism for children and the indicators of child trafficking, and ensure their application in practice;
 - increase the training of relevant officials on the identification of child victims of trafficking, including AWAS staff, and awareness raising on child trafficking;
 - accelerate the procedures for age assessment and appointment of legal guardians;
 - ensure that when there are reasonable grounds to believe that an asylum seeker is a child, he/she is immediately separated from unrelated adults and promptly transferred to a specialised accommodation and not kept in detention centres (paragraph 191).

Residence permits

- GRETA considers that the Maltese authorities should strengthen access to residence permits for trafficked persons by reviewing the process and requirements of issuing/renewing the permits (paragraph 196).

Appendix 2 - List of public bodies, intergovernmental organisations and civil society actors with which GRETA held consultations

Public bodies

- Ministry for Home Affairs, National Security and Law Enforcement
- Ministry for Health
- Parliamentary Secretary for Equality and Reforms
- Anti-Human Trafficking Monitoring Committee
- Police Vice Squad
- Office of the Attorney General
- Courts (Appeal Court, Court of Magistrates)
- Human Rights Directorate (under the Ministry of Equality, Research and Innovation)
- Department for Industrial and Employment Relations
- Jobsplus
- National Social Welfare Agency (Appoġġ), part of the Foundation for Social Welfare Services
- Legal Aid Agency
- Identity Malta Agency
- International Protection Agency
- Commissioner for Children
- Parliament's Social Affairs Committee

Intergovernmental organisations

- International Organization for Migration (IOM)
- United Nations High Commissioner for Refugees (UNHCR)

NGOs and other civil society organisations

- Dar Hosea
- Jesuit Refugee Service
- KOPIN Malta
- Malta Emigrants Commission
- National Council of Women
- People for Change Foundation
- Women's Rights Foundation

Government's comments

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

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

The Convention requires that "the report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned." GRETA transmitted its final report to the Maltese authorities on 23 July 2021 and invited them to submit any final comments. The comments of the authorities, submitted on 22 October 2021, are reproduced hereafter.

Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Malta – Third Evaluation Round

Submission of final comments on GRETA's third round evaluation report

Paragraph 26 -

GRETA was also informed by the Maltese authorities that a Unit had been set up within the Human Rights Directorate of the Ministry of Equality, Innovation and Research to monitor the implementation of the above-mentioned National Strategy and co-ordinate the work of stakeholders involved in the fight against human trafficking. It is not clear how this new structure will co-operate with or incorporate the Anti-Human Trafficking Monitoring Committee and the Anti-Trafficking Stakeholders Task Force.

The structures under the Ministry for Home Affairs, National Security and Law Enforcement – including the Anti-Human Trafficking Monitoring Committee and the Task Force on Trafficking in Human Beings – shall be transferred under the Ministry for Equality, Research and Innovation as the national coordinators on the fight against trafficking in human beings. The National Strategy and Action Plan currently being developed under the Ministry for Equality, Research and Innovation will replace the current Action Plan of the Ministry for Home Affairs, National Security and Law Enforcement, which will be discontinued.

Paragraph 38 -

“Pursuant to Article 4 of the Victims of Crime Act (VCA), a victim shall be offered without undue delay and from his/her first contact with a competent authority (such as the Police Vice Squad or the Agency Appoġġ), information on how and under which conditions he/she can have access to the existing support services, in particular medical care, accommodation, legal aid, interpretation and translation services, protection measures and compensation. Victim should also be informed of the procedures for filing a complaint to the police, the victim's role in criminal proceedings, remedies in the event that their rights are not respected in criminal proceedings, contact details for communications about their case, and any special measures, procedures or arrangements available to protect their interests in Malta if they leave the country. Further, pursuant to Article 6 of the VCA, if criminal proceedings are instituted as a result of a complaint lodged by the victim, the latter shall receive, upon request, information on: “(a) any decision not to proceed with or end an investigation or not prosecute the offender; (b) the time and place of the trial, and the nature of the charges against the offender; (c) any final judgement in a trial; (d) information enabling the victim to know about the state of the criminal proceedings”. GRETA notes with concern that even when victims have filed a complaint, they need to make a request to be informed of the progress in the criminal proceedings and important decisions that they may wish to challenge. GRETA stresses that because of the trauma they have been through, lack of knowledge of the criminal justice system of the country concerned and language barriers, victims of trafficking are not always in a position to ask the competent authority for information.”

It needs to be clarified that the ‘first contact’ authority should be the immediate entity that a victim refers to – therefore it is imperative that all entities are well informed and updated with services that a victim can refer to in a simple and understandable language. MPF through the VSU, together with MHSE, FSWS, NGO's and the Legal Aid Malta collaborate to satisfy the various legal implications enshrined in the VCA.

All victims of crime (irrelevant of the subject – DV or others) are entitled by law for free legal aid services emanating from various chapters of the Maltese law. With regards to the services offered by the Legal Aid Malta Agency (LAM) victims are informed of all the information required and upon their approval they are referred to the Victim Support Agency (VSA) for any therapeutic services they would require. To this effect, as of lately, LAM and VSA have signed a declaration of intent to refer victims to each other as required. This was done with the sole purpose of providing victims a better holistic service. While LAM assists with legal assistance (either by the daily legal aid lawyer on roster, or appointment with our resident legal aid lawyer, or if a DV case with a specialized assigned legal aid lawyer), VSA can provide services regarding psychological, support services and also a legal advisor when remit goes beyond the services which can be provided by LAM. LAM also refers victims to Appogg or any other agencies for immediate action. We have a good working network with other entities providing different services.

Note: Legal Aid Malta is an established government agency and does not form part of the Court Services Agency (law courts). These are two different entities which complement each other.

Paragraph 55 -

However, the provision of interpreters for legal aid lawyers is reportedly problematic, as this needs to be organised and paid for by the lawyer.

The information reproduced in point 55 of the document is not correct. The Ministry assigns migrants with a legal aid lawyer and, when required, an interpreter. In every appeal case the appellant and the legal aid lawyer are informed that, if required, the Ministry can provide for and financially support interpretation services.

Paragraph 134 -

GRETA refers to the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) report on Malta,⁷⁸ published in November 2020, according to which the authorities should strengthen their efforts to facilitate access by women to justice by making legal aid in civil proceedings more accessible for women victims of violence, and increasing awareness of members of the law enforcement authorities and the judiciary on issues related to violence against women.

Paragraph 134 refers to the GREVIO recommendations, some of which have already been implemented. These include: specialized legal service for victims of GBV&DV through Legal Aid Malta, the specialized unit within the Malta Police Force for victims of GBV&DV and on-going training organized by the Commission to professionals working in the field of GBV&DV.

Generic Feedback -

- FSWS agrees with the report's suggestions about the importance to proactively seek victims, the importance to improve the inspections in most at risk areas, to offer continuous training to front liners, to monitor the companies' supply chain and for better screening during the asylum seeker's process.
- The report also speaks about the issue of court proceedings. Many of the FSWS victims have spoken about the length of the process and how many times they are left in the dark about the proceedings. FSWS agrees that, as a country, we need to put more effort in this area and more training should be provided to the judiciary system.
- Lastly, in the report the importance to provide information to victims and to raise awareness is mentioned. This is something FSWS also believes in and is taking steps to offer information sessions. FSWS

welcomes the suggestion made in the report that there is also more awareness about the rights of victims to help them overcome their fears and insecurities about the unknown.

Appendix 2 -

- Based on the latest re-assignment of portfolios within the Government structure, the position of Parliamentary Secretary for Equality and Reforms no longer exists.