



EVALUATION REPORT

BELGIUM

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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Contents

Executive Summary	4
Preamble	6
I. Introduction	7
II. Overview of the current situation in the area of trafficking in human beings in Belgium	9
III. Developments in the legislative, institutional and policy framework for action against trafficking in human beings	10
IV. Access to justice and effective remedies for victims of trafficking in human beings	12
1. Introduction	12
2. Right to information (Articles 12 and 15)	13
3. Legal assistance and free legal aid (Article 15)	16
4. Psychological assistance (Article 12)	19
5. Access to work, vocational training and education (Article 12)	20
6. Compensation (Article 15)	21
7. Investigations, prosecutions, sanctions and measures (Articles 22, 23 and 27)	26
8. Non-punishment provision (Article 26)	31
9. Protection of victims and witnesses (Articles 28 and 30)	33
10. Specialised authorities and co-ordinating bodies (Article 29)	35
11. International co-operation (Article 32)	36
12. Cross-cutting issues	38
a. gender-sensitive criminal, civil, labour and administrative proceedings.....	38
b. child-sensitive procedures for obtaining access to justice and remedies.....	38
c. role of businesses.....	39
d. measures to prevent and detect corruption.....	40
V. Topics specific to Belgium	41
1. Measures to prevent and combat trafficking for the purpose of labour exploitation	41
2. Identification of victims of trafficking	44
3. Assistance to victims	46
4. Measures to prevent trafficking in children, identification of, and assistance to, child victims of trafficking	48
5. Residence permits	51
Appendix 1 - List of GRETA's conclusions and proposals for action	53
Appendix 2 - List of public bodies, non-governmental organisations and civil society actors with which GRETA held consultations	59
Government's comments	61

Executive Summary

Since the second evaluation round of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, Belgium has continued to develop the legislative and policy framework relevant to action against trafficking in human beings. The fourth National Action Plan for preventing and combating Trafficking in human beings, covering the period 2021-2025, was adopted in June 2021. The Federal Migration Centre (MYRIA) continues to act as an independent national rapporteur. GRETA welcomes MYRIA's detailed and comprehensive reports as an important instrument for research and action in the field of trafficking in human beings.

Belgium remains primarily a country of destination for victims of human trafficking, but it is also a country of origin and transit. According to data provided by MYRIA, the number of victims of trafficking receiving support from specialised reception centres was 120 in 2017, 122 in 2018, 145 in 2019 and 88 in 2020. The majority of victims were men trafficked for the purpose of economic exploitation. The second most common type of exploitation was sexual exploitation, which mainly affects women.

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.

In Belgium, presumed victims of trafficking are informed about their rights through a leaflet, which is available in 28 languages and written in an accessible language, but which does not mention all the rights of the victims. GRETA considers that the Belgian authorities should strengthen the provision of information to presumed victims of trafficking concerning their rights as soon as they are detected and regardless of whether they decide to approach a specialised reception centre.

Access to legal aid for victims of trafficking is subject to very restrictive eligibility criteria. One of the criteria is the lack of financial resources, which should be maintained throughout the proceedings. The threshold for obtaining legal aid is lower than the minimum wage and excludes, in practice, all victims who work or find a job during the proceedings. GRETA urges the Belgian authorities to take further measures to ensure access to justice for victims of trafficking and, in particular, to revise and simplify the eligibility criteria for access to legal aid.

While welcoming the availability of legal remedies to claim compensation, GRETA is concerned about the limited number of victims who have obtained compensation. GRETA urges the Belgian authorities to take additional measures to guarantee effective access to compensation for victims of trafficking, and in particular to facilitate access to legal aid and to review the criteria for access to the Financial Aid Fund for Victims of Intentional acts of Violence.

The number of investigations and prosecutions in human trafficking cases has increased since 2017. The Financial Intelligence Processing Unit (CTIF) has referred to the judicial authorities several cases related to human trafficking, demonstrating a key role in conducting effective financial investigations. However, law enforcement officials met by GRETA during the visit expressed great frustration over the lack of staff and the impact on the possibility to carry out proactive and effective investigations. GRETA urges the Belgian authorities to allocate sufficient human and budgetary resources to the police forces.

GRETA welcomes the adoption of the law of 22 May 2019, which recognised in the Belgian Criminal Code the principle of non-punishment of victims of trafficking for their involvement in unlawful activities, to the extent that they were compelled to do so. However, GRETA considers that the authorities should take further steps to ensure the practical implementation of the non-punishment provision, in particular with regard to minor victims of trafficking for the offences they were forced to commit.

Furthermore, GRETA considers that the Belgian authorities should ensure that the available protective measures are effectively applied to victims of trafficking and witnesses in order to protect them, including by avoiding the confrontation of victims of trafficking in the physical presence of the accused and by ensuring the use of videotaped hearings of victims of all types of human trafficking.

The report also examines progress made on the implementation of previous GRETA recommendations on selected topics. While welcoming the efforts to prevent and combat human trafficking for the purpose of labour exploitation, GRETA urges the Belgian authorities to allocate sufficient human and financial resources to labour inspectors in order to allow them to perform their role effectively and proactively throughout the country. GRETA also considers that the training and specialisation of labour auditors should be improved, including on the specificities of the trafficking offence and the differences between it and other offences under labour criminal law.

The identification of victims in Belgium is, in practice, closely linked to their co-operation with the justice system and to the fact that they are accommodated in specialised centres. GRETA considers that the Belgian authorities should ensure that the formal identification of victims of trafficking is not dependent, in practice, on their co-operation with the justice system or on the outcome of criminal proceedings.

While welcoming the increase in public funding for specialised reception centres, GRETA urges the Belgian authorities to ensure that assistance measures are not conditional on the victim's agreement to co-operate with criminal investigations and proceedings.

Concerned by the low number of children identified as victims of trafficking, GRETA considers that the Belgian authorities should strengthen the training provided to front-line professionals and improve the assistance to unaccompanied minors.

Finally, GRETA considers that the Belgian authorities should take further steps to ensure that victims of trafficking can fully benefit from the right to obtain a residence permit, including on the basis of their personal situation.

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 Belgium on 1 August 2009. GRETA’s first evaluation report on Belgium¹ was published on 25 September 2013 and the second evaluation report² on 16 November 2017.
2. On the basis of GRETA’s second report, on 9 February 2018, the Committee of the Parties to the Convention adopted a recommendation to the Belgian authorities, requesting them to inform the Committee of measures taken to comply with the recommendation within a one-year period. The report submitted by the Belgian authorities was considered at the 24th meeting of the Committee of the Parties (5 April 2019) and was made public³.
3. On 21 October 2020, GRETA launched the third round of evaluation of the Convention in respect of Belgium by sending the questionnaire for this round to the Belgian authorities. The deadline for submitting the reply to the questionnaire was 20 February 2021 and the authorities’ reply was received on 22 February 2021.
4. In preparation of the present report, GRETA used the reply to the third-round questionnaire by the Belgian authorities, the above-mentioned report and additional information submitted by them in reply to the Committee of the Parties’ recommendation, and information received from civil society. An evaluation visit to Belgium took place from 25 to 29 October 2021 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:
 - Ms Helga Gayer, President of GRETA;
 - Mr Georgios Vanikiotis, member of GRETA;
 - Ms Daniela Ranalli, Administrator in the Secretariat of the Convention.
5. During the visit, GRETA’s delegation held consultations with Mr Vincent Van Quickenborne, Deputy Prime Minister and Minister of Justice and the North Sea and with officials from the Federal Public Service for Justice, Public Health, Food Safety and the Environment, Foreign Affairs and Employment. The delegation also talked to representatives of the Inter-departmental Co-ordination Unit for Action against Trafficking in and Smuggling of Human Beings (CIC) and the Federal Migration Centre (MYRIA), which acts as National Rapporteur on human trafficking, officials from the Board of Prosecutors General and the Federal Prosecution Service, the Office for Foreign Nationals and FEDASIL, the Judicial Training Institute, the Commission for Financial Aid for Victims of Deliberate Acts of Violence and Voluntary Rescuers, the Federal Police, the Financial Intelligence Processing Unit and the Guardianship Service. The delegation also met Mr Bernard De Vos, General Delegate for Children’s Rights in the French-speaking Community, and members of the Belgian Parliament.
6. During the visit, GRETA’s delegation travelled to Antwerp, Liège and Bruges, where it met representatives of the competent regional and local authorities, judges, prosecutors and law enforcement agencies, and visited the three specialised reception centres in Belgium which are run by three different NGOs. Lastly, it visited the reception centre for minors in Wallonia.
7. Separate meetings were held with representatives of non-governmental organisations (NGOs), a trade union, lawyers and victims of trafficking in human beings.

¹ <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680630d0f>

² <http://rm.coe.int/greta-2017-26-frg-bel-en/1680782ae0>

³ <https://rm.coe.int/cp-2019-09-bel-fr/16809987bf> (French only)

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.

9. GRETA thanks the Belgian authorities for their excellent co-operation and in particular Mr Jean-François Minet, Head of the Bureau of the Inter-departmental Co-ordination Unit for Action against Trafficking in and Smuggling of Human Beings (CIC) and contact person appointed by the Belgian authorities to liaise with GRETA.

10. The draft version of the present report was approved by GRETA at its 43rd meeting (28 March – 1 April 2022) and was submitted to the Belgian authorities for comments. The authorities' comments were received on 8 June 2022 and were taken into account by GRETA when adopting the final report at its 44th meeting (27 June - 1 July 2022). The report covers the situation up to 1 July 2022; 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 in the area of trafficking in human beings in Belgium

11. While Belgium is still primarily a destination country for victims of trafficking in human beings (THB), it is also a country of origin and transit. According to statistics provided by the Federal Migration Centre (MYRIA),⁴ the number of victims of trafficking receiving support from specialised reception centres for the first time was 120 in 2017 (61 victims of economic exploitation⁵ and 59 victims of sexual exploitation), 122 in 2018 (79 victims of economic exploitation and 38 victims of sexual exploitation), 145 in 2019 (87 victims of economic exploitation and 52 victims of sexual exploitation) and 88 in 2020 (49 victims of economic exploitation and 36 victims of sexual exploitation).⁶ The considerable 39% reduction in the number of identified victims in 2020 as compared with 2019 was a result of the travel restrictions and health measures adopted in the context of the Covid-19 pandemic (see paragraph 108). The majority of victims were men (238), followed by women (226) and children (22). The low number of children identified as victims of trafficking bears witness to difficulties in detecting and identifying minors presumed to be victims of trafficking which are analysed in detail in MYRIA's 2018 report.⁷ Over the 2017-2020 period, most victims were subjected to trafficking for the purpose of economic exploitation (276, mostly men); the second most common form of exploitation was sexual exploitation (185, mostly women). There were also cases of exploitation of forced begging (7) and forced criminality (7).

12. With regard to the nationality of victims, the most common nationality among victims of economic exploitation was Moroccan (21 in 2018, 23 in 2019 and 11 in 2020), followed by Egyptian. In 2020, India and Romania were also among the main nationalities. Victims of sexual exploitation, who are almost exclusively women, are mostly nationals of Nigeria. Sexual exploitation of Nigerian women and girls increased significantly between 2016 and 2020.⁸ Among the current trends in trafficking, the Belgian authorities have noticed an increase over the past few years in the number of identified potential victims of labour exploitation in nail bars. Victims are Vietnamese in most of these cases and are exploited by fellow Vietnamese nationals, primarily in the Brussels region.

13. As will be underlined in this report (see paragraph 183), these figures by no means reflect the true scale of trafficking in Belgium as they only relate to victims assisted by specialised reception centres. This is obvious when one compares, for example, the high number of new cases at prosecutor's offices for trafficking for the purpose of sexual exploitation in 2020 (234) with the very low number (36) of victims receiving assistance in centres for the first time⁹.

⁴ The annual reports published by the Federal Migration Centre (MYRIA) include statistics collected from the Federal Police, employment inspectorates, the Board of Prosecutors General, the Office for Foreign Nationals, the specialised NGOs that run the reception centres for victims of trafficking and the Criminal Policy Department. See MYRIA's 2021 Report, p. 100 ff., https://www.MYRIA.be/files/2021_Traite_et_trafic_des_%C3%AAtres_humains.pdf (French only)

⁵ This expression is commonly used in Belgium to refer to labour exploitation in conditions contrary to human dignity and applies to all sectors of the economy in which this form of exploitation can occur.

⁶ By way of comparison, the number of victims of trafficking identified over the period covered by GRETA's second report was 133 in 2013, 156 in 2014, 135 in 2015 and 133 in 2016.

⁷ See MYRIA's 2018 report, p. 41 ff.

⁸ In 2017, 68% of victims of sexual exploitation, i.e. 40 women and girls, were Nigerian nationals. The number of Nigerian victims was 19 in 2018, 15 in 2019 and 20 in 2020.

⁹ See MYRIA's 2021 report, p. 5.

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

14. There have been some legislative developments with ramifications for action against trafficking in human beings since GRETA's second evaluation. The Law of 22 May 2019 on Trafficking in Human Organs and on the Non-punishment Principle¹⁰ transposed the Council of Europe Convention on Action against Trafficking in Human Organs of 25 March 2015 into Belgian law and enshrined the principle of non-punishment of victims of trafficking for offences committed by them as a direct result of their exploitation in the Criminal Code (CC) (Article 433quinquies, paragraph 5).

15. On 17 March 2022, the Criminal Law (Sexual Offences) Reform Law was adopted by the Chamber of Representatives during a plenary session and entered into force on 1 June 2022.¹¹ This law establishes consent as a basic principle in the definitions of sexual offences and decriminalises prostitution (which is still prohibited for minors) and therefore creates a social status of self-employed person for the person working independently in prostitution. Pimping is still an offence and is punishable by one to five years' imprisonment, and a new offence of "aggravated abuse of prostitution" has been introduced, with longer sentences (10-15 years' imprisonment) where the offence has been committed against a vulnerable adult.¹² Sex-related advertising remains prohibited, but the law allows for exceptions, particularly on internet platforms, provided that the provider takes measures to protect the sex worker, and prevent the abuse of prostitution and human trafficking by immediately reporting possible cases of abuse or exploitation to the police and judicial authorities¹³. The new law also sets out to harmonise prostitution-related offences with criminal provisions on trafficking in human beings (see paragraph 101). A multi-agency assessment of how the law is being applied will be carried out two years after it enters into force and every four years thereafter. The police and civil society will be involved in these assessments and action against trafficking in human beings is explicitly included among the fields of expertise that will be represented.¹⁴

16. The institutional framework has remained essentially unchanged since the second GRETA report. The Inter-departmental Co-ordination Unit for Action against Trafficking in and Smuggling of Human Beings (hereinafter "Inter-departmental Unit"), under the authority of the Ministry of Justice, is still the main co-ordinating body for combating trafficking in Belgium. The three specialised reception centres for victims of trafficking run by the NGOs PAG-ASA in Brussels, Payoke in Antwerp and Sürya in Liège, which can accommodate adult victims, are formally part of the Inter-departmental Unit. However, the Esperanto centre in Wallonia, which is the only shelter for minors who are victims of trafficking, is still not officially recognised as a specialised centre and does not regularly participate in meetings of the Inter-departmental Unit. The federated bodies are also represented within the Inter-departmental Unit and a more structured dialogue mechanism was recently set up. Two working groups have been created to address the issue of care for trafficked minors more effectively: a group responsible for following up measures to be taken in the Flemish Region and a working group for the French- and German-speaking Communities. The Flemish Region group has focused on the problem of "loverboys" and the reception of child victims. The group for

¹⁰ https://www.ejustice.just.fgov.be/img_l/pdf/2019/05/22/2019013057_F.pdf (French only)

¹¹ Criminal Law (Sexual Offences) Reform Law.

<https://www.lachambre.be/kvvcr/showpage.cfm?section=/none&leftmenu=no&language=fr&cfm=/site/wwwcfm/flwb/flwbn.cfm?lang=F&legislat=55&dossierID=2141> (French and Flemish only)

¹² See Articles 76 and 79 of the new law, which make reference to Articles 433quater/1 and 433quater/4 of the Criminal Code respectively.

¹³ The modalities to fulfil these obligations will be detailed in a next Royal Decree.

¹⁴ Article 83: "Article 433quater/8. Multiagency assessment. § 1. The Chamber of Representatives shall assess the application of the provisions of this chapter two years after they enter into force and every four years thereafter. This assessment shall be multiagency and shall draw in particular on the expertise of representatives of the judiciary and the police, representatives of specialised public bodies, representatives of voluntary-sector organisations and academic experts. The fields of expertise represented by the latter three categories must include at least action against trafficking in human beings, support for prostitutes, gender equality, protection of workers' economic and social rights and access to healthcare. § 2. The arrangements for this assessment shall be laid down by law by 31 December 2022."

the French- and German-speaking Communities has focused on the implementation of the referral mechanism for victims of trafficking and training.

17. The Federal Migration Centre (MYRIA) is still acting as independent National Rapporteur on human trafficking and maintains its role as an observer within the Inter-departmental Unit and its Bureau. MYRIA publishes annual reports containing statistics, an analysis of developments in the area of trafficking in human beings and case-law as well as thematic analyses. It also makes recommendations to the authorities with a view to bridging gaps and overcoming identified difficulties so that efforts to tackle trafficking in human beings can be improved. **GRETA welcomes MYRIA's in-depth and comprehensive reports, which are an important tool for research and action in relation to trafficking in human beings.**

18. Significant changes which were previously announced in GRETA's second report¹⁵ have been implemented regarding the structure of the labour inspection system. As of 1 July 2017, the former labour inspectorate of the Federal Public Service (SPF) for Social Security was incorporated into the inspectorate of the National Social Security Office (ONSS) and the activities of the ECOSOC labour inspection teams that tackle trafficking in human beings were incorporated into the remit of the ONSS (see paragraph 169).

19. The third National Action Plan on Combating Trafficking in Human Beings, which covers the 2015-2019 period, was described in GRETA's second evaluation report.¹⁶ An addendum to this action plan¹⁷ which specifically concerns trafficking victims who are minors and aims to improve the detection, identification, referral and protection of these victims was adopted in August 2019.

20. In June 2020, the Inter-departmental Unit adopted a 2020-2021 update to the 2015-2019 Action Plan to ensure continuity of projects already implemented, and a new 2021-2025 Action Plan was adopted in June 2021.¹⁸ The new plan addresses the following areas: enhancing legislative or regulatory instruments and continuing to implement them effectively; training specialised and non-specialised stakeholders; refining victim status and improving the situation of reception centres; maintaining international vigilance in combating trafficking in human beings; and raising awareness and informing the public.

21. To raise public awareness, the Belgian authorities have adopted a number of initiatives including: a campaign aimed at the medical profession (2018) along with a day of discussions about the issue within the Benelux Union; the United Nations Blue Heart campaign; a booklet about financial indicators of trafficking in human beings which was shared and jointly approved with the Belgian Financial Sector Federation (Febelfin); and the EUCPN "Know your rights" campaign run in co-operation with public transport companies.

22. The authorities met by the GRETA delegation, and in particular the Minister of Justice, underlined that action against human trafficking is still a priority for the government and several measures have been taken or are planned in this respect. **GRETA welcomes the Belgian authorities' commitment in the fight against human trafficking and encourages them to allocate sufficient human and financial resources to police and labour inspection services to ensure that action against trafficking is once again a priority on the ground (see also paragraphs 111 and 177).**

¹⁵ See GRETA's second report, paragraph 37.

¹⁶ See GRETA's second report, paragraphs 25-28.

¹⁷ www.dsb-spc.be/doc/pdf/Addendum-plan-action-teh-FR.pdf (French only)

¹⁸ www.dsb-spc.be/doc/pdf/PAN_TEH_2021_2025_FR.pdf (French only)

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

1. Introduction

23. Victims of human trafficking, by virtue of their status as victims of crime and victims of human rights violations, have the right of 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

24. 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.¹⁹

25. According to the *Basic principles on the right to an effective remedy for victims of trafficking in persons*,²⁰ the right to an effective remedy is considered to include restitution,²¹ compensation,²² rehabilitation,²³ satisfaction²⁴ and guarantees of non-repetition.²⁵ 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 the victims' recovery and 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.²⁶

¹⁹ *Rantsev v. Cyprus and Russia*, no. 25965/04, ECHR 2010. [add references]

²⁰ 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, Joy Ngozi Ezeilo, 6 August 2014, A/69/269, available at: <https://undocs.org/A/69/269>

²¹ 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.

²² Compensation may cover damages for physical or non-pecuniary harm; damages for loss of chance, 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.

²³ 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.

²⁴ 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 of 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.

²⁵ 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.

²⁶ 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

26. 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 them. 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 subjected to penalties for their involvement in unlawful activities that they have been compelled to commit. Further, the Convention requires State Parties to enable the seizure and confiscation of the assets of traffickers, which could be used to fund State compensation schemes for victims.

27. 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.²⁷

28. Civil society, such as NGOs, trade unions, diaspora organisations and employer organisations, plays a vital role in enabling victims of THB to claim compensation and other remedies.²⁸ In this context, reference should be made to the international projects COMP.ACT - European Action on Compensation for Trafficked Persons²⁹ and Justice at Last - European Action for Compensation of Victims of Crime,³⁰ which aim to enhance access to compensation for trafficked persons.

29. The private sector should also play a role in enabling access to, as well as providing, remedies to trafficked persons, in accordance with the UN 'Protect, Respect and Remedy' Framework and the United Nations Guiding Principles on Business and Human Rights.³¹ 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.³² 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.

30. Because human trafficking is often a transnational crime, effective international co-operation is essential for fulfilling the obligations with regard to the right of access 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)

31. 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 escape 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.

²⁷ UNODC, ICAT Issue Paper, Providing Effective Remedies for Victims of Trafficking in Persons, 2016, pp. 7-8.

²⁸ OSCE Compensation for Trafficked and Exploited Persons in the OSCE Region, 2008, pp. 48-53.

²⁹ <http://www.compactproject.org/>

³⁰ <http://lastradainternational.org/about-lsi/projects/justice-at-last>

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

³² UNODC, ICAT Issue Paper, Providing Effective Remedies for Victims of Trafficking in Persons, 2016, pp. 8-9.

32. 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.³³

33. 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.³⁴

34. In Belgium, the right of presumed victims of trafficking to information is governed by the Law on Foreign Nationals, which provides in Article 61/2, paragraph 1, that police or inspection services shall inform foreign nationals that it is possible to obtain a residence permit by co-operating with the competent authorities in charge of the investigation or prosecution and shall refer them to a specialised centre. In addition, the Circular of 23 December 2016, which was published on 10 March 2017 and concerns multi-agency co-operation in relation to victims of trafficking in human beings,³⁵ states that "as soon as a person can, on the basis of indicators, be considered a presumed victim of human trafficking or of certain aggravated forms of human smuggling, the police or social inspection service concerned must inform this person of the procedure. This obligation also applies to any other authority that comes into contact with presumed victims, such as the Office for Foreign Nationals, the Office of the Commissioner General for Refugees and Stateless Persons...". Furthermore, according to Articles 3bis and 5bis of the preliminary title of the Code of Criminal Procedure (CCP), victims of offences must receive the necessary information and be put in touch, where appropriate, with specialised bodies. Victims must also be informed about how they can claim compensation in criminal proceedings and declare themselves as an injured party. The new Criminal Law (Sexual Offences) Reform Law, entered into force in June 2022, provides that the principle of referring victims to specialised reception centres will also feature in the Law of 13 April 1995 and no longer solely in the Law of 15 December 1980 on Foreign Nationals. This change clarifies the status of Belgian victims, as their right to information is laid down in law and not just in the multi-agency circular.³⁶

35. Information is provided to victims through a leaflet for victims of trafficking in human beings which is available in 28 languages.³⁷ It is written in accessible language and is intended to help presumed victims of trafficking to recognise themselves as victims and approach a specialised reception centre. However, it does not explicitly mention victims' rights under substantive and procedural law; for example, no mention is made of the right to compensation. The specialised reception centres are responsible for providing "every presumed victim with detailed information about the process of obtaining victim status and what the reception centre does" (Article 4 of the Circular of 23 December 2016). This information is provided by a member of staff at the centre during two interviews with the victim. During the first, the staff member attempts to gain the victim's trust and gives them general information, and during the second, the entire process of obtaining victim status and the basis on which support is provided are explained.

³³ See Explanatory Report on the Convention, paragraphs 160-162.

³⁴ See 8th General report on GRETA's activities, paragraphs 168-169.

³⁵ https://etaamb.openjustice.be/fr/circulaire-du-23-decembre-2016_n2017030090.html (French and Flemish only)

³⁶ A paragraph § 1/1 worded as follows is inserted into Article 115 b):

"§ 1/1. Where police or inspection services come across indications that a person is a victim of trafficking in human beings or aggravated trafficking in human beings, they shall put this person in contact with a centre specialised in the reception and provision of support to victims of these offences, without prejudice to the application of Article 61/2, § 1, paragraph 1, of the Law of 15 December 1980 on the Entry, Residence, Settlement and Removal of Foreign Nationals."

³⁷ [Multilingual brochure for victims of human trafficking \(in 28 languages\) | MYRIA](#)

36. In practice, going to a specialised reception centre is becoming essential for victims to be properly informed of their rights, and if they do not go to one, the information they receive is very incomplete. According to Article 3.3 of the Multi-agency Circular, police and inspection services must contact one of the specialised centres and refer the victim, regardless of nationality, to this centre as soon as possible. However, the representatives of civil society whom GRETA met stressed that only a limited proportion of victims who are detected by the police go to a specialised reception centre and where a victim is detected far from the specialised centres and does not agree to co-operate with the judicial authorities, the specialised centres may not even be informed (see paragraph 182).

37. As underlined in MYRIA's annual report of 2019,³⁸ there are positive examples of multi-agency co-operation between front-line services and specialised centres to enable presumed victims who are detected to be properly informed of their rights. For instance, in an outreach work pilot project in Brussels, a member of staff of a specialised reception centre accompanies the police when checks are carried out and a similar practice has been followed by the police in western Flanders and the ONSS labour inspection unit in Brussels. Despite these examples of good practice, police or labour inspection services which are not specialised or are far away from the reception centres are not always able to provide adequate information.

38. The staff of the Office for Foreign Nationals also fail to provide adequate information. To remedy this failing, the 2021-2025 Anti-Trafficking Action Plan includes training for the Office for Foreign Nationals which is aimed in particular at professionals who may come into contact with potential victims of trafficking, and an "information handbook" will be produced.

39. During the visit, GRETA was informed of several cases where victims of trafficking who had been sent to detention centres for migrants had been identified by staff and referred to the specialised centres. There is a co-operation between the staff working at the detention centres and the specialised trainings and several trainings are provided to staff.

40. In its 2018 report on minors who are victims of trafficking, MYRIA highlighted major failings and pointed out that providing adequate information in language that can be understood by minors is essential and encouraged the development of a "child-friendly" information tool. Implementing this recommendation is among the goals of the 2021-2025 Action Plan, but it has not yet been implemented. However, as a consequence of the arrival of the Ukrainian refugees, a working group on the provision of information to minors has been set up and two tools are being developed: a brochure for professionals working with minors and a message for minors. The authorities have informed GRETA that these tools may subsequently be used as general documents beyond the context in which they were developed. **GRETA welcomes this initiative and invites the authorities to further develop these tools with a view to ensuring adequate and accessible information for all presumed trafficked minors.**

41. The right to assistance from an interpreter in criminal matters during both investigations and hearings is guaranteed by Articles 31 and 32 of the Law of 15 June 1935 as amended by the Law of 28 October 2016, which transposes Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings and Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime. This law added various provisions to the Code of Criminal Procedure which establish a single set of legal rules recognising the right to assistance from an interpreter and translation before all courts (*tribunaux de police* – court of first instance, which judges minor offences, *tribunaux correctionnels* – criminal courts, *cours d'appel* – appeal courts, and *cours d'assises* – assize courts).³⁹

³⁸ MYRIA's 2019 report, pp. 25-36.

³⁹ Article 152bis of the Code of Criminal Procedure, which was added pursuant to Article 4 of the Law of 28 October 2016, makes these principles applicable in proceedings before a *tribunal de police*. Article 189 of the Code of Criminal Procedure, as amended by Article 7 of the Law of 28 October 2016, does likewise for proceedings before a *tribunal correctionnel*. Article 211 of the Code of Criminal Procedure, as supplemented by Article 8 of the Law of 28 October 2016, concerns proceedings before a *cour d'appel*. Articles 282 and 283 of the Code of Criminal Procedure, as amended by Articles 12 and 13 respectively of the Law of 28 October 2016, concern proceedings before a *cour d'assises*.

42. Since 25 November 2016, there has been a national register of certified interpreters and translators which is intended to protect quality of service. If prosecutor's offices, courts or police authorities have a bad experience with a particular translator or interpreter, they can inform the office that administers the National Register, which will conduct an investigation that may lead to the suspension or removal of the interpreter/translator from the Register.

43. Pursuant to the Circular of 23 December 2016, assistance from an interpreter should also be provided at the moment of the victim's detection. Although this assistance is provided quite effectively when a victim arrives at a specialised centre, there are difficulties during initial contact with law enforcement agencies or inspection authorities, and these difficulties were highlighted by GRETA's interlocutors. As was also underlined in MYRIA's 2019 report, an interpreter is not always present during first contact⁴⁰ and the aforementioned multilingual leaflet is not always sufficient for the purposes of communicating effectively with a victim and informing them adequately about their status and rights. In its report, MYRIA mentions a situation where Nigerian girls presumed to be victims of trafficking were intercepted one evening and had to spend the night in a local police holding cell because an interpreter was only available to attend an interview the following day.⁴¹

44. GRETA points out that under the Convention, victims' right to information must be guaranteed from their first contact with the competent authorities. This is a precondition for victims to be able to enter the national referral system.

45. While it welcomes the publication of the multilingual information leaflet for victims of trafficking, GRETA considers that the Belgian authorities should strengthen the provision of information to presumed victims of trafficking concerning their rights, how they can access them and the consequences of their being identified as victims of trafficking. This information must be provided from the moment when the victim is detected, regardless of whether they decide to approach a specialised reception centre. To this end, front-line service providers must receive training so that they can properly explain to victims what their rights are and how to exercise them, taking into account their knowledge of the language and the Belgian legal system, their psychological condition and their age. Co-operation with the specialised reception centres must be developed further, particularly in geographical areas that are far away from the centres.

46. GRETA also considers that the Belgian authorities should take further measures to ensure the timely availability of qualified interpreters with an awareness of human trafficking.

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

47. Article 15(2) of the Convention obliges 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 procedures are 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-law⁴² 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.

⁴⁰ MYRIA's 2019 report, p. 26.

⁴¹ Ibid., p. 28.

⁴² *Airey v. Ireland* judgment, 9 October 1979.

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 take civil actions for compensation and redress.⁴³

49. Article 23 of the Belgian Constitution guarantees that everyone has the right to live in a manner consistent with human dignity, and in this context, it guarantees the right to legal assistance. The Judicial Code (Articles 508/1 to 508/25) recognises two kinds of legal assistance: "first-line" legal assistance, i.e. access to legal advice outside the context of judicial proceedings, which is accessible to anyone regardless of their financial circumstances, and "second-line" legal assistance (hereinafter "legal aid"), i.e. the right to be represented by a lawyer in judicial proceedings. This assistance can be completely or partly free of charge, is reserved for persons without financial resources and is organised by the Legal Aid Office (BAJ).

50. The threshold for obtaining legal aid was recently increased. Under the new rules, to receive full legal aid, a single person must have a net monthly income below €1 326, and if they are cohabiting, the income of the household must be below €1 617.⁴⁴ To be entitled to partial legal aid (including payment of a lump sum of between €25 and €125 to a lawyer), the individual must have an income of between €1 326 and €1 617 for a single person and between €1 617 and €1 907 if the person is cohabiting or has one or more dependants.⁴⁵

51. Some categories of people are exempt from the means test requirement and receive full legal aid by virtue of their special situation,⁴⁶ including: minors; persons in receipt of Integration Income or welfare benefits; foreign nationals, solely for the purposes of an application to legalise their presence in the country or an appeal to a higher administrative authority or court against a decision taken under the Law of 15 December 1980 on the Entry, Residence, Settlement and Removal of Foreign Nationals; and asylum seekers.

52. The representatives of civil society and lawyers met by GRETA underlined that obtaining legal aid is very difficult in practice and that a limited number of victims of trafficking are represented by a lawyer because of the very strict eligibility criteria. Firstly, although it was increased recently, the required threshold remains below the minimum wage and automatically excludes all victims who work or find employment during the proceedings. Secondly, it is very difficult for a person to prove a lack of means because all means of subsistence are considered (personal property, savings, pensions, maintenance contributions received) and the applicant must submit a complex application in which they must declare their income and all of their property, as well as the income of the person supporting or accommodating them.⁴⁷ Thirdly, the process is very laborious because legal aid is only granted for a single stage in the proceedings. This means that a person who has requested and obtained legal aid for the investigation stage must make a further application in order to obtain it during the hearing stage, and so on. Furthermore, separate applications must be made for each set of proceedings (for example, one for the criminal proceedings and another for the administrative proceedings). Lastly, the most problematic aspect is the fact that the lack of means criterion must be met not only when the application is made, but also throughout the proceedings, which often go on for years. This means that presumed victims of trafficking who become entitled to legal aid by virtue of being in receipt of welfare benefits (as is normally the case with victims accommodated in specialised reception centres) lose this entitlement as soon as they find a job, so the beginnings of any improvement in their financial situation preclude their access to justice. This

⁴³ 8th General report on GRETA's activities, paragraph 167.

⁴⁴ These upper limits were previously €1 026 and €1 317.

⁴⁵ These upper and lower limits were previously €1 026 and €1 317 for a single person and €1 317 and €1 607 for a person who was cohabiting or had one or more dependants.

⁴⁶ See Article 1 § 2 of the Royal Decree of 18 December 2003 establishing the requirements for completely or partly free second-line legal assistance and legal aid.

⁴⁷ This requirement to assess all means of subsistence was introduced in 2016 when the eligibility criteria for legal aid were made stricter, whereas prior to that, proof of income had been sufficient on its own. See MYRIA's 2019 report, p. 38.

criterion is a big deterrent for victims, who often give up their right of access to justice when forced to choose between it and the right to work and become independent.

53. These failings in the Belgian legal aid system were highlighted in MYRIA's 2019 report, which recommended that the authorities revise the legislation on eligibility for legal aid to enable victims of trafficking to receive this aid throughout criminal proceedings, regardless of changes in their financial circumstances, because of their particular vulnerability.⁴⁸ However, the authorities felt that creating a dual-track system for access to legal aid would have led to discrimination against non-victims of trafficking and did not implement this recommendation.

54. Aside from the limits on access to legal aid, the lack of specialisation of lawyers could compromise quality of service and hence the effectiveness of this right. Officially, there is no specialisation of lawyers in supporting and assisting victims of trafficking. There are mandatory trainings for lawyers, but no courses specifically concerning trafficking have been run to date. The lawyers whom GRETA met also emphasised that the remuneration of lawyers working under the legal aid scheme is very low, and the number of hours they have to work is large because of the inherent complexity of trafficking cases. This demotivates them and deters them from taking on cases of this kind.

55. Presumed victims of trafficking receive legal assistance at the specialised reception centres,⁴⁹ where social workers or lawyers track the progress of the investigation, inform the victim of developments and accompany them during hearings. This is vital support which is provided for as long as the presumed victim is hosted in the centre. The legal assistance given does not include representing the victim in the proceedings and is instead limited to advice and providing legal assistance outside the context of the judicial proceedings. In the past, some reception centres used part of their budget to pay lawyers who were appointed to represent victims, but this practice was abandoned because of a lack of funding. The centres now engage lawyers who act under the legal aid system provided that victims meet the eligibility criteria⁵⁰ and assist with applications for legal aid. However, there is little take-up of this option. The staff members of centres whom GRETA met said that they prefer to steer victims towards work, which is essential for them to regain their independence, and this prevents them from obtaining legal aid. A list of lawyers who are willing to represent victims on a pro bono basis is available at most of the centres, but the number of these lawyers is quite small and cannot meet the demand in full.

56. In its 2019 report, MYRIA underlined that the specialised centres are sometimes late in appointing a lawyer for a victim, which precludes an effective defence because victims miss important deadlines in the proceedings. Early appointment enables a lawyer to access the case file, gives them time to prepare a defence before the hearing and also enables them to ask the investigating judge, where appropriate, to give directions for further investigative actions which provide an opportunity to gather evidence that can be used in the proceedings.

57. Minors who are presumed to be victims of trafficking and are accommodated in the Esperanto centre for minors receive legal assistance throughout the proceedings. Lawyers and staff members of the centre prepare minors for hearings, explain the issues surrounding their statements and regularly contact the prosecutor's office or the *Auditorat du travail* (Prosecution Service for Employment Cases) and the police officers conducting the investigation. The centre also appoints a specialist lawyer.

58. GRETA points out that access to legal aid is essential to guarantee effective access to justice for victims of trafficking. Because of the complex nature of criminal proceedings and their vulnerability, victims of trafficking have no chance of having their rights recognised in court without assistance from a lawyer. GRETA is concerned that very few victims have access to a lawyer.

⁴⁸ Ibid., pp. 39 and 51.

⁴⁹ See the multi-agency circular of 2016.

⁵⁰ Ibid., p. 37.

59. **GRETA urges the Belgian authorities to take additional measures to facilitate and guarantee access to justice for victims of trafficking, and in particular to:**

- **revise and simplify the eligibility criteria for second-line legal assistance (legal aid) to enable victims of trafficking to exercise this right effectively throughout the proceedings and independently of proof of their lack of means and changes in their financial situation;**
- **amend the Circular of 23 December 2016 so as to encourage the specialised centres to refer victims to a lawyer promptly;**
- **guarantee sufficient funding for specialised centres which provide legal representation for victims of trafficking who do not meet the eligibility criteria for legal aid.**

60. **In addition, GRETA considers that the Belgian authorities should raise awareness among Bar Associations on the need to encourage training and specialisation of lawyers, with a view to providing legal assistance to victims of trafficking and ensure that victims of trafficking are systematically provided with a specialist lawyer.**

4. Psychological assistance (Article 12)

61. 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 overcome 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 that 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.⁵¹ In the case of trafficked children, specialist child psychologists should be employed.

62. The Circular of 23 December 2016 acknowledges that "it is important for victims to return to a calm state of mind. With support from a recognised specialised reception centre, they can gain a better understanding of their situation, regardless of whether or not they make statements". The support given by centres includes psychological, social and medical assistance. The goal is "to help victims to overcome situations and trauma and take back control of their lives and to help them plan for the future. All aspects of a person's life can be considered to this end: language skills, training, civic integration, housing, work, family, health and integration". Support is tailored to the process that each person goes through and their personal situation and is provided on a long-term basis over a period of three to five years.⁵²

63. During the visit, GRETA went to the three specialised reception centres run by the NGOs PAG-ASA, Payoke and Sürya in Brussels, Antwerp and Liège respectively. All of the victims it met were receiving psychological assistance. Members of staff at the centres stressed the importance of this type of support in enabling victims to overcome trauma and regain their independence. Providing funding for psychological services is the responsibility of federated entities, and according to the staff whom GRETA met in the centres, it is sufficient to ensure the effectiveness and continuity of their work, as it is allocated over a five-year period.

⁵¹ OSCE, *Trafficking in Human Beings Amounting to Torture and Other Forms of Ill-Treatment* (2013), Vienna, p.115.

⁵² See [Victim support – PAG-ASA](#)

64. The GRETA delegation also went to the Esperanto centre for minors in Wallonia. This centre provides a psychological support process tailored to each child which aims at establishing a relation of trust with the child, assessing his/her situation, addressing identity issues or cultural difficulties and finally working on any trauma.⁵³ Support is provided over the medium term and often continues after the individual reaches adulthood, to the age of 20. The centre, which does not have the formal status of a specialised centre, has a separate funding system: it is financed jointly by the ONSS, provincial and local authorities and the Wallonia-Brussels Federation.

65. GRETA welcomes the quality and duration of the psychological support provided to victims, which can last for several years. However, it notes that only victims who are accommodated in centres have access to this type of support and, as was underlined by civil society, the centres have limited accommodation capacity and sometimes have to refuse to take in new people owing to a lack of places.⁵⁴ In their comments to the GRETA's draft report, the Belgian authorities affirmed that some residual possibilities to obtain psychological support exist for victims of trafficking who are not accommodated in specialised centres, for example, the Belgian authorities referred to the psychological support offered to asylum seekers by FEDASIL.

66. GRETA invites the Belgian authorities to take further steps to provide psychological assistance to all victims of trafficking, including those who are not accommodated in the specialised centres, in order to help them overcome the trauma they have been through, and to achieve a sustained recovery and social inclusion.

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

67. 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.⁵⁵ GRETA has stressed the need to develop public-private partnerships with a view to creating appropriate work opportunities for victims of trafficking.⁵⁶

68. In Belgium, the specialised reception centres, in co-operation with other organisations, assist victims with their plans to get back into work by offering them language classes and professional orientation. The victims met by the GRETA delegation were being assisted and actively supported by the specialised centres in seeking work or vocational training.

69. However, the representatives of civil society underlined that in practice, access to the labour market for foreign victims of trafficking and the establishing of a pathway to an autonomous life are severely hampered by the difficulty of obtaining and keeping a residence permit in Belgium (see paragraphs 211 et seq.).

70. GRETA notes that if the right to work is only guaranteed for victims who are lawfully resident within the country (Article 12, paragraph 4, of the Convention), the exercise of this right could be hampered in substance where the conditions governing the issuing and maintaining of residence permits for victims of trafficking are particularly restrictive.

⁵³ https://www.esperantomena.org/files/ugd/4da024_88dcd3070ae04f61be555926aa7d4c10.pdf (French only), p. 11.

⁵⁴ See, *inter alia*, the Esperanto Centre's 2020 Activity Report (French only), p. 14. https://www.esperantomena.org/files/ugd/4da024_88dcd3070ae04f61be555926aa7d4c10.pdf (French only)

⁵⁵ Rebecca Surtees, NEXUS Institute, *Re/integration of trafficked persons: supporting economic empowerment*, Issue paper No. 4, King Baudouin Foundation (2012).

⁵⁶ 8th General report on GRETA's activities, paragraph 183.

71. **While welcoming the efforts made by the specialised centres to create a process of finding employment and gaining independence for victims of trafficking, GRETA considers that the Belgian authorities should take steps to reduce the precariousness that characterises the access to work of foreign victims of trafficking, with a view to guaranteeing the effectiveness of the right recognised in Article 12, paragraph 4, of the Convention.**

72. **GRETA also invites the Belgian authorities to further promote the economic and social integration of victims of trafficking by making it easier for them to access employment, vocational training and education. This should involve awareness raising among employers and promoting micro-enterprises, social enterprises and public-private partnerships, including through employment programmes founded by the State, in order to create appropriate job opportunities for victims of trafficking.**

6. Compensation (Article 15)

73. 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.

74. 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 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 human rights violations.

75. 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.

76. The legislation that enables THB victims to seek compensation in Belgium is still as described in GRETA's second report.⁵⁷ A victim of trafficking has the right to bring a civil action in criminal proceedings to seek compensation from the offender for the harm suffered. Alternatively, the victim can make a separate claim before a civil court, but the civil proceedings are suspended until a final decision is taken by the criminal court. The advantage for the victim in claiming damages in criminal proceedings is that it enables them to contribute to the conducting of those proceedings and the judicial investigation, for instance by asking the judge for additional investigative measures. In a civil court, the victim must provide evidence of the offender's responsibility.

⁵⁷ See paragraphs 150-156 of GRETA's second report.

77. Furthermore, the specialised reception centres and MYRIA can claim damages in cases concerning trafficking in human beings and they often do so, receiving either a symbolic amount (€1) or larger sums (up to €2 500).⁵⁸

78. Compensation for victims of trafficking covers non-pecuniary damage, pecuniary damage and physical injury. The amount is set at the judge's sole discretion within the limits of the sum sought by the claimant. A table created by the National Union of First-Instance Judges and the Royal Union of District Judges, which is regularly updated, serves as a scale on which damage can be assessed.⁵⁹ The judge can also order an expert assessment where this is necessary to put a value on the damage.

79. With regard to trafficking for the purpose of labour exploitation, the damage suffered by the victim can include loss of wages, which is calculated by the labour inspectorate on the basis of the scales in force in Belgium. The Directorate-General of Supervision of Social Legislation Monitoring (hereinafter CLS) and the ONSS labour inspection unit play an important role in recovering unpaid wages. When wage arrears are confirmed, the CLS attempts to resolve the situation by asking the employer to pay them. If this attempt is successful, the employee need not bring a civil action and can obtain the unpaid salaries more quickly without this affecting the criminal or labour law proceedings. The ONSS labour inspection unit provides the labour law auditors with calculations of the financial gains made by the employer by employing victims illegally. These calculations include unpaid wages and social security contributions. To make it easier to recover wages, the 2021-2025 Anti-Trafficking Action Plan states that an information booklet about the conditions and procedures to be followed so that presumed victims can recover amounts owed to them will be produced. According to the information provided by the Belgian authorities, the information booklet was finalised in June 2022 and will soon be distributed and made available to specialised centres.

80. Victims' repatriation or voluntary departure to their country of origin do not prevent them from seeking compensation. Under Article 68, paragraph 1, of the Code of Criminal Procedure, any party who claims damages in criminal proceedings must choose an address for service in Belgium, although this address can be that of the office of the lawyer representing them. In this situation, victims must stay in contact with their lawyer, but this contact is often lost over the years due to the length of the procedure and the victims' loss of hope of obtaining compensation. The specialised centres sometimes manage to appoint a lawyer and stay in contact with victims. However, such cases are exceptional. As highlighted in MYRIA's 2019 report which specifically concerns victims' access to justice, and as pointed out by the representatives of civil society met by GRETA, it is practically impossible for victims who are no longer living in Belgium to obtain compensation from abroad.⁶⁰

81. Where the offender does not execute the judgment, the victim can refer the matter to a court bailiff and request enforcement and, where appropriate, confiscation of the convicted individual's property. However, this process is lengthy and onerous, which discourages victims. In some cases, decisions cannot be enforced because, where property has not been seized at an early stage, the necessary sums still cannot be found at the time of enforcement.⁶¹ The lawyers whom GRETA met mentioned a case of THB for the purpose of domestic work in which the claimant had been awarded €100 000 of compensation which had never been paid because, due to the failure to carry out an effective financial investigation, confiscation had not been ordered.

⁵⁸ See the case digest sections of MYRIA's annual reports.

⁵⁹ <http://www.roulagiste.be/tableau-indicatif> (French only)

⁶⁰ Ibid., pp. 40 and 64.

⁶¹ For examples of case-law, see MYRIA's 2019 report, p. 55.

82. The Belgian authorities did not provide any statistics concerning the number of THB victims who received compensation from perpetrators because no central mechanism to collect this type of data exists and this would require analysis of individual cases. However, GRETA was informed that only a limited number of victims obtain compensation from perpetrators. The difficulties in obtaining high-quality and promptly legal representation have an adverse impact on victims' right to claim damages in criminal proceedings. Many victims often withdraw from proceedings because of their excessive length and because they lose hope of success.⁶² In addition, shortcomings in financial investigations can make it impossible to identify perpetrators' assets, confiscate them in due time and ultimately ensure that compensation is actually paid. The situation in relation to children is particularly worrying. Staff members at the Esperanto centre informed GRETA that very few of the minors monitored by the centre had had access to compensation and that legal guardians often advise them against seeking it in the belief that this is not in the minor's best interests because of the length and complexity of proceedings, which exposes minors to stress, and because of the limited possibilities of obtaining adequate compensation.

83. MYRIA's annual reports, which analyse a considerable number of cases, offer an insight into how the issue of compensation is dealt with in case-law and how damages are calculated. The case-law shows that the amounts awarded to victims are sometimes considerable, particularly for pecuniary losses in labour exploitation cases. There is some variation in the case-law as to how non-pecuniary damage is assessed. The prosecutors whom GRETA met also underlined that it is easier to obtain compensation for labour exploitation because it is easier to calculate pecuniary damage with the help of labour inspectors and also because the chances of tracking down the traffickers' assets and confiscating them are higher. By way of example, GRETA makes reference to the following cases:

- On 20 September 2017, the criminal court (*tribunal correctionnel*) of Bruges⁶³ delivered judgment against eight Nigerian defendants who had been charged with trafficking in human beings for the purpose of sexual exploitation, with the aggravating circumstances of abuse of the vulnerable situation of the victims, duress, endangerment of the victims' lives, involvement with a criminal organisation and the fact that the offence had been committed on a regular basis. Three victims, one of whom was a minor, claimed damages and the PAG-ASA and Payoke reception centres did likewise. The eight defendants were all sentenced to prison terms of between 18 months suspended and nine years non-suspended, as well as fines. The three parties claiming damages were awarded between €6 500 and €12 000 for non-pecuniary damages. PAG-ASA and Payoke each received €2 500.
- In a judgment of 27 November 2020,⁶⁴ Antwerp Court of Appeal upheld the conviction for trafficking in human beings for the purpose of forced criminality against a couple from North Macedonia who had lured a single Belgian man with a fixed income into becoming completely dependent on them by isolating him socially and exploiting him financially. The victim was initially induced to give money to the family, then gave them his bank cards and PIN numbers and was eventually forced to commit a number of thefts. The victim lived with the family in very unhygienic conditions, was forced to eat and sleep outdoors and was subjected to physical and psychological violence. The two defendants were sentenced to five years' imprisonment and ordered to pay €100 000 in damages for pecuniary losses and €2 500 for non-pecuniary harm.

⁶² Ibid., p. 45.

⁶³ *Tribunal correctionnel* of West Flanders, Bruges Division, 20 September 2017, 17th Chamber (final). For more information, see MYRIA's 2018 report, p. 105.

⁶⁴ Antwerp, 27 November 2020, Chamber C6. For more information, see MYRIA's 2021 report, pp. 77-79.

84. The authorities stated that in 2019 and 2021, the Judicial Training Institute trained prosecutors on enforcement investigations in criminal cases. Several training courses were run by the Trafficking in Human Beings Department within the ONSS Labour Inspection Unit in 2018, 2019 and 2020. In 2018, after the labour inspectorate of the Federal Public Service for Social Security was incorporated into the inspection departments of the ONSS, the Department trained its non-specialised inspectors on, among other things, compensation for victims and the need to gather as much elements as possible in order to be able to calculate the damages suffered by victims with a view to obtaining subsequent compensation.⁶⁵ A procedural handbook aimed at all ONSS labour inspectors explaining how to carry out checks in relation to economic exploitation has also been produced.

85. With regard to compensation from the State, as described in GRETA's second evaluation report,⁶⁶ victims of trafficking can seek this from the Financial Aid Fund for Victims of Intentional Acts of Violence by making an application to the Commission for Financial Aid for Victims of Intentional Acts of Violence (hereinafter "Commission"). To be eligible for financial aid, a victim must show that an intentional act of violence was committed, they suffered serious physical or psychological damage, and the damage was a direct consequence of this intentional act of violence.⁶⁷ The Commission provides three types of aid: 1) primary aid, which is granted once the criminal proceedings have ended and is capped at €125 000;⁶⁸ 2) emergency aid, which can be granted where a delay in granting primary aid may cause the applicant considerable damage and which may be requested as soon as a civil claim or a criminal complaint have been lodged and may be granted before the end of the judicial investigation and proceedings. The cap on emergency aid has been raised from €15 000 to €30 000; 3) supplementary aid can be granted where the damage suffered by the victim increases after primary aid has been granted. This worsened level of harm must be proved with medical documents or expert assessments. The maximum amount of supplementary aid is €125 000.

86. Article 31bis of the Law of 1 August 1985 sets out a number of requirements that must be met in order to receive a payment from the Financial Aid Fund for Victims of Intentional Acts of Violence: the act of violence must have been committed in Belgium; the proceedings must have been ended by a final decision (if the perpetrator is known) or the investigation must have been completed (if the perpetrator is unknown); the victim must make their application for primary aid within three years from the date of the final judicial decision; and because this is a subsidiary system, the victim must demonstrate that they did everything in their power to obtain compensation (claiming damages in criminal proceedings is sufficient to meet this requirement) and obtain its payment (e.g. by requesting seizure of the perpetrator's property). However, this subsidiary requirement is not absolute and is not interpreted as requiring the victim to proceed to forced execution before applying for primary aid where the perpetrator was manifestly insolvent. Furthermore, Article 36bis, paragraph 1, 6°, of the Law of 1 August 1985 allows the Commission to make exceptions on a case-by-case basis if, owing to circumstances entirely beyond their control, the applicant was unable to file a complaint, acquire injured party status, claim damages in the criminal proceedings or obtain judgment or if it appears that it would be manifestly unreasonable to make a claim in the light of the offender's insolvency.

87. The process of applying to the Commission is an administrative process and assistance from a lawyer is not required. However, being represented by a lawyer is mandatory in order to submit an appeal against a decision taken by the Commission to the Council of State. GRETA was informed that only 1% of applicants appeal to the Council of State.

⁶⁵ See MYRIA's 2019 report, pp. 57-58.

⁶⁶ See GRETA's second report on Belgium, paragraph 151.

⁶⁷ Articles 31 and 31bis of the Law of 1 August 1985 on fiscal and other measures.

⁶⁸ The amount of aid was increased from €62 000 to €125 000 in 2016 by an amendment to the law.

88. According to information from the authorities, the Commission takes approximately 1 000 decisions a year, and only a very limited proportion of them concern victims of trafficking. The Commission opened four cases concerning victims of trafficking in 2017, one in 2018, one in 2019, one in 2020 and one in 2021 and took two decisions in 2017 (of which one was favourable to the victim), three in 2018 (of which one was favourable), one in 2019 (favourable), two in 2020 (of which one was favourable) and two in 2021 (of which one was favourable). However, the Commission clarified that such statistics may not include all trafficking cases, because where they are associated with other offences (sexual abuse, physical violence etc.), they may be recorded in the system under a different keyword which will then prevent them from being identified as trafficking cases as such. The total amounts awarded to victims of trafficking were €5 000 in 2017, €45 000 in 2018, €1 000 in 2019, €12 500 in 2020 and €2 500 in 2021. According to MYRIA's 2019 report, successful applications only relate to trafficking for the purpose of sexual exploitation. The Commission for Financial Aid explicitly stated in its answers to GRETA's questions that its intervention is limited to cases of physical violence and sometimes threats and does not deal with cases of labour exploitation.

89. The representatives of MYRIA and civil society met by GRETA pointed out that the number of trafficking victims who apply for State compensations is limited. This is due to a number of factors. Firstly, a large proportion of victims are unaware of this possibility. Secondly, the process of applying to the Commission is very time-consuming and places a mental strain on victims which discourages them from following this path. In addition, the subsidiary nature of this system excludes victims who have not lodged a civil claim, either because they were unable to be represented by a lawyer or because of fear of reprisals, to obtain State compensation.

90. The main obstacle to obtain State compensation is the difficulty of proving that they have suffered a damage and that it was caused by an intentional act of violence. Proving psychological damage can be very difficult for victims, especially without assistance from a lawyer. GRETA was informed that reports written by psychologists and social workers of the specialised centres are not sufficient to prove a psychological damage. The Commission can request an expert report ex officio, but this option is rarely exercised. A criminal conviction can prove harm to a certain extent, but this is not possible in practice where the perpetrator's identity is unknown or the case has been closed, as often happens in cases that are brought to the Commission's attention.

91. While welcoming the existence of legal remedies to claim compensation and the amounts awarded by the judicial authorities, GRETA is concerned by the limited number of victims who have obtained compensation.

92. **GRETA urges the Belgian authorities to take additional measures to facilitate and guarantee effective access to compensation for victims of trafficking, and in particular to:**

- **facilitate access to legal aid in order to enable victims of trafficking to exercise their right to compensation effectively (see paragraph 59);**
- **revise the criteria for access to the Financial Aid Fund for Victims of Intentional Acts of Violence (particularly the concept of "intentional act of violence") in order to ensure that all victims of trafficking can access it, regardless of the type of exploitation;**
- **facilitate access to justice for minors by adapting proceedings to the child's specific needs. GRETA makes reference in this regard to the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.⁶⁹**

⁶⁹ 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 1 098th meeting of the Ministers' Deputies): <https://rm.coe.int/16804b2cf3>

93. **GRETA also invites the Belgian authorities to create a system to record compensation claimed and obtained by victims of trafficking in criminal proceedings and to improve the system of the Commission for Financial Aid in order to identify the total number of claims made by victims of trafficking, distinguishing between dismissed and granted claims.**

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

94. One of the purposes of the Convention is to ensure the effective investigation and prosecution of THB. Article 27(1) establishes that the investigation or prosecution of THB offences must not depend on victims' reports. The aim is to avoid traffickers' subjecting victims to intimidation so as 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 aim at fighting trafficking in human beings or the protection of human rights, the possibility to assist and/or support the victim (subject to his or her consent) during criminal proceedings concerning the offence of trafficking in human beings.

95. Article 23 requires Parties to match their actions 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 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. The identified, seized and confiscated illegal profits of trafficking should be used to compensate victims of trafficking, directly or through a victim compensation fund.

96. 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.

97. As mentioned in GRETA's second evaluation report,⁷⁰ the definition of trafficking in human beings given in Article 433quinquies of the Belgian Criminal Code is based on two constituent elements: the act of exploitation and its purpose, while the means are regarded as aggravating circumstances as provided in Article 433septies of the Criminal Code. The Law of 31 May 2016 added to these aggravating circumstances so that they include all of the *modi operandi* listed in Directive 2011/36/EU.

⁷⁰ GRETA's second report, paragraphs 169-173.

98. With regard to penalties, the offence of trafficking carries a sentence of between one and three years' imprisonment and a fine of between €100 and €10 000 when committed against an adult (Article 433quinquies). Where it is committed by a person who has authority over the victim, a person who has abused their authority or office or a public officer or official, the term of imprisonment is between five and 10 years and the fine is between €750 and €75 000 (Article 433sexies). The offence is punishable by 10 to 15 years' imprisonment and a fine of between €1 000 and €100 000 when committed against a child or in one or more of the aggravating circumstances specified in Article 433septies.⁷¹ The offence carries a sentence of 15 to 20 years' imprisonment and a fine of between €1 000 and €150 000 where it has caused unintentional death of the victim or constituted involvement in the primary or incidental activity of a criminal organisation (Article 433octies).

99. As stated in GRETA's second evaluation report, Article 5 of the CC provides that corporations can bear liability, including for the offence of trafficking, and the stipulated punishments remain as stated in the previous report.⁷² Several examples of corporations convicted of trafficking are given in MYRIA's annual reports.⁷³

100. According to statistics from the Police Database, the number of human trafficking offences recorded by the police was 329 in 2017 (including 155 for economic exploitation and 149 for sexual exploitation), 358 in 2018 (including 161 for economic exploitation and 177 for sexual exploitation), 331 in 2019 (including 146 for economic exploitation and 171 for sexual exploitation) and 278 in 2020 (including 121 for economic exploitation and 142 for sexual exploitation). The number of investigations started in relation to trafficking for the purpose of sexual exploitation was 165 in 2017, 177 in 2018 and 171 in 2019; the number of investigations for the purpose of economic exploitation was 165 in 2017, 164 in 2018 and 146 in 2019. The number of defendants in human trafficking cases referred to prosecutor's offices was 490 in 2017, 560 in 2018, 539 in 2019 and 441 in 2020. 24.4% of defendants were prosecuted. The number of convictions was 114 in 2017, 128 in 2018 and 113 in 2019. Among the persons who were convicted in 2017, 42 served prison sentences, with 30 serving terms of between one and five years and four serving terms of between five and 10 years, and 49 were given suspended sentences. In 2018, 65 people served prison terms, with 41 serving between one and five years and 17 serving between five and 10 years, and 53 were given suspended sentences.⁷⁴

⁷¹ Article 433septies: The offence referred to in Article 433quinquies, § 1, shall be punishable by 10 to 15 years' imprisonment and a fine of between €1 000 and €100 000 in the following situations:

1° where the offence was committed against a minor;

2° where it was committed by exploiting a person's vulnerability due to their illegal or insecure administrative status, insecure social situation, age, pregnancy, illness, disability or mental or physical impairment, such that the person had no real and acceptable choice but to submit to this exploitation;

3° where it was committed with direct or indirect recourse to fraudulent acts, violence, threats or any form of duress or with recourse to abduction, abuse of authority or deception;

3bis° where it was committed by offering or accepting payments or advantages of any kind in order to obtain the consent of a person with responsibility for the victim;

4° where the victim's life was endangered deliberately or through gross negligence;

5° where the offence resulted in an apparently incurable illness, incapacity to work lasting for more than four months, complete loss of an organ or the use of an organ or serious mutilation;

6° where the activity concerned is a habitual activity;

7° where it constitutes involvement in the primary or incidental activity of an organisation, regardless of whether the guilty party is in charge of it.

The fine shall be imposed as many times as there are victims.

⁷² The sentences are a fine, confiscation, dissolution, a temporary or permanent ban on pursuing an activity, temporary or permanent closure of one or more sites and publication or distribution of the decision. See GRETA's second report on Belgium, paragraph 177.

⁷³ See, *inter alia*, MYRIA's 2021 report, pp. 46-50.

⁷⁴ See the reply of the Belgian authorities to the questionnaire, pp. 56-63 and MYRIA's 2021 report, p. 95 ff.

101. The statute of limitation for sexual offences against minors, including trafficking for the purpose of sexual exploitation, was abolished under the Law of 14 November 2019. According to the new Criminal Law (Sexual Offences) Reform Law, entered into force on 1 June 2022, running a bawdy house or house of prostitution, where only adults work and where no exploitation (sexual or financial) of any kind occurs ceases to be punishable.⁷⁵ According to several front-line NGOs, this reform could take sex workers out of the grey area that currently exists in Belgium, where prostitution is not punished when it takes place between consenting adults and in private but sex workers are left with no legal or social protection.⁷⁶

102. The prior admission of guilt (plea bargaining) procedure that was added to the Code of Criminal Procedure in Article 216 in 2016 is described in GRETA's second report and remains unchanged.⁷⁷ This procedure may apply in cases concerning trafficking in human beings, including aggravated forms of it, where the sentence requested by the prosecutor's office does not exceed five years' imprisonment. The victim still has the same rights during a hearing (they have the right to be heard) and in terms of compensation (they can claim damages). The plea bargaining must be accepted by the trial judge, who considers factors such as the defendant's willingness to compensate the harm caused. The judgment cannot be appealed for criminal matters but can be appealed for civil aspects.

103. The Law of 22 July 2018 introduced a procedure for "promises relating to prosecution, the serving of sentences or detention made following a statement in the context of combating organised crime and terrorism" (Article 216/1 of the Code of Criminal Procedure). This procedure allows certain advantages in relation to criminal proceedings, sentencing or the serving of sentences to be granted to individuals who decide to co-operate with the judicial authorities by making statements regarding their own involvement or that of third parties in serious offences (terrorism, organised crime). Statements must be substantial, revealing, truthful and complete. The use of this procedure is strictly regulated and the promise is always approved by the competent court after a proportionality and legality test has been applied. There are also guarantees for victims: the procedure does not confer any immunity from being sued for damages, there is an irrebuttable presumption of guilt in relation to offences committed and admitted to by the co-operating individual and if the promise relates to the serving of the sentence, the prosecutor always considers the risks to victims' safety. Promises can be withdrawn if the co-operating individual does not honour the terms of them, is convicted of new offences or does not compensate victims.

104. Under Article 216bis of the Code of Criminal Procedure, a settlement (*transaction pénale*) can be reached over an offence which did not cause serious physical harm and for which the main penalty does not exceed two years' imprisonment. Such settlements entail the payment by the perpetrator of a defined sum of money to the Federal Finances Department. The parties can reach agreement on compensation during the proceedings and the victim can assert their rights by making a claim in a civil suit in any event. When the settlement is proposed before the formal accusation is made by the prosecutor's office, this can have the effect of stopping a permanent residence permit from being issued to a victim of trafficking. The Anti-trafficking Action Plan 2021-2025 proposes to study ways of adapting the regulations to ensure the issuance of residence permits to victims of trafficking in this situation.⁷⁸ The authorities have informed GRETA that an initial discussion on this issue, as well as on the issue of granting residence permits in the event of dismissal of the case, has taken place within the THB Bureau and that it is planned to amend the multi-agency circular in this regard. However, no concrete action has been taken to date. **GRETA welcomes the inclusion of this important aspect in the Anti-Trafficking Action Plan and the envisaged measures for its implementation and invites the competent authorities to continue in this direction.**

⁷⁵ See

<https://www.lachambre.be/kvvcr/showpage.cfm?section=/none&leftmenu=no&language=fr&cfm=/site/wwwcfm/flwb/flwbn.cfm?lang=F&legislat=55&dossierID=2141> (French and Flemish only) and also MYRIA's 2021 report, pp. 14-19.

⁷⁶ For further information, see [Réforme du Code pénal en matière "sexuelle" : qui protège-t-elle ? – Axelle Mag](#) (French only)

⁷⁷ See GRETA's second report on Belgium, paragraph 197.

⁷⁸ 2021-2025 Action Plan, pp. 6-8.

105. During the investigation, a prosecutor can seize assets to the presumed amount of the damage suffered by the victim (Articles 35, 35bis and 35ter of the Code of Criminal Procedure) and then, in court, request for these assets to be confiscated (Articles 42, 43bis and 43quater of the Criminal Code) and awarded to the party claiming damages so that the damage is compensated as far as possible. The authorities are unable to indicate how many cases of trafficking in human beings have led to confiscation, however numerous examples can be found in MYRIA's annual reports⁷⁹.

106. The Financial Intelligence Processing Unit (CTIF) plays an important role in the financial analysis of human trafficking cases.⁸⁰ The starting point for the CTIF's work on a case is when the declaring party (such as a bank) reports a suspicion. If the analysis reveals serious indications of money laundering connected with one of the offences listed in the law (including THB), the CTIF refers the case to the prosecutor's office. GRETA was informed that between 2018 and 2020, the CTIF referred 99 cases concerning trafficking in human beings to the judicial authorities, and the total amount of money involved was €130 million.⁸¹ Of the 99 cases referred, 47% were closed with no further action being taken, 14% are under investigation by the police, 3% are under judicial investigation and judgment has been/will be passed on 24. Some examples are given below:

- Case concerning economic exploitation of falsely self-employed persons

In the space of six months, more than €3 500 000 was credited to a Belgian company's account by companies in the automotive industry. Some of the funds were transferred to individuals in Romania and some were withdrawn in cash. The CTIF's analysis indicated that the Belgian company was hiring workers in Romania. After obtaining the status of self-employed workers under Romanian law, these persons continued to be registered as resident in Romania but were sent to Belgium, where they had no addresses. They appeared to be falsely self-employed persons who were being exploited by the Belgian company. They did not have contracts of employment and were paid €4 an hour, which was well below the rates paid in Belgium. The case was referred by the CTIF to the judicial authorities as it was suspected that proceeds of trafficking in human beings were being laundered. A judicial investigation is under way.

- Case concerning Brazilian networks

Several Belgian construction and/or industrial cleaning companies managed by Brazilian and Portuguese nationals received transfers from various Belgian client companies. Some of the money was withdrawn in cash and some was transferred to companies based in Asia (mainly in China and Hong Kong). Information obtained from a counterpart financial intelligence unit established links with a criminal organisation which was trafficking drugs. The Belgian companies were suspected of involvement in an offset scheme whereby cash originating from the drug trafficking would be given to the Belgian companies so that it could be used to pay their undeclared workers. In parallel, under cover of fake invoices, the transfers to Asia could offset the money initially handed over in cash which originated from the drug trafficking. The CTIF mapped financial links between several parties involved in different cases and links with welfare fraud, serious tax fraud, people smuggling, trafficking in human beings, exploitation of prostitution and drug trafficking. Thanks to the CTIF's work, on 2 September 2021, one of these Brazilian networks was put on trial at the *tribunal correctionnel* in Brussels where 12 individuals and three companies were prosecuted for laundering €12 million in the space of 11 months.

⁷⁹ See MYRIA Report 2021, p. 58-79.

⁸⁰ For more information, see CTIF's Annual Activity Report: <https://www.ctif-cfi.be/index.php/en/> (French only)

⁸¹ It should be noted that most of this amount comes from a single case referred in 2018 which involved the sum of €120 million.

107. The CTIF forms part of the Inter-departmental Anti-Trafficking Unit. To improve the reporting of financial transactions potentially linked to trafficking, the Inter-departmental Unit set up a working group that brings together representatives of the ministry of Justice, the Board of Prosecutors General, the Federal Police and the Federal Public Service for Finance, which drew up a list of indicators that was distributed to banking institutions in 2018. The 2021-2025 Anti-Trafficking Action Plan states that the group will continue to work with banking institutions and envisages that investigative and judicial capacity will be increased to ensure that financial investigations are effective and result in victims being compensated. In this context, the CTIF is developing a leaflet in co-operation with a money transfer agency and, according to the authorities, this experience could be extended to other money transfer agencies. **GRETA welcomes the measures envisaged in the Action Plan to improve financial investigations and invites the authorities to take the necessary steps to ensure their implementation.**

108. During the visit, the police forces met by GRETA expressed great frustration over the lack of staff and the impact it was having on their work, which significantly limits any possibility of proactive investigation and severely affects their ability to combat trafficking in human beings effectively. After the terrorist attacks of 2016, large amounts of resources were channelled into counterterrorism activity, which absorbed a huge amount of capacity, and the police officers who were transferred were not replaced. The fight against trafficking has therefore lost in terms of human and budgetary resources and there has also been a decrease in precise knowledge of tools and procedures for the protection of THB victims. The lack of resources has a negative impact on investigative methods, particularly those that involve use of the Internet, as they require considerable human and economic resources. This problem was also highlighted in MYRIA's 2019 report, which contained a recommendation to "make trafficking in human beings a priority on the ground once again by allocating the human and material resources needed by front-line services". The 2021-2025 Anti-Trafficking Action Plan envisages an increase in capacity and material support for authorities responsible for identifying trafficking offences so that investigation and prosecution targets can be achieved. The Belgian authorities informed GRETA that a new recruitment of police officers is planned.

109. Training will be given to police forces and prosecutors. Jointly with Caritas International, the Judicial Training Institute provided training on "The multi-agency approach to human trafficking cases" for prosecutors in 2018. In 2021, it provided basic training to non-specialised prosecutors (duty prosecutors) and judicial trainees and also training for juvenile prosecutor's offices. The 2021-2025 Action Plan has announced an increase in training, especially for juvenile prosecutors, because of the difficulties observed in the identification of trafficking cases because of a lack of specialisation. To overcome these difficulties, the "People Smuggling and Trafficking in Human Beings" and "Youth" networks of expertise of the Board of Prosecutors General contribute to the activity of the working groups in relation to the issue of "loverboys" and the exploitation of minors. The groups also include representatives of Belgium's Communities, and information about practices and difficulties encountered is shared during meetings. An update to the "Trafficking in Human Beings" information sheet summarising the action to be taken where there are suspicions of trafficking, which is aimed at duty prosecutors, is also planned and currently being discussed.

110. Civil society has drawn attention to the difficulties in practice of distinguishing trafficking for the purpose of labour exploitation from other offences under criminal labour law, because proving a violation of human dignity (which is one of the constituent elements of the offence of human trafficking) can be very difficult in practice. The choice between one legal classification and the other has enormous consequences because only one classification will mean that the victim can receive the assistance given to victims of trafficking and a residence permit, whereas any other classification will mean that they are left without any support and prosecuted for offences related to their status as an illegal migrant. This uncertainty acts as a deterrent for victims, who often refuse to make a complaint or co-operate with the judicial authorities.

111. **While welcoming the measures envisaged in the 2021-2025 Anti-Trafficking Action Plan to ensure that THB is investigated and prosecuted effectively, GRETA urges the Belgian authorities to allocate sufficient human and budgetary resources to the police forces in order to conduct proactive and effective investigations in trafficking cases.**

112. **GRETA also considers that the Belgian authorities should take additional measures to guarantee proactive investigation of trafficking cases and effective prosecutions leading to effective, proportionate and dissuasive sanctions, and in particular, they should:**

- **further encourage take-up of the option of awarding confiscated assets and property to the party claiming damages to compensate them for damage suffered;**
- **step up their efforts to ensure that the offence of trafficking is selected whenever the circumstances of a case allow this;**
- **continue to provide training to prosecutors and judges on the peculiarities of trafficking in human beings, the serious consequences of exploitation for victims and the need to respect their fundamental rights.**

8. Non-punishment provision (Article 26)

113. 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.⁸² 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.

114. In the second evaluation report on Belgium, GRETA considered that the Belgian authorities should take additional steps to ensure compliance with the principle of non-punishment of the victims of THB, and that they should also monitor the application and impact on victims' rights of Article 183/1 of the Labour Criminal Code, which provides for the punishment of any undeclared worker who knowingly and voluntarily works despite being aware that they are undeclared.

115. There have been significant legislative changes since GRETA's second evaluation. As already mentioned in paragraph 14, the Law of 22 May 2019 on trafficking in human organs and the principle of non-punishment of the victims of trafficking expressly recognised the non-punishment provision in Belgian law through the incorporation of a paragraph 5 into Article 433*quinquies* of the Criminal Code, which provides as follows: "A victim of trafficking in human beings who participates in any offences as a direct consequence of their exploitation shall not incur any penalty in respect of these offences". As has been stressed by the legislator, the non-punishment provision applies to criminal or administrative offences provided for under the Criminal Code, the Labour Criminal Code (including undeclared work under Article 183/1) and special legislation. It is in the first instance for prosecutors, and ultimately for the courts, to assess whether there is any direct link between the exploitation and the committing of offences by the victim.

⁸² See the 2nd General Report on GRETA's activities, paragraph 58.

116. The new law reinforces the existing legal framework in this area by supplementing the Joint Circular of the Board of General Prosecutors and the Ministry of Justice on Trafficking in human beings (COL 1/2015 Investigation and prosecution policy on trafficking in human beings), which is already relevant for judges in cases in which a victim has committed offences within the context of their exploitation (e.g. possession and use of forged documents, drug trafficking, running a cannabis production facility, theft etc), and recommends that the fact that the person is a victim of human trafficking should be taken into account as a priority.

117. The Belgian authorities have referred to the following case in which, in a judgment of 13 June 2018, Liège criminal court (*tribunal correctionnel*) applied the non-punishment principle in a case involving THB for the purpose of sexual exploitation following a police investigation launched in 2009. The case concerned the recruitment of young women from Romania through the "loverboy" method for the purpose of forcing them into prostitution in France and Belgium. One of the women had initially been convicted as she was in a relationship with the man at the head of the criminal network, was present when the young women were recruited, had been involved in their surveillance and had helped to provide them with accommodation. She appealed against the judgment and presented a judgment from the Paris Regional Court (*Tribunal de Grande Instance*) of 4 March 2015, which convicted her partner of the human trafficking of various victims, including herself. The court of Liège held that the interested party had herself been above all a victim, whose position of vulnerability had been abused and who had been acting under duress.⁸³

118. In its 2019 report, MYRIA stated that, although the principle of non-punishment had already been applied by the public prosecutor and by merits courts in various cases, it was still not widely known and rarely applied to the detriment of victims. These concerns are also shared by civil society. The case-law analysis contained in the annual reports of MYRIA provides examples of situations in which the principle of non-punishment has not been applied. These include cases involving trafficking for the purposes of sexual exploitation using the "loverboy" technique, where the defendants had previously been victims or had committed the offences whilst at the same time being exploited by the trafficker.⁸⁴ GRETA points out that, in this type of case, there may be grey areas where the distinction between a victim acting under duress and a person acting knowingly and voluntarily is not clear. In order to avoid both a violation of the principle of non-punishment as well as an abuse of criminal law, these cases require particular attention and specific training must be provided to prosecutors and judges.

119. GRETA was informed that children forced to commit offences are rarely identified as victims of trafficking. Seen as underage offenders, they are treated as such and, depending upon the circumstances, risk being placed in a public youth protection institution (*Institution publique de protection de la jeunesse* - IPPJ).⁸⁵ The MYRIA Report for 2018 refers to a case involving a young girl who had been forced by a criminal network to commit pickpocketing and had been placed in an IPPJ. The Association Esperanto, met by GRETA, referred to cases involving young Moroccans, victims of forced criminality, and forced to rob pharmacies, under the effect of drugs, by a criminal network which exploited them; they were treated as offenders and not as victims of trafficking. The Esperanto representatives stressed that the lack of identification of minors and their conviction before criminal courts prevented them from obtaining the protection measures to which they should have been entitled as victims of trafficking.

⁸³ For further information, see the MYRIA Report for 2019, p. 119 ff.

⁸⁴ See, *inter alia*, the MYRIA Report for 2021, p. 65-66, referring to the judgment of 29 June 2020 of Antwerp *tribunal correctionnel*.

⁸⁵ An *institution publique de protection de la jeunesse* is an establishment where minors who have committed criminal offences are placed. Depending on how serious their offence was, minors can be subject to a "closed regime" or an "open regime".

120. The 2021-2025 Anti-Trafficking Action Plan takes account of the obstacles to full and effective application of the principle of non-punishment and aims to ensure the proper application of the provisions and to examine any aspect that might have a chilling effect on the lodging of complaints so that these obstacles are removed.⁸⁶ The authorities have informed GRETA that this point of the Action Plan has not been implemented to date.

121. The network of expertise in human trafficking of the Board of General Prosecutors held a plenary meeting on 29 November 2019 concerning *inter alia* current issues relating to the non-punishment provision (legislative amendment of 22 May 2019). Specialised reception centres also participated, describing the difficulties encountered on the ground.

122. **GRETA welcomes the adoption of the Law of 22 May 2019, which expressly recognises the principle of non-punishment in the Belgian Criminal Code and considers that the authorities should take further steps to ensure the practical implementation of the non-punishment provision, in particular:**

- **by providing further training to law enforcement officers, prosecutors and judges, by issuing appropriate guidelines and by strengthening the exchange of information among police forces, prosecutors and the different judicial authorities;**⁸⁷
- **by ensuring that the non-punishment provision can be applied in practice to minors who are victims of trafficking for offences which they were forced to commit, making sure that they are swiftly identified as victims and receive appropriate support.**

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

123. 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.

⁸⁶ See the 2021-2025 Action Plan, p. 23.

⁸⁷ See OSCE, Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking, 2013: <https://www.osce.org/secretariat/101002?download=true>. [Regarding the non-punishment provision, see also ECtHR, V.C.L. and A.N. v. United Kingdom \(nos. 77587/12 and 74603/12\), 16 February 2021.](#)

124. 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 are concerned with extra-judicial protection, Article 30 addresses the procedural measures to be introduced. The following means can be used, in accordance with the European Convention on Human Right and the case-law of the European Court of Human Rights, to achieve the objectives of Article 30: non-public hearings, audiovisual technology, recordings of testimony, and anonymous testimony.

125. The legal measures to protect witnesses and victims described in paragraphs 199 to 202 of GRETA's second evaluation report remain unchanged. These include the possibility for the victim to give evidence anonymously (Law of 8 April 2002) and, under certain circumstances, to be heard via videoconference (Law of 2 August 2002). In addition, the Law of 7 July 2002 provides for a police protection scheme for witnesses who have been threatened, their family members and other close relatives. The request for the defendant be present at a public hearing may be rejected if the accompanying publicity would be detrimental to the interests of justice because of the dangers it would entail for the safety of victims or witnesses (Article 24 of the Law of 20 July 1990 on preventive Detention).

126. Under the terms of Article 433*nonies*/1 of the Criminal Code, it is prohibited to publish or distribute any information in written, visual or audio format that might reveal the identity of a victim of THB for the purposes of sexual exploitation, unless the victim has consented or unless this is necessary for the purposes of the investigation. Circular no. COL 7/99 of the Board of General Prosecutors at the Court of Appeal clarifies that no information that might result in secondary victimisation for the victim or their close family may be released to the press.

127. Since 2019, particularly vulnerable or seriously traumatised victims or witnesses may use video-filmed hearings (Articles 91 to 101 of the Code of Criminal Investigation) in order to avoid traumatic repetition through successive interrogations, memory loss and having to confront the perpetrators.

128. A joint circular has been issued by the Board of General Prosecutors and the Ministry of Justice concerning the reception of victims in prosecutor's offices and courts (COL 16/2012 of 12 November 2012). This was adopted within the framework of the policy to support victims of crime devised and implemented by public authorities. The policy has a twofold objective: to enable victims to overcome trauma regain a new stability as soon as possible; and to avoid the secondary victimisation that may result from involvement in judicial proceedings.

129. The prosecutors and judges met by GRETA reported a lack of co-operation with certain non-European countries, which does not allow for effective protection of the family members of victims and witnesses in those countries. The MYRIA Report for 2019 provides the example of the Nigerian Mama L. case,⁸⁸ which involved a victim of trafficking for the purposes of sexual exploitation who had been 14 years old at the time of the facts, and who had escaped from her pimp, Mama L., on the advice of her mother. Police forces learned from wiretapping that the young girl's mother had been severely beaten by corrupt Nigerian police officers, who had been paid by the brother of Mama L. The victim's mother was imprisoned and tortured and her brother died under unexplained circumstances. The case shows the failure of the Belgian authorities to ensure, in co-operation with the Nigerian authorities, the protection of the victim and members of her family.

⁸⁸ Dutch-Language Criminal Court of Brussels, 31 May 2018. See the MYRIA Report for 2018 p. 58 ff.

130. In its second evaluation report, GRETA noted that, even if in principle the victims of trafficking are not required to appear in court during the trial to give evidence in the presence of the defendant, it is possible that they may be brought face-to-face if the defendant submits a request to this effect to the investigating judge. The Belgian authorities stated that a confrontation between victim and trafficker is an exceptional procedure. Judges do not generally arrange a direct confrontation or refuse to allow such confrontations where there are other ways of obtaining evidence or establishing the judicial truth that respect the rights of the parties. Nonetheless, in its Report for 2019, MYRIA considered that a direct confrontation between a victim and their trafficker could amount to a form of secondary victimisation and questioned the utility of this procedure, which is often used by traffickers to manipulate and intimidate the victim. MYRIA referred to two examples in which confrontation led, in the first case, to a loss of control by the victim who, exasperated, verbally assaulted the defendants, and in the second case to the victim amending their statement, who as a result lost the protection to which she would have been entitled.⁸⁹

GRETA notes that the use of this procedure is particularly concerning in the Nigerian cases concerning THB for the purposes of sexual exploitation, given the often highly specific socio-cultural context in which the victim may be manipulated through voodoo rites.

131. **GRETA considers that the Belgian authorities should take additional steps to ensure the protection of victims and witnesses, and in particular make full use of the applicable legislation and ensure that the available protective measures are effectively applied to THB victims and witnesses in order to protect them and to prevent them from being intimidated during the investigation as well as during and after the trial, and also to avoid the confrontation of victims of trafficking in the physical presence of the accused and ensure the use of videotaped hearings of victims of any type of human trafficking.**

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

132. 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, include both women and men. To combat trafficking effectively and protect its victims, it is essential that proper training is provided to relevant officials.

133. As indicated in paragraph 17 above, co-ordination of the fight against trafficking in Belgium is ensured by the Inter-departmental Co-ordination Unit for Action against Trafficking Human Beings and Smuggling, acting under the authority of the Ministry of Justice, which brings together all actors involved in the fight against THB (including federated entities and specialised centres).

134. A network of expertise on THB and people smuggling has been established within the Board of General Prosecutors. The network of expertise is composed of members of public prosecutors' offices who are involved in action against THB, the Criminal Policy Department (SPF Justice) and the Central Service for Trafficking in Human Beings of the Federal Police. Day-to-day management and co-ordination of the activities of the network of expertise on trafficking in human beings and smuggling is ensured by a co-ordination team. The monitoring of the relevant case-law and of any other relevant information by specialist judges is ensured by the co-ordinator of the network of expertise. Specialised prosecutors are present in each district and meetings are organised regularly with law enforcement authorities in accordance with criminal policy circular COL 1/2015, which recognises action against trafficking as a priority.

⁸⁹ MYRIA Report for 2019, p. 47-48.

135. Investigations on THB cases are carried out by specialist police units at local level. The role of the Federal Police, in particular the Directorate for the Fight against Serious and Organised Crime of the federal criminal police, is mainly to ensure co-ordination, to map THB networks, their meeting places, their *modus operandi*, and to ensure co-operation with foreign police forces, where the local police are encountering difficulties in this regard. Specialist financial investigation units exist within the Federal Criminal Police in each district.

136. Investigations into human trafficking for the purpose of labour exploitation are normally carried out by the ECOSOC teams from labour inspection authorities (see paragraphs 169-180).

137. The police officers and labour inspectors met by GRETA stressed that the level of specialisation that has now been achieved by front-line operators in Belgium risks being compromised by staff shortages, which are affecting not only the capacity to conduct investigations effectively but also knowledge of procedures and the specific characteristics of trafficking. The difficulty lies not with specialist teams but with the services that, due to the lack of specialist resources and teams, may be confronted with human trafficking cases. The 2021-2025 Action Plan provides for enhanced training for the police as well as basic training on THB indicators and the procedures to be followed whenever a potential victim of trafficking is detected, to be provided to front-line services from the Foreigners Office, as well as the preparation of an "information book". According to the information provided by the authorities, the initial training of new police officers is included in an action plan aimed at better harmonisation of training and including the topics of trafficking in human beings and smuggling. The harmonisation work includes content validated and consolidated by the partners of the multidisciplinary approach, as well as updated manuals and information and awareness-raising material. This information is also available to all police staff through an online platform. A training course for investigators specialised in human trafficking and smuggling is also being developed and a compendium containing all strategic and operational information on the phenomena of human trafficking and smuggling is currently being published.

138. While welcoming the trafficking training recently provided as well as the numerous specialist bodies in Belgium, **GRETA invites the Belgian authorities to fully implement the measures set out in the Action Plan and to continue to strengthen the specialisation of police forces and members of the judiciary.**

11. International co-operation (Article 32)

139. 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 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 engage in extensive co-operation with 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 Convention neither cancels nor replaces relevant international or regional instruments⁹⁰ on mutual legal assistance and extradition, reciprocal arrangements between Parties to such instruments and relevant provisions of domestic law concerning international co-operation.

⁹⁰ 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, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

140. The authorities stated that, in all investigations of THB cases with an international dimension, the federal police send requests for information to their counterparts in the European countries involved. There is very good co-operation with the Netherlands, France, Italy and Germany. Where action results in specific information being obtained in relation to evidence, witnesses, victims or suspects, an international mission is often organised in order to pursue the investigation abroad. This may involve the transmission of a European Investigation Order (EIO), although if necessary the federal police and an investigating judge travel abroad.

141. For example, the authorities mentioned a case involving THB for the purpose of sexual exploitation, which resulted in the defendant's conviction in Belgium. During the investigation, the necessary action was taken in order to secure the proceeds of crime abroad and a house belonging to the defendant was seized in Romania. However, when the authorities attempted to enforce the judgment of the Court of Appeal of Antwerp, the Romanian authorities were unable to identify any house registered in the suspect's name.⁹¹

142. Belgium participated in five Joint Investigation Teams in relation to trafficking/smuggling cases in 2017 (two with the United Kingdom, one with the United Kingdom, Bulgaria, France and the Netherlands, one with Luxembourg and one with Romania), two in 2018 (one with France and one with Romania), none in 2019 and 2020 and two in 2021 (one with France, Italy, Germany and Austria and one with France).

143. Belgium is involved in most of the action plans within the EU Policy Cycle for organised and serious international crime EMPACT and, in this context, co-operates with its partners by ensuring the constant exchange of strategic and operational information. The action plans are essentially intended to locate victims and to organise co-ordinated, simultaneous actions in the territories of various Member States.

144. The "Africa Team" of the Federal Criminal Police (PJF) in Brussels has been, for the period 2017-2021, co-leader of the ETUTU project, launched within Europol-EMPACT, the aim of which is to intensify the fight against Nigerian networks for THB and to offer European Member States the opportunity to exchange operational expertise, to share information more quickly and more effectively and to establish effective operational co-operation. The project currently involves twenty countries from throughout Europe.

145. In September 2020, Belgian labour inspection authorities participated in Empact Action Days Labour Exploitation for the fifth year in a row. Initiatives in Belgium focused on the sectors of nail bars, agriculture and horticulture and resulted in the inspection of 78 workers.

146. There is also co-operation with counterparts from other countries at the level of labour inspection. For example, the authorities referred to an international co-operation request from 2018 issued at the initiative of the Czech Republic Labour Inspectorate concerning the exploitation of Czech workers employed by a company in the automotive sector in Brussels. This report made it possible to discover a network of subcontractors, mostly from eastern Europe and the Balkans, which were providing manpower to the company at which workers were being exploited. This led to 17 or 18 prosecutions.

147. **GRETA welcomes the efforts made by Belgium in international co-operation and invites the authorities to pursue these efforts by reinforcing co-operation in investigations, prosecutions and the protection of victims and members of their families from reprisals by traffickers.**

⁹¹ Bv: 2021/PGA/1444: BENEDO v. OM; 2020/PGA/0066 - Egbenayalonben v. OM,

2018/PGA/767 - Stan Ionut.

12. Cross-cutting issues

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

148. 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.⁹² The Council of Europe Gender Equality Strategy 2018-2023 notes that, whilst securing access to justice may be difficult for everyone, it is even more difficult for women owing to the inequalities between men and women within society and the judicial system. Consequently, one of the Strategy's objectives is to ensure the equal access of women to justice.⁹³ GRETA notes that, in cases involving THB, sexist stereotypes, prejudices, cultural barriers, fear and shame have an impact on access of women to justice, and these barriers may persist throughout investigations and trials. This is in particular the case for certain groups of women, such as the victims of sexist violence, migrant women, refugees and asylum seekers, women from ethnic minorities and women with disabilities. 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.⁹⁴ 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".⁹⁵

149. The authorities stated that the Action Plan on Combating Trafficking in Human Beings incorporates the gender dimension into its formulation. An awareness-raising campaign addressed to the medical sector has already been run on three occasions, and is envisaged once again in the latest Action Plan. In order to take account of the gender dimension, gynaecological services have been included among the target audiences.

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

150. According to the circular of 23 December 2016, wherever front-line services detect a minor who is a presumed victim of trafficking, they must inform the Guardianship Service, which appoints a legal guardian as a matter of priority. The Framework Law of 24 December 2002 on the guardianship of unaccompanied minors describes the tasks of the legal guardian, which specifically include representing the minor in all administrative or judicial proceedings, assisting them throughout each phase of the proceedings and accompanying them at each hearing. The legal guardian must inform the child regularly concerning the state of the proceedings and ensure that the child has properly understood developments in the proceedings. The legal guardian may use interpreters, where necessary, in order to communicate effectively with the child. The guardian may appoint a lawyer in order to ensure legal representation for the child, who is entitled to legal aid (Article 9 of the Guardianship Law and Article 12 of the Royal Decree on Legal Aid).

⁹² CEDAW General recommendation No. 33 on women's access to justice, paragraph 8, CEDAW/C/GC/33 of 3 August 2015: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/33&Lang=en

⁹³ Council of Europe Gender Equality Strategy 2018-2023, pp. 27-29, <https://www.coe.int/en/web/genderequality/gender-equality-strategy>

⁹⁴ 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>

⁹⁵ Available at: <https://rm.coe.int/factsheet-womens-access-to-justice/16808ff44e>

151. In April 2017, the Guardianship Service created a group of legal guardians specialised in THB, who are appointed on a priority basis for unaccompanied minors. These guardians receive specific training concerning the indicators of trafficking, the relevant legal framework and existing procedures. In 2019, the service also created a group of legal guardians specialising in transnational migration, who are appointed for unaccompanied minors wishing to migrate to the United Kingdom and who are not willing to accept a place at a reception centre. In addition to these specific groups, all legal guardians receive basic training, including a specific module on THB, and must complete multi-disciplinary and further training concerning the problem of unaccompanied minors once a year.

152. GRETA was informed of major shortcomings in the protection of minors where their parents are the traffickers, as they may retain their parental rights even in the event of a criminal conviction. The child thus ends up not having a legal guardian and being legally represented by their trafficker-parents. According to the operators consulted by GRETA, such a scenario has arisen for at least three or four children accommodated in their facility. GRETA is concerned about this practice as well as the consequences for the child victim of trafficking.

153. The Bar Association organised basic and continuous training for lawyers assisting minors and each bar association has a "Minors Section" comprised of lawyers who have completed this training.

154. According to the Code of Criminal Investigation (Articles 91 to 101), a victim or witness who is a minor must be heard by means of a video-recorded hearing in order to avoid traumatic repetitions triggered by subsequent questioning, memory loss and having to confront the perpetrators. The minor has the right to be accompanied by a trusted adult chosen by them, unless decided otherwise by the public prosecutor or the investigating judge in the interests of the child or the interest of justice, and any such decision must be supported by reasons.

155. GRETA has been informed by front-line organisations specialised in the rights of underage THB victims that hearing by video recording is used systematically in cases involving sexual exploitation, although it is used very infrequently for other types of human trafficking.

156. While welcoming the measures taken to allow minors to have access to justice in an effective manner tailored to their specific needs, GRETA considers that the Belgian authorities should further strengthen the dialogue between the criminal courts and the juvenile courts in order to guarantee that children are adequately protected against trafficker-parents, and to ensure adequate training for all actors involved (see paragraph 199). GRETA also considers that the authorities should make full use of the existing legislation in this area, including the practice of hearing minors by video recording, irrespective of the type of trafficking.

c. role of businesses

157. In its second report on Belgium, GRETA considered that the Belgian authorities should improve co-operation with the private sector in order to prevent trafficking for the purpose of labour exploitation.⁹⁶ Since then, various steps have been taken by the Belgian authorities in this direction.

158. In 2017, a first National Action Plan entitled "Business and Human Rights" was adopted, comprising 32 initiatives including the elaboration of a "human rights" toolbox, that provides a set of instruments to guide companies in their human rights obligations in the context of their activities. In particular, the toolbox is intended to: inform businesses and raise awareness on issues related to respect for human rights; assist businesses in anchoring respect for human rights within their operations and in the management of their supply chains; and facilitate access to information by centralising and structuring existing tools in an online platform. A brochure listing the mechanisms for obtaining redress available to victims has also been developed, and is available in Dutch, French, German and English.

⁹⁶ See GRETA's second evaluation report on Belgium, paragraph 64.

159. On 30 June 2017, new regulations on public procurement procedures entered into force (Law of 17 June 2016), which place a special focus on the problem of social dumping. Article 67 of the Law provides that a contracting authority must exclude any candidate that has been convicted of certain offences, including THB, child labour and the employment of unlawfully resident third-country nationals.

160. A Law on the publication of non-financial information and information relating to diversity by certain large companies and certain groups was adopted on 3 September 2017. The Law provides for a mechanism for the disclosure of non-financial information by large companies, which must include in particular their efforts concerning "human rights"-related issues. Although THB is not directly covered by the new law, it is one of the legal instruments intended to enhance the responsibility of companies and to prevent human trafficking in supply chains, and more generally in the manufacturing sector. The 2021-2025 Anti-Trafficking Action Plan envisages an adaption of the law so that it expressly covers THB.⁹⁷

161. The 2021-2025 Anti-Trafficking Action Plan refers to the regulatory initiative announced at European level in 2021, which is supported by Belgium, concerning the adoption of a cross-cutting framework aimed at obliging companies from all sectors to incorporate "sustainable corporate governance" into their strategies. Belgium has committed to supporting "the incorporation, at national level, of the European regulation that will be developed in order to ensure the adoption of a due diligence process by companies, thereby helping to prevent economic exploitation and to stress the responsibility of principals (within supply chains)".⁹⁸ The Action Plan also refers to the European Regulation on minerals originating from conflict-affected areas (Regulation EU 2017/821 of 17 May 2017), which came into force on 1 January 2021 and establishes due diligence obligations for companies, which are now required to examine the risk of THB in relation to the supply of raw materials and, where applicable, to put an end to it.

162. Targeted awareness-raising campaigns aimed at economic sectors exposed to a risk of exploitation have been carried out. The 2021-2025 Anti-Trafficking Action Plan envisages raising awareness of the issue of trafficking in the hotel sector by providing support for existing initiatives, such as the ALERT project established by the ECPAT NGO, or by developing other ones.

163. **GRETA welcomes the measures taken and planned by Belgium with a view to making companies aware of their responsibilities and their role in preventing and eradicating THB in supply chains and invites the Belgian authorities to further strengthen co-operation with the private sector, to continue awareness-raising efforts and to ensure that existing legislation is fully implemented.**

d. measures to prevent and detect corruption

164. Trafficking in human beings can occur in various contexts. Human traffickers may form part of organised criminal groups, which frequently use corruption to circumvent the law, and money laundering to conceal their profits. Consequently, other legal instruments elaborated by the Council of Europe, in particular those intended to combat corruption, money laundering and cybercrime, also apply to the fight against THB. The organ of the Council of Europe with the most prominent role in combating corruption is the Group of States against Corruption (GRECO). Its country reports can help to remedy structural shortcomings in the fight against corruption, including potentially within the context of trafficking.

⁹⁷ Ibidem, p. 32.

⁹⁸ 2021-2025 Anti-Trafficking Action Plan, p. 30.

165. The fight against corruption has been recognised as a priority of the Belgian Government, as is indicated in the National Security Plan for 2016-2019.⁹⁹ GRETA refers to the recommendations made by GRECO in its report on Belgium published on 21 January 2022, which deals with the prevention of corruption and the promotion of integrity within central governments and law enforcement authorities.¹⁰⁰ GRECO recommended in relation to law enforcement authorities *inter alia*: i) an integrity assessment of candidates be introduced in the context of mobility and promotion; ii) that objective and transparent criteria should strictly regulate opportunities for secondary activities and that an effective control mechanism be established; iii) that members of the police be required to disclose their status as a police officer whenever they are involved in an investigation or convicted of a criminal offence and/or to inform the competent internal service within the police, submitting also details of the respective investigation or conviction.

166. **GRETA invites the Belgian authorities to incorporate measures to combat corruption within the context of trafficking into general anti-corruption policies.**

V. Topics specific to Belgium

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

167. In 2017, the former labour Inspectorate within the Federal Public Service for Social Security was incorporated into the National Social Security Office (ONSS). This raised fears of a paradigm shift, specifically that action by labour inspectors may be motivated by the need to recover unpaid social security contributions (the core mission of the ONSS), rather than by trafficking indicators and the need to respect victims' rights. However, the objective of the ONSS is to make its labour inspection service a pioneering service in the fight against labour exploitation and, as a tangible sign of this commitment, as well as continuing the work of the specialist ECOSOC teams within the 10 provincial directorates (around 40 labour inspectors), a central thematic directorate on THB has been set up: it establishes policy in this area, maintains the network within which research activity is organised and co-ordinates and supports the operational work of ECOSOC teams.¹⁰¹

168. The ONSS labour inspection service sent 56 reports on facts and indicators of THB to labour law auditors and investigating judges in 2018, followed by 58 in 2019 and 100 in 2020. The presumed victims referred to the judicial authorities in this context were 65 in 2018, 82 in 2019 and 156 in 2020.¹⁰² Of the victims referred in 2020, 17 were women and 139 were men. All were adults except a girl aged 13, who was being exploited in domestic work. The most represented nationalities were Morocco (26), Ukraine (24), Romania (10), Slovakia (10) and Vietnam (9). At the beginning of the Covid-19 pandemic, very few reports were received and very few inspections were carried out owing to health restrictions. However, after a few months a significant number of victims had been detected, in some cases in the context of pandemic-related checks.¹⁰³

⁹⁹ <https://www.police.be/5998/sites/5998/files/downloads/PNS2016-2019.pdf>

¹⁰⁰ <https://rm.coe.int/cinquieme-cycle-d-evaluation-prevention-de-la-corruption-et-promotion-/1680a53be5>

¹⁰¹ See Peter Van Hauwermeiren, Stéphanie Schultze, external contribution to the MYRIA Report for 2019, p. 83.

¹⁰² See respectively the MYRIA Report for 2019, p. 148; the MYRIA Report for 2020, p. 108 and the MYRIA Report for 2021, p. 110.

¹⁰³ See the external contribution by the ONSS Inspection Service to the MYRIA Report for 2020, p. 110 ff.

169. While action against trafficking has found its place within the new architecture of the social inspection service, this change has had worrying effects in terms of the human and budgetary resources committed to combating trafficking in human beings. The labour inspectors met by GRETA stated that proactive action is practically impossible or very limited in this context, and these shortcomings cannot be offset by support from police forces, as these are also confronted with the same problems in terms of staff shortages. The labour inspectors fear a further deterioration in the situation with the upcoming adoption of the new law on the decriminalisation of prostitution, which may widen the mandate of labour inspectors to carrying out controls of sex workers throughout Belgium.

170. The question of staff shortages was raised with the Minister of Labour in a parliamentary question¹⁰⁴ and the reply stated that the service has lost around a hundred inspectors since 2017 and, as far as the specific issue of trafficking is concerned, "staff resources are not sufficient to properly carry out the missions falling under the thematic action plan".¹⁰⁵ The situation is particularly critical in the provincial directorates of Brussels, Hainaut, Namur-Luxembourg and Liege; however, "additional staff are urgently required" in other provinces too.¹⁰⁶ According to figures provided by the ONSS, 36 inspectors are currently employed in ECOSOC teams, whereas a *minimum*¹⁰⁷ number of 49 would be necessary in order to ensure the effective functioning of the service, and a recommended number would be 57.¹⁰⁸ The minister explicitly stated in his response that "any staffing level below this *minimum* number indicated is insufficient in order to adequately combat THB for the purpose of economic exploitation" in Belgium and "there is a risk that the expertise built up may be lost, jeopardising the multi-disciplinary Belgian model for combating THB".

171. New social inspectors were recruited by the ONSS in the last quarter of 2021. At the time of GRETA's visit, the ECOSOC teams consisted of 33 social inspectors in total and by 1 May 2022, the social inspectors had increased to 39. According to the authorities, during 2022, the capacity of the ECOSOC teams should be increased by one more social inspector (for the Brussels provincial directorate).

172. Civil society has drawn attention to the fact that labour exploitation affects practically every production sector and is calling for a response that is commensurate with its scope as well as the complexity of the current period characterised by the Covid-19 pandemic. In this context, MYRIA recommended that front-line services should remain vigilant throughout the pandemic in order to detect victims of economic exploitation, including within the context of health and safety checks of workplaces and workers' accommodation within sectors at high risk, and should increase their efforts to detect particularly isolated victims in the domestic work sector.

173. Since 2016, checks concerning the work conditions of private domestic staff working for diplomats have been increased and a mandatory interview is required not only at the time a special residence permit is issued, but also each time it is renewed (i.e. at least once a year). At the initial interview, the person receives information concerning their rights and obligations under Belgian law. The action plan also provides that an information leaflet be issued whenever an employment visa application is received at certain Belgian embassies. In addition, the Fairwork association has drawn up a brochure (available in Dutch, French, English, Spanish, Portuguese and Russian) intended for domestic workers, informing them on their rights and how to protect themselves against future exploitation. In addition, a fact sheet for diplomats working abroad has been prepared, for distribution during information sessions for diplomats assigned to new offices. Training concerning the indicators of THB and the procedure to be followed will

¹⁰⁴ See the Minister's answer to parliamentary question no. 142 of 5 January 2021 by Mr Ben SEGERS, Member of the Chamber of Representatives.

¹⁰⁵ Ibidem

¹⁰⁶ Ibidem

¹⁰⁷ By the term "minimum", the Minister was referring to "the minimum level necessary in order to be able to carry out good quality investigations within reasonable time limits in response to the requests and missions received, while at the same time enabling a proactive presence of our teams within sectors at risk, which is essential in order to be able to identify situations of exploitation at an acceptable level".

¹⁰⁸ The term refers to the number of inspectors required in order to achieve an adequate detection capability by organising a sufficient number of proactive inspections on the ground in sectors at risk and in order to be able to carry out in-depth investigations into cases involving THB. See the annex to the Minister's answer.

also be provided, and finally diplomats will be asked to ensure a minimum level of monitoring of the situation concerning THB and to exchange information with the countries to which they are posted.

174. In its Report for 2020, which specifically concerns the issue of domestic work, MYRIA recommended that the authorities launch awareness-raising campaigns for the general public in order to improve the detection of THB victims within the domestic sector and to reinforce checks into potential abuses of diplomatic domestic staff.¹⁰⁹ MYRIA also recommended that eligibility for the issue of a residence permit be expanded for the victims of trafficking, as this option is practically excluded for the victims of domestic work for diplomats, as the issuance of a residence permit is linked to the outcome of criminal proceedings and diplomats have criminal immunity.¹¹⁰ It is only possible for any of these victims to obtain a residence permit if the judge issues a positive advice recognizing the person as a THB victim. This possibility, which is already limited and residual, is not available where the criminal case is closed following the payment of a settlement.

175. In its second evaluation report, GRETA considered that the Belgian authorities should continue to organise initiatives to raise awareness concerning the risks of trafficking for the purpose of labour exploitation, in particular among groups of workers. Various initiatives have been implemented in this area: the preparation of a brochure for asylum seekers in search of employment (2017); the follow-up of the EUCPN campaign "Know your rights", in which various public transport companies participated; the preparation of a brochure concerning financial indications of THB, for distribution with money transfer agencies. Initiatives to raise awareness in the hotel sector, which is particularly affected by THB, for the purpose of both sexual exploitation as well as labour exploitation, are also envisaged under the 2021-2025 Anti-Trafficking Action Plan.

176. The thematic directorate on THB provided various training programmes on THB in 2018, 2019 and 2020, including in particular: a training session organised by the ONSS in conjunction with PAG-ASA concerning the identification of and provision of assistance to Vietnamese migrants who may be potential victims of trafficking (November 2019); a one-day workshop for specialist labour inspectors, with presentations by the specialised reception centres, the FEDASIL and the OIM (October 2018) concerning the role of specialised centres and the voluntary repatriation of victims; and training provided to new labour inspectors concerning trafficking and slum landlords (May 2020). In addition, the thematic directorate has drawn up a manual concerning inspection procedures in relation to labour exploitation aimed at labour inspectors as well as a syllabus on economic exploitation, along with another syllabus on other types of exploitation. Other basic and specialist training is envisaged within the Action Plan for 2021-2025, which also covers a study of the case-law in order to understand the aspects that are considered relevant for a criminal prosecution and conviction for trafficking, as well as the calculation of pecuniary benefits. Training is offered annually to labour inspectors in order to maintain their knowledge up to date.¹¹¹

177. GRETA urges the Belgian authorities to allocate sufficient human and financial resources to labour inspectors in order to allow them to perform their role effectively and proactively throughout the country, including within private homes in order to prevent the exploitation of domestic workers and detect human trafficking cases.

¹⁰⁹ See the MYRIA Report for 2020, p. 132-136.

¹¹⁰ Ibidem, p. 18.

¹¹¹ See Action Plan for 2021-2025, p. 14-15 and the Belgian authorities' response to the questionnaire p. 17.

178. **GRETA also considers that the Belgian authorities should take further measures to prevent and combat trafficking for the purpose of labour exploitation, and in particular:**

- **continue to improve the training and specialisation of labour inspectors and labour law auditors in action against trafficking for the purpose of labour exploitation, including the constituent elements and specificities of the offence of trafficking and the differences between it and other offences under labour criminal law;**
- **continue to raise awareness among the general public and, more specifically, vulnerable groups of the risks associated with trafficking for the purpose of labour exploitation and the rights of THB victims;**
- **reduce the precariousness and vulnerability of presumed victims of domestic work and trafficking for the purpose of labour exploitation who are undocumented migrants (particularly those working for diplomats), including by considering broadening eligibility for the issue of a residence permit for the victims of trafficking, on grounds of the personal circumstances of the victim and irrespective of the outcome of criminal proceedings.**

2. Identification of victims of trafficking

179. In its second evaluation report, GRETA considered that the Belgian authorities should reinforce the proactive and multi-disciplinary approach to detecting and identifying victims of trafficking, by maintaining the training provided to front-line services and by ensuring that they have sufficient human and financial resources to enable them to perform this task.

180. The structure and operation of the national referral system are still regulated by the circular of 23 December 2016 on multi-disciplinary co-operation, which states that where police or labour inspectors detect a potential victim of trafficking, they must inform the public prosecutor, contact one of the specialised reception centres and, in cases involving foreign nationals, inform the Foreigners Office. Victims of trafficking may also contact a specialised centre on their own initiative, which, in case of a positive assessment of the existence of indicators of trafficking, must inform the public prosecutor. After a presumed victim of trafficking has been identified, it is then a matter for the public prosecutor to formally identify the individual and to grant temporary status as a victim of trafficking.

181. According to the circular of 23 December 2016, the individual is not required to make a statement immediately after being detected in order to be considered as a trafficking victim. However, GRETA has been informed that, in practice, identification as a victim is closely linked to the victim's co-operation with the judicial authorities and whether or not they are accommodated at a specialised reception centre.¹¹² MYRIA's website explicitly states that "victims must satisfy three basic requirements in order to be granted victim status: they must leave the person or network that exploited them; they must be supported by an officially recognised reception centre specialised in receiving and assisting victims of trafficking in human beings; and they must lodge a criminal complaint or make statements against the persons or networks of traffickers who exploited them". If the victim decides not to co-operate with the judicial authorities or is not housed at a centre, they stand no real chance of benefiting from the identification and assistance mechanism provided for under Belgian law. This failing is taken into account in the 2021-2025 Action Plan, which sets out to establish, in a more explicit way, a duty to refer all potential victims (anonymously) to the specialised centres, even those who refuse to be assisted by them.¹¹³

¹¹² See MYRIA's 2018 report, p. 38.

¹¹³ 2021-2025 Action Plan, p. 21.

182. The representatives of civil society met by GRETA stressed that, in some cases, victims decide not to approach specialised reception centres as they fear incurring sanctions on account of their status as undocumented migrants or reprisals by their traffickers. In addition, victims' effective access to support services can be problematic either because there are no places available or because of the distance between the place where the victim was identified and the location of reception centres. This latter aspect was highlighted in MYRIA's 2019 report, which stated that victims who are identified far from centres risk having far less chance of obtaining victim status than those identified in Brussels, Antwerp or Liège, where the centres are located.

183. GRETA notes that there is a considerable discrepancy between the number of cases involving THB that have resulted in a criminal investigation and the number of people received at specialised centres, which demonstrates that a considerable proportion of victims are not covered by the national referral system. GRETA was informed of the example of a potential victim of sexual exploitation who refused to be accommodated in a specialised reception centre and who was placed in a detention centre for undocumented migrants and was only subsequently identified by staff at the centre as a presumed victim of trafficking. GRETA is concerned about the lack of formal identification and the impossibility of benefiting from the recovery and reflection period for presumed THB victims who refuse to cooperate with the judicial authorities and who are not accommodated in the specialised centres.

184. According to the multi-agency circular, formal identification and the granting of victim status depend on the granting of (temporary) status by a prosecutor. Within six months of the start of the criminal proceedings, the responsible magistrate of the public prosecutor's office decides on the situation of human trafficking and thus confirms or revokes this status. If the public prosecutor considers that, in view of the elements of the investigation, trafficking in human beings is not involved, the presumed victim loses his or her status and hence is not identified as a victim of trafficking. According to the law of 15 December 1980, if the Public Prosecutor's Office has charged trafficking in human beings in a case, the victim will keep his or her status and will be able to obtain a permanent residence permit even in the event of acquittal. In the case of a dismissal of the case, in principle the victim loses his or her status, but there is an informal procedure whereby the Office for Foreign Nationals can issue a permanent residence permit to the victim if this dismissal occurs two years after the start of the investigation. The authorities have informed GRETA that some discussions are currently underway to formalise this procedure. It is not clear what impact the change in the legal classification of the facts by the judge on the merits has on the maintaining of the victim's status. **GRETA invites the authorities to continue in that direction and formalise this procedure.**

185. The greatest difficulties in terms of identification are sometimes due to a lack of training and awareness. Other than police from specialist units and inspectors from ECOSOC teams, the vast majority of law enforcement officers present in the field and other institutional actors who may come into contact with potential victims are not familiar with the indicators for identifying THB victims of different types of exploitation. As mentioned above in paragraph 39, training has been provided to staff at detention centres for migrants, who are also required to apply the multi-disciplinary circular.

186. With the aim of improving knowledge of the multi-disciplinary circular amongst front-line operators, the 2021-2025 Anti-Trafficking Action Plan envisages the creation of a didactic application for providing information concerning the application of the referral mechanism for victims and the establishment of a website providing co-ordination in relation to THB. A brochure setting out the indicators of THB is already available for inspection services and the police, and other practical tools are envisaged under the 2021-2025 Action Plan. It is also planned to create a co-ordination website.

187. **GRETA considers that the authorities should take further measures to improve the identification of victims of trafficking, and in particular:**

- **continue to promote knowledge of the circular of 23 December 2016 among all operators on the ground who may come into contact with victims of trafficking in human beings, especially members of the law enforcement agencies, labour inspectors and staff at detention centres for undocumented migrants, and provide further training on the indicators of human trafficking;**
- **ensure that presumed victims of trafficking, in particular undocumented migrants, benefit in practice from a recovery and reflection period;**
- **ensure that the formal identification of THB victims is not dependent in practice on their co-operation with the law enforcement agencies or on the outcome of the criminal proceedings;**
- **develop a comprehensive and consistent statistical system on THB, which makes it possible to obtain an overview of the actual number of presumed victims of trafficking, including those who have not been assisted by specialised reception centres.**

3. Assistance to victims

188. In its second evaluation report, GRETA urged the Belgian authorities to ensure adequate funding for specialised reception centres for THB victims in order to ensure their proper functioning. GRETA also considered that the Belgian authorities should continue to provide a sufficient number of places throughout the country.¹¹⁴

189. The three specialised reception centres, which are managed by the NGOs Pag-Asa, Payoke and Surya, have an official status as providers of assistance to victims of human trafficking. As described in the second evaluation report, the assistance offered by the centres includes accommodation, psychological and medical assistance, as well as administrative and legal support. The centres can also directly contact the Foreigners Office in order to request the issue of a residence permit to a THB victim and may act as a civil claimant in THB cases as, which they regularly do.

190. The centres are financed both at federal level, in particular as regards aspects involving contact with the authorities and the legal and administrative issues, and at regional level, in particular as regards reception and accommodation. While financing at regional level is not a problem, the centres have indicated that there is no structural financing at federal level and that the amounts are not indexed. Between 2015 and 2019, the federal element of financing for the centres was provided in part via a recurring item included within the general budget as well as an exceptional budget from the inter-departmental fund released by the Minister of Justice and the Secretary of State for Equal Opportunities. Since 2020, the budget has been centralised within the Ministry of Justice, although part of it is still paid for out of the inter-departmental fund. The 2021-2025 Anti-Trafficking Action Plan proposes including the entire federal budget for reception centres within the annual general budget instead of relying on exceptional budgets. This new provision should ensure structured and stable financing, enabling centres to receive financing without any delays. Increasing and simplifying the financing of centres is regarded as one of the aspects that could contribute to the efficiency of their work. Article 115 of the new Criminal Law (Sexual Offences) Reform Law (which is not yet in force) provides for financing for specialised centres, which will thus be put on a legal footing.¹¹⁵

¹¹⁴ See GRETA's second evaluation report on Belgium, paragraphs 115-116.

¹¹⁵ Five paragraphs worded as follows are added to Article 115 c), paragraph 2: "To this end, it sets out the basis for recognising and approving legal capacity for centres specialised in receiving and assisting victims of trafficking in human beings and aggravated forms of trafficking in human beings. "Recognising" refers to the ability to implement the procedures referred to in Chapter IV of Title II of the Law of 15 December 1980 on the Entry, Residence, Settlement and Removal of Foreign Nationals

191. The GRETA delegation visited the three shelters for THB victims that are managed by specialised centres. The shelter managed by the Pag-Asa NGO in Brussels has a capacity of 16 single rooms and hosts between 50 and 60 people each year. Victims stay at the centre for an average of five months, although support by Pag-Asa continues for longer, and may last for up to three or four years. The shelter has 28 salaried staff and 10 volunteers. The shelter managed by the Sürya NGO in Liege has 16 beds in five apartments. Since January 2021, Sürya has been credited and funded as a housing association (*association de promotion du logement* - APL) and within this context offers free administrative, legal and technical social support to people who are or have been accommodated in their shelter. The shelter managed by the Payoke NGO in Antwerp has a capacity of 22 places.

192. Representatives of specialised centres reported positive co-operation with law enforcement authorities. However, they highlighted the shortcomings in the national referral mechanism, which makes victims' situation and their right to obtain assistance more precarious. First of all, as mentioned in the previous section, only a limited number of presumed victims receive assistance from specialised centres and the capacity of centres is not sufficient to receive all presumed victims detected in Belgium. In addition, representatives of the centres indicated that, in practice, access to and the maintenance of assistance provided by specialised centres is dependent upon the victim's willingness to co-operate with the judicial authorities as well as progress in and the outcome of the criminal proceedings. The ability to stay at the centre is dependent upon whether the investigations result in opening of a criminal trial for trafficking in human beings. If the status of victim is revoked by the responsible prosecutor (see paragraph 184), the victim loses his or her right to assistance, and this can also happen if the case is dismissed, although with exceptions in cases where the proceedings have lasted more than two years (paragraph 184). Similarly, if the public prosecutor considers that, in view of the elements of the investigation, the case does not involve trafficking in human beings, assistance may be interrupted. GRETA is concerned that the right to assistance is strictly linked to the outcome of the criminal investigation.

193. GRETA welcomes the increase in and centralisation of the public funds allocated to specialised reception centres. However, GRETA reiterates that, according to Article 12, paragraph 6 of the Convention, assistance must not be made conditional on the victim's willingness to co-operate with the competent authorities in criminal investigations and prosecutions.¹¹⁶

194. GRETA urges the Belgian authorities to take further steps to fulfil their obligations under Article 12 of the Convention, and in particular to:

- **ensure that assistance is not made conditional on the victim's willingness to co-operate with the competent authorities in criminal investigations and prosecutions;**
- **ensure that all presumed and identified victims of trafficking in Belgium can receive adequate support and assistance, having regard to their individual needs, for as long as is necessary;**
- **ensure that specialised centres have sufficient human and financial resources to adapt their capacity to demand.**

and to serve as a point of referral to services responsible for detecting victims of trafficking in human beings and aggravated forms of trafficking in human beings, with the aim that these victims will participate in judicial proceedings. "Approving" refers to the implementation of paragraph 5. Recognised and approved centres can receive subsidies for the purposes of tasks related to their recognition and approval. The King shall establish the arrangements for granting and withdrawing subsidies allocated for the completion of these tasks." See <https://www.lachambre.be/kvvcr/showpage.cfm?section=/none&leftmenu=no&language=fr&cfm=/site/wwwcfm/flwb/flwbn.cfm?lang=F&legislat=55&dossierID=2141> (French and Flemish only)

¹¹⁶ See the Explanatory Report on the Convention, paragraph 165.

4. Measures to prevent trafficking in children, identification of, and assistance to, child victims of trafficking

195. In its second evaluation report, GRETA urged the Belgian authorities to take further action to proactively identify child victims of trafficking, to take steps to address the problem of unaccompanied children disappearing, to ensure the necessary funds to provide assistance to children and to enhance the training provided to front-line professionals, including police officers, social workers, staff of youth assistance services, legal guardians and juvenile judges.

196. In its 2018 report, which focuses specifically on child victims of trafficking, MYRIA also noted significant problems in identifying and providing assistance to children and recommended *inter alia* raising awareness amongst the various police services and members of the judiciary concerning the specific vulnerability of Nigerian girls and establishing a taskforce charged with examining problems in relation to the identification and taking into care of young Nigerian victims.

197. Various actions have been taken by the Belgian authorities with a view to addressing the problems identified. As indicated above in paragraph 20, an addendum was adopted to the 2015-2019 Anti-Trafficking Plan concerning specifically the problem of child victims. It was structured around six action points: establishing an information flow in which the role of each competent actor must be defined; organising inter-disciplinary training; examining whether status as a victim of THB should be adapted to the specific circumstances of minors; collecting information concerning the problem of "loverboys"; reinforcing co-operation among reference judges who deal with THB and judges who deal with juveniles; and analysing regulations concerning the enforcement of penalties and arrangements for the release on probation of suspects/perpetrators of THB.

198. The 2021-2025 Anti-Trafficking Action Plan provides for various initiatives for enhancing the training provided to juvenile judges concerning THB and facilitating the exchange of information between juvenile judges and reference judges dealing with trafficking. Training is organised according to a multi-disciplinary format in such a manner that the various different sectoral actors are represented: reception centres, police, judges etc. In Flanders, a working group has also been operating since 2021 in order to combat the pimping of adolescents.

199. The Action Plan also envisages an assessment of the multi-disciplinary circular with a view to adapting the national referral mechanism to the specific circumstances of minors and of each Community, having regard to the action to be taken for minors, so as to ensure that they receive better guidance and protection, taking account of federal and EU law.

200. Under the terms of the circular of 23 December 2016, where a minor is identified by front-line operators, they must inform the courts as well as the guardianship service, which arranges for a legal guardian to be appointed. The child is referred to a recognised specialised centre, which in turn refers them to a centre for children providing accommodation and appropriate support, such as the Esperanto centre in Wallonia or Minor-Ndako in Flanders.

201. The procedure is almost the same for adults as it is for children, the only difference being that the recovery and reflection period for foreign unaccompanied minors is three months, compared to 45 days for adults. However, Article 61/2, paragraph 2, of the Law on Foreigners states that consideration must be given to the best interests of the child throughout the procedure. Moreover, the judge must pay attention to the particular vulnerability of children, who are less likely to be inclined to co-operate, must contact the juvenile court responsible for dealing with the minor and must consult with police officers specialising in THB and in interviewing minors with a view to identifying a minor who is a THB victim.

202. In order to benefit from THB victim status, the minor must fulfil the three cumulative conditions: cutting of links with the perpetrators; receiving assistance from a specialised centre; co-operating with the judicial authorities by filing a complaint, making relevant statements or providing relevant information (SMSs, messages exchanged on social networks). As is the case for adults, while assistance and protection are not initially dependent on co-operation with the judicial authorities, in practice they are closely linked to it. Civil society, as well as MYRIA in its Report for 2018, have stressed that minors often decide not to co-operate with the judicial authorities, especially in cases involving the “loverboy” method, as they are emotionally dependent on their exploiter, or in cases involving trafficking for the purpose of sexual exploitation by the Nigerian network, out of fears of reprisals. In addition, where the traffickers are the parents of the minors, the latter are strongly disinclined to report them.

203. As indicated above in paragraph 12, only a limited number of presumed child victims of trafficking have been identified over the last few years: 4 in 2017, 7 in 2018, 6 in 2019 and 4 in 2020, which testifies the persistent difficulties encountered by front-line operators in identifying them.

204. Accommodation and assistance to child victims of trafficking are provided by the Esperanto NGO in Wallonia and by the Meza centre, which opened in Flanders on 1 March 2022, and is managed by the NGO Minor-Ndako, already active in Flanders in the assistance to minor victims of trafficking, in partnership with PAG-ASA. Meza is a closed centre for up to six minors, specifically dedicated to female victims of sexual exploitation. The minors can stay in the centre for as long as their situation requires, and receive individualised support and psychological, legal and social assistance. Admission to the centre is not conditional on the minor's willingness to testify or lodge a complaint against the traffickers. GRETA welcomes the opening of this reception centre for child victims of trafficking in Flanders.

205. The GRETA delegation visited the shelter run by the Esperanto NGO, which accommodates minors who are victims of human trafficking, smuggling and honour-related violence. The victims of trafficking account for a minority of the overall victims received. The centre's capacity has been increased from 15 to 20 places. Since it was created in November 2002, the centre has hosted 379 minors (including 22 in 2017, 32 in 2018, 27 in 2019 and 20 in 2020). Around 75% of the minors hosted are girls, with an average age of 12. Most of the minors are from Asia or Europe, and the most represented nationality in recent years has been Vietnamese. The centre ensures a safe environment for children and socio-educational support based on a personalised educational plan and psychological and social support, which is provided by a multi-disciplinary team including a psychologist, a lawyer, a social worker and a psychomotor therapist.

206. As mentioned above in paragraph 16, the Esperanto centre is not recognised as a specialised centre for the reception of the victims of trafficking. This means for example that it is not able to submit applications for residence permits directly to the Foreigners Office on behalf of the children housed by it, or to have any direct contact with front-line operators, who must first refer the victim to a specialised centre, which will then in turn contact the Esperanto centre. This situation adversely affects care of child victims of trafficking, as highlighted in the MYRIA Report for 2018, which recommended improving the process for taking into care unaccompanied foreign minors presumed to be victims of trafficking by officially recognising the Esperanto reception centre as a specialised reception centre.

207. GRETA was informed of the case of a young girl who was recruited using the “loverboy” technique in order to join the Islamic State and was intercepted in Turkey and subsequently brought back to Belgium. The question of trafficking was not raised in this case. According to information provided by civil society, this phenomenon is significant in scale and various underage girls have been recruited through methods similar to those used by pimps of adolescents to join a terrorist organisation and then be sexually exploited, forced into marriage.

208. Possible interactions between THB and terrorism must also be analysed in the context of repatriations of Belgian citizens held in camps run by Kurds in north-eastern Syria.¹¹⁷ Following the

¹¹⁷ Al-Hol and de Roj

favourable opinion expressed by the National Security Council to the systematic repatriation of children aged under 10 and a case-by-case assessment for older children, in 2019 it was possible to repatriate six children in circumstances of extreme vulnerability, as orphans or unaccompanied minors. The Special Representative for Children's Rights in Wallonia travelled to the camps and, upon his return, reported on the inhuman and degrading conditions to which the children were exposed, as well as the violence endemic throughout the camps, which exposed them to risks of sexual exploitation, labour exploitation and exploitation for the purpose of forced criminality. In 2021, following the recommendations of the Special Representative for Children's Rights that the separation of children from their mothers would be traumatic and contrary to their best interests, four mothers and 10 children were repatriated. According to the Special Representative's report, 42 Belgian children, most aged under six, are currently held in camps in north-eastern Syria. At least four Belgian children have died for reasons directly related to their living conditions: malnutrition, a lack of medical care, hypothermia or dehydration. The Special Representative's report stresses the difficulties in repatriating children where there are no documents to prove that they have Belgian nationality, as they are orphans or were born abroad without subsequently being registered.

209. GRETA welcomes the measures taken and planned by the Belgian authorities in order to overcome the obstacles relating to the identification of and provision of assistance to child victims of trafficking. **Referring to the recommendations contained in its second report, GRETA considers that the Belgian authorities should continue their efforts to prevent and combat the trafficking of children, to identify child victims of trafficking and to provide them with adequate assistance, and in particular to:**

- **strengthen training provided to front-line professionals on the identification of child victims of trafficking, including police officers, prosecutors, legal guardians and juvenile judges;**
- **ensure that assistance measures are not made conditional on the victim's willingness to co-operate with the competent authorities within criminal investigations and prosecutions;**
- **improve the assistance to unaccompanied minors presumed to be victims of trafficking by officially recognising the Esperanto reception centre as a specialised reception centre.**

210. **Moreover, GRETA invites the Belgian authorities to establish co-operation between the services responsible for combating terrorism and those responsible for combating THB with a view to collecting and analysing data concerning interactions between THB and terrorism, as well as promoting the exchange of information and expertise in order to prevent and detect this phenomenon.¹¹⁸ GRETA invites the Belgian authorities to take account of the interactions between human trafficking and terrorism when deciding whether to repatriate Belgian citizens held in camps in north-eastern Syria and to ensure, where applicable, that the obligations arising under Article 16 of the Convention are properly complied with, in particular in relation to minors.**

¹¹⁸ See the OSCE report "Trafficking in human beings and terrorism. Where and how they intersect. Analysis and recommendations for more effective policy responses", Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, 2021 <https://www.osce.org/files/f/documents/2/7/491983.pdf>

5. Residence permits

211. As illustrated in the second evaluation report, Articles 61/2 to 61/5 of the Law of 15 December 1980 on the Entry, Residence, Settlement and Removal of Foreign Nationals (as amended by the Law of 21 March 2017) set out the rules for granting residence permits to foreign victims of trafficking. Victims of trafficking may be granted a temporary three-month residence permit, provided that they have filed a complaint against the traffickers or have made a statement concerning them. Depending upon developments in the investigation, and provided that certain conditions are met, a six-month residence permit may be issued and may be renewed every six months until the judicial proceedings have concluded. In addition, a victim can obtain a permanent residence permit if their complaint or declarations are of major interest for judicial proceedings, even if they do not result in a conviction. The Foreigners Office may withdraw a residence permit from any person who has voluntarily resumed contact with the suspected traffickers, who is no longer co-operating in the judicial proceedings, who is considered to represent a threat to public order or national security, or whose complaint proves to be fraudulent or unfounded.

212. As stressed above, if the victim decides to co-operate with the judicial authorities and accepts the offer of accommodation in a reception centre, they may obtain a temporary three-month residence permit, which may be renewed repeatedly throughout the duration of the proceedings. However, definitive identification and the grant of a residence permit as a result of victim status are strictly related to the outcome of the criminal proceedings. The limits of this system are clearly apparent in cases in which a settlement (Article 216*bis* of the Code of Criminal Investigation) is proposed prior to indictment by the prosecutor or in the event that a criminal conviction is not possible on account of the diplomatic immunity of the traffickers (see paragraphs 104 and 174). It is possible therefore that, even in the event of co-operation with the judicial authorities and where there are reasonable grounds to believe that the person concerned is a victim of trafficking, a residence permit cannot be granted owing to criminal procedural considerations.

213. The same procedure also applies to child victims of trafficking, the only difference being the duration of the temporary residence permit, which is three months for adults and six months for children. Similarly to the case of adults, the issuance of a residence permit is dependent on the outcome of the criminal proceedings. The specific risk is that decisions to return to the family or to the country of origin may be made conditional upon co-operation with the judicial authorities and may not be made in accordance with the child's best interests. If the investigation lasts for more than two years without leading to any result or if the defendant is acquitted, the child may in all circumstances receive a residence permit, provided that the prosecutor has referred the matter for trial. There is a residual opportunity to obtain a residence permit if the Foreigners Office considers that it is in the child's best interests to remain in Belgium.

214. According to the information provided by the Belgian authorities, during 2017, victims of trafficking were issued with 112 three-month permits, 97 six-month permits, 383 renewed permits and 50 permanent permits. In 2018, a total of 113 three-month permits and 91 six-month permits were issued, along with 348 renewed permits and 61 permanent permits. In 2019, a total of 136 three-month permits and 108 six-month permits were issued, along with 370 renewed permits and 42 permanent permits. In 2020, a total of 80 three-month permits and 78 six-month permits were issued, along with 384 renewed permits and 29 permanent permits. One child obtained a temporary residence permit in 2017, 2 in 2018, none in 2019 and 2 in 2020; no child obtained a definitive residence permit in 2017, 1 in 2018, none in 2019 and 1 in 2020.

215. In its report for 2018, MYRIA stressed that very few children benefit from the residence permit procedure as trafficking victims as this procedure is conditional upon co-operation with the judicial authorities as well as the outcome of the proceedings. A child victim may obtain a permanent residence permit following the completion of judicial proceedings against the perpetrators in the following two scenarios: where a statement or complaint made by the child resulted in a conviction, or where the public prosecutor or the labour law auditor has referred to the offence of human trafficking in the indictment.

216. GRETA considers that the Belgian authorities should take further steps to ensure that adult and child victims of trafficking can fully benefit from the right to obtain a residence permit, including on the basis of their personal situation.

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 Belgian authorities should strengthen the provision of information to presumed victims of trafficking concerning their rights, how they can access them and the consequences of their being identified as victims of trafficking. This information must be provided from the moment when the victim is detected, regardless of whether they decide to approach a specialised reception centre. To this end, front-line service providers must receive training so that they can properly explain to victims what their rights are and how to exercise them, taking into account their knowledge of the language and the Belgian legal system, their psychological condition and their age. Co-operation with the specialised reception centres must be developed further, particularly in geographical areas that are far away from the centres (paragraph 45);
- GRETA also considers that the Belgian authorities should take further measures to ensure the timely availability of qualified interpreters with an awareness of human trafficking (paragraph 46).

Legal assistance and free legal aid

- GRETA urges the Belgian authorities to take additional measures to facilitate and guarantee access to justice for victims of trafficking, and in particular to:
 - revise and simplify the eligibility criteria for second-line legal assistance (legal aid) to enable victims of trafficking to exercise this right effectively throughout the proceedings and independently of proof of their lack of means and changes in their financial situation;
 - amend the Circular of 23 December 2016 so as to encourage the specialised centres to refer victims to a lawyer promptly;
 - guarantee sufficient funding for specialised centres which provide legal representation for victims of trafficking who do not meet the eligibility criteria for legal aid (paragraph 59);
- In addition, GRETA considers that the Belgian authorities should raise awareness among Bar Associations on the need to encourage training and specialisation of lawyers, with a view to providing legal assistance to victims of trafficking and ensure that victims of trafficking are systematically provided with a specialist lawyer (paragraph 60).

Psychological assistance

- GRETA invites the Belgian authorities to take further steps to provide psychological assistance to all victims of trafficking, including those who are not accommodated in the specialised centres, in order to help them overcome the trauma they have been through, and to achieve a sustained recovery and social inclusion (paragraph 66).

Access to work, vocational training and education

- While welcoming the efforts made by the specialised centres to create a process of finding employment and gaining independence for victims of trafficking, GRETA considers that the Belgian authorities should take steps to reduce the precariousness that characterises the access to work of foreign victims of trafficking, with a view to guaranteeing the effectiveness of the right recognised in Article 12, paragraph 4, of the Convention (paragraph 71);
- GRETA also invites the Belgian authorities to further promote the economic and social integration of victims of trafficking by making it easier for them to access employment, vocational training and education. This should involve awareness raising among employers and promoting micro-enterprises, social enterprises and public-private partnerships, including through employment programmes founded by the State, in order to create appropriate job opportunities for victims of trafficking (paragraph 72).

Compensation

- GRETA urges the Belgian authorities to take additional measures to facilitate and guarantee effective access to compensation for victims of trafficking, and in particular to:
 - facilitate access to legal aid in order to enable victims of trafficking to exercise their right to compensation effectively (see paragraph 59);
 - revise the criteria for access to the Financial Aid Fund for Victims of Intentional Acts of Violence (particularly the concept of "intentional act of violence") in order to ensure that all victims of trafficking can access it, regardless of the type of exploitation;
 - facilitate access to justice for minors by adapting proceedings to the child's specific needs. GRETA makes reference in this regard to the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (paragraph 92);
- GRETA also invites the Belgian authorities to create a system to record compensation claimed and obtained by victims of trafficking in criminal proceedings and to improve the system of the Commission for Financial Aid in order to identify the total number of claims made by victims of trafficking, distinguishing between dismissed and granted claims (paragraph 93).

Investigations, prosecutions, sanctions and measures

- While welcoming the measures envisaged in the 2021-2025 Anti-Trafficking Action Plan to ensure that THB is investigated and prosecuted effectively, GRETA urges the Belgian authorities to allocate sufficient human and budgetary resources to the police services in order to conduct proactive and effective investigations in trafficking cases (paragraph 111);
- GRETA also considers that the Belgian authorities should take additional measures to guarantee proactive investigation of trafficking cases and effective prosecutions leading to effective, proportionate and dissuasive sanctions, and in particular, they should:
 - further encourage take-up of the option of awarding confiscated assets and property to the party claiming damages to compensate them for damage suffered;
 - step up their efforts to ensure that the offence of trafficking is selected whenever the circumstances of a case allow this;

- continue to provide training to prosecutors and judges on the peculiarities of trafficking in human beings, the serious consequences of exploitation for victims and the need to respect their fundamental rights (paragraph 112).

Non-punishment provision

- GRETA welcomes the adoption of the Law of 22 May 2019, which expressly recognises the principle of non-punishment in the Belgian Criminal Code and considers that the authorities should take further steps to ensure the practical implementation of the principle of non-punishment, in particular:
 - by providing further training to law enforcement officers, prosecutors and judges, by issuing appropriate guidelines and by strengthening the exchange of information among police forces, prosecutors and the different judicial authorities;
 - by ensuring that the non-punishment provision can be applied in practice to minors who are victims of trafficking for offences which they were forced to commit, making sure that they are swiftly identified as victims and receive appropriate support (paragraph 122).

Protection of victims and witnesses

- GRETA considers that the Belgian authorities should take additional steps to ensure protection for victims and witnesses, and in particular make full use of the applicable legislation and ensure that the available protective measures are effectively applied to THB victims and witnesses in order to protect them and to prevent them from being intimidated during the investigation as well as during and after the trial, and also to avoid the confrontation of victims of trafficking in the physical presence of the accused and ensure the use of videotaped hearings of victims of any type of human trafficking (paragraph 131).

Specialised authorities and co-ordinating bodies

- GRETA invites the Belgian authorities to fully implement the measures set out in the Action Plan and to continue to strengthen the specialisation of police forces and members of the judiciary (paragraph 138).

International co-operation

- GRETA welcomes the efforts made by Belgium in international co-operation and invites the authorities to pursue these efforts by reinforcing co-operation in investigations, prosecutions and the protection of victims and members of their families from reprisals by traffickers (paragraph 147).

Child-sensitive procedures for obtaining access to justice and remedies

- While welcoming the measures taken to allow minors to have access to justice in an effective manner tailored to their specific needs, GRETA considers that the Belgian authorities should further strengthen the dialogue between the criminal courts and the juvenile courts in order to guarantee that children are adequately protected against trafficker-parents, and to ensure adequate training for all actors involved (see paragraph 199). GRETA also considers that the authorities should make full use of the existing legislation in this area, including the practice of hearing minors by video recording, irrespective of the type of trafficking (paragraph 156).

Role of businesses

- GRETA welcomes the measures taken and planned by Belgium with a view to making companies aware of their responsibilities and their role in preventing and eradicating THB in supply chains and invites the Belgian authorities to further strengthen co-operation with the private sector, to continue awareness-raising efforts and to ensure that existing legislation is fully implemented (paragraph 163).

Measures to prevent and detect corruption

- GRETA invites the Belgian authorities to incorporate measures to combat corruption within the context of trafficking into general anti-corruption policies (paragraph 166).

Follow-up topics specific to Belgium

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

- GRETA welcomes the Belgian authorities' commitment in the fight against human trafficking and encourages them to allocate sufficient human and financial resources to police and labour inspection services to ensure that action against trafficking is once again a priority on the ground (paragraph 22).

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

- GRETA urges the Belgian authorities to allocate sufficient human and financial resources to labour inspectors in the whole country so that they can fulfil their role effectively and proactively, including within private homes in order to prevent the exploitation of domestic workers and detect human trafficking cases (paragraph 177);
- GRETA also considers that the Belgian authorities should take further measures to prevent and combat trafficking for the purpose of labour exploitation, and in particular:
 - continue to improve the training and specialisation of labour inspectors and labour law auditors in action against trafficking for the purpose of labour exploitation, including the constituent elements and specificities of the offence of trafficking and the differences between it and other offences under social criminal law;
 - continue to raise awareness among the general public and, more specifically, vulnerable groups of the risks associated with trafficking for the purpose of labour exploitation and the rights of THB victims;
 - reduce the precariousness and vulnerability of presumed victims of domestic work and trafficking for the purpose of labour exploitation who are undocumented migrants (particularly those working for diplomats), including by considering broadening eligibility for the issue of a residence permit for the victims of trafficking, on grounds of the personal circumstances of the victim and irrespective of the outcome of criminal proceedings (paragraph 178).

Identification of victims of trafficking

- GRETA considers that the authorities should take further measures to improve the identification of victims of trafficking, and in particular:
 - continue to promote knowledge of the circular of 23 December 2016 among all operators on the ground who may come into contact with victims of trafficking in human beings, especially members of the law enforcement agencies, labour inspectors and staff at detention centres for undocumented migrants, and provide further training on the indicators of human trafficking;
 - ensure that presumed victims of trafficking, in particular undocumented migrants, benefit in practice from a recovery and reflection period;
 - ensure that the formal identification of THB victims is not dependent in practice on their co-operation with the law enforcement agencies or on the outcome of the criminal proceedings;
 - develop a comprehensive and consistent statistical system on THB, which makes it possible to obtain an overview of the actual number of presumed victims of trafficking, including those who have not been assisted by specialised reception centres (paragraph 187).

Assistance to victims

- GRETA urges the Belgian authorities to take further steps to fulfil their obligations under Article 12 of the Convention, and in particular to:
 - ensure that assistance is not made conditional on the victim's willingness to co-operate with the competent authorities in criminal investigations and prosecutions;
 - ensure that all presumed and identified victims of trafficking in Belgium can receive adequate support and assistance, having regard to their individual needs, for as long as is necessary;
 - ensure that specialised centres have sufficient human and financial resources to adapt their capacity to demand (paragraph 194).

Measures to prevent trafficking in children, identification of, and assistance to, child victims of trafficking

- GRETA considers that the Belgian authorities should continue their efforts to prevent and combat the trafficking of children, to identify child victims of trafficking and to provide them with adequate assistance, and in particular to:
 - strengthen training provided to front-line professionals on the identification of child victims of trafficking, including police officers, prosecutors, legal guardians and juvenile judges;
 - ensure that assistance measures are not made conditional on the victim's willingness to co-operate with the competent authorities within criminal investigations and prosecutions;
 - improve the taking into care of unaccompanied minors presumed to be victims of trafficking by officially recognising the Esperanto reception centre as a specialised reception centre (paragraph 209);

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- Moreover, GRETA invites the Belgian authorities to establish co-operation between the services responsible for combating terrorism and those responsible for combating THB with a view to collecting and analysing data concerning interactions between THB and terrorism, as well as promoting the exchange of information and expertise in order to prevent and detect this phenomenon. GRETA invites the Belgian authorities to take account of the interactions between human trafficking and terrorism when deciding whether to repatriate Belgian citizens held in camps in north-eastern Syria and to ensure, where applicable, that the obligations arising under Article 16 of the Convention are properly complied with, in particular in relation to minors (paragraph 210).

Residence permits

- GRETA considers that the Belgian authorities should take further steps to ensure that adult and child victims of trafficking can fully benefit from the right to obtain a residence permit, including on account of their personal situation (paragraph 216).

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

Public bodies

- Inter-departmental Co-ordination Unit for Action against Trafficking in and Smuggling of Human Beings
- Federal Migration Centre (MYRIA)
- Federal Ministry of Justice
 - M. Vincent Van QUICKENBORNE, Vice-Prime Minister and Minister of Justice
- Federal Ministry of Public Health, Food Safety and Environment
- Federal Ministry of Foreign Affairs
- Federal Agency for the Reception of Asylum Seekers (Fedasil)
- Board of General Prosecutors
- Federal Prosecution Service
- Institute for Judicial Training
- Commission for financial assistance to victims of deliberate acts of violence
- Financial Intelligence Processing Unit (CTIF)
- Guardianship Service (MENA)
- Federal Ministry of Employment
- Federal Ministry of Social Security (ONSS)
- Labour inspectors
- Federal Police
- Members of Parliament
 - Ms Kristien VAN VAERENBERGH, President of the Commission on Justice within the Belgian Parliament
- Mr Bernard De Vos, General Delegate for Children's Rights of the French Community
- Representatives of the Authorities of the Flemish Region
- Representatives of the French Community
- Representatives of the German Community
- Representatives of the Walloon Region

NGOs and other civil society actors

- Esperanto
- Sürya
- Pag-Asa
- Payoke
- Fair Work Belgium
- Child Focus
- Mentor-Escale
- Minor-Ndako
- Foundation SAMILIA
- ECPAT Belgium
- Casa Legal
- Lawyers' Union for Democracy (SAD)

Government's comments

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

GRETA engaged in a dialogue with the Belgian 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 Belgian authorities on 27 July 2022 and invited them to submit any final comments. The comments of the authorities, submitted on 6 October 2022, are reproduced hereafter (in French only).



Direction générale Législation, Libertés et Droits fondamentaux
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DATE 06/10/2022

NOTRE REF. TEH06102022
VOTRE REF.
COPIE
ANNEXE

Mme Petya Nestorova
Executive Secretary of the
Convention on Action against Trafficking in Human
Beings
Conseil de l'Europe
F 67075 Strasbourg

Concerne : Rapport du GRETA – 3^{ème} cycle d'évaluation

Madame la Secrétaire exécutive,

La Belgique souhaite d'abord remercier la délégation du GRETA pour l'excellente conduite de ses travaux et les discussions constructives qui ont pu être partagées.

Nous souhaitons également remercier le Secrétariat du Conseil de l'Europe pour l'important travail de synthèse réalisé.

Nous accusons bonne réception du nouveau rapport et veillerons à intégrer ses conclusions dans le cadre de la mise en œuvre de futures initiatives ou de l'élaboration des prochains plans d'actions de lutte contre la traite des êtres humains.

Nous souhaitons par ailleurs formuler les remarques suivantes à l'égard du rapport.

1. Caisse des dépôts et consignation

Dans la partie 6 du rapport, le GRETA pourrait faire référence à la Caisse des dépôts et consignations qui est un mécanisme qui peut être pris en compte dans le cadre de l'indemnisation.

Lorsqu'un employeur est condamné mais que la victime est retournée dans son pays, la loi du 12 avril 1965 sur la protection de la rémunération des travailleurs permet que les montants récupérés soient restitués. Par ailleurs, s'il s'agit d'un travailleur, ressortissant d'un pays tiers, en séjour illégal et si son adresse postale, les données relatives à son compte bancaire ou son compte-chèques postal sont inconnus de l'employeur, ce dernier doit verser la rémunération due, par virement, auprès de la Caisse des Dépôts et Consignations.

C'est alors à la victime de se manifester pour récupérer le montant de manière directe ou indirecte.

Si la victime n'est plus présente sur le territoire belge, elle peut faire appel à des intermédiaires (Asbl, avocats,....)

Depuis deux ans, la caisse est accessible en ligne et tout se déroule en ligne.

C'est l'employeur, le gérant de l'entreprise qui se connecte au nom de sa société pour être reconnu en tant qu'employeur et non pas en tant que personne privée.

Le travailleur qui a un numéro de registre national peut se connecter avec sa carte d'identité, et avec les informations qu'il fournit, il demande lui-même le montant dû. Une fois que les informations sont validées par la Caisse, le paiement est effectué.

Dans le cas des victimes de traite des êtres humains où nous avons peu d'informations et pour qui le Registre national est inconnu, il faut créer un dossier « titulaire de valeur introuvable ». (<https://finances.belgium.be/fr/pai/e-depo> / caution « avoirs de titulaires introuvables ou décédés ») Un formulaire est disponible et l'employeur doit indiquer toutes les informations qu'il a à sa disposition et ensuite le renvoyer par mail.

Pour pouvoir récupérer la rémunération déposée, le travailleur doit pouvoir être identifié. Raison pour laquelle il est important d'avoir un maximum d'informations.

Sur base de ces informations, le service de la Caisse va créer un numéro de registre national. Si la victime se fait connaître (généralement par mail via: info.cdcck@minfin.fed.be), elle donne ses coordonnées, elle peut envoyer une copie de son passeport, carte d'identité, compte bancaire.

Si la victime n'a pas de compte bancaire, la Caisse accepte de verser sur un compte bancaire d'un proche à condition d'avoir un accord écrit signé par les deux parties et le versement aura lieu sur ce compte-là.

Seule la victime ou un intermédiaire (avocat, asbl, centre d'accueil qui apporte la preuve écrite et signée du lien avec la victime) peut prendre contact avec la Caisse.

La Caisse ne fait pas de recherches pour retrouver les titulaires de compte.

L'argent reste 30 ans et si après 30 ans, la somme n'est pas réclamée, elle revient à l'état.

Ce qui semble compliqué dans la procédure c'est sa compréhension et mise en œuvre pour les personnes qui ne sont pas habitués à travailler sur un ordinateur ou pour celles dont le français et le néerlandais ne sont pas leur langue maternelle.

2. Nouvelles initiatives

Les autorités belges souhaitent informer le GRETA de la mise en place d'un nouveau point de contact centralisé sur la traite des êtres humains ainsi qu'un siteweb en différentes langues reprenant les informations de base pour les victimes ou les particuliers sur la problématique et les procédures possibles.

Le siteweb « stoptraitehumaine » (<https://www.stophumantrafficking.be/fr>) reprend les coordonnées de centres d'accueil spécialisés et donne une information globale sur la problématique de l'exploitation afin de sensibiliser la société civile au problème.

Hormis le lancement de ce point de contact, de nouvelles initiatives ont été prises dans le cadre de la crise en Ukraine. Des brochures d'informations ont été élaborées en ukrainien à propos des risques de traite et une campagne d'information a eu lieu via les réseaux sociaux. Par ailleurs, des outils ont été développés pour informer sur les normes de travail qui doivent être respectées en Belgique et deux brochures ont été préparées de manière à sensibiliser sur les risques d'exploitation des mineurs.

Une campagne d'information sur l'exploitation sexuelle sera par ailleurs diffusée dans 6 gares belges à l'occasion de la journée européenne de lutte contre la traite des êtres humains.

Je vous prie d'agréer, Madame la Secrétaire exécutive, l'expression de mes salutations distinguées.

Steven Limbourg
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Steven Limbourg
Conseiller général