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LANZAROTE COMMITTEE

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Corporate liability

**Compilation of relevant extracts from GRETA Reports
concerning the implementation of the Convention on Action against
Trafficking in Human Beings**

Prepared by the Secretariat of the Lanzarote Committee

Corporate liability – Compilation of relevant extracts from GRETA Reports concerning the implementation of the Convention on Action against Trafficking in Human Beings

ALBANIA

(document GRETA(2011)22, 2 December 2011, §161)

Under Article 45 of the CC, legal entities may be held liable for criminal offences, including those relating to trafficking, committed in their name and on their behalf. This liability does not exclude that of the physical persons involved in the committing of the offence. However, the Albanian authorities have indicated that, to date, there have been no criminal cases regarding the involvement of legal entities in THB offences. GRETA considers that the Albanian authorities should examine the reasons why no legal entities have been punished for trafficking-related acts to date and, in the light of their findings, take the necessary measures to ensure that the liability of legal entities can be acted upon in practice.

AUSTRIA

(document GRETA(2011)10, 15 September 2011, §140)

Since 2006, the Austrian Federal Law on the Responsibility of Entities for Criminal Offences provides for criminal liability of legal persons for all types of criminal offences, including THB, in addition to and independently from the criminal liability of the natural persons prosecuted for the same act. The main penalty against a legal person is a fine. The Austrian authorities have informed GRETA that so far, no legal entity has been convicted for THB. The law is currently being evaluated by the Austrian authorities.

BELGIUM

(document GRETA(2013)14, 25 September 2013, §208)

Article 5 of the Criminal Code provides for the criminal liability of legal entities, including for the offence of trafficking. The punishments stipulated for legal entities are fines, confiscation, dissolution, a temporary or definitive ban on exercising an activity, temporary or definitive closure of one or more establishments, and publication or dissemination of the decision. One example of a conviction of legal entities for acts of trafficking¹ was the decision of the Ghent regional court of 5 November 2012. In that case, a company (a chain of motorway cafes as the order-giver) used the services of a contractor for the cleaning of its toilets. That contractor used solely foreign employees who worked seven days a week from 7 a.m. to 10 p.m. for 45 euros a day. In this case both the contractor employing the workers and the order-giver, which was fully aware of their working conditions, were sentenced to pay fines of 528,000 euros and 99,000 euros respectively. GRETA welcomes the efforts made by the Belgian

¹ For another example, see the decision of the Tribunal correctionnel de Tournai, 4 November 2010, available on the CECLR website.

authorities to ensure that legal entities are held responsible for offences related to human trafficking.

BOSNIA AND HERZEGOVINA

(document GRETA(2013)7, 14 May 2013, §144)

According to Chapter 4 of the state CC, legal persons can be held criminally liable for human trafficking and the penalties include fines (from 5,000 to 5,000,000 Bosnia and Herzegovina convertible marks, i.e. approximately from 2,560 to 2,560,459 euros), confiscation of property (for criminal offences punishable by a prison sentence of at least five years) and dissolution of the legal person (when its activities were entirely or partly used for the purpose of perpetrating criminal offences). So far, no criminal cases have been initiated against legal persons for their involvement in THB offences in Bosnia and Herzegovina.

BULGARIA

(document GRETA(2011)19, 14 December 2011, §203)

The Bulgarian authorities have indicated that under national law, criminal responsibility is personal and cannot be sought from legal entities, which is why there are no sanctions for legal persons under the CC. However, administrative responsibility of legal persons for the crime of THB is provided for under Article 83a of the Law on Administrative Violations and Sanctions. Pursuant to this article, a legal person which has enriched or may enrich itself from a crime committed by an individual controlling, managing or representing that legal person is punishable by a property sanction of up to one million BGN, but not less than the equivalent of the benefit of a property nature, and if the benefit is not of a property nature or its amount cannot be established, a property sanction from 5,000 to 100,000 BGN. GRETA notes that the condition for attaching administrative responsibility to a legal person is enrichment or possible enrichment, which is not a part of the criminal offence of THB. GRETA invites the Bulgarian authorities to assess the implementation of the legal provisions concerning liability of legal persons for criminal offences related to THB, in the light of the provisions on corporate liability in Article 22 of the Convention.

CROATIA

(document GRETA(2011)20, 30 November 2011, §123)

Croatian legislation establishes the criminal liability of legal persons through the Act on the Liability of Legal Entities for Criminal Offenses. The sanctions that may be imposed on legal entities include closure of business, monetary fine, suspended sentence, ban on carrying out certain activities, ban on subventions, as well as ban on doing business with beneficiaries of the state budget. There have been not convictions of legal entities for THB under this Act for the time being.

DENMARK

(document GRETA(2011)21, 20 December 2011, §191)

Regarding legal persons such as limited companies, associations, foundations or public authorities, Article 306 of the CC, which was introduced in 2000 and amended in 2001 and 2002, extends the liability of such persons for violations of any provision of the CC, including Article 262(a) on THB, on the condition that the violation was committed within the establishment of the legal person and by fault of one or more persons connected to the legal person or by fault of the legal person. The office of the Director of Public Prosecutions has no knowledge of criminal proceedings against legal persons in relation to THB.

FINLAND

(no evaluation report so far)

FRANCE

(document GRETA(2012)16, 28 January 2013, §212)

The possibility of holding a legal person criminally liable for trafficking is provided for in Article 225-4-6 of the Criminal Code. For the repressive measures, that Article refers to Article 131-38 which provides for a fine equivalent to a maximum of five times that applicable to natural persons, and to Article 131-39 which lists the different supplementary penalties applicable to a legal person, including dissolution. In addition, Article 225-25 specifies that both natural and legal persons found guilty of THB and pimping offences may also incur confiscation of all or part of their assets, of whatever type, movable or immovable.

GREECE

(no evaluation report so far; the convention enters into force on 1 August 2014)

ICELAND

(no evaluation report so far)

ITALY

(no evaluation report so far)

LITHUANIA

(no evaluation report so far)

LUXEMBOURG

(document GRETA(2013)18, Adopted on 8 November 2013, Published on 15 January 2014, §143)

As regards corporate liability, Article 34 of the Criminal Code stipulates that where a crime is committed on behalf or for the benefit of a legal person by one of its statutory bodies or by one or more of its de jure or de facto managers, this legal person may be

declared criminally liable and incur the penalties provided for in Articles 35 to 38 (fines, confiscation, exclusion from participation in public tenders, dissolution). These provisions apply to all legal persons with the exception of the state and municipalities.

MALTA

(document GRETA(2012)14, 24 January 2013, §168)

Pursuant to Article 248E(3) of the CC, Article 121 on corporate liability² in cases of corruption and embracery (attempt to influence a jury or juror by corrupt means such as bribery or threats) is also applicable to THB offences. The punishment for corporate liability in THB offences is a fine of between 11,647 and 1,863,500 Euros. To GRETA's knowledge, there have been no convictions of legal entities for THB offences. The Maltese authorities have informed GRETA that amendments to the CC are under discussion in order to increase the fines applicable to corporate liability for THB. These amendments, included in Bill 97, await parliamentary approval. GRETA would like to be kept informed of the final adoption of this amendment, in due course. The Maltese authorities have informed GRETA that the temporary administrative sanction of closure of establishments has been carried out in some THB cases.

REPUBLIC OF MOLDOVA

(document GRETA(2011)25, 22 February 2012, §146)

Moldovan legislation establishes the criminal liability of legal persons involved in THB offences, pursuant to Article 31 of the Anti-Trafficking Law and Article 21(3) of the CC. Both provisions stress that the liability of legal persons does not exclude individual criminal liability of natural persons who committed trafficking offences. The only category of legal persons excluded from criminal liability are public authorities. According to information provided by the Moldovan authorities, no THB offences were committed by legal persons in 2008-2010.

MONTENEGRO

(document GRETA(2012)9, 13 September 2012, §182)

Pursuant to the Law on Liability of Legal Entities for Criminal Offences, a legal entity is liable for a criminal offence committed by a person acting on behalf of the legal entity within the power of his/hers authority with the intent of acquiring some benefit for that legal entity. The legal entity is liable even if that person's action was contrary to the legal entity's business policy or orders. Further, the legal entity is liable for a criminal offence even if the responsible person who committed the offence has not been convicted for it. The liability of the legal entity does not exclude criminal liability of the responsible person for the committed criminal offence. The legal entity that may be liable for a criminal offence is a business organisation, foreign company and part of a

² Article 13 of the Interpretation Act defines corporate liability as offences committed by a body or other association of persons, be it corporate or unincorporated, and for which responsibility lies on the director, manager, secretary or similar officer, unless they can prove that the offence was committed without their knowledge and that they exercised all due diligence.

foreign company, public utility company, public institution, domestic and foreign non-governmental organisation, investment fund, other fund (with exception of a fund exclusively performing public functions), sports organisation, political party, as well as another association or organisation that within its operations regularly or occasionally gains or obtains funds and manages them. To GRETA's knowledge, there have not been any convictions of legal entities for THB offences.

NETHERLANDS

(document GRETA(2014)10, Adopted on 21 March 2014, Published on 18 June 2014, §209)

Under Article 51 of the CC legal persons can be held liable for committing punishable acts. Criminal prosecution can be instituted against a legal person, against those who gave the order for the punishable act to be committed and those who were actually in charge while the punishable act was taking place.

PORTUGAL

(document GRETA(2012)17, 12 February 2013, §165)

In accordance with Article 11(2) of the CC, legal and equivalent entities, with the exception of central government, other public-law legal entities³ and public-law international organisations, may be held responsible for the offences defined in Article 160 of the CC if these are committed: (a) for their own account and in the collective interest by persons holding management authority within them; (b) by any person acting under the authority of the persons mentioned in (a) because of a failure to fulfil the obligations of supervision or control devolving on them. The main penalties applicable to legal entities are fines or closure⁴. According to the information provided to GRETA, no legal entity has been found guilty of trafficking.

ROMANIA

(document GRETA(2012)2, 31 May 2012, §184)

The CC was modified in 2006 in order to introduce the criminal liability of legal persons (Article 19), which also applies to THB-related offences. The sanctions foreseen are a fine, dissolution of the legal entity, closing down of its activities, prohibition of participation in tender procedures, and obligation to publish the sentence convicting the legal person. However, GRETA understands that this provision has very rarely been applied and, in particular, there have been no cases of application for THB-related offences. The Romanian authorities have indicated that they are currently reviewing the relevant criminal law provisions with a view to improving their efficiency. GRETA wishes

³ Within the meaning of criminal law, "public-law legal entities" are legal entities governed by public law, particularly public undertakings, public service providers, irrespective of ownership, or other legal entities which exercise public authority.

⁴ The following additional penalties may also be imposed on them: court order; prohibition of activity; prohibition of entering into certain kinds of contracts or of the conclusion of contracts with certain entities; loss of entitlement to subsidies or incentives; closure of the establishment; publication of the judgment.

to stress the particular importance of such a review in view of reports concerning recruitment companies based in Romania which have been involved in trafficking of Romanian citizens abroad (see paragraphs 111 and 196). GRETA considers that the Romanian authorities should explore the reasons why no legal entities have been punished for trafficking-related acts and, in the light of their findings, take the necessary measures to ensure that the liability of legal entities can be acted upon in practice.

SAN MARINO

(no evaluation report so far)

SERBIA

(document GRETA(2013)19, Adopted on 8 November 2013, Published on 16 January 2014, §210)

The 2008 Law on the Liability of Legal Entities for Criminal Offences applies to THB and is applicable to Serbian and foreign legal entities responsible for criminal offences in Serbia, foreign legal entities committing offences on the territory of a foreign country which damage Serbia or a Serbian national or legal entity, and Serbian legal entities committing offences abroad. Pursuant to Article 13 of this law, the sanctions include a fine and termination of the status of legal entity. Further, the law allows for the prohibition of practicing activities and operations, confiscation of instrumentalities and publication of the judgment. GRETA would like to be informed if any legal entities have been convicted of THB-related offences.

SPAIN

(document GRETA(2013)16, 27 September 2013, §§247-248)

In the case of legal persons being responsible for THB, paragraph 7 of Article 177 bis of the CC provides that the punishment shall be a fine from three to five times the profit obtained. Further, pursuant to the rules established in Article 66 bis of the CC, the judges and courts may also impose the penalties established in sub-sections b) to g) of Article 33, paragraph 7, of the CC, namely:

- dissolution of the legal person;
- suspension of its activities for a maximum of five years;
- closure of premises and buildings for a maximum of five years;
- temporary or permanent prohibition to carry out future activities having allowed the commission of a crime, facilitated or enabled the covering up of the crime;
- barring from obtaining public funding and subsidies, contracting with the public sector and enjoying tax or social security contributions benefits and incentives for a maximum of 15 years;
- judicial control in order to safeguard the rights of workers and creditors for the estimated time required that shall not exceed five years.

The penalties listed above may be extended to the whole organisation or parts of it. The temporary closure of facilities and buildings, suspension of activities and judicial control may be ordered by during the pre-trial investigation. The Spanish authorities have

indicated that penalties have been imposed on legal representatives of companies in THB cases. None of the five judgments handed down to date under Article 177 bis of the CC have concerned legal entities.

“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”

(document GRETA (2014)12, Adopted on 21 March 2014, Published on 17 June 2014, §190)

The criminal liability of legal persons is established in Article 418-a, paragraph 6, of the CC (concerning trafficking in adults) and Article 418-d, paragraph 7, of the CC (concerning trafficking in children). The sanction envisaged is a fine. In accordance with Articles 96-a and 96-b of the CC, the main penalty for criminal offences committed by legal entities is a fine. If the court considers that the legal entity has neglected its duty and there is a potential risk of repeating the illegal activity in the future, it can impose one or several of the following penalties: 1) prohibition on obtaining permits, licenses, concessions, authorisations or other rights determined by special law; 2) prohibition on participation in public call procedures, granting public procurement contracts and contracts for public-private partnership; 3) prohibition on establishing new legal entities; 4) prohibition on benefiting from subsidies and loans; 5) prohibition on the use of means of financing of political parties from the State budget; 6) confiscation of permit, license, concession, authorisation or other right determined by special law; 7) temporary ban on performing a specific business; 8) permanent ban on doing a specific business, and 9) termination of the legal entity. There have been no convictions of legal entities for THB-related offences.

TURKEY

(has not ratified the anti-trafficking convention yet)

UKRAINE

(no evaluation report so far)