

G R E T A

Group of Experts on Action
against Trafficking in Human Beings

GRETA(2012)9

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

First evaluation round

Strasbourg, 13 September 2012

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Preamble

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Executive summary

The Montenegrin authorities have taken a number of important steps to prevent and combat trafficking in human beings. The anti-trafficking provisions of the Criminal Code have been amended over the years and the use of services of a victim of trafficking was criminalised in 2010. The National Strategy for the Fight against Human Trafficking (2004-2011) was comprehensive in nature and aimed to involve all relevant actors. A new National Strategy for 2012-2018 is in the process of adoption.

The co-ordination of the anti-trafficking activities of relevant public bodies, non-governmental and intergovernmental organisations is performed by the Office for the Fight against Trafficking in Human Beings. GRETA stresses the need to ensure that the status of this Office is clarified as a matter of priority and that it is put in a position to fulfil its mandate effectively. As regards the Working Group for monitoring implementation of the National Strategy, which is composed of representatives of ministries and public bodies, as well as observers from intergovernmental organisations and foreign missions, GRETA considers that its expected broadening to involve NGOs will promote a comprehensive and co-ordinated approach.

In the area of prevention of THB, GRETA welcomes the efforts made by the Montenegrin authorities by means of public awareness campaigns and education in elementary and secondary schools. That said, GRETA considers that future awareness-raising campaigns, school education and training of relevant professionals should aim at promoting gender equality and eradicating gender-based violence and the stigmatisation of victims of trafficking. Further, the Montenegrin authorities should continue their efforts to discourage demand for services from trafficked persons.

GRETA notes as a positive development the conclusion of a Memorandum of Co-operation between State institutions and NGOs, which defines the responsibilities of each body and establishes operational procedures for handling THB cases. Pursuant to this Memorandum, all signatories undertake to provide assistance to potential victims of trafficking, regardless of whether they co-operate in the investigation or participate in criminal proceedings. GRETA considers that the Montenegrin authorities should further raise awareness of the Memorandum and the responsibilities arising from it.

Under Montenegrin law, the legal status of “victim of trafficking” is assigned if there is a valid court sentence for a THB offence. GRETA considers that this narrows down the definition of “victim of trafficking” and the understanding of the problem. GRETA urges the Montenegrin authorities to disconnect victim identification from criminal proceedings and to strengthen multi-agency involvement in victim identification. Law enforcement officials, social workers, labour inspectors and other relevant actors should adopt a more proactive approach and increase their outreach work to identify potential victims of trafficking.

As regards assistance measures for victims of trafficking, the Montenegrin Government has taken over the full financing of one specialised shelter. That said, GRETA stresses the need to ensure that conditions in shelters for victims of THB are adequate and adapted to their needs, and to provide victims with vocational training and access to the labour market, in order to facilitate their reintegration into society and avoid re-trafficking. Further, GRETA urges the Montenegrin authorities to review the legislation, in order to ensure that the recovery and reflection period provided for in the Convention is specifically defined in law.

Despite the existence of legal possibilities for compensation, none has been granted to victims of THB to date. GRETA urges the Montenegrin authorities to step up their efforts to provide information to victims of THB about their right to compensation and ways to access it, and to ensure that victims have effective access to legal aid in this respect. Further, bearing in mind that no victims of trafficking have received compensation from the perpetrators, GRETA encourages the Montenegrin authorities to set up a State compensation scheme accessible to victims of THB, as envisaged by draft legislation.

GRETA considers that in the context of the drafting of the new Criminal Code, the Montenegrin authorities should conduct a thorough assessment of the effectiveness of the criminal law provisions concerning THB and related provisions, with a view to avoiding any overlap in their scope and improving legal clarity and legal certainty. Further, GRETA urges the Montenegrin authorities to take legislative measures allowing for the possibility of not imposing penalties on victims of THB for their involvement in unlawful activities to the extent that they were compelled to do so.

Regarding the investigation of cases of trafficking in human beings, GRETA urges the Montenegrin authorities to take measures to identify gaps in the investigation procedure and the presentation of cases in court with a view to ensuring that crimes related to THB are investigated and prosecuted effectively, leading to proportionate and dissuasive sanctions. The authorities should make full use of the available measures to protect victims and to prevent intimidation during the investigation and during and after the court proceedings.

Finally, GRETA considers that there is need for improvement of the knowledge and sensitivity of judges, prosecutors, investigators and lawyers about THB and the rights of victims. Future training programmes should be designed with a view to improving the knowledge and skills of relevant professionals which enable them to identify victims of trafficking, to assist and protect them, and to secure convictions of traffickers.

I. Introduction

1. Montenegro deposited the instrument of ratification of the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) on 30 July 2008. The Convention entered into force for Montenegro on 1 November 2008¹.

2. As established in Article 36(1) of the Convention, the Group of Experts on Action against Trafficking in Human Beings (“GRETA”) monitors the implementation of the Convention by the Parties. GRETA does so in conformity with the procedure laid down in Article 38 of the Convention and the Rules on the evaluation procedure of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties. For the first evaluation round (2010-2013), GRETA drew up a monitoring timetable according to which the Parties to the Convention were divided into groups, Montenegro being in the second group of 10 Parties to be evaluated.

3. In accordance with Article 38 of the Convention, GRETA proceeded with the examination of the measures taken by Montenegro to implement the provisions set out in the Convention. The “Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties – first evaluation round” was sent to Montenegro on 25 February 2011. The deadline for replying to the questionnaire was 1 September 2011. Montenegro submitted its reply on 30 August 2011.

4. In preparation of the present report, GRETA used the reply to the questionnaire by Montenegro, other information collected by GRETA and information received from civil society. In addition, a country visit to Montenegro took place from 14 to 18 November 2011. It was carried out by a delegation composed of:

- Mr Davor Derenčinović, Second Vice-President of GRETA;
- Ms Louise Calleja, member of GRETA;
- Ms Petya Nestorova, Executive Secretary of the Secretariat of the Convention on Action against Trafficking in Human Beings.

5. During the country visit, the GRETA delegation held meetings with representatives of relevant Ministries and public agencies, judges, the Protector of Human Rights and Freedoms (Ombudsman) of Montenegro and members of the Parliament of Montenegro (see Appendix II). These meetings took place in a spirit of close co-operation.

6. The GRETA delegation held separate meetings with representatives of non-governmental organisations (NGOs), lawyers and other members of civil society, as well as with intergovernmental organisations present in Montenegro. GRETA is grateful for the information provided by them.

7. Further, in the context of the country visit to Montenegro, the GRETA delegation visited the State shelter for victims of trafficking, which is run by the NGO Montenegrin Women’s Lobby.

8. GRETA wishes to place on record the excellent assistance provided by the contact person appointed by the Montenegrin authorities, Ms Daliborka Mugoša, Senior Advisor at the Office for the Fight against Trafficking in Human Beings.

9. The draft version of the present report was adopted by GRETA at its 13th meeting (19-23 March 2012) and was submitted to the Montenegrin authorities on 30 March 2012 for comments. The authorities’ comments were received on 29 May 2012 and were taken into account by GRETA when drawing up its final evaluation report, which was adopted at the 14th meeting (25-29 June 2012).

¹

The Convention as such entered into force on 1 February 2008, following its 10th ratification.

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

1. Overview of the current situation in the area of trafficking in human beings in Montenegro

10. According to statistical information provided by the Montenegrin authorities, there were a total of 22 victims of trafficking in human beings (THB) in Montenegro in 2004-2011 (10 in 2004, six in 2005, three in 2008 and three in 2009). All but one of these victims were foreign nationals originating from Serbia (seven), Ukraine (eight), Kosovo* (one), Albania (one) and Bangladesh (four). In 2004-2006, there were 10 men victims of labour exploitation, and five women and one girl trafficked for sexual exploitation. All the victims of trafficking in 2008 and 2009 (four women, one man and one girl) were subjected to sexual exploitation. As regards trafficking in children, there were only two cases in 2004-2011 (both were girls aged 17). The Montenegrin authorities have indicated that Montenegro is primarily a country of transit for trafficked persons and to a lesser extent a country of destination.

11. The above figures on victims of trafficking do not reveal the real scale of the phenomenon as they are limited to those persons who took part in criminal proceedings which resulted in final convictions of perpetrators of trafficking offences (see paragraphs 49 and 77). In addition, a number of other persons were assisted as presumed victims of trafficking (see paragraphs 50 and 145).

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

a. Legal framework

12. At the international level, in addition to the Council of Europe Anti-Trafficking Convention, Montenegro is Party to the United Nations (UN) Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (both of which it ratified in 2001). Montenegro is also Party to the UN Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (both of which it ratified in 2006). Further, Montenegro has acceded to a number of Council of Europe conventions in the criminal field which are relevant to action against THB.²

13. Montenegro applied for European Union (EU) membership on 15 December 2008. On 1 May 2010, the Stabilisation and Association Agreement (SAA) between Montenegro and the EU came into force and the EC Opinion recommending the status of candidate country for Montenegro was issued on 12 October 2011.³ The prospect of EU accession has been accompanied by intensified activity for the fulfilment of the requirements for EU integration. In particular, Montenegro fulfilled the visa liberalisation benchmarks set by the EC and a visa-free regime for Montenegro was introduced on 19 December 2009.

* All reference to Kosovo, whether to the territory, institutions or population, in this text, shall be understood in full compliance with the United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

² In particular the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse; the European Convention on Mutual Assistance in Criminal Matters and its Additional Protocols; the European Convention on Extradition and its Additional Protocols; the European Convention on the International Validity of Criminal Judgments; the European Convention on Transfer of Convicted Persons and its Additional Protocol; the European Convention on the Transfer of Proceedings in Criminal Matters; the European Convention of the Compensation of Victims of Violent Crimes; and the Council of Europe Convention on Cybercrime.

³ Montenegro 2011 Progress Report, 12 October 2011, SEC(2011) 1204 final.

14. The national legal framework in the field of action against THB has evolved since the early 2000s and following Montenegro's Declaration of Independence on 3 June 2006. Provisions criminalising THB were included in the Criminal Code (CC) in 2002, namely Article 444 (trafficking in human beings), Article 445 (trafficking of children for adoption), and Article 446 (enslavement of persons and transportation of persons in an enslaved status). The anti-trafficking provisions of the CC were amended and supplemented in 2004, 2006, 2008 and finally in April 2010 when the use of services of a victim of trafficking was criminalised (Article 444, paragraph 7, of the CC).

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

- the new Code of Criminal Procedure (CCP), which was promulgated on 18 August 2009 and entered fully into force on 1 September 2011;
- the 2008 Law on Amendments of the Law on Public Prosecutor;
- the 2004 Witness Protection Law;
- the 2008 Law on Foreigners;
- the 2007 Law on Liability of Legal Persons for Criminal Offences.

16. Further, the Law on the Treatment of Juveniles in Criminal Proceedings, which entered into force on 6 January 2012 and will apply from 1 September 2012, regulates the status and protection of children, including victims of trafficking, in criminal proceedings.

b. National Strategies and Action Plans

17. On 13 November 2003, the Government of Montenegro adopted a National Strategy for the Fight against Human Trafficking which set out the national policy and priorities for the conduct of anti-trafficking activities in the period 2004-2011. With a view to implementing the National Strategy, a series of Action Plans were adopted, the latest covering the period 2010-2011. The National Strategy was divided into three parts: prosecution, protection and prevention. The part on criminal prosecution was dedicated to assessment of criminal trends, adoption of new legislation, strengthening the capacities of the judiciary, the police and other relevant State bodies and non-governmental agencies, with a view to identifying potential trafficking victims, efficient criminal prosecution and court proceedings involving prioritised processing of human trafficking cases. The part on protection covered measures aimed at providing adequate protection to victims, such as co-operation with NGOs, in order to provide safe accommodation for victims, along with psychological and medical assistance, as well as the provision of training to the police, judges and prosecutors in handling victims. Finally, the part on prevention included actions aimed at education and increasing public awareness on various forms of human trafficking, continuous monitoring of the media and the internet in order to prevent trafficking, in particular in children, strengthening co-operation at the local level and smooth functioning of the SOS hotline for victims of trafficking. An inter-agency Working Group (see paragraph 23) was set up to ensure implementation of the National Strategy and Action Plans.

18. At the time of GRETA's country visit to Montenegro, a new National Strategy for the period 2012-2018 was in the process of finalisation. A working group to develop the new strategy had been set up, soliciting advice from all stakeholders, including NGOs. GRETA was informed that the new strategy would focus in particular on prevention activities amongst young people, awareness raising, co-operation with the local authorities, improved identification of victims, and combating trafficking with the purpose of labour exploitation. After GRETA's visit, the Office for the Fight against Trafficking in Human Beings referred the final draft of the Strategy to the Government of Montenegro for adoption, which was expected to take place in June 2012. Further, the Montenegrin authorities have informed GRETA that the new Action Plan for achieving gender equality for the period 2013-2017 will address the issue of trafficking in human beings in the segment concerning violence against women.

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

a. Office for the Fight against Trafficking in Human Beings

19. In 2001, the Government of Montenegro adopted a decision establishing the National Co-ordinator for the Fight against THB, who is the Head of the Office for the Fight against THB. The Office was set up as an umbrella institution structured under the General Secretariat of the Government of Montenegro. However, pursuant to a Decree of 29 December 2011 on the organisation of the work of the public administration, the Office for the Fight against THB shall “conduct monitoring and implementation of mechanisms for efficient fight against trafficking in human beings” in the Ministry of the Interior. As a result, the Office was placed under that Ministry, although the formal transfer has not yet taken place as this requires amendments to the Act on the Internal Organisation of the Ministry of the Interior.

20. The Office is responsible for co-ordinating the activities of competent State bodies, international institutions and NGOs in the implementation of the National Strategy and Action Plans. It also performs duties related to the implementation of international conventions and agreements in the field of the fight against human trafficking, proposes initiatives for harmonisation of national legislation with international standards, promotes co-operation between local, national and international stakeholders, organises awareness-raising campaigns and training of relevant professionals, and informs the public on the results of the steps taken by relevant institutions in the field of action against human trafficking. Further, the Office monitors and finances the functioning of the State shelter for victims of trafficking, which is run by the NGO Montenegrin Women’s Lobby.

21. The Head of the Office presides over the meetings of the Working Group for monitoring the implementation of the National Strategy, monitors the implementation of respective ministries’ action plans and submits reports on the achieved results to the Government. The Office employs five staff members and has an annual budget of 110 000 Euros of which an average of 60 000 Euros is set aside to cover the following activities: financing the shelter for victims of trafficking (lease of the building and overhead expenses), provision of food, clothing, medication and other needs of persons accommodated in the shelter, and operation of the SOS Hotline. For victims of trafficking who are not insured in accordance with the Law on Health Insurance, the cost of emergency medical care is covered by the budget through the Health Insurance Fund of Montenegro.

22. The Office has established a Tripartite Commission, which includes representatives of the Supreme State Prosecutor’s Office, the Supreme Court and the Police Directorate. Based on information collected from these institutions, the Office compiles statistics on victims of trafficking⁴ and monitors the course of criminal proceedings for THB.

⁴

Available at: www.antitrafficking.gov.me

b. Working Group for monitoring the implementation of the National Strategy for the Fight against THB

23. The Working Group is composed of representatives of the Ministry of Justice and Human Rights, the Ministry of Health, the Ministry of Labour and Social Welfare, the Ministry of Education and Sport, the Ministry of Foreign Affairs and European Integration, the Ministry of the Interior, the Ministry for Minority Rights, the Ministry of Culture (all represented at the level of Deputy Minister), the judiciary, the Prosecutor's Office, the Police Directorate, as well as observers from the US Embassy, OSCE, UNICEF, IOM and the EU delegation. At the time of the visit to Montenegro, the GRETA delegation was informed that the Office of the Fight against THB had proposed that NGOs be invited to participate in the Working Group as observers. The Office has initiated a legal procedure for amending the decision of the Government by which the Working Group was established. Following this amendment, which is expected to happen by the end of June 2012, representatives of NGOs will be able to formally engage in the work of the Working Group. Regardless of the fact that NGOs are not members of the Working Group, NGO representatives have participated in the drafting of strategic documents for the fight against human trafficking in Montenegro, such as the National Strategy for 2012-2018 and the Memorandum of Co-operation (see paragraphs 25-29).

24. The task of the Working Group is to co-ordinate the activities of the competent institutions in the implementation of the National Strategy, including the preparation of quarterly reports on the realisation of measures from the Action Plan, defining priorities, dynamics and deadlines, assessing the results of the implementation of the National Strategy and reporting to the Government. When deemed necessary, the Working Group also prepares Action Plans for the fight against human trafficking. The Working Group meets, as a rule, once every two months, and can request information, clarification and reports from State bodies and other institutions related to issues of prevention, protection and criminal prosecution of perpetrators.

c. Memorandum of Co-operation

25. A Memorandum of Co-operation between the Supreme State Prosecutor's Office, the Ministry of Education and Sport, the Ministry of Labour and Social Welfare, the Ministry of Health, the Police Directorate and three Montenegrin NGOs (Montenegrin Women's Lobby, Safe Women's House and Centre Plus) was signed in 2007. It defined the responsibilities of these institutions and set up specific operational procedures for handling cases of THB, with a special emphasis on procedures related to handling of women and children victims of trafficking. Each signatory has an annex to the Memorandum relating to the signatory's specific areas of competence.

26. In November 2010, the Office for the Fight against THB formed a team of experts who held five working meetings in order to review the Memorandum of Co-operation and draft the text of a new Memorandum, which takes into account developments since 2007, such as international standards, organisational and regulatory changes, the important contribution of the civil sector and the need to expedite the court process for human trafficking cases. In addition to the original signatories, the new Memorandum will be signed by eight new partners: the Office for the Fight against THB, the Supreme Court, the Centre for Child and Family Support in Bijelo Polje, the Montenegrin Red Cross, the NGOs SOS Nikšić, SOS Hotline for Victims of Violence Podgorica, Dom Nade and the Roma Scholarship Foundation. However, the signing of the new Memorandum has been delayed due to the previously mentioned decision to transfer the Office for the Fight against THB to the Ministry of the Interior and the need to make amendments to the Ministry's internal organisation regulations (see paragraph 20). The new Memorandum is expected to be signed in the course of 2012.

27. The signatories of the Memorandum are obliged to appoint contact persons who, in addition to submitting reports on the implementation of the Memorandum twice a year, are responsible for informing the employees of the respective signatory of the obligations that arise under the Memorandum. Signatories also exchange information and inform the public about their joint activities. Each signatory can terminate the Memorandum following a 30 day notice sent to the other signatories.

28. The obligations of the NGOs under the new Memorandum have been amended to ensure respect of the non-discrimination principle (providing support to all persons irrespective of their gender, ethnicity/nationality, citizenship, religion, sexual orientation or any other grounds) and the anonymity principle (personal information/data are considered as confidential and can only be revealed to the relevant authorities if the victim of trafficking has given his/her given permission). NGOs undertake to provide necessary psychological, social and legal support to potential victims and victims of trafficking, to represent their interests, and to accommodate victims of trafficking in shelters for victims of domestic violence in urgent cases when required by the circumstances.

29. The Office for the Fight against THB is responsible for co-ordinating the implementation of the Memorandum. Within 30 days of the entry into force of the Memorandum, the Office should establish a co-ordination body composed of the contact persons appointed by the signatories and chaired by the Head of the Office. This co-ordination body is in charge of monitoring the implementation of the Memorandum and providing guidelines for its improvement. The co-ordination body should meet at a minimum twice a year but the Chair can convene members as necessary. In case a victim of trafficking is identified, the co-ordination body should meet to consider undertaking crisis activities. The Office is obliged to submit consolidated semi-annual reports on the implementation of the Memorandum to the Working group for monitoring implementation of National Strategy.

d. Police Directorate

30. Within the Police Directorate, the Department for the Fight against Organised Crime and Corruption, and in particular the specialised Group for Suppressing General Organised Crime deals, *inter alia* with combating THB and smuggling of migrants. The Police Directorate participates in training aimed at prevention and detection of traffickers. A mechanism whereby police officers are available round-the-clock to provide support to other signatories of the Memorandum of Co-operation has been put in place. Each regional police directorate has an officer who deals with THB offences, prostitution and juvenile delinquency, and is requested to report on a monthly basis on action taken and any suspicion of THB activities. Further, officers of the Police Directorate are responsible for launching the process of identification of potential victims of human trafficking (see paragraph 129).

e. NGOs

31. NGOs play a key role in the field of action against THB in Montenegro, through awareness-raising activities, training, assistance to victims and participation in international projects. Most of these NGOs work predominantly on protecting women's rights and gender equality and providing assistance to women victims of domestic violence, but they also have activities related to the prevention of THB and assisting victims of trafficking as such. The NGO Dom Nade used to run the shelter for women victims of trafficking until 2004 when the NGO Montenegrin Women's Lobby was contracted to manage the shelter with State financing. The latter NGO also operates a 24-hour telephone helpline for victims. Dom Nade now runs a shelter for single mothers who are under 18 years of age and may accommodate and assist victims of trafficking. The NGO SOS Nikšić has a project for the protection of women and children against domestic violence, which includes the operation of a shelter and a telephone helpline, as well as a project on social and economic empowerment of women, and participates in public campaigns and research on human trafficking. The NGO SOS Hotline for Victims of Violence Podgorica specialises in the protection and assistance of women and children victims of violence and runs a programme for AIDS and HIV prevention amongst sex workers. Another NGO which carries out activities in the anti-trafficking field, as part of its work with women and children victims of violence, is Women's Safe House, which also runs a shelter for victims of violence.

32. Some of the above-mentioned NGOs have been consulted during the preparation of national documents in the field of combating THB, such as the Memorandum of Co-operation and the National Strategy. As noted above, three NGOs have signed the 2007 Memorandum of Co-operation and four more were expected to sign the new Memorandum in 2012 (see paragraphs 25 and 26).

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

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

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

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

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

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

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

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

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

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

37. The Montenegrin authorities have referred to Article 9 of the Constitution of Montenegro, adopted on 19 October 2007, whereby “The ratified and published international agreements and generally accepted rules of international law shall make an integral part of the internal legal order, shall have the supremacy over the national legislation and shall be directly applicable when they regulate the relations differently from the internal legislation”. Further, Article 28 of the Constitution of Montenegro guarantees the protection of human dignity and the inviolability of physical and mental integrity and prohibits slavery and servitude, while Article 63 of the Constitution prohibits forced labour. In the light of these constitutional provisions, the Montenegrin authorities have stated that THB is considered as a violation of human rights, dignity and personal integrity.

38. In the area of court competences, according to the Montenegrin authorities, cases of human trafficking have a priority in handling, pursuant to a conclusion from a meeting of the President of the Supreme Court and the presidents of all courts. This means that such cases are immediately processed and the main court hearing is scheduled within the shortest period from the day of receiving the case in the court and its assignment to a judge. The presidents of all courts are obliged to submit monthly reports to the Supreme Court, specifying the status of criminal proceedings for trafficking in human beings and trafficking in children for adoption. In addition, the protection of witnesses and victims of human trafficking, as well as their family members, is provided for in the Witness Protection Law and the Code of Criminal Procedure and through the establishment of a support service for injured parties/witnesses of THB offences and a special court service regarding criminal cases related to THB.

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

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

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

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

41. Under Montenegrin law, the definition of trafficking in human beings is provided in Article 444(1) of the Criminal Code, according to which: “Anyone who by force or threat, deceit or keeping in delusion, or by abuse of authority, trust, relationship of dependency, difficult position of another person, or by keeping back identification papers, or by giving or receiving money or other benefit for the purpose of obtaining consent of a person having control over another, recruits, transports, transfers, hands over, sells, buys, mediates in sale, hides or keeps another person for exploitation of work, submission to servitude, commission of crimes, prostitution or begging, pornographic use, taking away a body part for transplantation or for use in armed conflicts, shall be punished by imprisonment for a term of one to 10 years.”

42. This definition of THB includes the three above-mentioned constitutive elements of THB as regards adults, in line with Article 4(a) of the Convention. As regards the list of means for committing human trafficking contained in Article 444 of the CC, GRETA notes that it does not specifically include abduction. The Montenegrin authorities have indicated that abduction is defined as a separate criminal offence under Article 164 of the CC and that if the offence of trafficking in human beings is committed by means of abduction, there would be a concurrence of offences, in accordance with Article 48 of the CC, and the sentence would be higher as it would combine sentences for each offence. That said, the Montenegrin authorities have indicated that the possibility of including “abduction” as one of the means laid down in Article 444 of the CC will be considered during the drafting of the new CC. **In order to be fully consistent with the definition of THB in the Convention, GRETA considers that the Montenegrin authorities should include abduction as one of the means for committing trafficking in human beings.**

43. As regards the types of exploitation, GRETA notes that Article 444 of the CC does not refer to slavery and practices similar to slavery. Montenegrin legislation criminalises slavery and the transportation of enslaved persons as a separate offence, established under Article 446 of the CC, which reads: “(1) Anyone who in breaching the rules of international law puts another person into slavery or other similar position or keeps another person in such a position, or buys, sells, hands over to another person or mediates in buying, selling or handing over of such a person or induces another person to sell own freedom or freedom of persons he/she supports or looks after, shall be punished by imprisonment for a term of one year to 10 years; (2) Anyone who transports persons in the position of slavery or other similar position from one country to another shall be punished by imprisonment for a term of six months to five years; (3) For offences referred to in paragraphs 1 and 2 of this Article committed to a juvenile person, the offender shall be punished by imprisonment for a term of five to 15 years.” The Montenegrin authorities have indicated that there is no case law on this article of the CC. **In order to be fully consistent with the definition of THB in the Convention, GRETA considers that the Montenegrin authorities should explicitly include “slavery and practices similar to slavery” in the forms of exploitation resulting from trafficking.**

44. As regards children, Article 444(2) of the CC states: “If the offence referred to in paragraph 1 of this Article is committed to a juvenile person⁸, the offender shall be liable to imprisonment prescribed for that offence, even if there was no force, threat or any other of the stated methods present in the commission of the crime.” This definition of trafficking in children contains only two of the elements mentioned in paragraph 40, i.e. the action and the purpose of exploitation, irrespective of the means used, which is in line with the definition in the Convention.

45. There is no reference to the issue of consent in Article 444 of the CC. The Montenegrin authorities have indicated that under the criminal legislation of Montenegro, the victim is identified through the term “injured party”, whose rights are defined by a series of provisions, both in material and procedural law. According to the authorities, where the victim’s consent is concerned, the question arises in what way and under what circumstances a person gave his/her consent. **GRETA considers that stating explicitly the irrelevance of the consent of a victim of trafficking to the intended exploitation could improve the implementation of anti-trafficking provisions.**

⁸

Under Montenegrin law, juveniles are persons up to 18 years of age.

46. Article 445(1) of the CC criminalises the trafficking in children for adoption: “Anyone who abducts a person who has not yet reached the age of 14 for adoption in contravention of current regulations or whoever adopts such a person or mediates in such adoption or whoever for that purpose buys, sells or hands over another person who has not yet reached the age of 14 or transports, provides accommodation for or hides such a person who has not reached the age of 14, shall be punished by imprisonment for a term of one to five years.” GRETA notes that this provision incriminates the “trafficking in children for adoption” on the condition that they are under 14 years of age, which is at variance with the Convention, according to which a child is a person under 18 years of age. The Montenegrin authorities have indicated that during the drafting of the new CC, the possibility of including children aged 14 to 18 in the scope of Article 445 of the CC will be considered. **GRETA considers that the Montenegrin authorities should expand the scope of Article 445 of the CC to include children up to the age of 18, in line with the Convention.** In this context, GRETA recalls that illegal adoption, when it is an act to establish a child-parent relationship⁹, is not in itself a form of exploitation recognised by the Convention. Nevertheless, where an illegal adoption amounts to a practice similar to slavery as defined in Article 1(d) of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery, it will fall within the Convention’s scope.

47. For further analysis of the definition of THB and related offences from a substantive criminal law perspective, see paragraphs 172-183.

ii. Definition of “victim of THB”

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

49. Montenegrin law does not contain a definition of a victim of THB. According to the Montenegrin authorities, the definition of “victim of trafficking” is “any person who is damaged by the acts of perpetrators of criminal offences from the area of human trafficking acts covered by the Criminal Code”. The Montenegrin authorities have indicated that the legal status of a victim of trafficking is assigned if it is proven that the person concerned was subject to trafficking pursuant to Articles 444 or 445 of the CC, i.e. in case of a valid court sentence on the basis of these articles.

50. According to information provided by the Police Directorate, the number of identified victims of human trafficking does not reflect the actual number of persons who have been treated as victims of human trafficking and who do not appear in the official data, which relates to judgments. The Montenegrin authorities have indicated that police officers of the Department for Combating Organised Crime and Corruption take all measures to provide protection and assistance to every person who is designated as a potential victim of human trafficking at the start of the investigation.

⁹

See Article 1 of the European Convention on the Adoption of Children (CETS No.202).

51. GRETA considers that the definition of “victim of trafficking” under Montenegrin law is too narrow as it is linked to the outcome of criminal proceedings. This has implications for the identification of victims of trafficking (see paragraph 135). In this context, GRETA refers to the 1985 United Nations Declaration on the Principles of Justice for Victims of Crime and Abuse of Powers, according to which a person may be considered a victim “regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted”.¹⁰ It is sufficient for persons to present reasonable grounds that they have been subjected to a combination of the three key elements of the definition of THB referred to in paragraph 40 (action, means and purpose) in order to be considered as victims of trafficking. This does not imply that they must provide proof that they have been injured or financially damaged, but it may involve providing some measure of independent evidence supporting their claim. It might sometimes be difficult for victims to justify one of the elements, e.g. the purpose of exploitation, prior to a criminal investigation, which is why it is important to apply operational indicators of THB (as designed by several international organisations, such as the ILO and ICMPD).

52. GRETA urges the Montenegrin authorities to review the definition of victim of THB, in the light of the above considerations, and to amend the relevant legislation.

53. The question of the definition of victim of THB will be further discussed in the sections of this report dealing with the identification of victims and the assistance measures provided to them, along with the related proposals made by GRETA.

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

- i. *Comprehensive approach and co-ordination*

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

55. The legal and policy framework in the field of action against THB in Montenegro, which has been outlined above, is intended to cover all victims of THB subjected to different types of exploitation, both transnationally and nationally. The National Strategy and Action Plans are comprehensive in nature and aim to involve all relevant actors and cover the aspects of prevention, protection and prosecution, as well as international co-operation. Further, the composition of the Working Group for monitoring the implementation of the National Strategy is multi-disciplinary in nature.

¹⁰ Further, according to the UNODC Model Law against Trafficking in Persons, “a person should be considered and treated as a victim of trafficking in persons, irrespective of whether or not there is already a strong suspicion against an alleged trafficker or an official granting/recognition of the status of victim”. UNODC Model Law against Trafficking in Persons, p. 42.

56. As noted in paragraph 20, a decision was taken at the end of 2011 to transfer the Office for the Fight against THB to the Ministry of the Interior. The process of transfer of the Office from the General Secretariat of the Government of Montenegro to the Ministry of the Interior has not changed its scope of jurisdiction or the manner of its functioning, although it has somewhat slowed down the pace of implementation of the planned activities of the Office (see paragraph 29) and the Office no longer has a separate budget. GRETA notes that, in a number of countries, the structures which co-ordinate action against THB are not placed within a particular Ministry but, rather, are directly subordinated to the Council of Ministers; this can be considered good practice as it demonstrates the willingness of the authorities to ensure that such structures have a genuine inter-agency functioning. Further, given that the Office for the Fight against THB is expected to perform a variety of tasks, linked to the planning, implementation and evaluation of the National Strategy and Action Plans, GRETA notes that further investment should be made in the development of its human and financial resources.

57. The Memorandum of Co-operation between State institutions and NGOs is also a positive development. That said, GRETA takes note of the low level of awareness about the existence and content of the Memorandum among signatories' staff. Further, there is a feeling in the NGO community that NGOs are not sufficiently involved in the national policy-making process. As noted above (see paragraph 23), NGOs are not included in the Working Group. The Memorandum of Co-operation imposes certain obligations on NGOs, such as to provide accommodation capacity for victims of trafficking in case of need. However, the role of NGOs is limited to providing assistance to victims. The NGOs which accommodate victims of trafficking in their crisis centres are not provided with funding from the State, which is necessary for ensuring an adequate level of assistance to victims and training for staff. Further mechanisms for involving NGOs in the decision making are needed, in order to create synergies and increase the impact of their work.

58. GRETA was informed that the criteria and procedures for the selection of NGO representatives into respective bodies and working groups of the Government are regulated by a special act adopted by respective ministries in co-operation with NGOs. When it comes to the Working Group, the Rulebook on criteria for the selection of NGO representatives for the Council for Co-operation between the Government and NGOs sets a number of conditions (e.g. the NGOs should have been registered for at least one year; the NGO's Act of Establishment and Statute should contain objectives relevant to the respective ministry's competences; members of the NGO's management should not be members of political parties' bodies, state or public officials, etc.). Criteria have also been established for NGO candidates to become Working Group members, as well as a list of requisite documents. That said, GRETA notes that the procedure for applying to participate in Working Group meetings is rather complicated and, as far as GRETA understands, this theoretical possibility has so far not been used by any NGO.

59. As regards the implementation of the National Strategy and Action Plans, there is no evaluation performed by an independent body. In addition to the annual reporting system by the Office for the Fight against THB, such an independent evaluation can assist the authorities in assessing the impact of the activities and help them plan future policies and measures to combat THB.

60. The particular vulnerability to trafficking of children from the Roma, Askali and Egyptian (RAE) population of internally displaced persons, many of whom have lived for years in inadequate conditions in the camp Konik¹¹, and children without parental care residing in institutions, has been highlighted in a 2007 report by the NGO Save the Children.¹² Due to problems of registering at birth children from the RAE communities and enrolling them in schools (see paragraph 106), the preventive measures taken through the education system risk to miss this vulnerable group.

¹¹ After the outbreak of the conflict in Kosovo*, more than 4 000 members of the RAE population fled to Montenegro and were placed in the collective centre Konik - Vrela Ribnička on the outskirts of Podgorica. According to reports, living conditions in the camp are very harsh, with people living in makeshift shacks built from scraps of wood, tin and other materials. Currently, there are around 2 000 persons living in the Konik camp.

¹² Save the Children (2007), *Children Speak out: Trafficking risk and resilience in Southeast Europe*, Montenegro.

61. Child begging has also been identified as a problematic area in terms of THB and the Ombudsman's Office, together with the Office for the Fight against THB, initiated a study on this issue (see paragraph 79). The Police Directorate and the regional authorities attribute significant importance to the problem of begging and the actions "Stop prosjačenje" ("Stop begging") and "Prosjak" ("Beggar") have involved direct field work and communication with begging children, their parents and other relatives.

62. Further, when it comes to prevention measures, GRETA takes note of the concern expressed by NGOs according to which gender mainstreaming is not sufficiently present in the national anti-trafficking policy and domestic violence is a serious problem. In this context, GRETA wishes to stress that gender equality means not only non-discrimination on grounds of gender, but also positive measures to achieve equality between women and men. Equality must be promoted by supporting specific policies for women, who are more likely to be exposed to human rights violations such as physical violence, rape and trafficking for the purpose of sexual exploitation.

63. The Montenegrin authorities acknowledge the growing problem of trafficking for the purpose of labour exploitation, and in 2010 the Office for the Fight against THB organised a regional meeting of National Co-ordinators of Balkan countries on this issue. That said, the scale of this problem in Montenegro is yet unknown, and it is necessary to take specific measures to address it. There is also a low level of awareness about internal trafficking, both among stakeholders and the general public.

64. GRETA considers that the Montenegrin authorities should further strengthen the co-ordination between the national authorities and NGOs active in the field of action against THB to ensure that NGOs are involved in the planning and implementation of national policy.

65. Further, GRETA considers that the Montenegrin authorities should take further steps to ensure that the national action to combat THB is comprehensive, and in particular:

- **encourage more effective participation of all public bodies involved in the implementation of anti-trafficking measures at the national and local levels, and increase the co-ordination of their activities; in this context, it is important to further raise awareness of the Memorandum of Co-operation and the responsibilities arising from it;**
- **pay increased attention to preventive measures among vulnerable groups, such as the RAE community, internally displaced persons, and children without parental care residing in institutions;**
- **ensure that gender mainstreaming is reflected in the national anti-trafficking policy and practice;**
- **include in the National Strategy measures to address THB for the purpose of labour exploitation.**

66. GRETA also considers that the Montenegrin authorities should ensure that the status of the Office for the Fight against THB is clarified as a matter of priority and that the Office is put in a position to fulfil its co-ordinating mandate effectively. GRETA invites the authorities to invest in the human and financial resources of the Office so that it can effectively carry out the full range of tasks within their mandate.

67. Further, GRETA invites the Montenegrin authorities to introduce an independent evaluation of the National Strategy and Action Plans as a tool for assessing the impact of the activities and for planning future policies and measures to combat THB.

ii. Training of relevant professionals

68. The Office for the Fight against THB, with the professional and financial support of international partners and in co-operation with NGOs, organises workshops for representatives of the police, prosecution, judiciary, health care institutions, local authorities, teachers and NGO representatives on various issues tackling the problem of human trafficking. At the beginning of each year, the Office draws up a plan of training for state employees who may come into contact with victims of human trafficking. Based on this plan, the respective ministries and public bodies, independently or with financial aid and other support from international organisations, conduct training of their employees. According to the Memorandum on Co-operation, each State institution appoints staff members who attend specialised training and seminars and subsequently train their colleagues. At the end of 2008, training on the implementation of the Memorandum of Co-operation was provided to 12 medical workers, 12 police officers, 12 teachers and 12 social workers acting as contact persons at the regional level.

69. For judges, ongoing training provided by the Centre for Education of Holders of Judicial Functions includes the subject of THB as part of lectures on criminal matters. Lecturers are judges of the Supreme Court, local and international experts. Further, Montenegrin judges regularly participate in the work of national and international conferences and seminars which tackle the issue of human trafficking.

70. The subject of THB forms part of the regular curricula at the Police Academy in Danilovgrad. Further, officers of the Department for the Fight against Corruption and Organised Crime have participated in a number of conferences organised with a view of strengthening the professional capacities of staff directly involved in tasks and duties related to suppressing THB, seminars on the role of the police in identification, criminal prosecution trafficking for labour exploitation and forced begging, as well as in an ICMPD project entitled "Transnational referral mechanism for trafficked persons in South East Europe".

71. In 2010, three training courses were organised for staff of the Labour Inspectorate, the Protection at Work Inspectorate and representatives of Social Care Centres, with the aim of strengthening their capacities as regards preventing and identifying cases of THB for labour exploitation. These training courses were financed by the Office for the Fight against THB and were attended by 27 labour inspectors, 11 protection at work inspectors and 10 representatives of Social Care Centres from across the country.

72. Conflict and post-conflict affected areas are known to be propitious for organised crime activities, and in particular THB. In February 2011 the Office for the Fight against THB, together with the Ministry of Defence, introduced, as a part of regular training programmes for members of the Armed Forces of Montenegro who are being sent on peace-keeping missions, lectures tackling THB issues, with a particular focus on the identification of victims and their handling.

73. GRETA welcomes the efforts made by the Montenegrin authorities to train relevant professionals working in the field of prevention of THB and protection of its victims. Despite these efforts, NGOs have expressed concerns about the lack of a proactive attitude on the part of social workers and law enforcement officers and the prevalence of stereotypes which prevent them from identifying victims of trafficking. Furthermore, it would appear that professionals working with risk groups have not benefited from training on THB-related issues. GRETA notes that pursuant to the new Memorandum of Co-operation, the Ministry of Education and Sport and the Ministry of Health are expected to take part in the training of relevant professionals

74. **GRETA considers that the Montenegrin authorities should take further steps to improve the knowledge and sensitivity of relevant professionals about THB and the rights of victims, in particular social workers, law enforcement officials, lawyers, prosecutors, judges, etc. Future training programmes should be designed with a view to improving the knowledge and skills of relevant professionals which enable them to identify victims of trafficking, to assist and protect them, and to secure convictions of traffickers. During the training, particular attention should be paid to overcoming entrenched negative attitudes and prejudices vis-à-vis victims of trafficking.**

iii. Data collection and research

75. The human rights-based approach to anti-trafficking policies advocated by the Convention requires adequate monitoring and evaluation. An essential element is the regular availability of comprehensive statistical information on both trends in human trafficking and on the performance of main actors in the fight against trafficking. The collation of data from different state institutions and NGOs raises concerns about data protection, especially when personal data are involved. International standards have been set for the collection, storage, transfer, compilation and dissemination of data. In order to ensure full compliance with these standards, Parties are expected to apply appropriate measures and techniques of data protection. An additional requirement for human rights-based anti-trafficking policies is the conduct of research and analysis with special attention to the rights and interests of victims.

76. As noted in paragraph 22, the Office for the Fight against THB, as a co-ordination body, compiles data via the Tripartite Committee composed of representatives of the Supreme State Prosecutor's Office, the Supreme Court and the Police Directorate. The data concerns information on perpetrators, victims of THB and criminal proceedings. Further, the Office receives data from the State-funded shelter for victims of trafficking. The Office keeps unified records of cases of human trafficking, the number of complaints, indictments and judgments (with a breakdown into gender, age and nationality), as well as on victims of trafficking (with an indication of gender, age, type of exploitation and country of origin). Any NGO which has a suspicion or information that a person is a victim of trafficking has the possibility to inform the competent authorities. The NGOs which are signatories of the Memorandum are obliged to do so.

77. A statistical overview of the collected data is available on the site of the Office for the Fight against THB.¹³ It is noteworthy that the statistics are limited to persons who have taken part in criminal proceedings. As noted in paragraph 51, the definition of "victim of trafficking" under Montenegrin law is too narrow, as it requires that there be a final conviction for a trafficking offence. This significantly narrows the understanding of the problem and, in turn, the resources which are allocated to the protection and assistance of victims. The data collection should, therefore, be broadened to include victims of THB identified by NGOs and other relevant structures, regardless of whether criminal proceedings have been instituted and whether the persons have given testimony against the alleged perpetrators.

78. **GRETA considers that, for the purpose of preparing, monitoring and evaluating anti-trafficking policies, the Montenegrin authorities should develop and maintain a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical information from all main actors and allowing disaggregation (concerning sex, age, type of exploitation, country of origin and/or destination, etc.). This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection, including when NGOs working with victims of trafficking are asked to provide information for the national database.**

79. As far as research is concerned, a study was recently conducted by the Ombudsman's Office, in co-operation with the Office for the Fight against THB, on the issue of child begging, which at the time of GRETA's visit to Montenegro was expected to be discussed in Parliament. The study involved interviews with representatives of relevant institutions, as well as interviews with children found on the street begging or rambling. Its results indicate that children beggars, displaced persons and persons living in Montenegro on a humanitarian basis who come from war affected zones of former Yugoslavia are among the most vulnerable categories of the population when it comes to THB. Often with an unregulated legal status, without personal identity documents, health or social insurance, living in conditions of extreme poverty, with extremely poor or no education at all, and often not speaking the official language, these children are a high risk category as regards trafficking in human beings.

80. GRETA invites the Montenegrin authorities to continue conducting and supporting research on THB-related issues, as an important source of information for future policy measures. Areas where research is needed, in order to shed more light on the extent of the problem of THB, include trafficking for the purpose of labour exploitation and trafficking in children.

iv. International co-operation

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

82. Montenegro has signed bilateral agreements on mutual co-operation in criminal matters with Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, France, "the former Yugoslav Republic of Macedonia", Germany, Hungary, Mongolia, Poland, Romania, Russian Federation, Serbia, Slovakia, Slovenia, Spain and Turkey. Further, the Supreme State Prosecutor's Office has concluded agreements on co-operation in the fight against serious transnational crime and criminal acts against humanity (including trafficking in human beings) with the Prosecutor's Offices of Albania, Croatia, Italy, "the former Yugoslav Republic of Macedonia", the Russian Federation, Serbia and Ukraine and the European Union Rule of Law Mission in Kosovo* (EULEX).

83. Co-operation on the police level is carried out through Interpol Offices, the Liaison Officer of the Department for International Co-operation, Police Co-operation and European Integration of the Police Directorate of Montenegro and the Southeast European Law Enforcement Centre (SELEC). The Ministry of the Interior of Montenegro has concluded bilateral agreements on police co-operation with the respective Ministries of Austria, Croatia, Romania, the Russian Federation and Turkey, as well as agreements on co-operation in the fight against terrorism, organised crime, human trafficking and other criminal offences with Albania, Serbia and Slovenia. Staff of the Police Directorate of Montenegro dealing with activities in the fight against human trafficking are obliged to send information to the party which has submitted such a request.

84. The Law on International Legal Assistance in Criminal Matters regulates the treatment of requests for international legal assistance submitted by Montenegrin judicial bodies to the judicial bodies of other countries and vice versa. This is done via diplomatic channels or, if envisaged by an international agreement, through a competent body in a foreign country or directly to the competent foreign judicial body, with the obligation to provide a copy of the request to the ministry in charge. In emergency cases, a request for international legal assistance can be delivered and received via the National Central Bureau of Interpol. Furthermore, Montenegrin judges use professional contacts in order to deliver the requested information to their colleagues, so as to speed up the court procedure and avoid the long procedure of providing international legal assistance. International legal assistance includes extradition of accused and convicted persons, assignment and transfer of the criminal prosecution, enforcement of foreign criminal judgments, the submission of documents, written materials and other items related to criminal proceedings in a foreign country, as well as the execution of certain procedural actions, such as interrogation of the accused, witnesses and experts, crime scene investigation, search of premises and persons and temporary seizure of items.

85. The Police Directorate of Montenegro has participated in a number of proactive regional and international investigations with other police forces of the region, aimed at collecting evidence against perpetrators of trafficking, identifying potential victims and preventing sexual or labour exploitation. Officers of the Crime Police Department have conducted joint actions with police forces of other countries in the fight against human trafficking resulting in the apprehension of perpetrators and protection of potential victims. In 2008, in co-operation with the police of Kosovo*, the police operation "Kassandra" was carried out, in which five persons originally from Kosovo* were arrested (four in Montenegro and one in Kosovo*) on suspicion of committing trafficking aimed at sexual exploitation, and one potential victim was identified. Also in 2008, in co-operation with the Serbian Police, the police operation "Balkan Route" was carried out, during which four persons originally from Kosovo* and Serbia were arrested in Montenegro and two potential victims of trafficking, originally from Ukraine, were identified. In 2010, officers of the Crime Police Department carried out a police operation "Aphrodite", during which 16 persons were arrested and 13 potential victims of human trafficking were identified, originally from Serbia and Kosovo*. This operation involved co-operation with the police forces of Serbia and Kosovo*, via the National Central Bureaus of INTERPOL.

86. The Office for the Fight against THB is instrumental in promoting co-operation with international organisations and other countries. A number of projects in the area of international co-operation have taken place in recent years. The key international players in this area are the OSCE, ICMPD, IOM and USAID. The Office convenes periodic meetings of international donors, in order to share information, discuss future projects and co-operation possibilities.

87. GRETA commends the efforts made in the area of international co-operation and **invites the Montenegrin authorities to continue exploring possibilities for international co-operation in the fields of protecting and assisting victims of THB, and the investigation and prosecution of trafficking cases.**

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

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

a. Measures to raise awareness and discourage demand

89. In accordance with the Convention, measures to discourage demand for the services of victims of trafficking, especially women and children, should be understood as a positive obligation on Parties to adopt and reinforce such measures as regards THB for the purpose of any form of exploitation (see paragraph 108 of the Explanatory Report of the Convention). As it is stated in the Recommended Principles and Guidelines on Human Rights and Human Trafficking, strategies aimed at preventing THB shall address demand as a root cause of trafficking¹⁴.

90. Raising awareness about THB as a form of prevention has played a key part in the action taken by the Montenegrin authorities, in partnership with NGOs, foreign governments and international organisations (in particular the OSCE). A great number of campaigns and projects have taken place over the years, covering THB for the purposes of sexual and labour exploitation, of both adults and children, and taking place both transnationally and nationally.

¹⁴ Principle 4 of Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

91. Having in mind that Montenegro is a popular tourist destination, in September 2006 the Office for the Fight against THB, together with representatives of the tourist industry and in co-operation with the OSCE Mission to Montenegro, signed a Code of Conduct for the protection of children from sexual exploitation in travel and tourism. The Code is aimed at enhancing the commitment of tourism companies in Montenegro to join efforts in the fight against trafficking in children. This project also aimed to raise the awareness of the general public. During the first phase of the project, five round tables were organised, as well as a one-day training and the signing ceremony of the Code of Conduct. The second phase of the project involved a series of round tables aimed at training staff working in tourist companies and other service industry companies on how to recognise a human trafficking victim and how to adequately react. Each hotel and tourist agency has appointed persons who should continue to inform and train staff on the issue of the fight against sexual exploitation of children in tourism and ensure that the Code of Conduct is respected.

92. A campaign entitled “Stop Human Trafficking” is being continuously carried out on the entire territory of Montenegro, including broadcasting of a video which is also promoted by the Government’s SOS Hotline for victims of human trafficking. During this campaign, and in co-operation with the police, posters have been posted on the most frequent routes and locations all over Montenegro.

93. The SOS Hotline for victims of human trafficking is available 24/7, free of charge, both for potential victims of trafficking and for those who wish to learn more about this phenomenon. For its functioning, the Office for the Fight against THB allocates 3 000 Euros per year.

94. Further, the Office, together with the NGO Montenegrin Women’s Lobby, has run a project entitled “I understand you, I will help you” which dealt with the relationship between THB and drug abuse and included activities aimed at raising awareness of children and parents in five elementary schools.

95. With the aim of achieving continuity in raising public awareness, as well as marking the European Day of Fight against THB (18 October), an Action Plan for 2010-2011 proclaimed October as the month of fight against human trafficking. The Office for the Fight against THB initiated a campaign entitled “Art against Human Trafficking” in the secondary art school. The pupils’ works were presented at an exhibition on 18 October 2010, and were used to produce a calendar for 2011. An addition, in co-operation with the Ministry of Education and Sport, on 18 October, the first class in schools all over Montenegro was devoted to the topic of human trafficking.

96. The Office for the Fight against THB organises lectures on THB for primary and secondary school pupils in all parts of Montenegro and has received a license from the Education Institute for the implementation of the programme “Raising awareness on trafficking in children through the educational system” in all schools. The first phase of the project, involving 15 teachers who attended a three-day training programme, has been finalised. The training covered international standards, national legislation, institutional framework, inter-agency co-operation, prevention measures, practical examples from case law, and reintegration. The teachers, who were awarded trainer certificates for this specific topic, will be used as trainers for other teachers. Further, a draft manual for teachers on best methods of transfer of knowledge on THB issues to pupils was produced.

97. The Office for the Fight against THB has concluded an agreement with the Ministry of Education and Sport pursuant to which, as of 2012, the subject of THB will be included in the civic education programme. Further, the Office, in co-operation with the UNICEF Office in Podgorica, has recently produced a leaflet entitled “You should know” which informs children and young people of the risks of trafficking and behaviour to adopt to avoid becoming a victim (including contact numbers).

98. Reference should also be made to the Joint Declaration on the fight against trafficking and prostitution of young people in Nikšić, which was signed in February 2011 by the Municipality of Nikšić, the Police Unit of Nikšić, the Centre for Social Work, the Bureau of Work and SOS Centre for Women and Children Victims of Violence Nikšić. Moreover, on 16 December 2011, the Parliamentary Committee for Gender Equality organised a thematic meeting dedicated to the Council of Europe Convention on Action against Trafficking in Human Beings, on the occasion of the campaign “16 days of activism against violence against women”.

99. As noted in paragraph 79, the study by the Ombudsman’s Office has highlighted the particular vulnerability of children begging on the street. This problem is particularly accentuated during the tourist season in the coastal parts of the country. The Office for the Fight against THB, together with the Ombudsman’s Office, has initiated the campaign “Do not give money to children in the streets - that’s not the way to help them”. Further, prevention activities include training and peer-to-peer educational activities.

100. A Protocol of Co-operation was signed between the Office for the Fight against THB and the Union of Employers of Montenegro in April 2011, with a view to jointly combating THB. The Protocol envisages joint activities aimed at informing both employers and employees, in particular foreign nationals who take up seasonal jobs in Montenegro, of the risks of trafficking, with a special focus on prevention of labour exploitation. GRETA welcomes this development.

101. The criminalisation of the known use of services of victims of trafficking through the introduction of Article 444, paragraph 7, of the CC in 2010, is a positive development (see also paragraph 177). That said, GRETA notes that there is need to step up efforts to discourage demand for the services of victims of THB as a form of prevention.

102. GRETA welcomes the efforts made by the Montenegrin authorities in the area of prevention of THB, in particular in the context of education in elementary and secondary schools, as well as public awareness campaigns. **GRETA considers that future actions in the area of awareness raising should be designed in the light of the assessment of previous measures and be focused on the needs identified. Awareness-raising campaigns, education in schools and training of relevant professionals should aim at promoting gender equality and eradicating gender-based violence and the stigmatisation of victims of trafficking.**

103. Further, **GRETA considers that the Montenegrin authorities should continue their efforts to discourage demand for services from trafficked persons.**

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

104. The Montenegrin authorities have reported a series of measures aimed at prevention amongst vulnerable groups, such as refugees and displaced persons, as well as Roma, Askali and Egyptians (RAE).

105. According to statistics from the Bureau for the Care of Refugees, there are some 3 800 persons registered as “Displaced Persons” (DPs) from Croatia and Bosnia and Herzegovina, and 9 300 registered as “Internally Displaced Persons” (IDPs) from Kosovo*. Following the independence of Montenegro, the DPs and IDPs have not been granted legal status as refugees, which represents a serious obstacle for their access to public services. A National Strategy for the Permanent Resolution of Refugee and Internally Displaced Persons’ Problems was adopted in March 2005. It provides for three solutions: repatriation, local integration and transfer to third countries.

106. Further, in September 2009 the Government adopted an Action Plan for the Resolution of the Status of DPs from the former Yugoslav Republics and of the Status of IDPs from Kosovo* in Montenegro. It creates a mechanism for DPs and IDPs to have access to the status of foreigner with permanent residence. However, the number of persons who have been granted resident status remains low, due to difficulties in fulfilling the very demanding document requirements. The Government Decree on the rights of DPs from former Yugoslav Republics and IDPs from Kosovo*, which is applicable from 1 January 2012, entitles such persons residing in Montenegro to exercise the same rights as Montenegrin citizens until their status is regulated in accordance with the Law on Foreigners. This concerns, *inter alia*, the right to employment and insurance against unemployment, the right to education and professional development, the right to social care and child protection, and the right to medical care and health insurance. There is also a Project for providing social care support to DPs and IDPs, in co-operation with the United Nations High Commissioner's Office for Refugees, a programme of support through subsidised electricity bills and a programme for providing free school books to children.

107. With the aim of improving the status of the RAE population and their integration into Montenegrin society, in 2005 the Government adopted the National Strategy and Action Plan "Roma Inclusion Decade 2005-2015". It concerns education, health protection, employment and accommodation measures, in particular as regards children. The Ministry for Human and Minority Rights is carrying out activities in the area of improvement of the status of the Roma population, which include encouraging children to join the education system through a financial incentive (for primary school children 50 Euros, for secondary school pupils 75 Euros, and for university students 150 Euros per person per month), as well as by guaranteeing them employment after graduation. The Ministry also finances an SOS Hotline, which is anonymous, free of charge and available 24/7, for children of the Roma community who find themselves in a threatening situation. The SOS Hotline is operated by the NGO "Roma Alliance", reporting to a Working Group composed of representatives of relevant ministries and the Police Directorate.

108. Further, in November 2007, the Government adopted a Strategy for Improvement of the RAE Population Status (2008-2012). It contains legal, political, economic, social, educational, cultural-informative and health measures, and defines stakeholders and financial resources.

109. It is noteworthy that the Ministry of Education and Sport has initiated a legal provision which sanctions parents who fail to send their children to school. As regards children who are displaced persons, some flexibility is given to school principals, taking into account that such children often do not have legal status.

110. The Montenegrin authorities have also reported measures taken with a view to improving the RAE population health status. A database system has been introduced, enabling updating of information on health conditions, rights and programmes intended for the RAE population. Health education programmes for women from the RAE community, including on reproduction and motherhood, are given by Support Centres.

111. Moreover, the Ministry of Labour and Social Welfare has taken a series of measures directed towards the protection of vulnerable groups, such as disabled persons, children without parents, children with disabilities or behavioural disorders, abused or neglected children, and families in need of a particular form of social care. The 2005 Law on Social Care and Child Protection provides for financial support to families, personal disability allowance, accommodation in a foster institution or foster family, support for education and upbringing of children and youth with special needs, etc. The adoption of the new Law on Social Welfare and Child Protection is expected to bring improvements in the field of social and child protection and contribute to the protection to victims and potential victims of human trafficking. The new Law will introduce social and child protection services in the community and will involve many different actors in the provision of services. The Law sets out a procedure for obtaining licenses for organisations in the field of social and child protection, as well as procedures for the accreditation of training programs. It also provides minimum standards for the provision of social services and child protection.

112. The Montenegrin authorities have also referred, amongst others, to the Strategy for Development of Social Care and Child Protection (2008-2012), the Strategy for Integration of Persons with Disabilities (2008-2016), and the Strategy for Development of Social Care for the Elderly (2008-2012), which are aimed at de-institutionalisation and development of services on local level. Further, the Strategy for Prevention of Domestic Violence was adopted by the Government of Montenegro on 30 June 2011. As part of this strategy, it is planned to introduce an SOS line for victims of domestic violence at the national level by the end of 2012. The Ministry of Labour and Social Welfare is also working on the implementation of the Strategy for Protection against Domestic Violence, the Strategy for the Development of Foster Care, and Strategies for Permanent Resolution of Issues of Refugees and Internally Displaced Persons with special reference to the area of Konik.

113. Further, the GRETA delegation was informed by the Ministry for Minority Rights (Office of Gender Equality) of steps taken to develop the legislative framework and to organise awareness-raising campaigns and educational activities. As regards in particular the RAE population, the Ministry is working with NGOs (such as the Foundation for Roma Scholarship and the Roma Council) to combat prejudice and provide training.

114. GRETA welcomes the above-mentioned economic and social protection measures taken by the Montenegrin authorities vis-à-vis groups vulnerable to THB. Nevertheless, **GRETA considers that there is scope for strengthening such measures on the basis of the identified root causes of THB (economic and social conditions, poverty, inadequate education, absence of employment opportunities, etc.).**

115. **GRETA also urges the Montenegrin authorities to ensure the registration of all children at birth, as a preventive measure against trafficking. Further, GRETA urges the Montenegrin authorities to take steps to secure the registration of all persons from vulnerable groups for social services, both as a prevention measure and in order to avoid re-trafficking.**

c. Border measures to prevent THB and measures to enable legal migration

116. The Border Police Sector performs the control of entry of foreign citizens into Montenegro, their exit from Montenegro, their movement and stay in Montenegro, as well as their employment and work. Officers of the Border Police follow training courses at the Police Academy in Danilovgrad, with the aim of detecting cases of human trafficking at border crossings, and have also been provided with training by the IOM and the NGO Women's Safe House. Border Police officers have been provided with a pocket card containing information on the indicators of trafficking in human beings and the differences between people smuggling and human trafficking. The Border Police Sector does not conduct investigations. Upon detecting a potential victim of human trafficking, Border Police officers notify the Department for Combating Organised Crime and Corruption, which takes over the case.

117. In the context of the harmonisation of the visa regime with the recommendations of the European Commission and standards of the European Union, the Ministry of Foreign Affairs and European Integration, in co-operation with other competent bodies, started to apply in early 2008 the "White Schengen List", harmonising the issuing of visas to foreigners for their entry, transit and stay in Montenegro. With a view to preventing illegal migration, the Montenegrin authorities have limited the issuing of visas at border crossings and have introduced more stringent procedures for the issuing of visas to citizens from the so-called 'black lists' (countries at risk).

118. The procedure for issuing visas requires the submission of documents which are forwarded by the Ministry of Foreign Affairs and European Integration to inspectors for foreigners at the Police Directorate, who give their opinion as to whether the applicant should be permitted to enter and stay in Montenegro. A brochure entitled "Essential information for foreign citizens coming to Montenegro" has been produced by the Montenegrin authorities, with assistance from the EU; it contains, *inter alia*, the number of the SOS line for victims of human trafficking.

119. The Ministry of Foreign Affairs and European Integration provides training to staff employed in diplomatic and consular offices. Particular attention is paid to the procedures for issuing of visas, interviewing techniques, detection of forged identity documents, and other measures relevant to the fight against illegal migration and trafficking in human beings. The Ministry of Foreign Affairs and European Integration, in co-operation with the Ministry of Interior and the Police Directorate, has participated in meetings and seminars with experts from the immigration services of different European countries.

120. According to the Montenegrin authorities, illegal migration via Montenegro to third countries has been significantly reduced, which has largely contributed to proposing Montenegro for a final visa liberalisation regime with the EU. Montenegro fulfilled the visa liberalisation benchmarks set by the EC and a visa-free regime for Montenegro was introduced on 19 December 2009.

121. As regards Montenegrin nationals, the Office for the Fight against THB, together with the Ministry of the Interior and the NGO “Women’s Safe House”, have produced a brochure entitled “Manual for Safe Travel” and fliers with information relevant to the prevention of human trafficking. These materials, which contain useful contact numbers and advice for safe travel in foreign countries, are distributed along with the issuing of passports to Montenegrin citizens.

122. While welcoming the measures already taken by the Montenegrin authorities, **GRETA considers that the authorities should make further efforts to:**

- **detect cases of THB in the context of border control;**
- **introduce a checklist to identify potential THB-related risks during the visa application system;**
- **provide regular training to Border Police officers with a view to improving their capacity to detect potential victims of trafficking.**

123. **Further, GRETA invites the Montenegrin authorities to consider carrying out information campaigns to alert potential foreign victims of THB-related risks, in co-operation with countries of origin.**

d. Measures to ensure the quality, security and integrity of travel and identity documents

124. Montenegro’s candidature for accession to the EU has been accompanied by a process of harmonisation of Montenegrin identity, travel and other personal documents with EU requirements. The Law on Travel Identity Documents - Passports, in force since 5 May 2008, provides for the issuing of machine-readable passports, including biometric data and fingerprints, and a contactless chip. The passports are compliant with the International Civil Aviation Organisation (ICAO) standards and Council Regulation (EC) No 2252/2004 on standards for security features and biometrics in passports and travel documents issued by the Member States.

125. The process of issuing of ID documents to Montenegrin citizens involves submitting a request to a branch office of the Ministry of Interior, along with other documents, which is followed by a procedure for submitting relevant alphanumerical data and a digital photograph, digitalised signature and fingerprints. The data are directly transferred via a unique computer network into a central database in Podgorica. The personalised identification document is forwarded to the respective branch office of the Ministry of Interior which hands over the document to its future holder, whose identity is verified by his/her fingerprints. The Montenegrin authorities have taken a series of measures to ensure observance of the above-mentioned rules, such as an anti-corruption training programme for relevant officials, which includes familiarisation with the Code of Ethics of civil servants and state employees.

126. Information on lost and stolen travel documents is forwarded to the Police Directorate/National Bureau of Interpol in Podgorica and the data is entered into the Interpol Database System.

127. There are various devices for the detection of fraudulent documents at border crossings. For example, four border crossings (the airports of Podgorica and Tivat, the international port of Bar, and the border crossing with Croatia “Debeli brijeg”) are equipped with the device Docubox Dragon Pia 5/CIAO/IPI/PC which has various possibilities for detecting forged travel documents. At all border crossings, border police officers have the possibility to control the data by means of verification in the national and Interpol’s databases of stolen identity documents. Further, since 2008, the Police Directorate operates a Forensic Centre in Danilovgrad, which includes a group for verification of documents, handwriting and information technologies. This Group is staffed with trained professionals and has the needed equipment for examining travel and identity documents.

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

a. Identification of victims of trafficking in human beings

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

129. The process of identification of potential victims of human trafficking is launched by officers of the Police Directorate on the basis of information/evidence collected by them, provided by the police services of other countries, following a statement of the potential victim, or on the basis of information from a non-governmental organisation. In all cases, the police must be informed of the presence of a potential victim of human trafficking, in order to file criminal charges against traffickers. The signatories of the Memorandum of Co-operation are obliged to file a report in line with Article 227 of the Code of Criminal Procedure (CCP) in case they deem that there is a suspicion that a criminal offence related to THB was committed.

130. The potential victim has the status of an “injured party” by virtue of the CCP and is considered to be a potential victim of human trafficking until a valid court sentence is declared which finds the offenders guilty of a human trafficking criminal offence. According to the Montenegrin authorities, persons assumed to be potential victims of trafficking are informed by the Police of their rights, in a language they understand, in order to be able to make a decision favourable to their interests, regardless of whether they want to testify or not. Information brochures on the services available to victims of THB have been prepared by the Office for the Fight against THB and other institutions in the languages most commonly spoken by victims (Montenegrin, Russian, Albanian and English).

131. Pursuant to the Memorandum of Co-operation, the Police should contact the staff of the shelter for victims of THB run by the NGO Montenegrin Women's Lobby (or another shelter run by an NGO which has signed the Memorandum) and escort the potential victim to the shelter where accommodation and other services are provided. According to the Montenegrin authorities, police officers respect the privacy and human rights of potential victims of THB and aim to create optimal conditions for the potential victim to provide a statement (testimony) with the least possible trauma. Within the framework of their competences, police officers take measures to protect potential victims, their relatives and staff of the shelter throughout the activities related to the collection of information. The Police Directorate also launches a procedure for issuing the potential victim with a temporary residence permit and, if necessary, with personal identity documents. The Police Directorate should inform the State Prosecutor of all the actions taken with regard to potential victims of trafficking.

132. As regards children potential victims of trafficking, according to the Montenegrin authorities, the Police would contact the competent Social Welfare Centre and together they would form a team to provide the child with administrative, legal, socio-psychological and other forms of support. In the absence of a specialised shelter for children victims of trafficking, such children are housed in the existing social care facilities used to accommodate children without parental care, or in the shelter for trafficking victims run by the NGO Montenegrin Women's Lobby (see paragraph 142). Pursuant to the Family Law, everyone shall act in the best interest of child in all child-related activities, and the State should take all the necessary measures to protect the child from neglect, abuse and exploitation. Further, Montenegrin law provides for the appointment of a legal guardian by a custodial body.

133. The Police Directorate plans the conduct of operations and the regular control of hotels, restaurants and "hospitality facilities" to collect information on possible criminal activities related to sexual exploitation, mediation in prostitution, etc. The Police Directorate also collects information on possible trafficking for labour exploitation through checks of the entry, departure and movement of foreign citizens in Montenegro, including their employment. In addition, it performs controls of street begging in the aim of collecting information on whether it is voluntary or forced.

134. That said, according to NGOs, there is insufficient outreach work and a lack of proactive approach in the identification of potential trafficking victims, in particular as regards social workers. By way of example, the GRETA delegation was informed that forced marriages of teenage girls from the RAE population are seen as "part of their tradition" and therefore not requiring intervention by the public authorities. Following the country visit, the Montenegrin authorities informed GRETA that two cross-border cases of alleged forced marriages of Roma girls, originally from Kosovo*, were investigated in the second half of 2011 - the first half of 2012. In the first case, the girl was found on the territory of Podgorica by the Police Directorate, which filed a criminal complaint against a person of the Roma population residing in the camp Konik for marrying a minor. The girl was assisted at the shelter for victims of human trafficking, the Social Welfare Centre in Podgorica appointed her a guardian, and after a period of reflection she returned to Kosovo* through the intermediary of a local social welfare centre. The second girl, who resided in the camp Konik, was identified as a potential victim of human trafficking at the border crossing point between Serbia and Hungary. She was returned to Montenegro and was given a recovery and reflection period at the shelter for victims of human trafficking before returning to her family in the camp Konik. Criminal proceedings were initiated in Serbia against a Serbian citizen for the criminal offence of trafficking in human beings. Further, Serbia has reportedly identified one Montenegrin girl of Roma origin as a victim of human trafficking. She was also placed in the shelter in Podgorica and later involved in a reintegration programme run by the NGO SOS Nikšić.

135. As noted above (see paragraph 49), the legal status of a victim of trafficking is assigned if it is proven that the person concerned was subject to trafficking pursuant to Articles 444 or 445 of the CC, i.e. in case of a valid court sentence. As a result, the number of persons formally identified as victims of trafficking depends on the success of investigations, prosecutions and convictions. In this context, NGOs providing assistance to victims of trafficking have pointed to the existence of a high level of mistrust amongst potential victims in the system. The involvement of officials and police officers in some presumed cases of human trafficking may be one of the reasons for low confidence in the police and a reluctance of trafficking victims to seek assistance. As a result, potential victims, who have to go through criminal proceedings and may be confronted with prejudices and gender stereotypes on the side of police officers, prosecutors and judges, often prefer to return to their countries rather than being identified formally as victims of trafficking. In consequence, the number of identified victims of trafficking in Montenegro is very low (see paragraph 10).

136. Reference is also made to the 2011 Progress report concerning Montenegro's application for EU membership, in which the European Commission noted that "some progress has been made with regard to trafficking in human beings", but "identification and protection of victims, especially children, and other vulnerable groups need to be strengthened considerably."¹⁵

137. GRETA notes that the identification of victims of trafficking in Montenegro is done purely from a law enforcement perspective, without the involvement of multi-disciplinary expertise, which is contrary to a human rights-based and victim-centred approach required by the Convention. GRETA concludes that the current system of identification of trafficking victims in Montenegro is not sufficiently effective, as it risks leaving out those who do not want to co-operate with the police and take part in criminal proceedings against the alleged traffickers, as well as victims of traffickers who cannot be prosecuted.

138. In light of the above, **GRETA urges the Montenegrin authorities to:**

- **disconnect victim identification from criminal proceedings** (see also paragraph 52 concerning the definition of victim of THB);
- **strengthen multi-agency involvement in victim identification by introducing a national referral mechanism which defines the roles and procedures of all frontline staff who may come into contact with victims of trafficking;**
- **provide frontline staff with operational indicators, guidance and toolkits to be used in the identification process; these indicators should be regularly updated in order to reflect the changing nature of victimhood of human trafficking;**
- **develop multi-agency training on the identification of victims for frontline staff (including law enforcement officials, labour inspectors, social workers, medical staff, staff of special institutions for children and NGOs);**
- **ensure that law enforcement officials, social workers, labour inspectors and other relevant actors adopt a more proactive approach and increase their outreach work to identify potential victims of trafficking.**

¹⁵

European Commission, *Montenegro 2011 Progress Report*, Bruxelles 12 October 2011, SEC(2011) 1204 final.

b. Assistance to victims

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

140. Pursuant to the Memorandum on Co-operation, all signatories undertake to provide assistance to potential victims of trafficking, regardless of whether they co-operate in the investigation or participate in criminal proceedings. Each signatory is assigned specific tasks in annexes to the Memorandum. Thus the Ministry of Health undertakes to provide, in public health institutions, assessment of the health of potential victims of THB, diagnostic checks and treatment. The Social and Child Protection services are responsible for assessing the social and economic status of potential victims, as the basis for the approval of one-time pecuniary aid (which is provided only to formally confirmed victims of THB), determining the legal grounds for the appointment of a guardian, and developing individual protection plans for potential victims, in co-operation with the other signatories of the Memorandum. The obligations of the Police Directorate have already been indicated in paragraph 131. As regards NGOs, they undertake to provide support to potential victims for the entire duration of criminal proceedings, including accommodation and psychological, social and legal assistance.

141. Up until 2004, the IOM funded a shelter for victims of trafficking, which was managed by the NGO Dom Nade. In 2004, following a tender, the NGO Montenegrin Women's Lobby won a contract for the running of the shelter for victims of trafficking. Initially, the funding continued to be provided by the IOM, but since 2006, the Montenegrin Government has taken over the full financing of the shelter, through the budget of the Office for the Fight against THB (see paragraph 21). The Office covers the expenses for rent, utility costs and salaries of staff, regardless of whether there are persons accommodated in the shelter. This implies a fixed amount of expenses that the Office allocates for the shelter, while the remainder of the expenses depends on the number of persons accommodated and the length of their stay in the shelter.

142. The GRETA delegation visited the shelter for victims of trafficking in Podgorica, which is the only specialised facility of this type in the country. It employed five full-time staff (including a lawyer). The shelter had two bedrooms with three beds each, and an additional bedroom on an upper floor which could accommodate up to six persons in case of need. It became clear that over the years, the shelter had been used to accommodate different categories of persons (e.g. irregular migrants and victims of domestic violence). Up to 17 persons had been accommodated at the shelter at a given time, some of them sleeping on mattresses on the floor. The GRETA delegation was concerned by the presence of bars on the windows, the lack of privacy, and the mixing of women, men and children, as well as victims of trafficking and other categories of persons.

143. After GRETA's country visit, on 17 April 2012, the Office for the Fight against THB closed the above-mentioned shelter. GRETA was informed by the Montenegrin authorities that, following a public tender, as of 15 May 2012, the Office has started renting another house, which is reportedly more adequate for accommodating victims of human trafficking. The house is said to have separate facilities for children and adults, and can hold up to 20 people. In the interim period, alternative accommodation was provided to victims of trafficking by the Office through another NGO.

144. Staff at the shelter which was visited by the GRETA delegation explained that they accepted persons who were referred to the shelter by the police or another public body. In principle, victims of THB could remain at the shelter until the end of criminal proceedings, but the majority preferred to leave earlier. In rare cases, some persons had spent several months at the shelter. The shelter provided food, clothing, personal hygiene items and medication, if necessary. Staff also tried their best to offer some activities (e.g. cooking, sewing), but in general there was a shortage of activities which could help the victims' rehabilitation and reintegration.

145. According to information provided by the Office of Fight against THB, the number of presumed victims of trafficking accommodated in the shelter was eight in 2004, 16 in 2005, six in 2006, nine in 2007, three in 2008, three in 2009, 14 in 2010 and three in 2011.

146. As regards the provision of medical care to victims of trafficking, GRETA notes as a positive step the adoption of a decree pursuant to which potential victims of trafficking, who are not insured in line with the Law on Medical Insurance, are provided with urgent medical care free of charge. In case the potential victim is a citizen of a country with which Montenegro has signed a bilateral agreement on social insurance, the expenses are covered in line with this agreement. In all other cases, medical expenses are covered by the Office for the Fight against THB.

147. That said, NGO representatives providing services to potential victims of trafficking expressed concern about the lack of knowledge at the local level of the roles and responsibilities under the Memorandum of Co-operation, in particular amongst medical professionals and social workers. As a result, NGOs stated that "everything is done on the basis of personal contacts". Ministry of Health officials met during the country visit to Montenegro confirmed the need for training of medical professionals on how to identify and assist victims of trafficking.

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

- **ensure that conditions provided in shelters for victims of trafficking are adequate and adapted to their special needs. In this context, better balance should be struck between the need to place victims of THB in a safe accommodation and the need to achieve their recovery and rehabilitation; this requires greater awareness among staff working with such victims as regards the need to respect the victims' privacy and to assist in their rehabilitation;**
- **facilitate the reintegration of victims of trafficking into society and avoid re-trafficking by providing them with vocational training and access to the labour market;**
- **improve the system for providing assistance to child victims of trafficking, both in terms of accommodation and as regards medium and long-term support programmes tailored to the needs of the children;**
- **ensure that all the signatories of the Memorandum of Co-operation effectively fulfil their responsibilities related to the provision of assistance to potential victims of trafficking;**
- **provide training to all professionals responsible for the provision of assistance and protection measures to victims of trafficking.**

c. Recovery and reflection period

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

150. Pursuant to Article 51 of the Law on Foreigners, a foreign national who is victim of THB cannot be expelled due to his/her illegal entry or residence in Montenegro. The only provision which refers to a recovery and reflection period for victims of trafficking is contained in the Instruction on the conditions and manner of regulating the residence of foreign nationals victims of trafficking, Article 6 of which states: "When submitting a request for the first time, temporary residence is granted for a period of three months (recovery and reflection period)." However, the Montenegrin authorities have informed GRETA that after the entry into force of the Law on Foreigners, this Instruction became redundant and has been rescinded.

151. According to information provided by the Montenegrin authorities, all victims of trafficking identified in 2008-2010 were granted a recovery and reflection period. The Montenegrin authorities have indicated that the victims were given special protection and assistance during this period.

152. **GRETA urges the Montenegrin authorities to review the legislation in order to ensure that the recovery and reflection period provided for in Article 13 of the Convention is specifically defined in law.**

153. Further, **GRETA urges the Montenegrin authorities to ensure that trafficked persons are systematically informed of the possibility to use this recovery and reflection period and are effectively granted such a period.**

d. Residence permits

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

155. By virtue of Article 51 of the Law on Foreigners, a temporary residence permit on humanitarian grounds can be granted to a foreign national who is considered to be a victim of THB, as well as to a minor who has been abandoned or is a victim of an organised crime. The granting of a temporary residence permit may be refused for reasons of national security and public order. The temporary residence permit is granted for a period of three months to one year. An extension is possible if the grounds for granting the permit persist. Article 9 of the Rulebook on procedures for granting temporary and permanent residence and issuing travel and other documents to foreigners prescribes that a temporary residence for humanitarian reasons is granted on the basis of adequate evidence from a legal person (international organisation, NGO or public authority) that provides assistance and protection to the victim or the competent authority confirming that the victim co-operates in disclosing criminal acts.

156. The Law on Foreigners prescribes that a permit for temporary residence in Montenegro is issued by the Ministry of Internal Affairs, with prior approval of the Police Directorate. Victims of trafficking can submit requests for residence permits personally or through a legal representative. In the case of children, the request must be signed by a legal guardian or a legal representative. In the case of a first-time request, the permit is granted for a period of three months.

157. The statistics provided by the Montenegrin authorities show that no victims of trafficking were issued a residence permit in 2006-2010. According to the authorities, the victims had either arrived in Montenegro with documents which allowed them to stay legally and work in the country for a fixed period of time or had residence in Montenegro.

158. GRETA urges the Montenegrin authorities to ensure that victims of THB can take full advantage of the right to be granted a renewable residence permit.

e. Compensation and legal redress

159. Article 15 of the Convention establishes the obligation for Parties to provide in their internal law for the right of victims of trafficking to legal assistance and free legal aid. Parties must also provide for the right of victims of trafficking to compensation from the perpetrators as well as adopt legislative or other measures to guarantee compensation for victims from the State. A human rights-based approach to action against THB entails the effective prosecution of traffickers, putting the emphasis on the right to effective remedy for the victim. Further, Article 15(1) of the Convention establishes that victims of trafficking must have access to information on relevant judicial and administrative proceedings in a language which they can understand.

160. Pursuant to the Law on Free Legal Aid, a victim of trafficking is entitled to legal counselling, support in drafting documents, the right to have an attorney before the court, prosecutor and Constitutional Court, as well as the right to a waiver of procedural expenses. These rights are guaranteed without it being necessary to assess the victim's financial status.

161. By virtue of the Code of Criminal Procedure (CCP), a victim of THB can file a claim for compensation of material and non-material damages. The claim is considered in the course of the criminal proceedings, parallel to deciding on the culpability of the offender. A victim may also file a compensation application in a civil litigation procedure, in accordance with the provisions on compensation of damages in the 2008 Law on Obligatory Relations.

162. The Law on Ratification of the Council of Europe's Convention on Compensation of Victims of Violent Crimes, which came into force in respect of Montenegro on 1 July 2010, envisages the adoption of a special law for the establishment of a system for compensation of victims of violent crimes. This compensation scheme will be provided by the State in cases when no compensation has been received from other resources. In December 2011, the Montenegrin Government approved a draft Law on Compensation for Damages to Victims of Crime. The draft was open to public debate and has been sent for expert opinion to the Council of Europe and the European Commission. The work plan of the Government for the fourth quarter of 2012 envisages the adoption of the final draft. The law will apply, *inter alia* to victims of THB.

163. Further, the new CCP contains provisions on the procedure for temporary seizure and confiscation of assets from perpetrators of criminal offences committed within a criminal organisation (Article 401 of the CC) and other criminal offences prescribed in Article 113, paragraph 3, of the CC. The conditions and manner for seizing assets are stipulated in Article 113 of the CC, paragraph 2 of which provides for a reversed burden of proof of the origin of criminal assets (extended powers of confiscation). That said, as far as GRETA could ascertain, there have been no confiscations of assets of traffickers (see also paragraph 181).

164. Despite the existence of legal possibilities for compensation of victims of THB, this aspect remains largely unexplored. GRETA notes that there has been no compensation granted to victims of THB to date. The GRETA delegation was informed by representatives of NGOs that victims of trafficking are generally not aware of the possibility to claim compensation and that, in practice, compensation is very difficult to obtain. NGOs reportedly do not have the means to help victims claim compensation. In this context, the Montenegrin authorities have pointed out that if a victim files a claim for compensation for pecuniary/non-pecuniary damages, the court decides on the claim based on an oral, direct and public debate. The adoption or rejection of the claim depends exclusively on whether the claim is justified, and the court decides at its own discretion what facts are considered proven. In civil proceeding the court is bound by the final judgment of the court that declared the defendant guilty.

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

166. Further, bearing in mind that no victims of trafficking have received compensation from the perpetrators, GRETA encourages the Montenegrin authorities to set up a State compensation scheme accessible to victims of THB, as envisaged by the draft Law on Compensation for Damages to Victims of Crime.

f. Repatriation and return of victims

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

168. The repatriation and return of victims of trafficking is defined by the Memorandum of Co-operation, as well as the Transnational Referral Mechanisms (TRM). The process of return must be voluntary and safe. According to the Montenegrin authorities, the following possibilities for repatriation/return exist: from government to government (via co-operation of the law enforcement bodies); via an international organisation; jointly by a governmental body (e.g. Office for the Fight against THB) and a non-governmental or international organisation.

169. The plan of reintegration of victims of THB, which is established in accordance with the Memorandum of Co-operation and the TRM, should be drawn up in co-operation with the victim and is based on his/her needs. The Office for the Fight against THB, together with the signatories of the Memorandum on Co-operation, is in charge of elaborating the plan of reintegration. The victim is given a possibility to contact a representative of a partner organisation in the country of origin, who meets him/her upon return.

170. According to the Montenegrin authorities, in the period 2004-2011, all foreign victims of THB in Montenegro were repatriated to their countries of origin or to another country. That said, GRETA understands that the IOM Office in Podgorica no longer has a programme for assisted voluntary return from Montenegro.

171. GRETA considers that the Montenegrin authorities should take additional steps to implement the institutional and procedural framework for the repatriation and return of victims of THB, with due regard to their safety, dignity and protection. Particular attention should be paid to ensuring financial means for the travel of victims of THB.

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

a. Substantive criminal law

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

173. As noted in paragraph 41, trafficking in human beings is criminalised by Article 444 of the CC. By virtue of Article 444, paragraph 1, the basic offence of THB is punished by imprisonment for a term of one to 10 years. The aggravating circumstances provided for in Article 444, paragraphs 3 to 8, concern children (where the envisaged penalty is imprisonment for a minimum term of three years); causing serious bodily injury (sanctioned by imprisonment from one to 12 years); causing death (imprisonment for a minimum term of 10 years); and committing the offence by more than one person (imprisonment for a minimum term of five years). Where a minimum term of imprisonment is set by the previously-mentioned provisions, the maximum sentence envisaged is 20 years of imprisonment.

174. However, two aggravating circumstances provided for in the Convention are omitted from the text of Article 444 of the CC, namely when the offence is committed by a public official in the performance of his/her duties and when it deliberately or by gross negligence endangered the life of the victim. As regards the former, the Montenegrin authorities have referred to Article 416 of the CC, which covers in general criminal offences committed by public officials in violation of or failure to fulfil their duties, and which envisages penalties of up to 10 years of imprisonment. In case of a THB offence being committed by a public official, there would be a concurrence of offences and the sentence would be a combination of sentences for each offence. Similarly, there would be a concurrence of offences if the life of the victim was endangered intentionally or by gross negligence, in case of a serious bodily injury or death of the victim, or if there was an occurrence of transportation in poor conditions where the life of the victim was endangered: for example, Article 155 of the CC (exposure to danger) or Article 157 (denial of help) will apply. **Nevertheless, in order to be fully consistent with requirements under Article 24 of the Convention, GRETA considers that the Montenegrin authorities should include commission of a criminal offence of THB by a public official in the performance of his/her duties and deliberately or by gross negligence endangering the victim's life as aggravating circumstances.**

175. The Montenegrin authorities have indicated that previous sentences for the crime of THB - issued either by other countries' courts or courts in Montenegro - can be taken into consideration by Montenegrin courts as an aggravating circumstance when determining the penalty for a new crime committed by the person concerned. Imprisonment or any other form of deprivation of liberty in relation to the criminal offence, as well as the sentence which the perpetrator has served by the ruling of a foreign country's court, is counted into the sentence rendered by a domestic court for the same criminal act. The court receives information about previous judgments pronounced in other countries through international legal assistance, in accordance with the Law on International Legal Assistance in Criminal Matters (see paragraph 84). Courts forward and receive letters rogatory for international legal assistance to foreign judicial authorities through the Ministry of Justice

176. As regards the criminalisation of acts relating to travel or identity documents, pursuant to Article 444 of the CC, “keeping back” of identity documents is one of the means for committing human trafficking. Further, Articles 412 to 415 of the CC criminalise the falsification of documents, which is one of the actions provided for under Article 20 of the Convention. In this respect, GRETA would like to stress that the wording of Article 20(c) of the Convention clearly places an obligation on Parties to adopt such legislative and other measures as may be necessary to establish as criminal offences retaining, removing, concealing, damaging or destroying a travel or identity document of another person. The Explanatory Report to the Convention (paragraphs 241 and 242) states that Parties are only free to decide whether this offence should also include similar actions in respect of a fraudulent travel or identity document¹⁶. Therefore, **GRETA considers that the Montenegrin authorities should take the necessary measures to establish as criminal offences the acts of providing, procuring, concealing, damaging or destroying a travel or identity document of another person when committed intentionally and for the purpose of enabling THB.**

177. Reference has already been made in paragraph 101 to Article 444, paragraph 7, of the CC, pursuant to which “anyone who uses the services from a person known to be the victim of the offence referred to in paragraph 1 of this Article shall be punished with imprisonment of from six months to five years”. In the case of children, the offender is liable to imprisonment of from three to 15 years. GRETA welcomes the introduction of the criminalisation of the known use of services of trafficked persons. There are still no convictions under this relatively new provision (introduced in 2010).

178. Article 445 of the CC criminalises “trafficking of children for adoption” as follows: “Anyone who abducts a person who has not yet reached the age of 14 for adoption in contravention of current regulations or whoever adopts such a person or mediates in such adoption or whoever for that purpose buys, sells or hands over another person who has not yet reached the age of 14 or transports, provides accommodation for or hides such a person, shall be punished by imprisonment for a term of one to five years”. The commission of this offence by an organised group is punished by imprisonment for a minimum term of three years. As regards the fact that this provision concerns children only up to the age of 14, reference is made to the comments in paragraph 45.

179. By virtue of Article 446 of the CC (enslavement of persons and transportation of persons in an enslaved status): “(1) Anyone who in breaching the rules of international law puts another person into slavery or other similar position or keeps another person in such a position, or buys, sells, hands over to another person or mediates in buying, selling or handing over of such a person, or induces another person to sell his or her own freedom or the freedom of persons he/she supports or looks after, shall be punished by imprisonment for a term of one year to 10 years; (2) Anyone who transports persons in a position of slavery or other similar position from one country to another shall be punished by imprisonment for a term of six months to five years; (3) For offences referred to in paragraphs 1 and 2 of this Article committed against a juvenile person, the offender shall be punished by imprisonment for a term of five to 15 years.” GRETA understands that there is no case law related to Article 446 of the CC, but it is clear that its scope overlaps with that of Article 444 of the CC. In this respect, reference is made to the comments in paragraph 43.

¹⁶ See paragraphs 241 and 242 of the Explanatory Report.

180. The Montenegrin authorities have referred to two other provisions of the CC which are related to the offence of THB: Article 209 (pimping and facilitating sexual intercourse with a minor) and Article 210 (mediation in prostitution). Article 209 concerns minors who are being provided to another person for sexual acts, by means of transferring messages, establishing contacts, inciting of a minor, etc. The stipulated punishment is imprisonment for a term of three months to five years. Another form of this criminal offence is providing a minor for sexual acts by renting premises, leasing apartments, providing transportation services to the location where the sexual act is performed, etc. The prescribed punishment is imprisonment for a term of up to three years. It is considered that the criminal offence has been done by the actual pimping or enabling of debauchery, an act equal to it, or other sexual acts, meaning not necessarily sexual intercourse. As regards Article 210, the offence represents inciting or encouraging another person to prostitution, taking part in transferring a person to another person for prostitution, and promoting or advertising prostitution. The actions are stipulated widely, which enables prosecuting a large number of offences related to sexual acts under this article. The punishment envisaged for mediation in prostitution is imprisonment for a term of from one to 10 years.

181. As mentioned in paragraph 163, the new Code of Criminal Procedure and the Criminal Code contain provisions concerning the confiscation of assets from perpetrators of organised criminal acts, with a reversed burden of proof of their origin and possibility for extended confiscation. There is a possibility to seize the assets at the time of the investigation in order that they may be confiscated at the end of the judicial proceedings. However, during the country visit to Montenegro, the GRETA delegation was informed that there had not been any confiscations of assets of traffickers, the CCP having entered into force relatively recently, but that there were already cases of confiscations of criminal assets in relation to money laundering and drug offences. After the visit, the Montenegrin authorities informed GRETA that there is a prosecutor's motion in the case "Aphrodite" (see paragraphs 85 and 193) for seizure of property acquired through the criminal offence of human trafficking. GRETA recalls that the confiscation of criminal assets, which requires as a prerequisite to detect, identify and seize the illegal assets at the time of the criminal investigations and to have adequate procedures to do so, is crucial as a way of reinforcing the effect of the penalty, as well as ensuring the payment of compensation to the victim. **GRETA considers that the Montenegrin authorities should take steps to ensure the application in practice of the legal provisions concerning the confiscation of assets of persons convicted for THB offences.**

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 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.

183. Public officials met during the country visit indicated that a new Criminal Code would be drafted in the next two years. **GRETA considers that in the context of the drafting of the new Criminal Code, the Montenegrin authorities should conduct a thorough assessment of the effectiveness of the criminal law provisions concerning THB and the above-mentioned related provisions of the CC, with a view to avoiding any overlap in their scope and improving legal clarity and legal certainty.**

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

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

185. Montenegrin legislation does not include a specific provision which covers Article 26 of the Convention. The Montenegrin authorities have referred to general provisions of the Criminal Code concerning exculpating and mitigating circumstances. The CC prescribes that if an act has been done under the influence of absolute force it shall not be considered as a criminal offence. If an act has been committed in order that an offender averts from him/herself or from someone else a danger that was caused by a force which is not absolute or under threat, the provisions on extreme necessity shall be applied to the offender. If a criminal offence has been committed under a force or threat, and the conditions for exclusion of criminal liability or for extreme necessity are not met, an offender can be punished by a reduced penalty, and if the offence was committed under particularly mitigating circumstances, he/she can be acquitted of any punishment. If a person towards whom a force or threat has been applied is not considered as a perpetrator of that criminal act, the person who has inflicted the force and threat thereof shall be considered as a perpetrator.

186. GRETA urges the Montenegrin authorities to take legislative measures allowing for the possibility of not imposing penalties on victims of THB for their involvement in unlawful activities to the extent that they were compelled to do so.

c. Investigation, prosecution and procedural law

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

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

189. In Montenegro, a criminal investigation into trafficking in human beings is initiated *ex officio* by the prosecutor. If the prosecutor concludes that there are no grounds for undertaking prosecution against some of the reported accomplices, the prosecutor is obliged to inform the damaged party within eight days, to notify him/her that he/she can undertake the prosecution on his/her own, and deliver him/her a decision on rejection of the criminal complaint. The damaged party has the right to undertake prosecution within 30 days from the day of notification and to file new charges. If the damaged party is not informed that the prosecutor did not initiate prosecution or dropped it, he/she can make a statement to the competent court on his/her intent to undertake prosecution within six months from the day the prosecutor rejected the charges or suspended the investigation. In case of death of the damaged party, his/her spouse, partner, children, parents, foster children, foster parents, brothers and sisters may, within three months after the death, undertake prosecution (pursuant to Article 59 of the Code of Criminal Procedure).

190. The new Code of Criminal Procedure (CCP) introduced prosecutor-led investigation (initially only for crimes of organised nature and, since September 2011, for all crimes). This is generally seen as a positive development to the extent that it contributes to a more efficient collection of evidence (prior to the entry into force of the new CCP, an investigating judge was in charge of criminal investigation). The new CCP also provides for the use of special investigative techniques, which must be authorised by an investigative judge (measures under Article 157, paragraph 1, of the CCP) or a prosecutor (measures under Article 157, paragraph 2, of the CCP). Article 157 of the CCP (which applies, *inter alia* to offences punishable with imprisonment of at least 10 years and other enlisted criminal offences with elements of organised crime, corruption, etc.) envisages secret surveillance, phone tapping, use of undercover agents, surveillance of objects and controlled deliveries. The Montenegrin authorities have indicated that these investigation techniques can be used in cases of trafficking in human beings. The Montenegrin authorities have also informed GRETA that the technique of controlled deliveries can be used in cases of THB if the conditions laid down in Article 158 of the CCP are fulfilled (these conditions include the presence of elements of organised crime, corruption, money laundering, abuse of authority, abduction, extortion, mediation in prostitution or smuggling).

191. According to senior prosecutors met during GRETA's country visit, the main challenges during the prosecution of THB offences are related to obtaining objective and accurate statements from victims/witnesses. It is therefore important to ensure that victims are prepared psychologically and agree to give statements. NGOs which provided shelter and assistance to victims have an important role to play in this respect.

192. The protection of victims and witnesses of human trafficking is addressed in two legal acts: the CCP and the 2004 Witness Protection Law. The CCP regulates the protection of witnesses in court and includes the possibility of conducting a hearing under a pseudonym and with the aid of technical devices (protective wall, devices for transmission of picture or sound, etc.). The protection of witnesses outside criminal proceedings, i.e. at the preliminary proceedings stage or after the completion of the criminal proceedings, is regulated by the Witness Protection Law. Pursuant to it, witnesses and their close relatives can be provided with various forms of protection (physical protection of the person and his/her property, relocation, concealing of identity and information, change of identity). Entry into the Witness Protection Programme implies the consent of the person concerned and his/her acceptance of the conditions set by the State. Decisions on the application, suspension, termination or extension of the Witness Protection Programme are rendered by a commission composed of a judge from the Supreme Court, the Deputy Supreme State Prosecutor and the Head of the Witness Protection Unit. The Montenegrin authorities have informed GRETA that the Witness Protection Unit has so far implemented protective measures in respect of one person in a case concerning THB. Further, in Montenegrin courts, there is a special service for support to injured parties, witnesses and victims of human trafficking, trafficking of children for adoption and domestic violence. A brochure has been published which contains contact information for the courts' staff responsible for providing support, as well as on criminal proceedings, testimony and measures of protection. That said, GRETA notes with concern a recent report by the Parliamentary Assembly of the Council of Europe according to which witnesses in Montenegro are not always provided with adequate protection.¹⁷

¹⁷ PACE, "The protection of witnesses as a cornerstone for justice and reconciliation in the Balkans" Doc. 12440 rev from 12 January 2011, available at <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc10/EDOC12440.htm>

193. The GRETA delegation also learned from prosecutors that cases of THB were sometimes prosecuted under Article 209 or Article 210 of the CC (see paragraph 180). According to prosecutors, charges under the two above-mentioned articles are less difficult to prove and it is therefore more likely to secure convictions under them. By way of example, reference was made to the so-called “Aphrodite” case, which involved two night clubs. Over a six month period in 2010, evidence was collected by the police using secret surveillance. As a result, 16 persons were arrested, of whom eight were indicted of criminal association, trafficking in human beings and mediation in prostitution in an organised manner, and the other eight (of whom three were active police officers working also as security guards in the night clubs) were charged with trafficking in human beings, mediation in prostitution, and abuse of office. A total of 13 potential victims of human trafficking were identified, originally from Serbia and Kosovo*; seven of them accepted to testify. The case was tried by the High Court in Podgorica which could not establish elements of trafficking in human beings. Convictions were therefore given for criminal association and mediation in prostitution and, in the case of the three police officers, abuse of office. Following appeal, the first-instance judgment was abolished and the case was returned to the High Court for retrial by decision of the Appellate Court of Montenegro of 20 January 2012.

194. According to statistics provided by the Montenegrin authorities, in the period from 2004 to 1 December 2011, the Police Directorate filed 18 criminal charges for THB under Article 444 of the CC and one under Article 445 of the CC.¹⁸ In the same period, the Prosecutor’s Office filed indictments against 52 persons under Article 444 of the CC and against six persons under Article 445 of the CC. The courts handled a total of 14 cases of THB during the period in question; the number of final guilty verdicts was 11, there was one acquittal, and in two cases the appeal procedure was still in progress. The sentences ranged from one year to six years and 10 months of imprisonment.

195. In the course of the country visit to Montenegro, the GRETA delegation sought to obtain up-to-date information on the so-called S.Č. case, which had been widely publicised in 2002-2003 and had been the subject of a joint Council of Europe/OSCE expert assessment.¹⁹ S.Č., a Moldovan woman who had escaped from her captors in Podgorica and gone to the police for help in November 2002, accused a number of persons of physical and sexual abuse, including several Montenegrin officials, in particular the then Deputy State Prosecutor. Despite a huge amount of material collected during the investigation, in May 2003 the Basic Prosecutor issued a decision to dismiss the case against four persons suspected of THB and mediation in prostitution and in June 2003 the investigative judge issued a declaratory ruling that the investigation was terminated.

196. According to the above-mentioned experts’ report, the case was mishandled at various stages by different actors, *inter alia* police officers apparently threatened S.Č. while she was in the shelter, the photo identification procedure was flawed, high-ranking representatives of the Prosecution Service considered S.Č. as an “unreliable witness” and made statements to this effect in the press. The expert team considered that it was highly unusual for a prosecutor to dismiss a case after the investigation had been completed, as the prosecutor is bound by the principle of legality and must prosecute if there is probable cause. The experts were of the opinion that there were all reasons to send the case to court and made a number of recommendations concerning the legal and institutional framework for the fight against THB in general, and the case of S.Č. in particular.

197. GRETA is concerned that the S.Č. case was not considered in court, despite all the evidences collected during the investigation. This, together with the above-mentioned findings of the experts which suggest that S.Č. was not treated in a way that a potential victim of trafficking should be, raise questions about the adequacy of the legislative and institutional framework for the fight against THB in Montenegro.

¹⁸ In 2004, six criminal charges against 15 persons; in 2005, three criminal charges against three persons; in 2006, two criminal charges against seven persons; in 2007, two criminal charges against eight persons (of whom four for mediation in prostitution); in 2008, two criminal charges against nine persons; in 2009, two criminal charges against four persons; in 2010, two criminal charges against 16 persons.

¹⁹ Council of Europe, SG/INF(2003) 42, 11 December 2003. Joint Council of Europe/OSCE assistance to Montenegro in the fight against trafficking in human beings. Independent Experts’ Report on their visit to Podgorica (22-24 July 2003) and Responses of the Government of Montenegro.

198. The GRETA delegation learned that the S.Č. case had not been reopened, despite the above-mentioned expert report and recommendations. GRETA understands that it is legally possible to reopen the case if the prosecutor comes up with new evidence or if it is proven that a decision in previous proceedings was based on abuse of position or criminal offence committed by public prosecutor. However, if no steps are taken to reopen the S.Č. case, the statute of limitations will expire. In response to GRETA's request to be provided with up-to-date information on any steps taken to reopen the S.Č. case, the Montenegrin authorities have simply restated that the case was suspended with a decision from 2 June 2003, due to the withdrawal of the State Prosecutor from prosecution. GRETA notes with concern that the authorities have not provided information on any steps taken to reopen the S.Č. case, which raises issues related to a number of the provisions of the Convention.

199. The GRETA delegation was informed that the former Deputy State Prosecutor against whom S.Č. had testified, filed a complaint against her for false testimony, and in 2011 the Basic Court in Podgorica initiated a criminal case against S.Č. *in absentia* (the defendant has not been residing in Montenegro since 2003).²⁰ GRETA understands that the decision on holding trial *in absentia* is up to the court upon request of the public prosecutor if there are important reasons (public interest in prosecuting the case even if the suspect/defendant is not present). The Montenegrin authorities have subsequently informed GRETA that the judgment of the Basic Court in Podgorica from 24 February 2012 exempted S.Č. from prosecution for two criminal offenses of giving false testimony (Article 389, paragraphs 3 and 4 in relation to paragraph 1 of the CC). The judgment is not final as there is an ongoing appeal procedure.

200. GRETA notes that the legislative and institutional framework for the fight against THB in Montenegro has evolved since the time of the S.Č. case. In particular, the new Code of Criminal Procedure provides that a witness statement given to the police is not admissible as evidence in court, but a statement given during the pre-trial proceedings to a prosecutor (who according to the new CCP is in charge of the investigation) could be considered as evidence and reproduced during the court hearing. This avoids repetitive hearings in court of witnesses who are potentially vulnerable.

201. **GRETA urges the Montenegrin authorities to take measures to:**

- **identify gaps in the investigation procedure and the presentation of cases in court, *inter alia* with a view to ensuring that crimes related to THB are investigated and prosecuted effectively, leading to proportionate and dissuasive sanctions;**
-
- **strengthen investigation and prosecution of trafficking cases with the involvement of public officials by imposing and enforcing proportionate and dissuasive sanctions upon those convicted.**

202. **GRETA also considers that the Montenegrin authorities should make full use of all measures available to protect victims and to prevent intimidation during the investigation and during and after the court proceedings. In this context, the Montenegrin authorities should take additional measures to ensure that victims of THB are adequately informed and assisted during the pre-trial period and court proceedings.**

203. **Further, GRETA considers that there is need for improvement of the knowledge and sensitivity of judges, prosecutors, investigators and lawyers about THB and the rights of victims. Future training programmes should be designed with a view to improving the knowledge and skills of relevant professionals which enable them to identify victims of trafficking, to assist and protect them, and to secure convictions of traffickers. During the training, particular attention should be paid to overcoming entrenched negative attitudes and prejudices vis-à-vis victims of trafficking.**

²⁰

Human Rights Foundation (2011), *Human Rights in Montenegro 2010-2011*, pp. 194-195.

5. Concluding remarks

204. The legal and institutional framework put in place by the Montenegrin authorities to prevent and combat THB provides a good basis for tackling this phenomenon from a human rights-based perspective. That said, GRETA considers that the definition of “victim of trafficking” under Montenegrin law is too narrow, as it is linked to the outcome of criminal proceedings. As a result, the identification of victims of trafficking is done purely from a law enforcement perspective, which is contrary to the human rights-based and victim-centred approach required by Convention.

205. The full financing by the Montenegrin authorities of the shelter for victims of THB and the increased involvement of NGOs are signs of willingness to put the human rights of trafficked persons at the centre of anti-trafficking action. However, additional efforts should be made to ensure that the assistance is adapted to victims’ needs and facilitates their reintegration into society.

206. Victims of THB should be entitled to a recovery and reflection period during which no expulsion orders can be enforced and should be provided with a renewable residence permit on the basis of their personal situation and/or their co-operation with the competent authorities. Further, the right of victims of THB to compensation should be made effective in practice, including through the setting up of a State compensation scheme.

207. The victim-centred approach also requires ensuring effective protection of victims of trafficking during the investigation and preventing their intimidation during and after court proceedings. GRETA considers that it is necessary to take legislative measures allowing for the possibility of not imposing penalties on victims of THB for their involvement in unlawful activities to the extent that they were compelled to do so.

208. In addition, the training of law enforcement officials, border guards, prosecutors, judges, social workers and other relevant professionals should stress the need to apply a human rights-based approach to action against THB on the basis of the Council of Europe Convention and the case-law of the European Court of Human Rights.

209. GRETA invites the Montenegrin authorities to keep it regularly informed of developments as regards the implementation of the Convention and looks forward to continuing its good co-operation with the Montenegrin authorities for achieving the purposes of the Convention.

Appendix I: List of GRETA's proposals

Definition of trafficking in human beings

1. In order to be fully consistent with the definition of THB in the Convention, GRETA considers that the Montenegrin authorities should include abduction as one of the means for committing trafficking in human beings.
2. In order to be fully consistent with the definition of THB in the Convention, GRETA considers that the Montenegrin authorities should explicitly include "slavery and practices similar to slavery" in the forms of exploitation resulting from trafficking.
3. GRETA considers that stating explicitly the irrelevance of the consent of a victim of trafficking to the intended exploitation could improve the implementation of anti-trafficking provisions.
4. GRETA considers that the Montenegrin authorities should expand the scope of Article 445 of the CC to include children up to the age of 18, in line with the Convention.

Definition of victim of trafficking

5. GRETA urges the Montenegrin authorities to review the definition of victim of THB, in the light of the above considerations and amend the relevant legislation.

Comprehensive approach and co-ordination

6. GRETA considers that the Montenegrin authorities should further strengthen the co-ordination between the national authorities and NGOs active in the field of action against THB to ensure that NGOs are involved in the planning and implementation of national policy.
7. Further, GRETA considers that the Montenegrin authorities should take further steps to ensure that the national action to combat THB is comprehensive, and in particular:
 - encourage more effective participation of all public bodies involved in the implementation of anti-trafficking measures at the national and local levels, and increase the co-ordination of their activities; in this context, it is important to further raise awareness of the Memorandum of Co-operation and the responsibilities arising from it;
 - pay increased attention to preventive measures among vulnerable groups, such as the RAE community, internally displaced persons, and children without parental care residing in institutions;
 - ensure that gender mainstreaming is reflected in the national anti-trafficking policy and practice;
 - include in the National Strategy measures to address THB for the purpose of labour exploitation.
8. GRETA also considers that the Montenegrin authorities should ensure that the status of the Office for the Fight against THB be clarified as a matter of priority and that the Office be put in a position to fulfil its co-ordinating mandate effectively. GRETA invites the Montenegrin authorities to invest in the human and financial resources of the Office for the Fight against THB so that it can effectively carry out the full range of tasks within their mandate.
9. Further, GRETA invites the Montenegrin authorities to introduce an independent evaluation of the National Strategy and Action Plans as a tool for assessing the impact of the activities and for planning future policies and measures to combat THB.

Training of relevant professionals

10. GRETA considers that the Montenegrin authorities should take further steps to improve the knowledge and sensitivity of relevant professionals about THB and the rights of victims, in particular social workers, law enforcement officials, lawyers, prosecutors, judges, etc. Future training programmes should be designed with a view to improving the knowledge and skills of relevant professionals which enable them to identify victims of trafficking, to assist and protect them, and to secure convictions of traffickers. During the training, particular attention should be paid to overcoming entrenched negative attitudes and prejudices vis-à-vis victims of trafficking.

Data collections and research

11. GRETA considers that, for the purpose of preparing, monitoring and evaluating anti-trafficking policies, the Montenegrin authorities should develop and maintain a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical information from all main actors and allowing disaggregation (concerning sex, age, type of exploitation, country of origin and/or destination, etc.). This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection, including when NGOs working with victims of trafficking are asked to provide information for the national database.

12. GRETA invites the Montenegrin authorities to continue conducting and supporting research on THB-related issues as an important source of information for future policy measures. Areas where research is needed in order to shed more light on the extent of the problem of THB include trafficking for the purpose of labour exploitation and trafficking in children.

International co-operation

13. GRETA invites the Montenegrin authorities to continue exploring possibilities for international co-operation in the fields of protecting and assisting victims of THB, and the investigation and prosecution of trafficking cases.

Measures to raise awareness and discourage demand

14. GRETA considers that future actions in the area of awareness raising should be designed in the light of the assessment of previous measures and be focused on the needs identified. Awareness-raising campaigns, education in schools and training of relevant professionals should aim at promoting gender equality and eradicating gender-based violence and the stigmatisation of victims of trafficking.

15. Further, GRETA considers that the Montenegrin authorities should continue their efforts to discourage demand for services from trafficked persons.

Social, economic and other initiatives for groups vulnerable to THB

16. GRETA considers that there is scope for strengthening measures for groups vulnerable to THB on the basis of the identified root causes of THB (economic and social conditions, poverty, inadequate education, absence of employment opportunities, etc.).

17. GRETA also urges the Montenegrin authorities to ensure the registration of all children at birth, as a preventive measure against trafficking. Further, GRETA urges the Montenegrin authorities to take steps to secure the registration of all persons from vulnerable groups for social services, both as a prevention measure and in order to avoid re-trafficking.

Border measures to prevent THB and measures to enable legal migration

18. GRETA considers that the Montenegrin authorities should make further efforts to:

- detect cases of THB in the context of border control;
- introduce a checklist to identify potential THB-related risks during the visa application system;
- provide regular training to Border Police officers, with a view to improving their capacity to detect potential victims of trafficking.

19. Further, GRETA invites the Montenegrin authorities to consider carrying out information campaigns to alert potential foreign victims of THB-related risks, in co-operation with countries of origin.

Identification of victims of trafficking in human beings

20. GRETA urges the Montenegrin authorities to:

- disconnect victim identification from criminal proceedings (see also paragraph 51 concerning the definition of victim of THB);
- strengthen multi-agency involvement in victim identification by introducing a national referral mechanism which defines the roles and procedures of all frontline staff who may come into contact with victims of trafficking;
- provide frontline staff with operational indicators, guidance and toolkits to be used in the identification process; these indicators should be regularly updated in order to reflect the changing nature of victimhood of human trafficking;
- develop multi-agency training on the identification of victims for frontline staff (including law enforcement officials, labour inspectors, social workers, medical staff, staff of special institutions for children and NGOs);
- ensure that law enforcement officials, social workers, labour inspectors and other relevant actors adopt a more proactive approach and increase their outreach work to identify potential victims of trafficking.

Assistance to victims

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

- ensure that conditions provided in shelters for victims of trafficking are adequate and adapted to their special needs. In this context, better balance should be struck between the need to place victims of THB in a safe accommodation and the need to achieve their recovery and rehabilitation; this requires greater awareness among staff working with such victims as regards the need to respect the victims' privacy and to assist in their rehabilitation;
- facilitate the reintegration of victims of trafficking into society and avoid re-trafficking by providing them with vocational training and access to the labour market;
- improve the system for providing assistance to child victims of trafficking, both in terms of accommodation and as regards medium and long-term support programmes tailored to the needs of the children;

- ensure that all the signatories of the Memorandum of Co-operation effectively fulfil their responsibilities related to the provision of assistance to potential victims of trafficking;
- provide training to all professionals responsible for the provision of assistance and protection measures to victims of trafficking.

Recovery and reflection period

22. GRETA urges the Montenegrin authorities to review the legislation in order to ensure that the recovery and reflection period provided for in Article 13 of the Convention is specifically defined in law.

23. Further, GRETA urges the Montenegrin authorities to ensure that trafficked persons are systematically informed of the possibility to use a recovery and reflection period and are effectively granted such a period.

Residence permits

24. GRETA urges the Montenegrin authorities to ensure that victims of THB can take full advantage of the right to be granted a renewable residence permit.

Compensation and legal redress

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

26. Further, bearing in mind that no victims of trafficking have received compensation from the perpetrators, GRETA encourages the Montenegrin authorities to set up a State compensation scheme accessible to victims of THB, as envisaged by the draft Law on Compensation for Damages to Victims of Crime.

Repatriation and return of victims

27. GRETA considers that the Montenegrin authorities should take additional steps to develop the institutional and procedural framework for the repatriation and return of victims of THB, with due regard to their safety, dignity and protection. Particular attention should be paid to ensuring financial means for the travel of victims of THB.

Substantive criminal law

28. In order to be fully consistent with requirements under Article 24 of the Convention, GRETA considers that the Montenegrin authorities should include commission of a criminal offence by a public official in the performance of his/her duties and deliberately or by gross negligence endangering the victim's life as aggravating circumstances.

29. GRETA considers that the Montenegrin authorities should take the necessary measures to establish as criminal offences the acts of providing, procuring, concealing, damaging or destroying a travel or identity document of another person when committed intentionally and for the purpose of enabling THB.

30. GRETA considers that the Montenegrin authorities should take steps to ensure the application in practice of the legal provisions concerning the confiscation of assets of persons convicted for THB offences.

31. GRETA considers that in the context of the drafting of the new Criminal Code, the Montenegrin authorities should conduct a thorough assessment of the effectiveness of the criminal law provisions concerning THB and the above-mentioned related provisions of the CC, with a view to avoiding any overlap in their scope and improving legal clarity and legal certainty.

Non-punishment of victims of trafficking in human beings

32. GRETA urges the Montenegrin authorities to take legislative measures allowing for the possibility of not imposing penalties on victims of THB for their involvement in unlawful activities to the extent that they were compelled to do so.

Investigation, prosecution and procedural law

33. GRETA urges the Montenegrin authorities to take measures to:

- identify gaps in the investigation procedure and the presentation of cases in court, *inter alia* with a view to ensuring that crimes related to THB are investigated and prosecuted effectively, leading to proportionate and dissuasive sanctions;
- strengthen investigation and prosecution of trafficking cases with the involvement of public officials by imposing and enforcing proportionate and dissuasive sanctions upon those convicted.

34. GRETA also considers that the Montenegrin authorities should make full use of all measures available to protect victims and to prevent intimidation during the investigation and during and after the court proceedings. In this context, the Montenegrin authorities should take additional measures to ensure that victims of THB are adequately informed and assisted during the pre-trial and court proceedings.

35. Further, GRETA considers that there is need for improvement of the knowledge and sensitivity of judges, prosecutors, investigators and lawyers about THB and the rights of victims. Future training programmes should be designed with a view to improving the knowledge and skills of relevant professionals which enable them to identify victims of trafficking, to assist and protect them, and to secure convictions of traffickers. During the training, particular attention should be paid to overcoming entrenched negative attitudes and prejudices vis-à-vis victims of trafficking.

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

Public bodies

- Office for the Fight against Trafficking in Human Beings
- Police Directorate
- Ministry of the Interior
- Ministry of Justice and Human Rights
- Ministry of Foreign Affairs and European Integration
- Ministry for Minority Rights
- Ministry of Health
- Ministry of Labour and Social Welfare
- Ministry of Education and Sport
- Supreme State Prosecutor's Office
- Supreme Court
- High Court of Podgorica
- Parliament of Montenegro
- Protector of Human Rights and Freedoms (Ombudsman) of Montenegro

Intergovernmental organisations and foreign missions

- International Organisation for Migration (IOM) Mission in Montenegro
- Organisation for Security and Co-operation in Europe (OSCE) Mission to Montenegro
- US Embassy in Podgorica

NGOs and other non-governmental actors

- Montenegrin Women's Lobby
- Women's Safe House
- SOS Hotline for Victims of Violence Podgorica
- SOS Nikšić
- Bar Association of Montenegro

Government's comments

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

GRETA engaged in a dialogue with the authorities of Montenegro 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 Montenegrin authorities on 24 July 2012 and invited them to submit any final comments. The Montenegrin authorities' comments, submitted on 5 September 2012, are reproduced hereafter.



MONTENEGRO
MINISTRY OF THE INTERIOR
OFFICE FOR FIGHT AGAINST TRAFFICKING IN HUMAN BEINGS

No: 252/12

Podgorica, September 5, 2012

Council of Europe
Justice and Human Dignity Directorate
Executive Secretary of the Council of Europe
Convention on Action against Trafficking in Human Beings

**Final Comments on Report concerning the implementation of the Council of Europe Convention
on action against trafficking in human beings**

The Government of Montenegro, with a great attention has received GRETA Report on the implementation of the CoE Convention on action against trafficking in Human Beings in Montenegro. Report is considered of a great significance and we will continue with the implementation of activities to meet the standards set by the Convention. In that regard, we are particularly encouraged by the fact that many of the activities of the Government of Montenegro in the prevention of and fight against human trafficking GRETA has noted as positive, which further encourages us to continue to make additional efforts in order to further improve the efficiency of all the institutions involved in the fight against trafficking people in Montenegro.

We would particularly like to express our gratitude to the members of the GRETA delegation that visited Montenegro- Ms. Petya Nestorova, Executive Secretary of the Secretariat of the CoE Convention for the fight against human trafficking, experts Ms. Louise Calleja and Mr. Davor Derencinovic for the excellent cooperation during the whole monitoring period.

In the text to follow we wanted to add a couple of comments on specific paragraphs of the final GRETA Report, as well as on some of the proposals that have already been partially implemented by the relevant state authorities of Montenegro.

Finally, we wish to emphasize the readiness of the Government of Montenegro to further continue fruitful cooperation with the GRETA in effective implementation of the CoE Convention on action against trafficking in human beings in Montenegro.

Sincerely,

Head of Office

Zoran Ulama

FINAL COMMENTS by the Montenegrin authorities:

-PARAGRAPH 38. Comment/intervention by Supreme Court of Montenegro: “In the area of court competences, according to the Montenegrin authorities, cases of human trafficking have a priority in handling, pursuant to a conclusion from a meeting of the President of the Supreme Court and the presidents of all courts. This means that such cases are immediately processed and the main court hearing is scheduled within the shortest period from the day of receiving the case in the court and its assignment to a judge. The presidents of all courts are obliged to submit monthly reports to the Supreme Court, specifying the status of criminal proceedings for trafficking in human beings and trafficking in children for adoption. In addition, the protection of witnesses and victims of human trafficking, as well as their family members, is provided for in the Witness Protection Law and the Code of Criminal Procedure and through the establishment of a support Service for injured parties/witnesses of THB offences **AS** a special court service regarding criminal cases related to THB.”

-PARAGRAPH 84. Comment from Ministry of Justice and Human Rights: International legal assistance is provided in accordance with international agreements and if there is no international agreement or specific issues are not regulated by such act, international legal assistance is provided in accordance with the Law on International Legal Assistance on condition of reciprocity. International legal assistance shall include the extradition of accused and convicted persons, assignment or transfer of the criminal prosecution, enforcement of foreign criminal judgments, submission of documents, written materials, and other items in connection with criminal proceedings in a foreign country, as well as the execution of certain procedural actions, such as interrogation of the accused, witnesses and experts, crime scene investigation, search of premises and persons and temporary seizure of items. The central organ for communication in cases of international legal assistance is the Ministry of Justice and if the international agreement provides, the judicial authorities may communicate directly with the competent authority of the other State. In urgent cases, a request for international legal assistance can be provided through the Central Bureau of National Interpol. In order to improve the efficiency of cooperation in this field, the Law provides for the mutual exchange of information that some international agreements recognized as a spontaneous exchange of information.

-PARAGRAPH 150. Comment from Ministry of the Interior- Sector for administrative interior affairs: In terms of the reflection period (recovery and reflection), we note that the existence of this period is not prescribed by law, but in upcoming period it will be incorporated into the Law on Foreigners, through appropriate amendments, with a view to full harmonization of Montenegrin legislation with the EU.

- PARAGRAPH 158. Comment from Ministry of the Interior- Sector for administrative interior affairs: The issue of granting temporary residence permit to a foreigner assumed to be victims of the human trafficking is regulated by the Law on Foreigners and by Rulebook on procedures for granting temporary and permanent residence and issuing travel and other documents to foreigners. Temporary residence is granted with a validity of up to one year. Article 51 of the Law on Foreigners stipulates following:

“A temporary residence for humanitarian reasons can be granted to an alien assumed to be the victim of the crime of trafficking with human beings, as well as to an alien minor who has been abandoned or is a victim of organized crime even if he does not fulfill conditions pursuant to Article 39 hereof (condition from Article 36 of this Law on foreigners are: that an alien has resources sufficient for his maintenance; has provided accommodation; has health insurance).

A temporary residence from humanitarian reasons shall not be granted to an alien if such is required by the reasons of national security and public order.

A temporary residence for humanitarian reasons shall be granted to a period of time from three months up to one year and can be extended until conditions pursuant to paragraph 1 hereof exist.

An alien pursuant to paragraph 1 hereof is not allowed to be subject to expulsion due to illegal entry or residence in Montenegro.

An alien pursuant to paragraph 1 hereof subject to well founded concern that by giving his statement he could be exposed to the life, health, physical integrity or freedom risk shall be provided protection and fulfillment of rights pursuant to regulations of the Witness Protection Act.”

- Article 9 of the Rulebook on procedures for granting temporary and permanent residence and issuing travel and other documents to foreigners, prescribes that a temporary residence for humanitarian reasons is granted based on adequate evidence of a legal person (international organization, nongovernmental organization, or a state authority) that provides assistance and protection to the victim, or the competent government authority confirming that the victim cooperates in disclosing criminal acts.

According to above mentioned, it can be concluded that victims of trafficking, without hindrances can regulate their residence in Montenegro.

- PARAGRAPH 170. Comment from the Office for Fight against THB: There was one case in 2011 where IOM provided financial means for travel expenses of victim of human trafficking to the third country. When there is a need, Office for Fight Against Trafficking in Human Beings seeks financial assistance from IOM for organization of victims repatriation.

-PARAGRAPH 175. part – “Imprisonment or any other form of deprivation of liberty in relation to the criminal offence, as well as the sentence which the perpetrator has served by the ruling of a foreign country’s court, is counted into the sentence rendered by a domestic court for the same criminal act.”
Comment from Ministry of Justice and Human Rights and Prosecutor’s Office: The procedures of extradition, transfer of sentenced persons and the recognition of foreign criminal judgments, the time spent in custody or serving a sentence for a criminal offense shall be included in the sentence imposed for the same offense in another state.

-PARAGRAPH 180. “The Montenegrin authorities have referred to two other provisions of the CC which are related to the offence of THB: Article 209 (pimping and facilitating sexual intercourse with a minor) and Article 210 (mediation in prostitution). Article 209 concerns minors who are being provided to another person for sexual acts, by means of transferring messages, establishing contacts, inciting of a minor, etc. The stipulated punishment is imprisonment for a term of three months to five years. Another form of this criminal offence is providing a minor for sexual acts by renting premises, leasing apartments, providing transportation services to the location where the sexual act is performed, etc. The prescribed punishment is imprisonment for a term of up to **five (Ministry of Justice and Human Rights)** years. It is considered that the criminal offence has been done by the actual pimping or enabling of debauchery, an act equal to it, or other sexual acts, meaning not necessarily sexual intercourse. As regards Article 210, the offence represents inciting or encouraging another person to prostitution, taking part in transferring a person to another person for prostitution, and promoting or advertising prostitution. The actions are stipulated widely, which enables prosecuting a large number of offences related to sexual acts under this article. The punishment envisaged for mediation in prostitution is imprisonment for a term of from one to 10 years.”

-PARAGRAPH 190- part: “The new Code of Criminal Procedure (CCP) introduced prosecutor-led investigation (initially only for crimes of organised nature and, since September 2011, for all crimes”--
Comment from Ministry of Justice and Human Rights: In proceedings for criminal offenses of organized crime, corruption, terrorism and war crimes, the new Code for Criminal Procedure "Off. Gazette of Montenegro, no. 57/2009 and 49/2010 started to apply from August 26, 2010. The law is being fully implemented starting from September 1, 2011).

-PARAGRAPH 193- Comment from Prosecutor’s Office: All 13 potential victims testified in the investigation, but in the course of the proceeding before the court, some of them did not testify, because they have not responded to the court invitation. The case was tried by the High Court in Podgorica which convicted eight persons for mediation in prostitution in an organized manner. In the respect of human trafficking offence, court issued a verdict of acquittal, while in the case of three police officers court delivered its judgment for abuse of office. Following the appeal from Prosecutor’s Office and defence attorneys to the Appellate Court, the first-instance judgment was abolished and the case was returned to the High Court in Podgorica for retrial by decision of the Appellate Court of Montenegro of 20 January 2012. The retrial procedure is still in progress.

- PROPOSAL 7- part: “... include in the National Strategy measures to address THB for the purpose of labour exploitation” -**Comment from the Office for Fight Against Trafficking in Human Beings:** National Strategy for fight against trafficking in human beings 2012-18 envisages measures for combating labour exploitation, among other forms of human trafficking crime. Draft Strategy with following Action Plan was determined by the Government of Montenegro at the session held on June 21, 2012, after which was conducted a public hearing and prepared the final Draft of the document, which is expected to be adopted until the end of September 2012.

MONTENEGRO
SUPREME STATE PROSECUTOR'S OFFICE
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Podgorica, 07.09.2012.godine

PODGORICA

In respect to Report of the Expert Group GRETA on the implementation of the Convention on action against trafficking in human beings in Montenegro, beside comments previously provided, we would like to add comment on paragraphs 196,197,198 and 200.

In case of S.C. criminal proceedings were initiated against four persons. Against one person for the criminal act of mediation in prostitution Art.251 paragraph 2 in relation to paragraph 1 of the Criminal Code of the FRY in concurrence with the criminal offense of trafficking in human beings from Art. 201a, paragraph 8 in relation to paragraph 1 of the Law on Amendments to the Criminal Code of Republic of Montenegro, as well as against three persons only for the criminal act of mediation in prostitution Art.251 paragraph 2 in line with paragraph 1 of the Criminal Code of the FRY.

From the time of the commission of the criminal offense mediation in prostitution to the present, the Criminal Code of Montenegro was changed several times, as well as the criminalization of the criminal offense mediation in prostitution.

With regard to the provision of Art.133 para 3 of the Criminal Code there is a duty of applying the most lenient law to the perpetrator. Presently applicable criminalization of the criminal offense of mediation in prostitution from Art.210 CC is lenient for the perpetrator because the commission of this criminal offense by force and threats is not defined as a severe form, as was the case of criminalization at the time of the commission of the criminal offense prescribed by Art.251 para 2, CC FRY.

Therefore, acquiring eventually new facts and new evidence in relation to these persons couldn't lead to reopening of proceedings for a criminal offense of mediation in prostitution.

One of the persons against whom criminal proceedings were initiated was charged for the commission of the crime of trafficking in human beings from Art.201a, paragraph 8 in relation to paragraph 1 of the Law on Amendments to the Criminal Code of the Republic of Montenegro, for those actions for which were suspicions that were committed from the end of July 2002 until November 2002, when by novels of the Criminal Code of Montenegro from July 2002, for the first time was prescribed criminal offense of trafficking in human beings by mentioned article.

During the investigation, which was conducted for this criminal offense, injured S.C. presented a number of facts that have not been confirmed by physical evidence, after which she left Montenegro and became unavailable to the judiciary. Due to facts that the testimony of the injured S.C. could not be confirmed by physical evidence, and that she left Montenegro before the end of the hearing, her statement was assessed as unreliable and the prosecutor dropped the prosecution.

Prosecution currently has no evidence that would allow it to initiate a retrial in this case, and believes that, in line with its new statutory power, the re-hearing of the injured S.C., in which she would complete her testimony and eventually present new facts, could be used to check that facts which would be the basis for delivering decision in accordance with the law.

SUPREME STATE PROSECUTOR
Ranka Čarapić