



# EVALUATION REPORT

## ROMANIA

### Third evaluation round

#### **GRETA**

Group of Experts  
on Action against  
Trafficking  
in Human Beings

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

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## Table of contents

<b>Preamble</b> .....	<b>3</b>
<b>Executive summary</b> .....	<b>4</b>
<b>I. Introduction</b> .....	<b>6</b>
<b>II. Overview of the current situation and trends in the area of trafficking in human beings in Romania</b> .....	<b>8</b>
<b>III. Developments in the legal, institutional and policy framework for action against human trafficking</b> .....	<b>9</b>
<b>IV. Access to justice and effective remedies for victims of human trafficking</b> .....	<b>11</b>
<b>1. Introduction</b> .....	<b>11</b>
<b>2. Right to information (Articles 12 and 15)</b> .....	<b>13</b>
<b>3. Legal assistance and free legal aid (Article 15)</b> .....	<b>15</b>
<b>4. Psychological assistance (Article 12)</b> .....	<b>18</b>
<b>5. Access to work, vocational training and education (Article 12)</b> .....	<b>19</b>
<b>6. Compensation (Article 15)</b> .....	<b>20</b>
<b>7. Investigations, prosecutions, sanctions and measures (Articles 22, 23 and 27)</b> .....	<b>25</b>
<b>8. Non-punishment provision (Article 26)</b> .....	<b>32</b>
<b>9. Protection of victims and witnesses (Articles 28 and 30)</b> .....	<b>34</b>
<b>10. Specialised authorities and co-ordinating bodies (Article 29)</b> .....	<b>36</b>
<b>12. Cross-cutting issues</b> .....	<b>39</b>
a. gender-sensitive criminal, civil, labour and administrative proceedings.....	39
b. child-sensitive procedures for obtaining access to justice and remedies.....	39
c. role of businesses.....	41
d. measures to prevent and detect corruption.....	42
<b>V. Follow-up topics specific to Romania</b> .....	<b>43</b>
<b>1. Measures to prevent trafficking in children</b> .....	<b>43</b>
<b>2. Social, economic and other initiatives for groups vulnerable to THB (Article 5)</b> .....	<b>45</b>
<b>3. Identification of victims of THB</b> .....	<b>47</b>
<b>4. Assistance measures</b> .....	<b>49</b>
<b>4. Identification of, and assistance to, child victims of trafficking</b> .....	<b>51</b>
<b>5. Recovery and reflection period</b> .....	<b>53</b>
<b>Appendix 1 - List of GRETA's conclusions and proposals for action</b> .....	<b>54</b>
<b>Appendix 2 - List of public bodies, intergovernmental organisations and civil society actors with which GRETA held consultations</b> .....	<b>61</b>
<b>Government's comments</b> .....	<b>63</b>

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## Preamble

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

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

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

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

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

## Executive summary

Since the second round of evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, Romania has continued to develop the legislative and policy framework relevant to action against trafficking in human beings. In 2020, amendments were made to the Criminal Code to increase the minimum penalty for trafficking in children and introduce new aggravating circumstances to this offence. A new National Strategy against Trafficking in Human Beings for 2018-2022 and a National Action Plan for 2018-2020 were adopted. Further, a Monitoring Committee for the implementation of the National Strategy and a working group on victim assistance were created, and the National Identification and Referral Mechanism (NIRM) was updated in 2019.

Romania remains predominantly a country of origin of victims of trafficking in human beings, many of whom are trafficked within the country. The number of victims identified by the Romanian authorities has been declining over the years. Their total number was 2 613 in the period covered by the report (2016-2019), of whom the majority (74%) were female and nearly 50% were children. Sexual exploitation remained the most common purpose of trafficking in the reporting period, followed by labour exploitation. There were 19 identified foreign victims of trafficking during this period.

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

Even though Romanian legislation provides for the right of victims of trafficking to free legal counselling, which includes legal representation, there is a limited number of lawyers specialised in representing victims of trafficking. GRETA considers that the Romanian authorities should ensure that a lawyer is appointed as soon as there are reasonable grounds for believing that a person is a victim of trafficking, as well as encourage training and specialisation of lawyers to provide legal aid to trafficking victims.

The Romanian authorities should also strengthen effective access to the labour market for victims of trafficking, as well as their economic and social inclusion through the provision of vocational training and job placement, awareness-raising amongst employers, and the promotion of micro-businesses, social enterprises and public-private partnerships.

Compensation awarded by courts is rarely paid to victims because the perpetrators' assets have not been identified and frozen at an early stage, which is related to shortcomings in financial investigations. As for state compensation, during the reporting period only one victim of trafficking was granted compensation from the State. GRETA urges the Romanian authorities to make additional efforts to guarantee access to compensation for victims of trafficking, in particular by making full use of the legislation on the freezing and forfeiture of assets, simplifying the procedure and eligibility criteria for claiming state compensation, and setting up as a matter of priority a victim compensation fund which uses confiscated assets of perpetrators of human trafficking.

While welcoming recent instructions of the Minister of Justice asking the Prosecutor General to prioritise the action to combat human trafficking, GRETA is concerned by indications that the criminal justice response to human trafficking has weakened in Romania. A significant number of sentences are suspended, and the use of plea bargaining or similar agreements allows defendants to have their punishments reduced. GRETA urges the Romanian authorities to take measures to ensure that human trafficking offences are proactively and promptly investigated, making use of all possible evidence in order not to rely exclusively on testimony by victims or witnesses, and lead to effective, proportionate and dissuasive sanctions. The plea-bargaining procedure should be used only exceptionally in human trafficking cases, subject to appropriate safeguards. Further, the authorities should ensure that the length of court proceedings in cases of trafficking of human beings is reasonable.

Romanian legislation contains a provision on the non-punishment of victims of trafficking, but its scope is rather narrow. GRETA urges the Romanian authorities to extend the non-punishment provision to cover all offences which victims of trafficking have been compelled to commit. The authorities should also take measures to ensure effective compliance with the non-punishment provision, including through the development of guidance for police officers and prosecutors on its application.

Pursuant to 2016 amendments to the Criminal Procedural Code, victims of trafficking are to be considered as particularly vulnerable victims. However, GRETA is concerned by the continuing practice of making the names and addresses of victims of trafficking publicly available on judicial websites. GRETA urges the Romanian authorities to make full use of the available measures to protect victims and witnesses of trafficking, and to prevent their intimidation during the investigation, as well as during and after the court proceedings, including by banning the publication of trafficking victims' names on judicial websites.

While welcoming the existence of police investigators and prosecutors specialised in trafficking in human beings, GRETA notes that their number should be increased, and that the authorities should promote specialisation and training of judges to deal with human trafficking cases in a victim-sensitive and trauma-sensitive manner.

The report examines progress made on the implementation of previous GRETA recommendations on selected topics. While welcoming the steps taken to raise awareness of child trafficking, GRETA considers that the Romanian authorities should sensitise and train child protection professionals and teachers across the country on the risks and indicators of trafficking and raise awareness of the risks of recruitment and abuse through the Internet and social networks.

GRETA notes that there are continuing gaps in the identification of foreign victims of trafficking in Romania. Further, there is still a lack of awareness among stakeholders about trafficking for the purpose of labour exploitation and not sufficient attention is paid to identifying such cases. GRETA urges the Romanian authorities to further improve the identification of victims of trafficking, including by making a budgetary allocation of the implementation of the NIRM and ensuring that the Labour Inspectorate has adequate resources to prevent and detect cases of trafficking for the purpose of labour exploitation, including in remote locations. Moreover, systematic training should be provided to asylum officials, migration officials, border police staff, social workers, medical and other staff working at facilities for asylum seekers and detained migrants to enable them to proactively identify victims.

While noting with appreciation the fact that many civil society and faith-based organisations provide assistance to victims of trafficking in Romania, GRETA remains concerned by the limited capacity of state-run shelters, as well as the absence of public funding for NGOs. Further, access to health care for victims of trafficking remains a problem. GRETA urges the Romanian authorities to step up their efforts to provide assistance to victims of trafficking, in particular by providing a sufficient number of shelter places around the country and by ensuring adequate funding and staff to work with victims of trafficking.

Noting with concern the scale of child trafficking in Romania, GRETA once again urges the Romanian authorities to strengthen their efforts to identify child victims, including when the recruitment and/or exploitation take place online, and to provide them with specialised assistance.

Finally, GRETA reiterates its previous recommendation and considers that the Romanian authorities should take steps to ensure that all possible foreign victims of trafficking are offered a recovery and reflection period, as well as all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention.

## I. Introduction

1. The Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) entered into force for Romania on 1 February 2008. GRETA’s first evaluation report<sup>1</sup> on Romania was published on 31 May 2012, and the second evaluation report<sup>2</sup> on 30 September 2016.
2. On the basis of GRETA’s second report, on 4 November 2016 the Committee of the Parties to the Convention adopted a recommendation to the Romanian authorities, requesting them to inform the Committee of measures taken to comply with the recommendation within a one-year period. The report submitted by the Romanian authorities was considered at the 22nd meeting of the Committee of the Parties (9 February 2018), and was made public.<sup>3</sup> Subsequently, on 16 October 2018, the Romanian authorities submitted additional information as a follow-up to their report sent in reply to the Committee of the Parties’ recommendation.
3. On 21 June 2019, GRETA launched the third round of evaluation of the Convention in respect of Romania by sending the questionnaire for this round to the Romanian authorities. The deadline for submitting the reply to the questionnaire was 21 October 2019 and the authorities’ reply was received on 22 October 2019.
4. In preparation of the present report, GRETA used the reply to the third-round questionnaire by the Romanian authorities, the above-mentioned report and additional information submitted by them in reply to the Committee of the Parties’ recommendation, as well as information received from civil society. An evaluation visit to Romania took place from 2 to 6 March 2020 in order to hold meetings with relevant governmental and non-governmental actors, collect additional information and examine the practical implementation of adopted measures. The visit was carried out by a delegation composed of:
  - Ms Ia Dadunashvili, member of GRETA;
  - Mr Frédéric Kurz, member of GRETA;
  - Mr Mats Lindberg, Administrator in the Secretariat of the Convention.
5. During the visit, the GRETA delegation met representatives of relevant ministries and other public agencies, namely the Ministry of Justice, the Ministry of Labour and Social Protection (including the Labour Inspectorate, the Social Policies Services Directorate and the National Agency for Employment), the Ministry of Foreign Affairs, the Ministry of Education and Research, as well as agencies subordinated to the Ministry of the Interior, namely the National Agency against Trafficking in Persons (ANITP), the Department for Combating Trafficking in Human Beings of the Police Directorate for Combating Organised Crime (DCCO), the General Inspectorate of the Romanian Police (GIRP), the General Directorate of the Romanian Border Police, and the General Inspectorate of the Romanian Gendarmerie. Meetings were also held with representatives of the Directorate for Investigating Organised Crime and Terrorism (DIICOT) of the Prosecutor’s Office, the State Compensation Board for Victims of Crime, and judges of the Superior Council of Magistracy. Further, GRETA met representatives of the National Agency for Roma, the General Ombudsman and the Ombudsman for Children. A meeting was also held with representatives of the Romanian Parliament’s Group for Combating Trafficking in Persons.
6. Separate meetings were held with representatives of non-governmental organisations (NGOs), lawyers, victims of human trafficking, researchers and journalists. The GRETA delegation also met representatives of the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR).

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<sup>1</sup> <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680683a1d>

<sup>2</sup> <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a99b1>

<sup>3</sup> <https://rm.coe.int/cp-2017-32-rr2-rom-en/16807647cc>

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7. In the course of the visit, the GRETA delegation visited a state shelter for victims of human trafficking in Craiova, a shelter for child victims of trafficking, run by the NGO Reaching Out in Pitesti, and a shelter for victims of trafficking, run by the NGO Open Door Foundation in Bucharest.

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

9. GRETA wishes to place on record the co-operation provided by the Romanian authorities and in particular by Ms Irina Din, expert at the National Agency against Trafficking in Persons (ANITP), who acted as GRETA's contact person at the time of the visit.

10. The draft version of the present report was approved by GRETA at its 38th meeting (6-9 October 2020) and was submitted to the Romanian authorities for comments. The authorities' comments were received on 15 February 2021 and were taken into account by GRETA when adopting the final report at the 40th meeting (22-26 March 2021). The report covers the situation up to 26 March 2021; developments since that date are not taken into account in the following analysis and conclusions. GRETA's conclusions and proposals for action are summarised in Appendix 1.



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

11. Romania remains predominantly a country of origin of victims of trafficking in human beings (THB), but is also a destination country for a limited number of foreign victims. The number of victims identified by the Romanian authorities has been declining over the years, and stood at 756 in 2016 (170 male and 506 female victims, including 356 children), 662 in 2017 (156 male and 506 female victims, including 340 children), 497 in 2018 (134 male and 363 female victims, including 212 children), and 698 in 2019 (117 male and 581 female victims, including 327 children).<sup>4</sup> These statistics include victims from ongoing investigations and prosecutions initiated in previous years. The majority of the victims (74%) were female, and children constituted nearly 50% of identified victims. Sexual exploitation remained the most common purpose of THB in the reporting period, followed by labour exploitation, forced begging and forced criminality.<sup>5</sup> Most of the identified victims were trafficked internally, i.e. within Romania (435 in 2016, 401 in 2017, 244 in 2018, and 384 in 2019). As regards victims trafficked abroad, the main countries of destination were Germany, Italy, Spain and the United Kingdom. There were 19 identified foreign victims in 2016-2019 who originated from Hungary, Italy, Republic of Moldova, Portugal, Turkey, Latvia and Germany.

12. According to a report by the NGO European Centre for Legal Education and Research (ECLER), there are discrepancies in the above statistical data reported by the National Agency against Trafficking in Persons (ANITP), related to the fact that Romanian victims identified abroad and repatriated to Romania are not always included in the statistics.<sup>6</sup> According to the Romanian authorities, information about repatriated Romanian victims is not systematically brought to their attention. This was confirmed by IOM representatives, who indicated that many Romanian victims are repatriated to Romania by foreign authorities or NGOs without any information about this being provided to ANITP.

13. Further, according to NGOs, the scale of trafficking of foreign nationals to Romania, in particular for the purpose of labour exploitation, is much larger than the limited number of identified foreign victims of THB suggests. The number of work permits issued to third-country nationals has grown exponentially in recent years,<sup>7</sup> which has reportedly led to an increase in cases of labour exploitation. NGOs report cases of persons from Ethiopia, Eritrea, the Philippines, Sri Lanka and Vietnam being trafficked to Romania by organised crime groups and exploited in the hospitality, food processing, construction and domestic work sectors.

<sup>4</sup> By way of comparison, during the period covered by GRETA's second evaluation report, the number of identified victims was 1 041 in 2012, 896 in 2013, 757 in 2014, and 880 in 2015.

<sup>5</sup> The number of identified victims by form of exploitation was as follows: in 2016, 530 sexual, 132 labour, 68 forced begging, 4 forced criminality; in 2017, 454 sexual, 79 labour, 35 forced begging, 43 forced criminality; in 2018: 335 sexual, 100 labour, 26 forced begging, 8 forced criminality. In the case of the remaining victims, the form of exploitation was not specified.

<sup>6</sup> <http://www.ecler.org/wp-content/uploads/2019/11/2019%20ANITP%20fake%20data%20reported.pdf>. The European Commission reports a much higher number of victims identified than those reported by ANITP: 1 527 Romanian victims identified for 2017 and 1 353 for 2018, while ANITP reports respectively 662 and 497 victims. EC Report on "Data collection on trafficking in human beings in the EU", 2020, available at [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study\\_on\\_data\\_collection\\_on\\_trafficking\\_in\\_human\\_beings\\_in\\_the\\_eu.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_data_collection_on_trafficking_in_human_beings_in_the_eu.pdf), p. 25.

<sup>7</sup> The quota for work permits for non-EU workers was increased to 30 000 in 2019. Work permits granted to citizens from South East Asia account for a large share of the increase.

### **III. Developments in the legal, institutional and policy framework for action against human trafficking**

14. The National Agency against Trafficking in Persons (ANITP), which is subordinated to the Ministry of the Interior and is responsible for co-ordinating national anti-trafficking policy, has 15 regional offices and employs 85 staff members (police officers, sociologists, psychologists and social workers). In March 2018, Government Decision No. 84/2018 amended Government Decision No. 460/2011 on the organisation and functioning of ANITP. As a result, ANITP's role as equivalent mechanism was changed into that of a National Rapporteur, its mandate covering the evaluation of public agencies' work against THB, as well as the work performed by specialised NGOs. A draft Order of the Minister of the Interior concerning the role and functioning of ANITP, complementing and clarifying the provisions of Government Decision No. 84/2018, was under discussion at the time of the visit. Specialised anti-trafficking NGOs, including the Independent Working Group against Trafficking in Persons and Smuggling of Migrants (see paragraph 21), have raised concerns about some of the provisions of Government Decision No. 84/2018 and the draft Order (in particular Article 2(1) of the latter), which appear to give ANITP powers to monitor and evaluate the work carried out by NGOs in the field of combating human trafficking, thereby jeopardising their independence. GRETA was subsequently informed that the Ministry of the Interior had decided to withdraw from the legislative process the previously mentioned draft Order, following a public debate which took place online on 11 August 2020. Further, a draft text amending Government Decision No. 460/2011 on the organisation and functioning of ANITP in order to establish a clear role and competences of ANITP, as well as a legal framework for collaboration and co-operation with civil society in the fight against trafficking in human beings was submitted to the Government's approval. The Inter-ministerial Working Group on Combating Trafficking in Persons mentioned in GRETA's previous reports<sup>8</sup> has ceased to exist. GRETA also understands that a working group has been set up by Parliament to discuss changes to the anti-trafficking legislation.

15. Through an amendment made to Article 211 of the Criminal Code (CC) in October 2020, the minimum penalty for trafficking in children was increased from three to five years' imprisonment (the maximum penalty remains 10 years' imprisonment) and two new aggravating circumstances were added to the offence of trafficking in children (the fact that the offence was committed by "a person living with the victim" or by a person who "took advantage of the child's vulnerable situation, caused by a mental or physical disability, a situation of dependence, a state of physical or mental incapacity or other cause").

16. A new National Strategy against Trafficking in Human Beings for the period 2018-2022, together with a National Action Plan for 2018-2020, were approved by Government Decision 861/2018. The drafting of the strategy involved a range of institutions,<sup>9</sup> but civil society was reportedly not sufficiently involved. The Action Plan for the implementation of the National Strategy has objectives and activities in five areas: prevention of THB; protection, assistance and re-integration of victims of THB; development of capacities to investigate THB; increasing the quality of information about THB and; improving and extending co-operation in the fight against THB and the support of victims, both internally and internationally. For each objective, there are indicators which are to be used to measure implementation.

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<sup>8</sup> See paragraph 27 of GRETA's first report on Romania and paragraph 20 of GRETA's second report on Romania.

<sup>9</sup> The institutions involved in the development of the strategy were: the Ministry of Internal Affairs (the National Agency against Trafficking in Persons, General Inspectorate of the Romanian Police - Directorate for Combating Organized Crime, General Inspectorate of the Border Police, General Inspectorate for Immigration), the Public Ministry (Directorate for Investigating Organized Crime and Terrorism Offences), the Ministry of Justice (National Probation Directorate, National Agency for the Management of Seized Assets), the Ministry of Labour and Social Justice (Labour Inspectorate, National Authority for the Protection of the Rights of the Child and Adoption, National Agency for Employment, National Authority for People with Disabilities, National Agency for Equal Opportunities for Women and Men), the Ministry of Foreign Affairs (Directorate of Human Rights, Protection of Minorities and Council of Europe, Directorate for Consular Relations), the Ministry of Health (National Transplant Agency, General Directorate for Medical Assistance and Public Health), the Ministry of National Education (Directorate for Lifelong Learning).

17. In order to achieve one of the objectives of the National Action Plan against THB for 2018-2020, namely to “improve the quality of protection and assistance provided to victims of THB for their social reintegration”, a working group on victim assistance was set up at the beginning of 2019<sup>10</sup>. Its role is to monitor the implementation of assistance measures for victims of THB and improve the co-ordination and quality of the assistance provided. According to information provided by the authorities, the working group met four times in 2019 (in March, July, September and November) to discuss the level of enforcement of the legislative provisions on assistance and protection of victims of trafficking and the difficulties encountered by the latter in accessing specialised services. NGOs were invited to attend the November meeting. In 2020 three online meetings took place with the members of the working group to discuss specific issues regarding victim assistance.

18. A Monitoring Committee for the implementation of the National Strategy was created in accordance with Government Decision No. 861/2018, co-ordinated by the State Secretary of the Ministry of the Interior and supported by ANITP. Its mandate is to monitor and evaluate the implementation of the National Strategy. The Committee should appoint monitoring teams composed of representatives, at expert level, of the institutions involved in the implementation of the Strategy, which carry out evaluation visits. According to updated information provided by the Romanian authorities, the Committee became operational in April 2019 and six meetings have so far been conducted, the last one in November 2020. According to the Romanian authorities, there is no overlapping in roles between the monitoring function of the Committee and ANITP’s function as National Rapporteur.

19. As noted in GRETA’s second report on Romania, the key features of National Rapporteurs’ mechanisms within the meaning of Article 29, paragraph 4, of the Convention should be the ability to critically monitor the efforts and effectiveness of all state institutions, including national co-ordinators, and to that end maintain a constant exchange with civil society, the research community and other relevant stakeholders. A structural separation between these monitoring functions and executive functions makes possible an objective evaluation of the implementation of anti-trafficking legislation, policies and activities, identification of lacunae and shortcomings, and the formulation of comprehensive legal and policy recommendations. Therefore, **GRETA reiterates its recommendation from the second evaluation report that the Romanian authorities should examine the possibility of establishing an independent National Rapporteur or designating another already existing mechanism as an independent organisational entity, with a view to ensuring an effective monitoring of the anti-trafficking activities of state institutions and making recommendations to persons and institutions concerned (see Article 29, paragraph 4, of the Convention and paragraph 298 of the Explanatory Report).**

20. The National Identification and Referral Mechanism (NIRM), which had been approved by Joint Order No. 335/2007, was updated by ANITP, with the support of NGOs, in the summer of 2019.

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<sup>10</sup> The members of the working group are: ANITP; the General Inspectorate for Immigration; the General Inspectorate of Romanian Police (Direction for Combating Organised Crime); the Ministry of Labour and Social Justice (the Social Policies Services Directorate); the National Authority for the Protection of the Rights of the Child and Adoption; the National Authority for Equal Opportunities between Women and Men; the National Authority for Persons with Disabilities; the National Employment Agency; the Ministry of Health; the Ministry of Justice; the Ministry of Foreign Affairs; and the National Agency for Roma.

21. The Independent Working Group against Trafficking in Persons and Smuggling of Migrants, which is an informal NGO coalition,<sup>11</sup> meets four times per year. It was established at the initiative of the European Centre for Legal Education and Research, which provides its secretariat. The working group brings together Romanian and international experts, and constitutes an independent forum for discussion, research and advocacy that aims to contribute to the prevention of THB and smuggling in Romania. The group also monitors the implementation of national anti-THB policies. Further, 18 NGOs working in the area of combating human trafficking and protecting victims established an informal network in July 2020 (RoITP).<sup>12</sup>

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

### 1. Introduction

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

23. The right to effective remedies is a reflection of the human rights-based approach underpinning the Convention. Regardless of whether a State is implicated in the trafficking or directly responsible for the harm, the positive obligations arising from international human rights law require States to facilitate and guarantee effective access to remedies if they have failed to take reasonable steps to prevent human trafficking, protect potential or actual victims of THB, and effectively investigate trafficking offences.<sup>13</sup>

24. According to the Basic Principles on the Right to an Effective Remedy for Victims of Trafficking in Persons,<sup>14</sup> the right to an effective remedy is considered to include restitution,<sup>15</sup> compensation,<sup>16</sup> rehabilitation,<sup>17</sup> satisfaction<sup>18</sup> and guarantees of non-repetition.<sup>19</sup> All victims of trafficking require access

<sup>11</sup> The members of the working group include representatives of the European Centre for Legal Education and Research; Reaching Out, the Open Door Foundation; World Teach Romania; Jesuit Refugees Service Romania; the Freedom House Romania Foundation; and Doctors Against Forced Organ Harvesting representative in Romania. See <http://www.ecler.org/en/working-group-human-trafficking-smuggling/>

<sup>12</sup> <http://www.ecler.org/en/rotip-en/>

<sup>13</sup> *Rantsev v. Cyprus and Russia*, application no. 25965/04, judgment of 7 January 2010; *L.E. v. Greece*, application No. 71545/12, judgment of 21 January 2016; *Chowdury and Others v. Greece*, application No. 21884/15, judgment 30 March 2017; *S.M. v. Croatia*, application No. 60561/14, Grand Chamber judgment 25 June 2020.

<sup>14</sup> UN General Assembly, Basic principles on the right to an effective remedy for victims of trafficking in persons, Annex to the Report by the Special Rapporteur on trafficking in persons, especially women and children, 28 July 2014, A/69/33797.

<sup>15</sup> Restitution includes restoration of liberty, including release of the victim from detention; enjoyment of human rights and family life, including reunification and contact with family members; safe and voluntary repatriation; temporary or permanent residence status, refugee status, complementary/subsidiary protection or third-country resettlement; recognition of the victim's legal identity and citizenship; restoration of the victim's employment; assistance and support to facilitate social integration or reintegration; return of property, such as identity and travel documents and other personal belongings.

<sup>16</sup> Compensation may cover damages for physical or mental harm; damages for lost opportunities, including employment, education and social benefits; reimbursement of costs of necessary transportation, child care or temporary housing; material damages and loss of earnings; moral or non-material damages; reimbursement of legal fees and other costs relating to the participation of the victim in the criminal justice process; reimbursement of costs incurred for legal, medical or other assistance.

<sup>17</sup> Rehabilitation includes medical and psychological care, legal and social services, shelter, counselling and linguistic support, independently of the capacity or willingness of the victims to co-operate in legal proceedings.

<sup>18</sup> Satisfaction includes effective measures aimed at the cessation of continuing violations; verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety, privacy and other interests of the victims of their families; an official declaration or a judicial decision restoring the dignity, reputation and rights of the victim; public apologies; judicial and administrative sanction against the perpetrators.

<sup>19</sup> Guarantees of non-repetition include ensuring the effective investigation, prosecution and sanctioning of traffickers; all measures necessary to protect victims from re-trafficking; providing or strengthening training of relevant officials; strengthening

to appropriate and effective remedies, starting with access to justice. The provision of effective remedies serves multiple purposes. The remedy of compensation, for instance, for any injury, loss or harm sustained, can provide critical support in victims' recovery and empowerment, help their social inclusion and prevent re-victimisation. The remedy of rehabilitation can similarly help in the victims' recovery, as well as social inclusion. Of relevance in this respect is also the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which outlines the main steps to be taken to improve access to justice, and fair treatment, restitution, compensation and social assistance for victims of crime.<sup>20</sup>

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

26. Children need special support to access remedies, the best interests of the child being the primary consideration in all actions concerning trafficked children. The appointment of legal guardians to represent unaccompanied or separated children plays a vital role in enabling child victims of trafficking to access justice and remedies. Further, facilitating family reunification can be an important element of restitution.<sup>21</sup>

27. Civil society, including NGOs, trade unions, diaspora organisations and employers' organisations, plays a vital role in enabling victims of THB to claim compensation and other remedies.<sup>22</sup> In this context, reference should be made to the international projects COMP.ACT - European Action on Compensation for Trafficked Persons<sup>23</sup> and Justice at Last - European Action for Compensation of Victims of Crime,<sup>24</sup> which aim to enhance access to compensation for trafficked persons.

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the independence of the judiciary; modifying practices that cause, sustain or promote tolerance to trafficking, including gender-based discrimination and situations of conflict and post-conflict; effectively addressing the root causes of trafficking; promoting codes of conduct and ethical norms for public and private actors; protecting legal, medical and other professionals and human rights defenders who assist victims.

<sup>20</sup> United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by General Assembly resolution 40/34 of 29 November 1985, available at: [https://www.unicef-irc.org/portfolios/documents/472\\_un-declaration-crime.htm](https://www.unicef-irc.org/portfolios/documents/472_un-declaration-crime.htm)

<sup>21</sup> UNODC, ICAT Issue Paper, Providing Effective Remedies for Victims of Trafficking in Persons, 2016, pp. 7-8. Available at: [https://www.unodc.org/documents/human-trafficking/ICAT/ICAT\\_Policy\\_Paper\\_3\\_Providing\\_Effective\\_Remedies\\_for\\_Victims\\_of\\_Trafficking\\_in\\_Persons\\_2016.pdf](https://www.unodc.org/documents/human-trafficking/ICAT/ICAT_Policy_Paper_3_Providing_Effective_Remedies_for_Victims_of_Trafficking_in_Persons_2016.pdf)

<sup>22</sup> OSCE Compensation for Trafficked and Exploited Persons in the OSCE Region, 2008, pp. 48-53.

<sup>23</sup> <http://www.compactproject.org/>

<sup>24</sup> <http://lastradainternational.org/about-lsi/projects/justice-at-last>

28. The private sector should also play a role in enabling access to, as well as providing, remedies to trafficked persons, in accordance with the UN 'Protect, Respect and Remedy' Framework and the United Nations Guiding Principles on Business and Human Rights.<sup>25</sup> The role of businesses includes steps to ensure that their supply chains are free of trafficked labour, as well as the adoption and implementation of measures to facilitate victims' access to remedies for any harm that occurs. Further, businesses have the potential to help trafficked persons regain economic autonomy.<sup>26</sup> States should therefore ensure that business enterprises implicated in human trafficking are held responsible and take steps to reduce barriers that could lead to a denial of access to remedies.

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

## **2. Right to information (Articles 12 and 15)**

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

31. The information that victims of trafficking must be provided with deals with essential matters, including availability of protection and assistance arrangements, the various options open to the victim, the risks they run, the requirements for legalising their presence in the Party's territory, the various possible forms of legal redress, how the criminal-law system operates (including the consequences of an investigation or trial, the length of a trial, witnesses' duties, the possibilities of obtaining compensation from persons found guilty of offences or from other persons or entities, and the chances of a judgment being fully and effectively enforced). The information and counselling should enable victims to evaluate their situation and make an informed choice from the various possibilities open to them.<sup>27</sup>

32. Many victims do not speak, or barely speak, the language of the country they have been brought to for exploitation. Ignorance of the language adds to their isolation and is one of the factors preventing them from claiming their rights. The provision of translation and interpretation, where needed, is an essential measure for guaranteeing access to rights, which is a prerequisite for access to justice. GRETA has stressed the need for ensuring the availability, quality and independence of interpreters.<sup>28</sup>

33. In Romania, presumed victims of THB (including children) must give their written consent to be referred to assistance (see paragraph 106 regarding the consequences of this for the trial). According to information provided by some civil society actors, only once the consent of the presumed victim has been obtained, she/he will be informed of her/his rights, starting with those related to the victim's immediate needs, such as safe accommodation, subsistence, health care and psychological care. As a second step, victims are informed of their rights in legal proceedings.

<sup>25</sup> United Nations Guiding Principles on Business and Human Rights, implementing the UN 'Protect, Respect and Remedy' Framework, Doc. A/HRC/17/31 (2011).

<sup>26</sup> UNODC, ICAT Issue Paper, Providing Effective Remedies for Victims of Trafficking in Persons, 2016, pp. 8-9.

<sup>27</sup> See Explanatory Report on the Convention, paragraphs 160-162.

<sup>28</sup> See 8th General Report on GRETA's activities, paragraphs 168-169.

34. The right to information is provided for in Article 43 of Law No. 678/2001 on Preventing and Combating THB (hereafter "Anti-Trafficking Law") and by Article 4 of Law No. 211/2004 on Certain Measures to Ensure the Information, Support and Protection of Victims of Crime.

35. Judicial bodies<sup>29</sup> must inform any victims of crime, including THB, of their rights under Article 4 of Law 211/2004 on Certain Measures to Ensure the Information, Support and Protection of Victims of Crime. Under the latter law, victims have the right to be informed of the following: a) the services and organisations that provide counselling or other assistance; b) the prosecution authority to which they can make a complaint; c) the right to legal counselling and the institution to which they may turn; d) the conditions and procedure for granting free legal counselling;<sup>30</sup> e) the procedural right of the injured party and civil party in criminal proceedings (see paragraph 36); f) the conditions and procedures for benefiting from witness protection; g) the conditions and procedure for financial compensation from the State; h) the right to be informed when the defendant is deprived of liberty and/or released. All information must be provided in a language the victim understands or in his/her native language if he/she is a Romanian citizen belonging to a national minority.

36. In the context of criminal proceedings, victims of THB can participate as an injured party, a civil party or a witness, and have a set of procedural rights attached to their status. Pursuant to Article 81 of the Criminal Procedural Code (CPC), injured parties have the right to be informed of their rights at the first contact with a judicial body; to propose the collection of evidence, raise objections and make submissions; to file applications, including for compensation; to be informed of the status of the criminal investigation; to consult the case file; to be heard; to put questions to the defendant, witnesses and experts; to have a free-of-charge interpreter; to be assisted by a lawyer; to use a mediator. The right of an injured party to join the criminal proceedings as a civil party is important because it enables the victim to claim compensation for any damage suffered as a result of the offence, thereby avoiding the need to go through a civil court. Article 20, paragraph 1, of the CPC provides that judicial bodies must inform victims about this right. Civil action can be introduced in the criminal proceedings before the commencement of the inquiry. If a victim decides not to participate in criminal proceedings as an injured party, the prosecutor may decide to order his/her hearing as a witness, under Article 81, paragraph 2, of the CPC. As a witness, a victim of THB has the rights to protection measures and reimbursement of expenses incurred by being summoned before judicial bodies (Article 120, paragraph 2, letter a, of the CPC), as well as the right to avoid self-incrimination (Article 118 of the CPC).

37. The Police Department for Countering Trafficking in Persons uses a standard form for informing victims of their rights. The form is signed by the victim and attached to the case file. Further, prosecutors are obliged to ensure that victims are informed of their rights.

38. According to specialised NGOs, the information on rights tends to be given in a formalistic manner, without making an effort to ensure that the victim understands it. Information about the right to free legal aid has reportedly not always been provided to presumed victims of THB, because Law No. 211/2004 does not explicitly mention victims of THB among the beneficiaries of this legal instrument, and some officials are not aware that it has to be read in conjunction with the Anti-trafficking Law, according to which victims of THB are entitled to free legal aid in accordance with Law No. 211/2004 (see paragraph 46).

39. In the context of criminal procedures, Article 105 of the CPC provides that any hearing shall be conducted using an interpreter certified under relevant laws and regulations, if a person who is subject to the hearing does not understand Romanian. This interpreter may be appointed by the judicial bodies or by the parties to the proceedings, including the injured parties. Exceptionally, when procedural measures need to be taken urgently, a hearing may be conducted in the presence of any person who can

<sup>29</sup> Pursuant to Article 30 of the CPC, the judicial bodies are: (a) criminal investigation bodies; (b) the prosecutor; (c) the judge of rights and freedoms; (d) the preliminary chamber judge; (e) the courts.

<sup>30</sup> Law No. 211/2004 refers to *asistentă juridică gratuită*, which is the Romanian term used for both legal assistance and free legal aid. The police and prosecutors are obliged to provide victims of crime with legal assistance. Legal aid (representation) is regulated by Article 44 of Law No. 678/2001.

communicate with the subject of the hearing. As noted above, Article 81 of the CPC also provides that the injured party has the right to be assisted by an interpreter, free of charge, when needed. However, there is a shortage of qualified interpreters for certain languages (see paragraph 40).

40. According to Law No. 122/2016 on Asylum, victims of trafficking fall within the category of vulnerable persons who must be identified as such and their special needs taken into account in the asylum procedure. Most asylum seekers in Romania originate from Afghanistan, Iraq, Iran, Pakistan and Syria, but no victims of THB have been identified among the 12 000 asylum seekers who applied for asylum in the last five years. UNHCR considers the lack of experienced, qualified interpreters a major difficulty in the context of identifying victims of THB among asylum seekers.

41. Access to information on rights is reportedly limited in practice and usually not freely accessible at asylum reception centres, or else available only in a limited range of foreign languages. There is a particular lack of child-friendly information materials in this regard.

42. If the presumed victim of THB is a child, his/her rights will be explained by staff of the local social assistance and child protection authorities. However, there is reportedly a limited capacity of the child protection services to ensure targeted counselling in a child-friendly manner and with interpretation if the child is a foreigner.

43. **GRETA considers that the Romanian authorities should strengthen the provision of information to presumed and formally identified victims of THB about their rights, the services available to victims and how to access them, as well as the implications of being identified as a victim of THB, including by:**

- **training relevant officials on how to explain to victims their rights in a way which takes into account their cognitive skills and psychological state, at the first point of contact as well as through later stages of the procedures;**
- **ensuring that the information is given in a language which the victim understands, including with the help of qualified interpreters sensitised to the phenomenon of THB, and in a child-friendly manner where applicable.**

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

44. Article 15(2) of the Convention obliges Parties to provide in their internal law for the right of victims of trafficking to legal assistance and free legal aid. As court and administrative procedure is often very complex, legal assistance is necessary for victims to be able to claim their rights. It is for each Party to decide the requirements for obtaining such free legal aid. Parties must have regard not only to Article 15(2) of the Convention, but also to Article 6 of the ECHR. Even though Article 6(3)(c) of the ECHR provides for free assistance from an officially appointed lawyer only in criminal proceedings, European Court of Human Rights case-law<sup>31</sup> also recognises, in certain circumstances, the right to free legal assistance in a civil matter on the basis of Article 6(1) of the ECHR. Thus, even in the absence of legislation granting free legal assistance in civil matters, it is for the courts to assess whether, in the interest of justice, an applicant who is without financial means should be granted legal assistance if unable to afford a lawyer.

45. GRETA's reports highlight the value of a lawyer being appointed as soon as there are reasonable grounds for believing that a person is a victim of trafficking, before the person makes an official statement and/or decides whether to co-operate with the authorities. Early access to legal assistance is also important to enable victims to take civil actions for compensation and redress.<sup>32</sup>

<sup>31</sup> *Airey v. Ireland* judgment, 9 October 1979.

<sup>32</sup> See the 8<sup>th</sup> General report on GRETA's activities.



46. In Romania, Article 44 of the Anti-trafficking Law provides that victims of THB are entitled to free legal counselling, which includes legal representation, to help them exercise their rights within criminal proceedings, as well as at all stages of the proceedings. As already noted in paragraph 38, the Anti-trafficking Law refers to Law No. 211/2004 on Certain Measures to Ensure the Information, Support and Protection of Victims of Crime which, however, does not specifically mention victims of THB among the categories of victims entitled to legal assistance and free legal aid. GRETA notes that Article 14, paragraph 1, of Law No. 211/2004 specifies that free legal aid is to be provided, upon request, to several categories of victims of serious offences, but does not mention Articles 210 and 211 of the CC which criminalise, respectively, trafficking in adults and child trafficking. As a result, courts reportedly do not always grant free legal aid to victims of THB who have been subjected to forms of exploitation other than sexual if no reference is specifically made to the entitlement under the Anti-trafficking Law.

47. Article 16 of Law No. 211/2004 sets out the following conditions for granting free legal aid: i) the victim has notified the prosecution or court within 60 days of the offence being committed (this condition does not apply to children and persons who do not have full legal capacity); ii) for victims covered by Article 14, paragraph 1, of the Law, the term of 60 days is calculated from the date when the victim learned about the commission of the offence; iii) if the victim was physically or mentally unable to do so, the 60-day term is calculated from the date when that inability ceased. The application must be submitted personally by the victim or by his/her legal representative in the case of children, or by NGOs operating in the area of victim protection provided that the victim signs the application. The request has to be submitted to the district court in the court jurisdiction in which the victim is resident and the decision is taken by at least two judges who are members of the court commission for granting financial compensation to victims of crime. The application must include "where applicable the monthly income per victim's family member" and other supporting documents. Pursuant to Article 15 of Law No. 211/2004, free legal aid is granted if the monthly income per family member of the victim is not more than the equivalent of the gross minimum monthly salary. Access to free legal aid is therefore means tested and has to be requested by the victim. Free legal aid is granted up to the equivalent of two gross minimum monthly salaries (Article 18).<sup>33</sup>

48. Article 80 of the CPC foresees an active role for the prosecutor, the judge of rights and freedoms,<sup>34</sup> the judge of the preliminary chamber or the court to appoint an *ex officio* lawyer in order to represent victims during criminal proceedings. Article 93 (5) of the CPC establishes an obligation for the judicial bodies to order the appointment of an *ex officio* lawyer whenever it considers that the injured person or the civil party cannot defend themselves.

49. An *ex officio* lawyer is appointed by the relevant county Bar Association, pursuant to an agreement concluded between the Ministry of Justice (which pays the lawyer's fees) and the National Union of Bar Associations of Romania.<sup>35</sup> Each county Bar Association has lawyers on standby each day of the week. Article 5 (d) of the Protocol between the Ministry of Justice, the Prosecutor's Office and the National Union of Bar Associations sets the fee for legal aid services at 470 lei (less than 100 Euros), and 723 lei for legal aid for extrajudicial actions or actions in relation to a special law (e.g. compensation).<sup>36</sup> *Ex officio* lawyers are required to have at least two years of practice, but GRETA was informed that they are often not very experienced and the fees paid by the Ministry of Justice are rather low. At the same time, alleged traffickers often engage experienced lawyers and are able to pay them higher fees. Further, as noted in GRETA's second report, *ex officio* lawyers often change during the criminal proceedings due to their long duration (between three and five years).<sup>37</sup>

<sup>33</sup> As of January 2020, the monthly minimum gross salary was 2 230 Lei (about 460 Euros).

<sup>34</sup> Pursuant to Article 53 of the CPC, the judge of rights and freedoms is a judge who, in the course of the prosecution, decides, *inter alia*, on preventive measures, temporary security measures, the use of special surveillance and other means for collecting evidence.

<sup>35</sup> There are about 30 000 lawyers members of Bar Associations in Romania, some 10 000 of whom are active in Bucharest.

<sup>36</sup> <http://www.unbr.ro/wp-content/uploads/2019/02/PROTOCOL-OFICII-FINAL-SEMNET-14.02.2019.pdf>

<sup>37</sup> See paragraph 149 of GRETA's second report on Romania.

50. Based on Article 14 of Law No. 211/2004, in conjunction with Article 44, paragraph 2, of the Anti-trafficking Law, a victim of THB can decide to choose a specific lawyer, rather than being appointed an *ex officio* lawyer. However, there is a limited number of lawyers specialised in representing victims of THB. It should be noted that specialised lawyers chosen by victims are entitled to higher fees than *ex officio* lawyers appointed by the county Bar Associations.

51. Pursuant to Resolution No. 419/2008 of the National Union of Bar Associations, a lawyer providing legal counselling outside the scope of the criminal proceedings cannot provide legal representation in the same case during the criminal proceedings. However, the National Union of Bar Associations' Decision No. 180/2016 states in Article 43 that a lawyer who has provided legal aid during the criminal investigation may also provide it before the competent court if he/she has obtained and certified the agreement of the beneficiary.<sup>38</sup>

52. Further, NGOs can provide legal counselling through their associated lawyers, but at the trial stage, these lawyers cannot intervene unless they have been accepted by the victim as his/her designated lawyer rather than as an *ex officio* lawyer.

53. According to the Romanian authorities, 188 victims of THB received free legal aid in 2016, pursuant to Law No. 211/2004, 317 in 2017, 296 in 2018, and 81 in 2019.

54. In April 2017, as part of an EU-funded project implemented by NGOs from Romania, Germany, Bulgaria and Sweden, a manual for lawyers, prosecutors and judges was produced on "Strengthening Legal Knowledge for Better Protection of Victims of Human Trafficking Rights in Judicial Proceedings".<sup>39</sup> The manual includes a series of case studies of THB from Romania. It is noteworthy that in some of the cases, the victims (who had the procedural status of injured parties and witnesses) were not assisted by *ex officio* lawyers at the court hearing, even though this is required by Article 44 of the Anti-trafficking Law.<sup>40</sup>

55. GRETA was informed that victims of THB have the right to legal assistance irrespective of immigration status. However, while foreign victims of THB may receive free legal aid based on Law No. 211/2004, they may be advised by the authorities not to declare that they are victims of THB if they want to benefit from a swift return home through IOM, as court procedures in THB cases are long (see paragraph 102). GRETA was informed by the authorities that no foreign victim of THB received legal assistance and free legal aid in 2019.

56. **GRETA considers that the Romanian authorities should strengthen their efforts to facilitate and guarantee access to justice for all presumed victims of THB, in particular by ensuring that:**

- **a lawyer is appointed as soon as there are reasonable grounds for believing that a person is a victim of THB, before the person concerned has to decide whether or not to co-operate with the authorities and/or make an official statement;**
- **the authorities and Bar Associations encourage training and specialisation of lawyers to provide legal aid to trafficking victims, and trafficking victims are systematically appointed a specialised lawyer;**
- **access to free legal aid for victims of THB is unconditional and does not depend on proof of lack of financial means to pay for a lawyer;**

<sup>38</sup> [http://unbr.ro/wp-content/uploads/2017/04/Hotarare-Consiliu-180-2016\\_Reg-SAJ\\_final\\_complet.pdf](http://unbr.ro/wp-content/uploads/2017/04/Hotarare-Consiliu-180-2016_Reg-SAJ_final_complet.pdf)

<sup>39</sup> Available at: <https://humanrightslawyers.eu/eu-projects/strengthening-legal-knowledge-for-a-better-protection-of-victims-of-human-trafficking-rights-in-the-judicial-proceedings/>

<sup>40</sup> See, for example, indictment No. X/D/P/2016, quoted on pages 24-26.

- **review Law No. 211/2004 on Certain Measures to Ensure the Information, Support and Protection of Victims of Crime so that it specifically mentions victims of THB among the categories of victims entitled to legal assistance and free legal aid.**

#### **4. Psychological assistance (Article 12)**

57. Human trafficking and exploitation may have serious psychological and physical consequences on the victims, including mental health problems and loss of self-esteem. Psychological assistance is needed to help victims of trafficking deal with the trauma they have been through and achieve a sustained recovery and social inclusion. Some victims require long-term therapeutic attention due to the violence that they have suffered. Every victim of trafficking should have a clinical assessment tailored to include an evaluation of their particular readiness for therapy conducted by an experienced clinician.<sup>41</sup>

58. Law No. 211/2004 in 2019 (Articles 7 to 13) contains provisions on the psycho-social counselling of victims of crime, which is to be provided free of charge to victims of certain offences, including THB. Until 2019, the provision of psycho-social assistance to victims of crime was the responsibility of the Romanian Probation Office, which, as noted in GRETA's second report, did not have specialist counsellors among its staff and was not trusted by victims as its primary role is to work with offenders.<sup>42</sup> Following an amendment to Law No. 211/2004 in 2019, new public service entities tasked with supporting victims of crime, including psychological support, are to be established. These new entities will be subordinated to the county directorates of social assistance and child protection. Each entity will employ at least one social worker, one psychologist and one legal advisor, and will be tasked, *inter alia*, with the provision of psychological assistance to victims of crime. GRETA was informed that nine county offices<sup>43</sup> had already been established. According to the Romanian authorities, psychological assistance will continue to be provided by the local authorities and NGOs until the new entities have been set up in the remaining 32 counties.

59. The shelter for victims of THB run by the General Directorate for Social Assistance and Child Protection in Craiova, which was visited by GRETA, employs a psychologist who at the same time provides legal advice to victims. GRETA notes that most victims of THB remain at the shelter for only a few days and the psychological support is short-term.

60. The two NGO-operated shelters for victims of THB which GRETA visited employ psychologists who provide long-term support to victims. At the shelter for child victims of THB, psychological assessments are made every three months.

61. **GRETA considers that the Romanian authorities should take further steps to ensure that victims of THB are provided with psychological assistance to help them overcome the trauma they have been through, and to achieve a sustained recovery and social inclusion.**

<sup>41</sup> OSCE, *Trafficking in Human Beings Amounting to Torture and Other Forms of Ill-Treatment* (2013), Vienna, p.115.

<sup>42</sup> See paragraph 117 of the second GRETA report.

<sup>43</sup> In the counties of Vrancea, Caraş Severin, Galaţi, Bacău, Arad, Dolj, Brăila, Hunedoara and Buzău.

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

62. Article 12, paragraph 4, of the Convention requires State Parties to enable victims of trafficking who are lawfully present in the country to have access to the labour market, vocational training and education. An important element of the recovery and successful social inclusion of trafficked persons is their economic empowerment, which can be achieved through job placement, micro-businesses and social enterprises.<sup>44</sup> GRETA has stressed the need to develop public-private partnerships with a view to creating appropriate work opportunities for victims of trafficking.<sup>45</sup>

63. GRETA visited two shelters for victims of THB operated by NGOs, one for adults and the other for children. Both shelters have entered into partnerships with institutions providing general education and vocational training (on bakery, hairdressing and manicure) to victims. The shelters have also established partnerships with hotels and an electronics factory, which provide jobs to victims. Further, the NGO Reaching Out, which runs the shelter for child victims, owns a lavender plantation in which victims acquire job skills (producing lavender oil and related products). The shelter run by the NGO Open Doors Foundation reported that one victim of THB had completed flight attendant training while staying at the shelter.

64. The National Agency for Employment, under the Ministry of Labour and Social Protection, has programmes for supporting employment opportunities for young vulnerable people. One of these programmes, implemented by the county employment offices, consists of three-year agreements with victims of THB and the provision of State subsidies to employers who hire them.

65. Civil society organisations reported difficulties when it comes to victims of THB (re)integrating into the general school system, due to the fact that they had missed several years of compulsory education. The "Second Chance School",<sup>46</sup> intended for children and adults who have missed several years of school due to traumatic experiences, is accessible to victims of THB and provides a more flexible option than regular school.

66. Asylum seekers are allowed to seek employment three months after making an asylum application (unless they already had a work permit before claiming asylum). Asylum seekers get free accommodation at reception centres,<sup>47</sup> but receive only 16 Lei (approximately 3.30 Euros) per day for food and other essential needs, which makes them vulnerable to exploitative employment relationships.

**67. GRETA considers that the Romanian authorities should strengthen effective access to the labour market for victims of THB, as well as their economic and social inclusion through the provision of vocational training and job placement, awareness-raising amongst employers, and the promotion of micro-businesses, social enterprises and public-private partnerships, including through state-supported employment programmes, with a view to creating appropriate work opportunities for victims of trafficking.**

**68. Further, GRETA considers that the Romanian authorities should ensure that asylum seekers are provided with effective access to the labour market, including by providing them with vocational and language training.**

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<sup>44</sup> Rebecca Surtees, NEXUS Institute, *Re/integration of trafficked persons: supporting economic empowerment*, Issue paper No. 4, King Baudouin Foundation (2012).

<sup>45</sup> See 8th General report on GRETA's activities, paragraph 183.

<sup>46</sup> See paragraph 67 of the second GRETA report on Romania.

<sup>47</sup> Asylum seekers have a right to stay in reception centres during the asylum procedure, unless they have the financial means to secure private accommodation. Unaccompanied asylum-seeking children over 16 years of age are also usually hosted in reception centres, while those under 16 are placed in child protection centres.

## 6. Compensation (Article 15)

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

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

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

72. The legislation regulating compensation to victims of crime, including victims of THB, has not changed since GRETA's second report on Romania. Pursuant to the CCP, victims of THB can participate in criminal proceedings as civil parties and claim compensation for material and/or moral damages from the perpetrator. Lawyers appointed to provide free legal aid assist victims in submitting claims for damages from the perpetrator.<sup>48</sup> If the victim is a child or has limited legal competence, the prosecutor shall, according to the CPC, make the claim for damages on behalf of the victim. Both the prosecutor and the judge are obliged to inform victims of their right to claim damages from the perpetrators. Pursuant to Article 19, paragraph 4, of the CPC, a civil action is to be settled within the criminal proceedings, unless this would lead to exceeding the reasonable duration of the trial.

73. Compensation can be claimed for physical and psychological damage, including where such damage is long-term or permanent, in which case there might be a lump sum paid as compensation and/or a monthly payment.<sup>49</sup> A court may also order the perpetrator to pay the victim compensation for loss of earnings (see paragraph 74). Material damages may cover unpaid wages and be ordered in situations where victims of THB were not paid at all or were paid an unreasonably low amount.

<sup>48</sup> In line with Article 44 of the Anti-trafficking Law, which envisages legal aid for the purpose of claiming compensation.

<sup>49</sup> Article 1386 of the Civil Code provides that "If the injury is of a continuity nature, the compensation shall be granted in the form of periodic benefits".

74. Article 19, paragraph 5, of the CPC provides that the amount of compensation for material or moral damage is to be calculated according to the relevant provisions of the Civil Code (Articles 1381 to 1395). Article 1385, paragraph 3, of the Civil Code provides that "the compensation shall include the loss suffered by the injured party, the gain which he/she could have made under ordinary circumstances and which he/she was deprived of, as well as the expenses he/she has incurred to avoid or limit the damage".<sup>50</sup> Article 1387, paragraph 1, of the Civil Code stipulates that "in the case of injury to the bodily integrity or health of a person, the compensation must include, under the conditions of Article 1388 and 1389, as the case may be, the equivalent of the earnings that the injured person was deprived of or that he/she is prevented from acquiring, through the effect of losing or reducing his/her work capacity. In addition, the compensation must cover the costs of medical care and, where appropriate, the expenses determined by the increased needs of the injured person, as well as any other material damages".<sup>51</sup> Further, Article 1387, paragraph 3, of the Civil Code provides that the court may grant the injured party a provisional compensation award to cover urgent needs. In order to decide on the compensation award, the judge may use forensic evidence and/or psychological assessments.

75. If no civil action for compensation was filed in the criminal proceedings, or the criminal court did not settle the civil action, or alternatively the losses were not entirely covered, the victim or his/her successors may file a compensation claim in a civil court. The evidence produced during the criminal proceedings may be used before the civil court. Based on Emergency Ordinance 51/2008,<sup>52</sup> the victim may claim judicial public aid to cover at least part of the costs of the civil court procedures, but this aid is means tested and difficult to access. GRETA was informed that a specialised NGO had tried, without success, to claim judicial aid on behalf of a victim of trafficking. In practice, there are hardly any civil claims submitted by victims of THB outside the context of the criminal proceedings.

76. The freezing orders issued during the criminal proceedings, pursuant to Article 249 of the CPC, are a guarantee that the defendant is solvent when the final judgment is passed. Asset freezing consists of freezing movable and immovable assets, based on a restraint order. The CPC provides for the possibility of challenging freezing orders during the investigation and the trial. GRETA was informed that freezing orders against perpetrators of THB are rare and are not issued in a timely manner (see paragraph 104). Compensation awarded by courts is rarely paid to victims because the perpetrators' assets have not been identified and frozen at an early stage, which is related to shortcomings in financial investigations. In the few known cases in which victims of THB received compensation, the perpetrators' assets had been frozen in a timely manner and then confiscated.

77. There are also difficulties related to the enforcement of compensation decisions. Free legal aid may be requested to cover the expenses<sup>53</sup> of engaging a so-called executor, i.e. bailiff. Under Article 90 of the Civil Procedure Code, a victim may benefit from such free legal aid, as well as from a reduction or postponement of certain court fees.

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<sup>50</sup> Unofficial translation.

<sup>51</sup> Unofficial translation.

<sup>52</sup> Article 4 of the Government Emergency Ordinance No. 51/2008 provides that any natural person may request legal aid if he/she cannot bear the costs of a trial or the costs of legal consultations in order to defend a legitimate right or interest in justice, without jeopardising his/her family or maintenance. Legal aid is granted in civil, commercial, administrative, labour and social insurance cases, as well as in other cases, except for criminal cases.

<sup>53</sup> Usually 8-10% of the amount of compensation eventually received from the perpetrator.

78. There are no official statistics on the number of compensation claims made by victims in THB cases. However, based on a discussion GRETA had with judges during its visit, the number of such claims appears to be low in relation to the number of adjudicated cases of THB. According to data provided by the Romanian authorities, in 2016, 89 victims were granted civil damages by a final court decision,<sup>54</sup> but only two of them actually received compensation. In 2017, 54 victims<sup>55</sup> were granted civil damages, but only two of them received compensation, and in 2018, 71 victims<sup>56</sup> were granted civil damages, but only one received compensation. In the first semester of 2019, 42 victims<sup>57</sup> were granted civil damages, but only two of them effectively received compensation. According to judges, some victims refrain from claiming compensation, especially when they have developed an emotional attachment to their traffickers. Civil society representatives noted that some victims are afraid of their traffickers and do not dare claim compensation. According to lawyers and NGOs, perpetrators usually do not have assets in their name and victims do not receive assistance from the State for the enforcement of compensation orders, despite the possibility of free legal aid under Article 90 of the CPC.

79. On the positive side, case-law concerning child victims of THB since 2017 shows that almost all court decisions in which the defendants were found guilty included moral damages to be paid by the perpetrators to the victims. However, compensation for moral damages has not been awarded as frequently to adult victims of THB.

80. By way of example, reference can be made to the following cases:

- the two defendants had gained the trust of their victims, offering to pay their travel and find them work as housekeepers in Italy. Shortly after arrival in Italy the victims were beaten by the defendants and forced into prostitution from 2002 to 2004. The first instance court, based on testimonies of four of the victims and material evidence, sentenced the defendants to three years' imprisonment (suspended) and granted each of the victims the equivalent of 50 000 Euros in moral damages, but refused the prosecutor's request to confiscate the proceeds of crime. Following an appeal by the prosecutor, the Brasov Court of Appeal confiscated 150 000 Euros held by the traffickers. The appeal court upheld the suspended sentences and the moral damages awarded.<sup>58</sup> No material damages were granted to the victims, even though the court accepted that they had been exploited for at least 20 months, during which they had each earned between 250 and 700 Euros per day for the traffickers. It is not known whether the victims received the moral damages awarded to them.
- in another case adjudicated by the Sibiu Tribunal,<sup>59</sup> a 16-year old girl living in an orphanage who had been sexually exploited claimed the equivalent of 50 000 Euros in moral damages and 10 000 Euros in material damages. The Tribunal granted only 10 000 Euros in moral damages and confiscated 12 600 lei (about 2 650 Euros) as proceeds of crime. The Alba-Iulia Court of Appeal upheld the Tribunal's decision to sentence the traffickers to five years' imprisonment and accepted the prosecutor's request to seize the car used by the traffickers for transportation of the victim.
- a large-scale case was detected in 2016, involving some 40 victims who had been exploited over 12 years in domestic households and the forest industry near the village of Gămăcești in Argeș County. The victims, both adults and children, included persons with physical or mental disabilities who had been physically, and in some cases sexually, abused. The case was prosecuted as THB for the purpose of labour exploitation in several related cases according to the family affiliation of

<sup>54</sup> Including 44 women, 19 men, 19 girls and 7 boys.

<sup>55</sup> Including 17 women, 5 men, 26 girls and 6 boys.

<sup>56</sup> Including 18 women, 17 men, 14 girls and 22 boys.

<sup>57</sup> Including 9 women, 19 men and 14 girls.

<sup>58</sup> Brasov Court of Appeal, decision 803/Ap, <http://www.rolii.ro/hotarari/5c36b324e49009d41e000039>

<sup>59</sup> Sibiu Tribunal, sentence 16/2018, available at: <http://www.rolii.ro/hotarari/5a90daa6e490091c5a000038>

the defendants<sup>60</sup>. The trials began in 2017 in Argeş Tribunal and the final verdicts were reached in 2019. The most severe punishment was imprisonment of 15 years and 8 months. The victims were assisted by the NGO ADPARE and each of them was awarded the equivalent of 20 000 Euros in moral damages. With the support of the ANITP Regional Centre in Pitesti, ADPARE managed to find a local court executor (bailiff) willing to pursue the execution of the court decision without asking for a percentage of the damages eventually paid, as is usually the case.<sup>61</sup> However, only 40 000 Euros were seized from the perpetrators and therefore it is doubtful that the damages awarded will be paid in full.

81. According to the Labour Code (Law No. 53/2003), knowingly hiring<sup>62</sup> an irregular migrant who is a victim of THB is a crime punishable by three to 24 months' imprisonment or, if the work performed poses a danger to the life or health of the worker, punishment of between six and 36 months' imprisonment.<sup>63</sup> Article 265 of the Labour Code prescribes that the employer must pay the illegally hired person any outstanding wages, corresponding to at least the minimum wage in the employment sector. The employer may also be obliged to pay social and other comparable fees, and the costs for transferring outstanding wages to the country of origin of the victim, should the latter have had to leave Romania.

82. As explained in GRETA's second report, victims of certain serious crimes, including THB, may seek financial compensation from the State under certain conditions, under Law No. 211/2004 on Certain Measures to Ensure the Information, Support and Protection of Victims of Crime (Articles 21 to 34).<sup>64</sup> Such compensation may be sought to cover any costs incurred by the victim as a result of the crime or the criminal procedure, including medical expenses and the hiring of a lawyer, as well as income the victim was deprived of because of the crime. Victims must lodge their claim for compensation with the tribunal in their place of residence. Each tribunal has a Crime Victim Compensation Board responsible for examining such claims. The crime must have been committed on the territory of Romania and the victim must be a Romanian or a foreign national residing legally in Romania or another EU member state. The deadline for seeking financial compensation is one year from the date of the final judgment in a criminal or civil case or, in case the perpetrator is unknown, within three years of the crime having been committed.

83. There is no state compensation foreseen for moral damages. State compensation can only be granted once there is a final decision of a criminal court in the case in question (though it is possible for a victim to apply for an advance on the financial compensation, before the related trial has been concluded, in order to pay for urgent expenses, including medical ones). Further, if the victim had the status of a witness in the criminal proceedings – as opposed to an injured party or a civil party – he/she cannot claim compensation from the State. State compensation is limited to a maximum of 10 gross minimum wages (i.e. about 4 600 Euros). Any compensation the victim has received from the perpetrator or an insurance company will be deducted from the state compensation.

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<sup>60</sup> File No. 7/109/2017, Arges Tribunal, sentence 8/2018; Pitesti Court of Appeal, decision 4/2019; file No. 18/109/2017, Arges Tribunal, sentence 23/2018; Pitesti Court of Appeal, decision 590/2018; file No. 19/109/2017, Argest Tribunal, sentence 15/2018; Pitesti Court of Appeal, decision 1174/2018.

<sup>61</sup> GRETA refers to paragraph 142 of its second report on Romania, in which it is explained that a victim of THB is entitled to free bailiff's services in this context, but that the legal provision to this effect is not well known.

<sup>62</sup> Hiring an irregular migrant who is a victim of THB is considered different from using the services of a victim of THB, which is criminalised by Article 216 of the CC.

<sup>63</sup> Article 265, paragraphs 2 and 3, of the Labour Code.

<sup>64</sup> See paragraph 145 of GRETA's second report on Romania.



84. According to statistics provided by the Romanian authorities, 86 victims of THB applied for state compensation in 2016,<sup>65</sup> 75 in 2017,<sup>66</sup> 73 in 2018<sup>67</sup> and 45 in the first semester of 2019.<sup>68</sup> During this time period, only one victim of THB was granted state compensation (in 2017), which was in fact not paid to her. GRETA notes that the procedure for applying for state compensation is rather complex, requiring the provision of proof of expenses by the victims.

85. According to the previously mentioned manual for lawyers, prosecutors and judges (see paragraph 54), there are multiple problems in practice related to the fact that victims are not correctly or fully informed of the right to claim compensation, as well as to the excessive length of the criminal proceedings, in particular when there are many defendants and victims in cases of organised crime. Further, in most cases, victims do not have the financial resources to undertake enforcement proceedings.<sup>69</sup>

86. There has been no training provided to relevant professionals explicitly on compensation to victims of THB since 2015,<sup>70</sup> although there has been training for judges and prosecutors about the general application of relevant laws, such as the criminal and civil procedures codes (see paragraph 131).

87. **GRETA urges the Romanian authorities to make additional efforts to facilitate and guarantee access to compensation for victims of THB, in particular by:**

- **ensuring that the collection of evidence about the harm the victim has suffered, including the financial gain from the exploitation of the victim or loss sustained by the victim, is part of the criminal investigation with a view to supporting compensation claims in court;**
- **making full use of the legislation on the freezing and forfeiture of assets, as well as international co-operation, to secure compensation to victims of THB, and ensure that recoverable property which is seized in criminal proceedings is returned as soon as possible to the victim;**
- **reviewing the procedure to facilitate access to judicial public aid for victims who wish to claim compensation in civil proceedings;**
- **supporting victims to effectively enforce compensation orders, including by ensuring that they have access to free legal aid;**
- **including the topic of compensation in training programmes for lawyers, prosecutors and judges and encouraging them to use all the possibilities the law offers to uphold compensation claims by victims of THB;**
- **facilitating access to state compensation by setting up as a matter of priority a victim compensation fund which uses confiscated assets of perpetrators of human trafficking to fund compensation and reparation, and simplifying the procedure and eligibility criteria for claiming compensation.**

88. **Further, GRETA considers that the Romanian authorities should take additional steps to enable access to compensation for victims of trafficking by making compensation awarded in criminal proceedings payable by the State in advance, and the State taking the responsibility to recover the amount from the offender.**

<sup>65</sup> Including 41 women, 2 men and 43 girls.

<sup>66</sup> Including 30 women, 41 girls and 4 boys.

<sup>67</sup> Including 41 women, 4 men and 28 girls.

<sup>68</sup> Including 32 women, 1 man and 12 girls.

<sup>69</sup> At p. 50. <https://humanrightslawyers.eu/eu-projects/strenghtening-legal-knowledge-for-a-better-protection-of-victims-of-human-trafficking-rights-in-the-judicial-proceedings/>

<sup>70</sup> In autumn 2015 ANITP provided training about compensation to victims of THB to a number of relevant professionals, namely judges, prosecutors, police officers, social assistants, psychologists, lawyers, bailiffs, staff of ANITP regional offices and NGOs. There were seven training sessions in as many Romanian cities, each lasting two days.

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

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

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

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

92. There have been no changes to Article 210 of the Romanian Criminal Code (CC), which criminalises trafficking in human beings. The penalties envisaged for the basic offence of trafficking in human beings in Article 210 of the CC are imprisonment of three to 10 years and a ban on the exercise of certain rights. The penalty for trafficking of children envisaged in Article 211 of the CC is imprisonment from five to 10 years and a ban on the exercise of certain rights (see paragraph 15). Further, no changes have been made to Article 182 of the CC, which defines the forms of exploitation.<sup>71</sup> As mentioned in GRETA's second report, while the exploitation of criminal activities is not explicitly mentioned in Article 182 of the CC, according to the Romanian authorities, it falls under the concept "forcing a person to carry out work or tasks". The available statistics on police investigations related to THB refer to 10 cases of forced criminality (see paragraph 11) and Romania has participated in several Joint Investigation Teams (JITs) related to this form of trafficking, including a large case involving Romanian victims exploited in Denmark.<sup>72</sup>

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<sup>71</sup> Article 182 of the new CC defines exploitation as follows: "forcing a person to carry out work or tasks; enslavement or other similar procedures implying deprivation of freedom; forcing persons into prostitution, pornography, in view of obtaining and distributing pornographic material or any other types of sexual exploitation; forcing into mendicancy and illegal collection of body organs, tissues or other cells". Further, Articles 214 and 215 of the CC criminalise the exploitation of adults and children for begging.

<sup>72</sup> The Hornet Nest case, see paragraph 176 of GRETA's second report in Denmark, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806662af>

93. GRETA was informed of a draft Law (PL-x 77/2021<sup>73</sup>), pending before the Chamber of Deputies, which includes the exploitation of criminal activities among the forms of exploitation resulting from THB in Article 182 of the CC. The draft Law also extends the statute of limitation for human trafficking offences from 10 to 15 years and the minimum penalty for trafficking in adults (Article 210) from three to four years' imprisonment. For both trafficking in adults and trafficking in children, the draft Law adds new aggravating circumstances: the act caused the victim serious bodily or health integrity; the offence was committed for the purpose of illegal removal of organs, tissues or cells; the offence was committed by causing a state of intoxication with alcohol or other psychoactive substances; the offence was committed by an organised criminal group; the act led to the death of the victim.

94. Article 182 of the CC does not refer to forced marriage as a form of exploitation. GRETA notes that according to the UN OHCHR, Romania has one of the highest numbers of early/child marriages in Europe, affecting primarily (but not exclusively) Roma communities; however, there is a general reluctance on the part of the authorities to intervene in this regard.<sup>74</sup> The National Strategy for the Protection and Promotion of Child Rights 2014-2020 refers to early marriages only in the section dedicated to Roma children, where it mentions that approximately 28% of children/youth aged 15-19 are married; however, besides mentioning the problem and citing its dimensions, the Strategy does not include any specific measures or strategic action targeting early marriages.<sup>75</sup> In their comments on the draft GRETA report, the Romanian authorities have indicated that while there have been no cases of THB involving forced marriage as a form of exploitation, such situations fall under the concept "forcing a person to carry out work or tasks" criminalised in Article 182 of the CC.

95. In its second report, GRETA considered that the plea-bargaining procedure should not be applied to human trafficking cases, given the severity of this crime. Articles 375, 396 and 480-486 of the CPC provide for, and regulate, plea bargaining procedures, which may lead to reduced sentences. A plea bargain can be agreed between the prosecutor and the defendant, but it has to be approved by the judge, who can reject it, for example because the proposed punishment is unjustifiably mild in relation to the seriousness of the crime. Child defendants may enter into a plea bargain agreement with the consent of their legal representatives and the plea bargain agreement will be taken into account when educational measures are chosen for the child. There is a second procedure for negotiating a reduced sentence in exchange for a guilty plea by the perpetrator, based on Article 480 of the CPC, which takes place in court. In this procedure, the defendant admits guilt, often on the advice of his or her lawyer, which leads to a reduction of one third of the prison sentence calculated by the judge based on the evidence in the case and the severity of the crime. In 2016, an amendment of Article 480 of the CPC raised the threshold for applying this procedure from seven to 15 years' imprisonment. A plea bargain agreement may, but does not necessarily have to, include a civil settlement or mediation agreement concerning civil action for damages. In 2018 there were nine plea bargaining procedures concluded in THB cases and in 2019, 16, including eight concerning trafficking in children (see also the statistics in paragraph 98, which are different as they cover THB and related offences). It would appear that many defendants in THB cases have had their sentences reduced following a plea bargaining or a guilty plea procedure.

96. The Directorate for Investigating Organised Crime and Terrorism (DIICOT) within the Prosecutor's Office attached to the High Court of Cassation, and the Department for Combating Organised Crime (DCCO), are responsible for investigating and prosecuting THB. Prosecutors from DIICOT usually get involved only in complicated cases of transnational organised crime, including THB. The 2016 law regulating the functioning of DIICOT establishes that DIICOT should have its own investigators (police officers and financial/IT investigators) in order to prevent interference into investigations (corruption). In their comments on the draft GRETA report, the Romanian authorities indicated that as of December 2019, 39 out of the 90 positions of investigators created for DIICOT were filled. However, it is not clarified how

<sup>73</sup> Draft law PL-x 77/2021 is available at: [http://www.cdep.ro/pls/proiecte/upl\\_pck2015.proiect?idp=19086](http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?idp=19086)

<sup>74</sup> Statement of the UN OHCHR Working Group on discrimination against women and girls reflecting its preliminary findings at the end of its official visit to Romania 24 February – 6 March 2020.

<sup>75</sup> National Strategy for the Protection and Promotion of Child Rights 2014-2020, p. 25.

many of these investigators work in DIICOT's section which is competent to investigate terrorism-related offences and how many in the section competent to investigate organised crime, including THB.

97. The statistics on investigations provided by DIICOT and DCCO vary and do not differentiate between THB cases and cases related to other crimes, such as pimping and pandering. According to the DCCO, the crime of THB and pandering/pimping by an organised criminal group (Article 213<sup>76</sup> in conjunction with Article 367) cannot be dealt with separately because in practice, many cases are initiated as pimping/pandering and subsequently the police identify victims of THB among those engaged in prostitution for the benefit of the members of the criminal group. There has been a decrease in registered cases of THB for the purpose of sexual exploitation at the expense of cases of pimping/pandering because perpetrators increasingly use the "loverboy" *modus operandi*, and their victims do not consider themselves as victims. GRETA was told of cases in which traffickers were living with their victims while awaiting trial or had married the victim. Pimping/pandering is easier to prosecute, as there is no need to provide evidence of the element of "action" which is part of the definition of human trafficking, but attracts milder penalties, while the victims do not have access to the entitlements of victims of THB.

98. In 2016, there were a total of 1 727 cases of THB and related offences under investigation by DIICOT, of which 853 were new cases opened in 2016; 552 files were settled, resulting in 132 indictments concerning 352 defendants (of whom 208 were remanded in custody),<sup>77</sup> four plea bargaining agreements and 416 decisions by the prosecutor not to proceed with prosecution. In 2017 there were a total of 1 766 cases under investigation, of which 738 were new cases; 532 cases were settled resulting in 113 indictments concerning 451 defendants (of whom 249 were remanded in custody) and 19 plea bargaining agreements. In 2018 there were 1 816 cases, of which 695 were new cases; 118 cases were settled resulting in 103 indictments concerning 400 defendants (of whom 209 were remanded in custody) and 15 plea bargaining agreements.

99. According to the DCCO, about 55% of all THB cases concerned exploitation within Romania; the vast majority of cases were for THB for the purpose of sexual exploitation, while about 11% were for THB for the purpose of labour exploitation. The Romanian authorities have noted that evidence of the exploitation of Romanian citizens is often located abroad, which makes it more difficult for Romanian agencies to investigate the offence. There is a heavy reliance on victim and witness testimony, which investigators try to match with verifiable records, such as of travel or flat rentals.

100. The number of persons convicted of THB has decreased in recent years: 312 in 2016, 230 in 2017, 130 in 2018, and 120 in 2019. As regard the sentences, in 2016, 31 were for imprisonment of over 10 years, 80 involved five to 10 years' imprisonment, 83 involved three to five years' imprisonment, 35 involved one to three years' imprisonment, and 71 were suspended. In 2019, five sentences involved imprisonment of over 10 years, 44 involved five to 10 years' imprisonment, 23 involved three to five years' imprisonment, seven involved one to three years' imprisonment, and 37 were suspended.

101. GRETA notes with concern that the majority of prison sentences for THB are on the lower part of the sentencing scale. Further, because the lower threshold of the penalty for THB is three years, judges can give suspended sentences and this happens in a considerable number of cases. By way of illustration, reference can be made to the following cases:

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<sup>76</sup> Article 213 of the CC: "(1) The causing or facilitation of the practice of prostitution or the obtaining of financial benefits from the practice of prostitution by one or more individuals shall be punishable by no less than 2 and no more than 7 years of imprisonment and a ban on the exercise of certain rights. (2) In the event that a person was determined to engage in or continue the practice of prostitution through coercion, the penalty shall be no less than 3 and no more than 10 years of imprisonment and a ban on the exercise of certain rights. (3) If such acts are committed against a minor, the special limits of the penalty shall be increased by one-half. (4) Practicing prostitution means having sexual intercourse with various individuals for the purpose of obtaining financial benefits for oneself or for others" (unofficial translation).

<sup>77</sup> The Romanian authorities have explained the relatively low number of defendants remanded in custody with the fact that many of the defendants are not present in Romania at the time of the indictment.

**"Tanderei case"**

In 2004 the London Metropolitan Police started an investigation into what had become large scale petty crime committed in London by Romanian children, in the form of pickpocketing and other forms of theft, such as shoplifting, as well as credit card cloning and forced begging. Intelligence checks revealed that an organised crime group based in the Romanian town of Tanderei had smuggled the children into the UK in cars and lorries. This led to an operation named Golf, conducted from October 2004 to July 2006, as a co-operation initiative between the police and the UK Immigration Service. As part of a separate operation named Girder, the UK Serious Organised Crime Agency (SOCA) found that Romanian children were being systematically smuggled into the UK. SOCA started co-operation with the Romanian authorities, it was discovered that the child victims were being trafficked, and one person was sentenced in the UK for trafficking in children.

As a result of operation Girder, DIICOT and the Romanian National Police opened an investigation which established that the Tanderei organised crime group had transported at least 1 087 children out of Romania for the purpose of exploitation in Italy, Spain, France and the UK. In 2007, four members of the organised crime group were sentenced in the UK to a total of 24 years' imprisonment for child trafficking, child neglect and perjury.

On 1 September 2008 a joint investigation team (JIT) was formed between the UK and Romania for the purpose of further investigating the apparent trafficking of Romanian children into the UK. This led to the arrest of 120 persons in the UK, and subsequently 52 persons were sentenced to a total of 59 years' imprisonment. In a related operation known as Operation Longship, the UK investigators identified and recovered 27 child victims and made them available to a Romanian investigation team for a witness hearing under Romanian law, but on UK soil.

On 8 April 2010, a joint UK-Romanian police operation took place in Tanderei, as a result of which 18 persons were arrested on suspicion of trafficking in children and money laundering. Eight more suspects were arrested later, bringing the total number to 26 persons who were charged by the Romanian authorities with trafficking of 224 children, money laundering, membership of an organised criminal group and firearms offences. As a result of the police operation, 25 000 Euros, 25 000 UK Pounds and 40 000 Romanian Lei, six houses, 13 expensive cars and 10.5 kilos of gold with an estimated value of 500 000 Euros were seized, as well as many weapons, partly of military grade. At the same time, the police obtained substantial amounts of material evidence linking the suspects to the investigated crimes in the UK and other EU countries.

The JIT was concluded on 31 December 2010, but officers of the Metropolitan Police Financial Investigation Unit continued to identify and seize criminal assets of the Tanderei criminal group. For example, in 2013 the UK authorities made 24 requests to the Romanian authorities to trace and seize criminal assets from the Tanderei crime group.

From April 2010 to February 2013 the DIICOT prosecutor prepared an indictment in the Tanderei case, which was returned twice by the court to DIICOT for lack of supporting evidence. In the meantime, after six months in custody, the 26 suspects were released by the Romanian Court on bail.

The trial started in February 2013 in Harghita Tribunal and lasted six years; 53 hearings were scheduled but were mostly postponed. On 12 February 2019, the Harghita Tribunal decided to acquit all defendants and to free all seized assets. The Tribunal considered that the criminal activities subject to the trial had started in 2008 and that therefore, the statutes of limitations of the offences of "establishment of an organised crime group" and "non-compliance with the arms and ammunition regime" had been reached. The Tribunal concluded that there was no evidence of child trafficking, despite the UK authorities having provided extensive evidence to their Romanian counterparts, including proof of exploitation of 181 named Romanian children and evidence of money laundering involving 45 members of the organised crime group, who had used money service bureaus to send to Romania significant sums of proceeds of crime from the UK, Spain and Italy. Further, despite proof of 213 further children from Tanderei having been exploited in the same way in Spain, DIICOT had not agreed to a Spanish request for inclusion in the JIT investigating the Tanderei case.

The decision of the tribunal was appealed by the DIICOT prosecutor and one defendant. In its decision of 23 December 2019, the Targu-Mureş Court of Appeal upheld the Tribunal's decision regarding the statute of limitations and acquitted all defendants because the offence of trafficking in children could not be proved based on the evidence presented by DIICOT. The Appeal Court stated that "it is difficult to understand how DIICOT failed to gather relevant, useful and conclusive information to prove in a concrete and unequivocal way; how those presumed child victims of THB identified by the UK authorities arrived in England; which were the circumstances of their departure from Romania; which were the roles and intentions of the defendants in this case; or whether the parents of the children were indebted to the defendants, for which reason they would have agreed to send their children abroad to be exploited in order to pay off the parents' debts or compensate for any advance payments made by the defendants to the parents." Two of the former defendants have started a civil action for €1 million damages for illegal arrest.

#### **Case 4/MF**

In 2016, the Argeş Tribunal (juvenile section) adjudicated a case involving five defendants who had recruited girls and trafficked them for the purpose of sexual exploitation. Five girls had been recruited by the defendants through the "loverboy" *modus operandi*, with false promises of marriage. However, the prosecutor considered that only two of them were victims of THB and the other three girls were not provided with assistance and protection. One of the girls was later on re-trafficked to Switzerland, where she was reportedly killed by her traffickers.

Three of the defendants were charged with trafficking in children, and the other two were charged with complicity in trafficking in children and pimping. One of the defendants was also investigated for trafficking of children (5-10 years old) for the purpose of begging. The five defendants were not considered as constituting a criminal network.

No claims for damages were made by the victims or by the prosecutor and there were no financial investigations undertaken in the case. The apartment of one of the defendants and a motel in Piteşti had been used for the exploitation of the victims, but the prosecutor did not request the freezing of these assets. The sum of 1 705 Lei (about 350 euro) was confiscated as proceeds of crime by the Tribunal.

One defendant was sentenced to four years' imprisonment for child trafficking, and the other four were sentenced to suspended prison sentences of between two and three years, as well as to community work of between 60 and 100 hours, which was to be performed at the Argeş School Inspectorate and General Directorate of Social Assistance and Child Protection, despite the fact that the offences had concerned children. When the case was appealed, it turned out that the Argeş Tribunal had not added up the different parts of the sentences correctly and the correct prison sentences should have been long enough not to allow suspended sentences.

Following an appeal by the defendants, in March 2017, the Piteşti Court of Appeal decided to lower the sentences of two of the defendants from one year and eight months, to one year and six months. In this way, the combined sentences for THB and pimping no longer exceeded three years of imprisonment, which allowed the imposition of suspended sentences.

In August 2017, a JIT was opened between Switzerland and DIICOT Piteşti, with the operational and financial support of Eurojust, which investigated the same criminal network for the exploitation of 15 victims in Switzerland. Nine Romanian suspects were identified and four were arrested, including the man who had recruited the girl killed in Switzerland. As part of the JIT, assets of more than two million CHF and five houses were seized.

102. Continuing issues of concern are the duration of criminal proceedings, both in the pre-trial and the trial phase. According to the Romanian authorities, in 2018, the average duration of court proceedings in THB cases was 689 days and in 2019, 585 days. However, individual cases have lasted much longer.<sup>78</sup> According to NGOs, victims of THB are reluctant to come back to court to testify again, in cases which have lasted several years, as the testimony would remind them of their trafficking experience. In some cases, crimes linked to THB have reached the statute of limitations, namely 10 years, as happened in the Tanderei case (as regards children, the 10 years start running at the moment a child reaches the age of 18). Some representatives of civil society have suggested that deliberate delays may occur as a result of corruption, in order for the criminal process to reach 10 years, including appeal (see also paragraph 167).

103. Article 210, paragraph 2, of the CC provides that THB committed by a public official in the exercise of his duties is punishable by imprisonment from five to 12 years. GRETA was informed of a number of cases in which public officials were implicated in THB offences. By way of example, in a case in Covasna county a police officer was sentenced to eight years' imprisonment for trafficking in children, belonging to an organised crime group, abuse of office and sexual exploitation.<sup>79</sup> In a pending case, the chief police officer of Mizil Police Department (in Prahova county, close to Ploiesti) has been indicted for trafficking in children for the purpose of sexual exploitation.<sup>80</sup> GRETA was informed that there had been cases in which DIICOT preferred to investigate without the support of DCCO or other police forces, as they were concerned that the police could have been involved in the case, or at least might have reasons to neglect their duty to investigate. Further, there have been cases in which employees of institutions for children subordinated to the General Directorate for Social Assistance and Child Protection were convicted of direct involvement in trafficking in children and/or their exploitation.<sup>81</sup>

104. Article 249 of the CPC provides that the prosecutor, during the criminal investigation, and the judge in the course of preliminary proceedings or the trial, can freeze the defendant's assets (moveable or immovable) to avoid that they are hidden, destroyed or transferred out of the reach of the authorities, which would put at risk the payment by a perpetrator of material or moral damages, or fines. The modalities of confiscation of assets are set out in Article 112 of the CC entitled "special confiscation", which applies, *inter alia*, to goods obtained through the commission of the offence, used in the commission of the offence, or used immediately after the offence has been committed in order to ensure the escape of the perpetrator. Further, Article 112<sup>1</sup> of the CC, which entered into force in 2015, provides for "extended confiscation" of assets and goods going beyond those referred to in Article 112, if the person is convicted of certain offences, including trafficking in human beings, exploitation of vulnerable persons or trafficking in organs, tissues or cells of human origin, which are likely to procure a material benefit and carry a penalty of at least four years' imprisonment. THB is one of the crimes listed in the CC for which extended confiscation may be applied. Extended confiscation can be used to confiscate proceeds of crime or other assets transferred by a convicted person or a third party to a family member of the perpetrator or to a legal person, over which the convicted person has control. Extended confiscation can also be used for confiscating assets acquired by a convicted person five years prior to the crime in question, or where applicable after it, if the value of these assets clearly exceed that which can have been obtained lawfully by the convict and the court is convinced that the assets have been financed by proceeds of crime from the crime under investigation.

<sup>78</sup> For example, in a case concerning trafficking in children, the indictment was made in 2011 (indictment 143/D/P/2011) and the court decision was issued in 2019 (court decision 41/F/2019 of Bistrita Nasaud Tribunal). None of the defendants were put in custody during the investigation and the trial. The four defendants received sentences ranging between six years' imprisonment and three year's suspended sentence.

<sup>79</sup> Covasna Tribunal, Decision 25/2016, available at: <http://www.rolii.ro/hotarari/589afd23e49009642e00046e>

<sup>80</sup> <https://www.romaniajournal.ro/society-people/mizil-town-police-chief-detained-by-diicot/>

<sup>81</sup> See [Report of the Parliamentary Committee of Inquiry into the situation of missing children](#), pp. 16-18.

105. Following the adoption of Law No. 318/2015 on the Establishment, Organisation and Functioning of the National Agency for the Management of Seized Assets (NAMSA), NAMSA became operational in 2016.<sup>82</sup> At the time of GRETA's visit, NAMSA was managing about two million Euros worth of assets. GRETA was informed that there were some 10 cases of THB in which assets had been seized and were being stored by NAMSA. NAMSA's task is to manage seized assets, until the end of an associated trial, in such a way that they do not depreciate in value. However, it only manages assets valued at more than 15 000 Euros. NAMSA sells assets (other than cash) at auctions and keeps the ensuing funds on its bank account, thus accruing interest. However, NAMSA is not allowed to sell immovable assets until the end of a related trial. Instead, such properties can be allocated for use in the public interest, including at the request of NGOs. Initially Law No. 318/2015 foresaw specialised anti-trafficking NGOs among the beneficiaries of confiscated assets, but this provision was not adopted in the final text. Confiscated assets are not used directly to compensate victims of crime, but once they have been sold, their monetary value is transferred to the State budget and can be used for various purposes, such as crime prevention and assistance to victims of crime. In 2016 NAMSA sold assets to the value of 20 536 268 Lei (about 4.2 million Euros). From this sum, after deduction of administrative expenses and on the proposal of the Ministry of Justice, various ministries were granted 15 or 20% of the value of the assets sold by NAMSA in order to fund their activities in the areas of crime prevention, education and victim protection.

106. GRETA was informed that the Minister of Justice had recently issued instructions Nos. 99940 and 45318, respectively on 28 November 2019 and 10 June 2020, asking the Prosecutor General to prioritise the action to combat human trafficking and organised crime. While welcoming these instructions, GRETA is concerned by indications that the criminal justice response to THB in Romania has weakened since the second evaluation. A number of cases are classified as pimping/pandering instead of THB, leading to lighter sentences and depriving victims of the possibility to be assisted and have access to remedies. A significant number of sentences are suspended. Moreover, the use of plea bargaining or similar agreements allows defendants to have their punishments reduced. The lack of timely seizure of defendants' assets makes the payment of damages ordered by courts very rare. Too much emphasis is put on the victim's testimony during criminal investigations. If proceedings are built solely upon the victim's testimony, this puts an exorbitant amount of pressure upon the victim, who is often vulnerable and possibly traumatised. The concept of "abuse of a position of vulnerability", which is part of the international definition of THB, should be properly understood and applied in practice, acknowledging the psychological pressure exerted by perpetrators on the victim. Many victims recruited through the "loverboy" *modus operandi* do not consider themselves as victims and do not co-operate in the investigation. Because access to assistance requires the presumed victim's written consent, these victims are not provided with psycho-social and legal assistance which is crucial for their participation in criminal proceedings. A further concern is the length of court procedures, which in some cases have led to impunity for traffickers because the statute of limitations for crimes related to the THB cases were reached in their cases.

107. Despite the fact that Romania has participated in many JITs related to THB (see paragraph 140), there are also indications that international co-operation is not sufficiently utilised to combat THB and punish offenders. GRETA is seriously concerned about the failure to successfully prosecute the defendants in the Tanderei case, despite plentiful evidence having been provided by the UK authorities. Similar concerns arise concerning the long-standing investigation of the case 4/MF of 22 June 2016, in which DIICOT does not appear to have been able to make full use of evidence provided by the Swiss and French authorities. Further, GRETA was informed that members of three criminal networks in Craiova that exploited more than 4 000 Romanians in the US were acquitted in July, in a manner resembling the Tanderei case.<sup>83</sup>

<sup>82</sup> See paragraph 183 of the second GRETA report.

<sup>83</sup> <https://balkaninsight.com/2020/08/14/romania-extradites-human-trafficking-kingpin-to-us/> ; <https://krebsonsecurity.com/2019/04/alleged-chief-of-romanian-atm-skimming-gang-arrested-in-mexico/>



108. GRETA stresses that failure to convict traffickers and the absence of effective punishment engenders a feeling of impunity and undermines efforts to support victims to testify. **GRETA urges the Romanian authorities to take measures to strengthen the criminal justice response to THB, including by:**

- **ensuring that human trafficking offences are proactively and promptly investigated, regardless of whether a complaint about the reported crime has been submitted or not, making use of all possible evidence, including evidence collected through special investigative techniques and financial investigations, in order not to rely exclusively on testimony by victims or witnesses;**
- **requiring consideration of allocation of specialist financial investigators to every THB case;**
- **sensitising prosecutors and judges to the rights of victims of THB, and encouraging the development of specialisation amongst prosecutors and judges to deal with THB cases;**
- **strengthening efforts to investigate, prosecute and convict traffickers of labour exploitation;**
- **ensure that THB cases are prosecuted as such and lead to effective, proportionate and dissuasive sanctions for those convicted, including in cases involving public officials. If an alternative charge is preferred in THB cases, this should be recorded and monitored by the Prosecutor's Office. The plea-bargaining procedure should be used only exceptionally in human trafficking cases, subject to appropriate safeguards, where the reduction of a sentence is clearly outweighed by the advantages offered by the plea agreement (these advantages being indicated in the judicial decision approving the agreement) and the agreement is not in any way detrimental to the rights of the victims, including their access to compensation;**
- **ensuring that the length of court proceedings in cases of trafficking of human beings is reasonable, in line with the case-law of the European Court of Human Rights (regarding Article 6, paragraph 1, of the ECHR) and the standards set by the European Commission for the Efficiency of Justice (CEPEJ).<sup>84</sup>**

109. Further, GRETA invites the Romanian authorities to make the necessary legal amendments in order to enable the allocation of confiscated assets for use by specialised anti-trafficking NGOs.

## **8. Non-punishment provision (Article 26)**

110. Pursuant to Article 26 of the Convention, Parties must provide for the possibility of not imposing penalties upon victims of THB for their involvement in unlawful activities, to the extent that they have been compelled to do so. As previously stressed by GRETA, the criminalisation of victims of THB not only contravenes the state's obligation to provide services and assistance to victims, but also discourages victims from coming forward and co-operating with law enforcement agencies, thereby also interfering with the state's obligation to investigate and prosecute those responsible for THB.<sup>85</sup> Furthermore, GRETA has noted that the absence of a specific provision on the non-punishment of victims of trafficking entails a risk of differential treatment, depending on the prosecutor in charge of the case.

<sup>84</sup> <https://rm.coe.int/cepej-2018-26-en-rapport-calvez-regis-en-length-of-court-proceedings-e/16808ffc7b>

<sup>85</sup> See GRETA's 2nd General Report.

111. In its second report, GRETA considered that the scope of the non-punishment provision should be extended to cover all offences which victims of THB were compelled to commit, including administrative and immigration-related offences, and that the Romanian authorities should develop guidance and training for police officers and prosecutors on the non-punishment provision.

112. Following the decriminalisation of prostitution and begging with the entry into force in 2014 of the new CC, Article 20, paragraph (1), of the Anti-Trafficking Law was amended in 2014, removing the reference to prostitution, begging and illegal immigration from this Article, which stipulates therefore: "a person subject to trafficking who committed, as a result of his/her exploitation, the crime of unlawful crossing of a border of a state or donation of organs or tissues or cells of human origin (...) shall not be punished for these crimes."<sup>86</sup> The Romanian authorities have also stated that Articles 24 and 25 of the CC (which address situations in which a person commits an offence as a result of physical and/or moral constraint)<sup>87</sup> would apply to a victim of THB who as a result of his or her exploitation has committed criminal, civil or administrative offences.

113. The Romanian authorities have indicated that while prostitution and begging in public places are administrative offences, which may be penalised by fines according to Article 2, paragraphs (3) and (6), of Law 61/1991 on the Punishment of Violations of Social Standards (amended in January 2020), victims of THB must not be punished for such offences as they are covered by Article 20, paragraph (2), of the Anti-Trafficking Law. GRETA was informed of a case in which a victim of THB for the purpose of sexual exploitation had her fines annulled by a court, with reference to Article 20, paragraph (2), of the Anti-Trafficking Law, thanks to the insistence of her lawyer. However, according to NGOs, persons trafficked for the purpose of forced prostitution who have not been identified as victims of THB have occasionally been fined. GRETA notes that Article 20, paragraph (2), of the Anti-Trafficking law makes reference to Article 3 of an unspecified law, which can be understood as referring to Article 3 of the same Law (which sets out the role of anti-trafficking actors), whereas the intended reference is to Article 3 of Law 61/1991. As a result, there is no effective correlation between the two laws and the non-punishment provision is not effectively applicable to administrative offences, which is used by traffickers as a form of pressure on victims. According to UN OHCHR, there have been cases of abuse by police officers of Roma girls, as well as other women and girls who work and/or live on the streets, including those engaged in street prostitution. Such abuse is facilitated by the legal framework according to which prostitution is an administrative offence.<sup>88</sup>

**114. GRETA remains concerned that the scope of Article 20 of the Anti-Trafficking Law is rather narrow and urges the Romanian authorities to extend it to cover all offences (including administrative ones) which victims of THB have been compelled to commit.**

**115. Further, GRETA considers that the Romanian authorities should take measures to ensure effective compliance with the principle of non-punishment of victims of THB for their involvement in unlawful activities, to the extent that they were compelled to do so. Such measures should include the development of guidance for police officers and prosecutors on the scope and application of the non-punishment provision,<sup>89</sup> including with regard to the application of Article 20 of the Anti-trafficking Law.**

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<sup>86</sup> Unofficial translation.

<sup>87</sup> See paragraphs 174 and 175 of GRETA's second report on Romania.

<sup>88</sup> Statement of the UN OHCHR Working Group on discrimination against women and girls reflecting its preliminary findings at the end of its Official visit to Romania 24 February – 6 March 2020.

<sup>89</sup> See OSCE, Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking, 2013, available at: <https://www.osce.org/secretariat/101002?download=true>

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

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

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

118. As noted in GRETA's first and second evaluation round reports,<sup>90</sup> Romania has a witness protection programme based on Law No. 682/2002 on the Protection of Witnesses. The National Office for Witness Protection, which is directly subordinated to the General Inspectorate of the Romanian Police, is responsible for the implementation of the programme. Interventions by the National Office for Witness Protection are rare and only undertaken when it is considered that there is a particularly serious and concrete threat against a victim of THB. Since the establishment of the Office in 2003, 20 victims of THB have been included in the programme. At the time of GRETA's visit, one victim of THB was in the programme, together with his family members, all of whom had been given new identities and relocated to a new place of residence.

119. A protected witness who has been given a new identity testifies in the relevant court procedures under his or her old name, and nobody outside the National Office for Witness Protection has access to the new identity of the witness. Apart from the above measures, persons included in the witness protection programme may also profit from a small financial allowance, since the protection measures are likely to prevent the witness from doing his/her usual work. Measures taken under the witness protection programme may last for several years.

120. Protection measures in cases in which the threat level is not considered high enough to merit inclusion in the witness protection programme are taken in line with the relevant provisions of the CPC. DCCO takes protection measures, as needed, from the first contact with a presumed victim of THB, including by referring them where necessary to NGO shelters at secret addresses. In practice there are various protection measures put in place by NGOs at shelters for victims of THB, such as the use of guards or services of security companies, as well as behaviour counselling and keeping the addresses of the shelters secret.

<sup>90</sup> See paragraph 198 of the first GRETA report on Romania and paragraph 191 of the second one.

121. Pursuant to the CPC, victims of THB may also profit from the status of a vulnerable victim or threatened witness. Following 2016 amendments to the CPC, victims of THB are included among the categories of victims of crime who, according to Article 113, paragraph 2, of the CPC are to be considered as particularly vulnerable victims. The status of vulnerable victim is mainly used when the victim has been traumatised and re-traumatisation needs to be avoided, including by avoiding repeated interviews. The authorities are obliged to provide appropriate protection measures *ex officio*, without a specific request from the victim or his or her representative. Nonetheless, the injured party has the right to refuse such protection measures. Any rejection by the victim of protection measures must be recorded in writing and signed by him/her, in the presence of his/her legal representative, if applicable. Further, Article 125 of the CPC provides for the possibility of granting a witness, including witnesses of THB, the status of threatened witness if there is a reasonable suspicion that testifying may put them in danger. The protection measures from which vulnerable victims and threatened witnesses may benefit are listed in Articles 126-129 of the CPC and include surveillance of the place of residence; provision of temporary housing; escorting and protection of witnesses or members of their family while traveling; provision of a pseudonym with which the witness will sign his or her statements; hearing by means of audio-visual transmission, with the witness' voice and/or image distorted. The application of the above protection measures can be ordered upon the request of the prosecutor, the witness and the parties in a trial, including an injured party.

122. As regards the protection of victims and witnesses of THB crimes in court, Articles 24-26 of the Anti-trafficking Law foresee the possibility of holding a hearing *in camera* and using video links, if need be with blurred images, when victims are testifying. The Ministry of the Interior shall ensure the physical protection of victims of THB during trials on the territory of Romania, upon request. Moreover, according to Article 352 of the CPC, if a public hearing could affect state interests, public morals, the dignity or intimate life of a person, the interests of a child or of justice, the court, at the request of the prosecutor or the parties, can decide to hold a hearing partly or entirely *in camera*.

123. In its second report, GRETA urged the Romanian authorities to abandon the practice of making the names and addresses of victims of trafficking publicly available on judicial websites. In the report submitted by the Romanian authorities on measures taken to comply with Committee of the Parties Recommendation CP(2016)11 on the implementation of the Convention, the Romanian authorities referred to the setting up of a working group on the issue of data anonymisation, in order to find a technical solution to this problem.<sup>91</sup> During the third evaluation visit, GRETA was shown data of victims of THB, including names, published in connection with court cases. GRETA notes with concern that the problem persists, which also raises issues from the point of view of respecting the right to the protection of personal data. GRETA understands that in early September 2020, the ECRIS nomenclature commission took the decision, in order to implement the recommendation, to delete all THB cases from the public judiciary platform, which affects the ability of civil society to monitor cases with suspicion of corruption (at the same time, victims' data are still available on online documents).

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<sup>91</sup> According to the Romanian authorities, the Superior Council of Magistracy (CSM) has, with a view to finding a remedy, studied the matter of victims' names being published on judicial websites. The authorities explained that once such victim data has been entered into the Electronic Court Record Information System Database (ECRIS), the data is automatically transposed into the portal of the court which has dealt with the case. In 2015 and 2016 the CSM signalled to the Ministry of Justice the need to change the system to avoid the names of victims of certain crimes, including THB, being published on court portals. The CSM also ordered the circulation of a specific Order/Circular to the courts so that, until the ECRIS application is properly adapted, interim measures be taken to ensure anonymisation. According to the Ministry of Justice, a working group attended by representatives of the Ministry of Justice, CSM, and courts has been established on the issue of data anonymisation, in order to find a technical solution to this end.

124. GRETA was informed by many stakeholders during the third evaluation visit that victims of THB in practice are often intimidated by defendants through various means (including defendants' lawyers) in the run-up to court proceedings. According to lawyers specialised in representing victims of THB, while testimony by video link is often used in court in THB cases, the use of other protection measures is limited or completely absent. The previously mentioned manual for lawyers, prosecutors and judges (see paragraph 54) refers to cases in which infringements were observed of the right to privacy and security of injured parties, the right to prevention of repeat victimisation, the right to be informed by the prosecutor of the release of the defendant, as well as the right to protection of personal data.<sup>92</sup> Further, sexual exploitation of victims of THB is reportedly often referred to by judges as "prostitution" without reference to the coercion involved. GRETA is concerned by the persistence of entrenched negative attitudes and prejudices vis-à-vis victims of trafficking, which adds to their trauma and can affect the evidence given by them during the trial.

125. While welcoming the 2016 amendments to the CPC, according to which victims of THB are to be considered as particularly vulnerable victims, GRETA is concerned by the continuing practice of making the names and addresses of victims of THB publicly available on judicial websites, as well as the sparse use of protection measures for victims of THB. **GRETA urges the Romanian authorities to make full use of the available measures to protect victims and witnesses of THB and to prevent their intimidation during the investigation, as well as during and after the court proceedings, including by applying the measures provided for particularly vulnerable victims and threatened witnesses, making more frequent use of the witness protection programme, banning the publication of trafficking victims' names on judicial websites, without affecting the ability of civil society to monitor cases with suspicion of corruption, and effectively investigating any cases of intimidation and threats against victims and witnesses.**

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

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

127. As mentioned in paragraph 96, the Directorate for Investigating Organised Crime and Terrorism (DIICOT) within the Prosecutor's Office attached to the High Court of Cassation, is responsible for investigating and prosecuting organised crimes, including THB. All DIICOT prosecutors, except those working exclusively with economic crime, are specialised in prosecuting THB cases.

128. The Department for Combating Organised Crime (DCCO), which is subordinated to the General Inspectorate of the Romanian Police, has specialised investigators dealing with THB cases, in co-operation with DIICOT. In addition to its central office, DCCO has regional offices which employ officers specialised in investigating THB offences (219 officers in total). DCCO operates with limited staff due to measures adopted by the previous Romanian government on the early retirement of police officers, which required 30% of the workforce to retire in 2018. Further, some counties reportedly have fewer staff and resources than others. As a result, investigators handle multiple cases simultaneously and struggle to build strong cases for prosecutors.

<sup>92</sup> At pp 27-29, pp 37-43. <https://humanrightslawyers.eu/eu-projects/strengthening-legal-knowledge-for-a-better-protection-of-victims-of-human-trafficking-rights-in-the-judicial-proceedings/>

129. The Financial Investigation Service for investigating money flows of organised crime groups was set up within DCCO in 2016 following the second evaluation visit. The service became operational at full capacity in 2019, with eight officers specialised in conducting financial investigations related to organised crime at central level and 15 officers at territorial level within Anti-Organised Crime Brigades. DIICOT is also required by law to have its own financial investigators.<sup>93</sup> According to information provided by the authorities, within DIICOT, at central and territorial level, there are currently 43 specialists dealing with processing economic, financial and banking information.

130. DCCO, DIICOT and ANITP, in partnership with the International Justice Mission, are currently implementing a project on "Strengthening Proactive Criminal Justice Response to Trafficking in Persons in Romania" which was launched in 2020 and is funded by the US State Department. The project focuses mainly on the training of police officers, prosecutors and other professionals involved in the fight against human trafficking.

131. The National Institute of Magistrature (NIM) is responsible for the continuous professional training for judges and prosecutors. In the context of the implementation of the National Strategy against Trafficking in Persons, NIM is implementing the project "POCA - Justice 2020: professionalism and integrity", financed by EU structural funds. The target groups of the training are judges, prosecutors, as well as other staff employed by courts and prosecution offices. The project started in June 2019 and has an implementation period of 42 months. It includes six training activities in the field of THB, targeted at 120 judges and prosecutors who are dealing with THB cases. The topics covered will include the hearing and protection of victims of THB.

132. Further, the training institute of the Romanian Bar Association offers training on various topics to its members, including THB. However, as noted in paragraph 50, there are still only a few lawyers specialised in representing victims of THB.

133. As part of a partnership concluded between ANITP and the Labour Inspectorate, seven information and training sessions were organised for labour inspectors from 18 counties on the detection and reporting of human trafficking cases, in collaboration with the eLiberare Association. Some of the sessions were also attended by specialists from DCCO.

134. Since 2011, Romanian consular staff are being trained about THB at the Romanian Foreign Ministry's training centre for diplomatic and consular staff.

135. The UNHCR provides annual training to asylum reception centre staff on THB and its indicators, but the capacity of such staff to identify victims of THB remains low, partly because there is a great turnover of staff. There has been no training of staff of immigration detention centres and there is therefore no screening for victims of THB in these centres.

**136. While welcoming the existence of police investigators and prosecutors specialised in trafficking in human beings, GRETA urges the Romanian authorities to ensure that there is a sufficient number of specialised, trained and well-resourced investigators and prosecutors to deal with THB cases throughout the country.**

**137. Further, GRETA considers that the Romanian authorities should promote specialisation and training of judges to deal with THB cases in a victim-sensitive and trauma-sensitive manner.**

**138. GRETA also considers that training on THB should be integrated into the regular training curricula of relevant professional groups, including law enforcement officials, prosecutors, judges, labour inspectors, social workers, child welfare staff, health-care staff, immigration officials, asylum case workers and staff of immigration detention centres.**

<sup>93</sup> Article 8 of Emergency Ordinance 78/2016 for the organisation and functioning of DIICOT.

## 11. International co-operation (Article 32)

139. Article 32 of the Convention requires parties to co-operate to the widest extent possible to prevent and combat THB, to protect and to provide assistance to victims, and to investigate and prosecute cases of THB. International co-operation between State Parties to the Convention is also essential for enabling access to effective remedies for victims of trafficking. Parties must co-operate with one another "to the widest extent possible". This principle requires them to provide extensive co-operation to one another and to minimise impediments to the smooth and rapid flow of information and evidence internationally. As regards international co-operation in criminal matters for the purposes of investigations or proceedings, the provisions of the Convention neither cancel nor replace the provisions of relevant international or regional instruments<sup>94</sup> on mutual legal assistance and extradition, reciprocal arrangements between Parties to such instruments and relevant provisions of domestic law concerning international co-operation.

140. Romania is the European country with the highest number of agreements on joint investigation teams (JITs) for investigating THB offences for different forms of exploitation, having 35 ongoing JITs in 2019. The majority of JIT requests are initiated by other EU countries. Most of the JITs have been concluded with the UK, but there have also been JITs with France, Germany, Italy, the Netherlands and Spain. According to DCCO, the evidence of exploitation of Romanian victims tends to be located in the countries of exploitation, even though profits of the crime are sometimes transferred to Romania, and financial investigations are conducted in connection with each JIT.

141. The Romanian authorities mention having access to Europol resources, including databases, as being particularly helpful in THB investigations. Regular operational meetings are held with Europol and Eurojust. The Romanian authorities have also referred to meetings held on 13-15 May 2019 at the DIICOT headquarters, attended by 40 prosecutors and police officers, together with experts from Interpol and NAMSA, to discuss police and judicial co-operation channels as well as co-operation in the field of financial investigations.

142. DIICOT and the Prosecutor's Office attached to the High Court of Cassation and Justice implemented in 2019-2020 the EU-funded project WESTEROS "Strengthening the capacity to combat trafficking in human beings and the proceeds of this crime through advanced financial investigations", in partnership with the Netherlands and Austria. The project included activities such as an international workshop, an international conference, three study visits, and two courses on financial investigations and anti-money laundering in THB cases, which were attended by prosecutors and police officers. DIICOT was selected to implement the project "Enhancing further the fight against trafficking in human beings by focusing on prevention, co-operation and recovery of crime proceeds WESTEROS 2", together with the Belgian Federal Police, the National Agency for the Administration of Unavailable Assets, ANITP and the Polish National School of Justice and Prosecution. DCCO is currently involved in the implementation of a project with the Internal Security Fund (ISF) aiming at strengthening the capacity to combat human trafficking by streamlining the investigation activity, increasing the mobility of specialised structures and intensifying the exchange of data and information. Further, DDCO represented Romania as co-driver of the THB priority in the EU Policy Cycle-EMPACT (European Multidisciplinary Platform Against Criminal Threats) 2018-2021 and also as co-action-leader for several operational actions.

143. **GRETA welcomes the Romanian authorities' participation in JITs in THB cases and EMPACT and considers that they should continue their efforts in the area of international co-operation against trafficking and make increased use of evidence obtained through international co-operation (see also paragraph 108).**

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<sup>94</sup> For example, the European Convention on Extradition, the European Convention on Mutual Assistance in Criminal Matters and its protocols, Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member states, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

## 12. Cross-cutting issues

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

144. As noted in CEDAW General recommendation No. 33 on women's access to justice, discrimination against women, based on gender stereotypes, stigma, harmful and patriarchal cultural norms and gender-based violence, which affects women in particular, has an adverse impact on the ability of women to gain access to justice on an equal basis with men.<sup>95</sup>

145. Women encounter obstacles with respect to access to justice within and outside the legal system. Some of these obstacles are of a legal or institutional nature, while others have socio-economic and cultural grounds. The legal and institutional barriers include discriminatory or insensitive legal frameworks including legal provisions that are explicitly discriminatory; gender blind provisions that do not take into account women's social position; and gaps in legislation concerning issues that disproportionately affect women. On the socio-economic level the obstacles include lack of awareness of one's legal rights and legal procedures or of how to access legal aid, which can stem from gender differences in educational levels, and access to information. A further obstacle may be the lack of financial resources, including the means to pay for legal representation, legal fees, judicial taxes, transportation to courts or child care.<sup>96</sup> Such obstacles, and remedies to them, are listed in a Council of Europe training manual for judges and prosecutors on ensuring women's access to justice, as well as in the publication "Women's Access to Justice: Guide for Legal Professionals".<sup>97</sup>

146. In 2018 Romania adopted the National Strategy for the Promotion of Equal Opportunities and Treatment between Women and Men and Preventing and Combating Domestic Violence for the period 2018-2021, accompanied by an Operational Plan.

147. A considerable number of Romanians are working abroad and their children remaining in Romania are sometimes vulnerable to abuse. Certain categories of women and girls are particularly vulnerable to gender-based violence, including domestic violence, sexual violence, trafficking of women and early marriage, such as girls whose parents work abroad, girls and women with disabilities, and girls and women who live in state institutions.<sup>98</sup> GRETA notes that UN OHCHR has stressed the need for a greater understanding of the barriers to women's access to justice in Romania.<sup>99</sup>

**148. GRETA invites the Romanian authorities to promote a gender-responsive approach to access to justice for victims of THB, including through gender mainstreaming, training and increasing women's participation in law enforcement.**

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

149. Law No. 272/2004 on the Protection and Promotion of Children's Rights provides that a child has the right to be heard in any judicial or administrative proceedings concerning him or her, which in practice means the right to request and receive relevant information and to express his or her opinion, as well as to be explained the consequences of any decision concerning him or her, whether in line with his or her opinion or not. It is compulsory to hear a child of 10 years or older, while a younger child may be heard if it is considered necessary to resolve the case. In all cases, the child's opinion will be taken into consideration, while taking into account the age and level of maturity of the child.

<sup>95</sup> CEDAW General recommendation No. 33 on women's access to justice, paragraph 8, CEDAW/C/GC/33 of 3 August 2015, [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_GC\\_33\\_7767\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf)

<sup>96</sup> Council of Europe training manual for judges and prosecutors on ensuring women's access to justice, page 13 available at <https://rm.coe.int/training-manual-women-access-to-justice/16808d78c5>

<sup>97</sup> Available at: <https://rm.coe.int/factsheet-womens-access-to-justice/16808ff44e>

<sup>98</sup> Statement of the UN OHCHR Working Group on discrimination against women and girls reflecting its preliminary findings at the end of its Official visit to Romania 24 February – 6 March 2020.

<sup>99</sup> Ibidem.



150. According to the CPC, child victims of THB are to be considered as particularly vulnerable victims. Repeated questioning of such victims must be avoided, and any repeated questioning must be carried out by the same person who performed the first interview.

151. Pursuant to Article 93 of the CPC, children and persons without full legal capacity who are involved in criminal proceedings are entitled to free legal aid. According to Article 124(1) of the CPC, the hearing of witnesses who are less than 14 years old shall take place in the presence of one of the child's parents, a guardian, or a representative of the institution to which the child is entrusted for upbringing and education. If the parent or other person mentioned above is a suspect, defendant, victim, civil party, party with civil liability or witness in the case, or if there is a reasonable suspicion that s/he may influence the child's statement, then the child shall be heard in the presence of a representative of the guardianship authority or of a relative having full legal capacity, as established by the judicial bodies. The criminal investigation bodies or the judge may, upon request or *ex officio*, order that a psychologist be present during the hearing of underage witnesses. If the child is under 14 years of age, such presence is obligatory. Further, according to Article 124(4) of the CPC, it must be avoided that the hearing of an under-aged witness negatively impacts his or her psychological state.

152. Government Decision 49/2011 provides details about how to conduct interviews with children, including the composition of professionals whose presence at the interview is required. These include a social worker (who is usually the case manager), a psychologist in whose office it is recommended that the interview take place, a doctor and the police officer handling the case. Depending on the case, a legal advisor from the General Directorate for Social Assistance and Child Protection might also be required. In criminal procedures the legal advisor provides necessary legal assistance and can advise the parents or legal representative of the child as regards the possible submission of a complaint to the competent authorities. In all cases involving child victims of THB the multidisciplinary team in place to support child victims of violence, including THB, would, in addition to the above professionals, include a representative of ANITP and a teacher, the latter being responsible for the education of the child. The interview must be carried out by professionals trained in this regard. In the case of young children and those with disabilities, including mental ones, appropriate techniques will be used, for example, the use of anatomical dolls, drawing or free play.

153. There are only a few specialised rooms for interviewing child victims and witnesses in Romania. They are usually equipped with one-way see-through mirrors or other equipment facilitating the hearing of children in the discrete presence of professionals whose participation, at least as observers, is compulsory. In the context of the 2013-2016 project "AUDIS - for a better hearing of children", financed by the French Embassy in Bucharest, three specialised rooms were set up, within the Prosecutor's Office in Bucharest, in Cluj-Napoca<sup>100</sup> (Cluj County) and in Craiova (Dolj County). In addition, there are five specialised interviewing rooms for children, located in the counties of Alba, Bihor, Botosani, Ilt and Suceava. However, GRETA was informed by the authorities that no child victim of trafficking was interviewed in those rooms in 2020 as they are not yet fully equipped.

154. Law No. 304/2004 on the Organisation of the Judiciary allows each court to establish separate sections for cases involving children and most courts have such sections. Cases involving both children and adults are in practice often split to allow adjudication by an appropriate court section, but if this is not possible, they will be adjudicated by the section for child cases. Judges serving in juvenile sections have been trained to deal with such cases. However, civil society organisations have raised concerns about some juvenile judges having taken the view that girls of 11-13 years of age had given their consent to sexual relations with older men, because they had dressed provocatively or had not told their parents about these relations. Such cases, which under Romanian law should be considered as rape regardless of possible consent, were reported in research by the NGO *Dela 0* ("From Zero"), published in 2019.<sup>101</sup>

<sup>100</sup> GRETA visited the latter during its second evaluation visit, see paragraph 193 of GRETA's second report.

<sup>101</sup> <https://beta.dela0.ro/dreptate-stramba-3-din-4-cazuri-de-acte-sexuale-cu-victime-copii-sunt-judecate-in-instantele-romanesti-ca-fapte-consimtitute/> (in Romanian language only).

Reference is made in this respect to the judgment of the European Court of Human Rights in *M.G.C. v. Romania*.<sup>102</sup>

155. The previously mentioned manual for lawyers, prosecutors and judges (see paragraph 54) refers to cases in which child victims of trafficking were heard without the presence of a parent or a legal representative, the request to declare the hearing non-public was rejected, and there were infringements of the right to privacy and security of injured parties, the right to prevention of repeat victimisation, and the right to be informed by the prosecutor of the release of the defendant.<sup>103</sup>

**156. GRETA urges the Romanian authorities to ensure that all child victims of THB are in practice afforded the protection measures foreseen by law. In this context, GRETA refers to the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.**<sup>104</sup>

**157. GRETA also considers that the Romanian authorities should increase the number of special rooms used for interviewing child victims of crime, including THB, and make the existing ones fully operational.**

c. role of businesses

158. One of the exclusion criteria for companies taking part in public tender procedures under Romanian legislation is if the company as a legal person has been convicted of THB or exploitation of vulnerable persons.

159. There have been a number of reports about foreign workers (e.g. from Ethiopia and the Philippines) having been recruited to work in hotels and the food processing industry under exploitative conditions (see paragraph 13). Civil society sources consider that there are victims of THB among them, even though no such victims have been formally identified by the Romanian authorities.

160. According to the Romanian authorities, one legal entity was convicted of THB in 2016 and one in 2017.

161. As part of the implementation of a protocol signed between ANITP and the Romanian Federation of the Hotel Industry (FIHR), five information and training sessions on detecting and reporting possible cases of human trafficking were held in 2019, attended by 80 hotel industry staff. The 15 additional training sessions for hotel staff that were planned to take place in 2020 were rescheduled for 2021 due to COVID-19 related sanitary restrictions.

162. In 2020 ANITP concluded four collaboration protocols with representatives of the private sector: OLX Romania (the largest advertising platform in Romania), the dating platform Sentimente.ro, the National Union of Road Transporters of Romania and the media company BlânduBen SRL.

<sup>102</sup> [https://hudoc.exec.coe.int/fre#{"EXECIdentifier":\["004-13219"\]}](https://hudoc.exec.coe.int/fre#{)

<sup>103</sup> At pp 26, 38. <https://humanrightslawyers.eu/eu-projects/strengthening-legal-knowledge-for-a-better-protection-of-victims-of-human-trafficking-rights-in-the-judicial-proceedings/>

<sup>104</sup> [Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice](#) (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies).

163. **GRETA welcomes these initiatives and considers that the Romanian authorities should continue to strengthen engagement with the private sector, in line with the UN Guiding Principles on Business and Human Rights<sup>105</sup> and Council of Europe Committee of Ministers Recommendation CM/Rec(2016)3 on human rights and business,<sup>106</sup> with a view to raising awareness of the important role and responsibility of businesses in supporting the rehabilitation and recovery of victims, and to provide access to effective remedies.**

164. **GRETA considers that the Romanian authorities should step up their efforts to investigate and prosecute cases of corporate involvement in THB offences, paying particular attention to recruitment companies based in Romania and involved in recruiting third-country nationals.**

165. **Further, GRETA considers that the Romanian authorities should adopt legislation promoting transparency in supply chains, to enable scrutiny of corporate performance in preventing THB and labour exploitation.**

d. measures to prevent and detect corruption

166. Trafficking in human beings can occur in various contexts. Human traffickers may form part of organised criminal groups, which frequently use corruption to circumvent the law, and money laundering to conceal their profits. Other Council of Europe legal instruments, in particular those designed to combat corruption, money laundering and cybercrime, are also relevant to combating human trafficking.

167. According to various sources, Romania continues to face considerable problems related to corruption, including within law enforcement and the judiciary, which has implications for the fight against human trafficking.<sup>107</sup> Reference has already been made in paragraph 103 to cases of THB committed by public officials or with their complicity. Cases such as the Tanderei case (see paragraph 101) raise questions about the integrity and functioning of the prosecution service in particular. Some civil society members met by GRETA have suggested that delays in the criminal proceedings in THB cases may sometimes be deliberate attempts by corrupt officials to reach the statute of limitations for THB cases, which is 10 years.

168. The Council of Europe body with the main role to play in the fight against corruption is the Group of States against Corruption (GRECO). In its 4th evaluation round report on Romania, which focused on prevention of corruption in respect of members of parliament, judges and prosecutors, GRECO noted that judges and prosecutors are subject to a career system and procedural rules which limit a number of risks for their integrity. That said, the conditions for the appointment and dismissal of some of the holders of top prosecutorial functions expose them excessively to possible government influence. The added value of the code of ethics adopted in 2005 appears to be limited, especially since it provides neither concrete guidance nor examples on how to deal with certain situations which could be problematic.<sup>108</sup> GRECO's recommendations have only been partially implemented by the Romanian authorities.<sup>109</sup>

<sup>105</sup> [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

<sup>106</sup> Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on human rights and business, adopted by the Committee of Ministers on 2 March 2016 at the 1249th meeting of the Ministers' Deputies.

<sup>107</sup> See in particular [Progress report Romania 2019 \[COM\(2019\)393\] | European Commission \(europa.eu\)](https://www.transparency.org/files/content/pages/2019_CPI_Report_EN.pdf) and [https://www.transparency.org/files/content/pages/2019\\_CPI\\_Report\\_EN.pdf](https://www.transparency.org/files/content/pages/2019_CPI_Report_EN.pdf)

<sup>108</sup> GRECO fourth evaluation round report, page 2, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c7d05>

<sup>109</sup> See GRECO's Interim Compliance Report available at: <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/168096568a>

169. Further, GRETA notes that a consequence of the tendency of THB offences for the purpose of sexual exploitation to be qualified as pimping (see paragraphs 97 and 106) is that the use of services of victims of pimping is not criminalised, and public officials who have used such services are not prosecuted. Some of GRETA's civil society interlocutors suggested that the qualification of the offence as pimping could be a consequence of corruption and/or inappropriate trading in influence in connection with blackmail. GRETA was informed about a petition addressed in November 2019 by NGOs to the Prime Minister and other government ministers, raising concerns about a secret club in Bacau in which public officials were reportedly secretly filmed having sexual relations with teenage girls who were under the influence of drugs. The owner of the club where this happened was in possession of the recordings and used them to blackmail the public officials and the victims.<sup>110</sup> As far as GRETA was informed, two separate investigations have been opened into this case: one for corruption and pimping which involves police officers and influential persons who were the clients of the club, and another one against other clients of the club. The investigations were ongoing at the time of writing.

**170. GRETA considers that the Romanian authorities should include measures against corruption in a THB context in the national anti-corruption strategy, in particular with a view to ensuring that the integrity of the investigation is protected (see paragraphs 101 and 103).**

## V. Follow-up topics specific to Romania

### 1. Measures to prevent trafficking in children

171. In its second report, GRETA urged the Romanian authorities to intensify their efforts to prevent trafficking in children, in particular by sensitising and training child protection professionals across the country, raising awareness of children through education, and paying special attention to Roma communities and migrant children.

172. As noted in paragraph 11, children have constituted nearly 50% of identified victims in the period 2016-2019. Several campaigns aimed at preventing trafficking in children have been implemented in the reporting period. By way of example, as part of the project 'Models of good practice in the field of assistance services for victims of trafficking in persons',<sup>111</sup> financed through the 2009-2014 Norwegian Financial Mechanism, ANITP implemented the campaign "Ask for help, don't beg!" aimed at preventing trafficking in children for the purpose of forced begging. The campaign ran in 2015-2016 and aimed at raising awareness of trafficking, in particular in Roma communities. It consisted of the organisation of meetings with students and teachers, and the production and dissemination of information materials, as well as a documentary film.

173. Another campaign, entitled "Don't ignore the... invisible girl! Her story can become your story!", targeted children and young people at risk of being trafficked for the purpose of sexual exploitation. Apart from printed materials, the campaign used a video clip which was broadcast on television stations, and an audio version of the clip which was broadcast on radio.

174. In 2018 ANITP, together with Save the Children Romania, launched the campaign "Work safely abroad!". One of the main aspects of the campaign was preventive action in relation to the risks of trafficking in children which may occur when parents work abroad and leave their children in Romania, in the care of other adults. Another campaign launched by ANITP was entitled "Inform yourself to be protected" and was aimed at improving the level of knowledge amongst children about the risks of THB.

<sup>110</sup> Details are available in a Statement by the NGO European Centre for Legal Education and Research (ECLER) at: <http://www.ecler.org/wp-content/uploads/2019/11/2019-11-19-National%20Petition%20Trafficking%20in%20Persons%20%5bEN%5d.pdf>

<sup>111</sup> Project reference VC 3107 – RO 20 PA 29, Norwegian Financial Mechanism 2009-2014.

175. Further, at the beginning of 2018, ANITP launched the campaign "Know your rights! Respect your duties!", as part of the project "Reducing THB through better information for citizens", financed through the Internal Security Fund. The campaign was aimed at reducing demand for services of victims of THB. The campaign's message was "Both the employer and the employee must earn from the job. Using the services of a victim of THB is punished by law". Another ongoing campaign organised under the same project is entitled "Tear down this wall... of indifference! Trafficking in persons can be prevented". It is aimed at preventing THB for the purpose of sexual exploitation, including through "loverboy" *modus operandi*, and the target groups are both children and potential clients.

176. There are also campaigns taking place exclusively online, such as one launched in 2016 by ANITP in partnership with the Child Helpline Association (ATC), entitled "Happy hands, NOT tortured hands!". The campaign was aimed at preventing trafficking in children for the purpose of labour exploitation.

177. As a continuation of previous efforts in the field of prevention of trafficking in children, in 2020, ANITP and the Directorate for Investigating Organised Crime and Terrorism (DIICOT) signed a joint plan of measures. Further, in 2020, ANITP concluded a collaboration protocol with the National Authority for the Rights of Persons with Disabilities, Children and Adoptions with the aim of carrying out joint actions to prevent child trafficking.

178. While the prevention of THB is not part of the national education system, there are various initiatives at county and local level, in particular in areas with high rates of poverty, where many parents work abroad and there are high levels of school absenteeism. Such measures have reportedly targeted up to 400 000 children aged 12-18.<sup>112</sup> Regular school attendance is another measure for preventing THB. There are scholarships and other programmes aimed at promoting school attendance, such as providing free meals and computers.

179. As noted in previous GRETA reports, Romanian children travelling abroad alone or accompanied by adults other than their parents have to be in the possession of an *affidavit*, prepared by a notary, to prove that they have their parents' permission to travel.<sup>113</sup> In the reporting period, five victims of THB have been identified by border guards. As noted in GRETA's second report, there is little evidence that the affidavit system helps to prevent trafficking in children. According to NGOs, border guards do not always properly check that *affidavits* and children's identity documents match, and the same *affidavits* have sometimes been used for several children. There are also allegations of notaries being bribed in order to issue *affidavits* based on false information, for example in the Tanderei case (see paragraph 101).

180. There is an increasing number of cases of recruitment and exploitation of children online, especially children coming out of institutional care. In their comments on the draft GRETA report, the Romanian authorities have indicated that delivering information regarding online recruitment and children exploitation is a central element of various prevention activities organised by ANITP such as information sessions held by ANITP specialists in schools and online campaigns launched on social networks targeting children and young people (e.g. "Be safe Online", "Choose carefully your online friends!", "Make real, not virtual friends!").

<sup>112</sup> Statement of the UN OHCHR Working Group on discrimination against women and girls reflecting its preliminary findings at the end of its Official visit to Romania 24 February – 6 March 2020.

<sup>113</sup> See paragraph 63 of GRETA's second report on Romania.

181. While welcoming the steps taken to raise awareness of child trafficking, GRETA is concerned by the continuing prevalence of child trafficking in Romania. **GRETA considers that the Romanian authorities should strengthen their efforts to prevent and combat child trafficking, and in particular:**

- **continue raising children's awareness of their rights and the risks of human trafficking (including recruitment and abuse through the Internet and social networks), paying particular attention to children in institutional care or leaving institutions, children from Roma communities and unaccompanied children;**
- **sensitise and train child protection professionals and teachers across the country on the risks and indicators of THB, including for the purpose of forced marriage.**

## **2. Social, economic and other initiatives for groups vulnerable to THB (Article 5)**

182. In its second report, GRETA considered that the Romanian authorities should increase their efforts to prevent THB through social, economic and other measures to assist groups vulnerable to THB, including through outreach work in Roma communities, as well as promoting gender equality, combating gender-based violence and stereotypes, and supporting specific policies for the empowerment of women as a means of combating the root causes of THB.

183. Romania remains a major source country of persons trafficked abroad and internally, the majority of whom are women and girls, although the number of men and boys has been increasing. Although the official unemployment rate dropped to around 4% in 2019, inequality and poverty rates remain high, and wages remain low compared to the average in the EU.<sup>114</sup> Young people, the rural population and Roma communities are particularly affected.

184. There are a number of programmes in Romania aimed at promoting employment. Jobseekers can benefit from a number of measures to stimulate labour mobility, such as a resettlement premium, granted by the Ministry of Labour and Social Justice through the "First Rent" programme. It is intended for people registered with employment agencies, who are assigned to a workplace located more than 50 km away from their domicile. Another support initiative is the installation premium granted as part of the "National Stimulation of Labour Employment Programme", intended for Romanian citizens who had been working abroad. Further, there is the "hiring premium", granted by the Ministry of Labour and Social Justice, on a monthly basis, during a 12-month period, to unemployed people registered with the employment agencies, assigned to have their workplace at more than 15 km away from their domicile or residence.

185. Another initiative financed by the Ministry of Labour and Social Justice are the support measures aimed at employers for the integration of vulnerable groups in the labour market. It involves a monthly grant of 2 250 Lei (approximately 475 Euros) during a 12-month period for each person receiving an indefinite employment contract. To qualify, employers are obliged to maintain the contractual relationship with the employee for at least six months after the expiration date of the grant. Potential beneficiaries are unemployed people over the age of 45, long-term unemployed people, persons with disabilities, and single parents.

186. In addition, there are several programmes of financial support available to persons who intend to become entrepreneurs, including the Diaspora START UP and START UP Nation programmes, aimed at Romanians returning from abroad. Other programmes promoting entrepreneurship are linked to rural or regional development in Romania.

<sup>114</sup> See Suzanne Hoff, Rights Work! Tackling Labour Exploitation in Poland, Bulgaria and Romania, March 2019, pp. 100-102, available at: <http://lastradainternational.org/doc-center/3301/rights-at-work-tackling-labour-exploitation-in-poland-bulgaria-and-romania>

187. Romania has adopted a Strategy for the Inclusion of Romanian Citizens belonging to the Roma Minority (2014-2020), covering four areas - education, employment, health and housing - as well as other fields such as social services and culture. The National Roma Contact Point (NRCP) and National Agency for Roma (NAR) co-ordinate the process of Roma inclusion at national and local level. Further, Roma health mediators serve as a bridge between vulnerable minority communities and health and social services and can play an important role in preventing THB. They can help with administrative issues, such as obtaining identity cards and registering children at birth.

188. GRETA notes that according to the most recent report of the European Commission against Racism and Intolerance (ECRI) on Romania, published in June 2019, measures to address the educational needs of Roma pupils have been put in place, including scholarships for pupils in secondary and professional schools and free transport. Progress in the fight against school drop-outs has been made, following the adoption of the National Strategy for the reduction of early school leaving (2015-2020). Moreover, in 2016, a Ministerial Order on the prohibition of school segregation in pre-university schools, which focuses on equal access to quality education, was adopted. However, accounts of alleged cases of racial discrimination and misconduct by the police and racial profiling, against Roma in particular, continue to be reported. Further, according to ECRI, Romania's National Strategy for the Inclusion of Romanian Citizens belonging to the Roma Minority has had little impact so far. The implementation of this strategy has suffered considerable financial constraints. ECRI points out that while 25% of the general population has incomes below the national poverty threshold, this rate stands at 70% for the Roma population. Moreover, the shortage of social housing persists and the forced evictions of Roma from their irregular settlements continue, often without offering any re-housing solutions.<sup>115</sup>

189. Another negative factor for Roma integration is limited and unequal access to employment. According to ECRI's report, only 33% of the employable Roma population (between 20-64 years) are in paid work (compared to 66% of the general population) while worryingly 64% of young persons (16-24 years old) are neither in employment nor in education (compared to 17% of the general population). There is a strong employment gap between Roma women and men. On a positive note, ECRI welcomes the job fairs organised by the National Agency for Employment (NAE) through the implementation of "Program 145", designed for 145 localities where a large number of Roma live.<sup>116</sup>

190. While welcoming the actions taken, **GRETA considers that the Romanian authorities should continue to strengthen the prevention of THB through sustained social, economic and other measures to empower groups vulnerable to THB, especially members of Roma communities, women, children, young people and persons with disabilities, including by promoting access to the labour market and by providing access to vocational education. Further efforts should be made to promote gender equality, combat gender-based violence and stereotypes, and support specific policies for the empowerment of women as a means of combating the root causes of THB.**

191. **Further, GRETA considers that the Romanian authorities should provide additional resources to Roma health mediators to enable them to identify potential and actual victims of trafficking within the Roma communities, and strengthen efforts to ensure access to justice for persons from these communities.**

<sup>115</sup> ECRI Report on Romania (Fifth monitoring cycle), published on 5 June 2019, p. 9, pp. 24-29, available at: <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/romania>

<sup>116</sup> Ibid., p. 29.

### 3. Identification of victims of THB

192. In its second report, GRETA urged the Romanian authorities to take further steps to improve the timely identification of victims of THB, and in particular to ensure that the NIRM is effectively implemented in practice, including by backing it up with adequate funding; to make sure that whenever there are reasonable grounds to believe that a person is a victim of THB, he or she is identified as a victim of THB, regardless of whether an investigation into trafficking is opened; to increase efforts to proactively identify victims of trafficking for the purpose of labour exploitation; and to pay increased attention to detecting victims of trafficking among foreign workers and asylum seekers.

193. In the period following the second evaluation, ANITP implemented the project "Trafficking in human beings - a victim-centred approach" which aimed, *inter alia*, at improving the implementation of the National Identification and Referral Mechanism (NIRM) by considering tools for risk assessment, reflection period and transnational repatriation. There were 17 training sessions, scheduled to take place at the beginning of 2018, for professionals who may come into contact with the victims of THB. As noted in paragraph 20, the NIRM was updated by ANITP in the summer of 2019. However, the new NIRM has been largely criticised by NGOs as it is said to give huge powers to ANITP, centralising all steps related to victims' assistance and protection, without there being enough staff at ANITP trained for these new competences. In their comments on the draft GRETA report, the Romanian authorities have indicated that criticism made by some NGOs might flow from an insufficient awareness and understanding of the mechanism and its drafting process, and that the new NIRM does not foresees new powers for ANITP. The funding for the implementation of NIRM is provided from the participant institutions' budget.

194. The Romanian authorities have stressed that assistance to victims does not depend on their participation in the criminal proceedings and that potential victims are immediately included in support, assistance and counselling programmes, whether or not they participate in criminal proceedings.

195. The available statistics on the number of identified victims of THB (see paragraph 11) indicate that there were 132 victims of THB for labour exploitation in 2016 (44 victims exploited in Romania and 88 abroad), 79 in 2017 (50 victims exploited in Romania and 29 abroad), 100 in 2018 (8 victims exploited in Romania and 92 abroad), and 115 in 2019 (42 victims exploited in Romania and 73 abroad). It is considered that sectors where exploitative practices occur in Romania include construction, agriculture, shipping, hospitality, the food sector and domestic work.<sup>117</sup> Sectors where most Romanian victims have been exploited abroad are construction and agriculture.

196. As a result of demand from the private sector actors to ease labour migration rules for third-country nationals, claiming a shortage of one million workers, the issuing of work permits for third-country nationals has been eased over the last few years, and the work permit quotas have been increasing (up to 30 000 in 2020). In 2018 there were 17 089 non-EU foreign employees in Romania, including permanent, seasonal, posted and other workers.<sup>118</sup> In 2018, Romania passed a law lowering the mandatory minimum pay for non-EU workers from the average gross salary (2 500 Lei or 512 Euros net as of 2018) to the national minimum wage (1 162 Lei net as of 2018).<sup>119</sup>

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<sup>117</sup> See Suzanne Hoff, Rights Work! Tackling Labour Exploitation in Poland, Bulgaria and Romania, March 2019, pp. 107, available at: <http://lastradainternational.org/doc-center/3301/rights-at-work-tackling-labour-exploitation-in-poland-bulgaria-and-romania>

<sup>118</sup> Ibid., p. 102.

<sup>119</sup> See [Parliament passes law to lower mandatory minimum pay for non-EU employees to national minimum wage level - Business Review \(business-review.eu\)](https://business-review.eu)



197. Although China and Turkey remain the leading countries of origin for migrant workers, in recent years a considerable number of Vietnamese citizens have come to work in Romania, following the signing of a memorandum between the two countries' governments. Chinese and Vietnamese workers often work in the garment industry and in shipyards. Foreign workers from the Philippines, Nepal, India, Indonesia and Thailand are employed in construction, shipbuilding, manufacturing, industry, agriculture, hospitality and services, and migrant women from the Philippines, Peru, Thailand and Pakistan work in domestic households.<sup>120</sup>

198. According to information provided by the Romanian authorities in reply to the Committee of the Parties' recommendation from the second evaluation round, in February 2015, a mechanism for the identification of vulnerable asylum seekers, including victims of trafficking in human beings, was put in place at the level of the Regional Centres of the Inspectorate General for Immigration (IGI) and the County Inspectorates of Immigration. On the basis of the National Strategy on Immigration for the period 2015-2018 and the corresponding action plan, campaigns have been organised by IGI and the Labour Inspectorate to inform foreigners about the conditions under which they can work in Romania as well as on their rights and obligations as employees. An Operational Co-operation Plan is being concluded annually for the detection of irregular foreign workers and the fight against undeclared work of foreigners. Further, IGI carries out activities/inspections itself or in co-operation with the Labour Inspectorate in order to prevent and combat undeclared work of foreigners.<sup>121</sup>

199. Labour inspectors within the regional labour inspectorates (which exist in every county of Romania) are trained on the relevant national and European legislation applicable to foreigners. Labour inspectors can identify cases of THB for labour exploitation and refer them to the prosecution authorities in cases covered by criminal law, as opposed to violations of employment, working conditions and health and safety standards in respect of which the Labour Inspectorate has a mandate. According to the Labour Inspectorate, irregular labour continues to be one of the major problems of the Romanian labour market, and violations of the labour law have also been reported by trade unions. However, the Labour Inspectorate is understaffed and there is a high turnover of inspectors due to the unattractive salaries.<sup>122</sup>

200. As noted by ECRI, although Romania is a country significantly affected by outward migration, it also continues to be a country of transit and destination for migrants and persons in need of international protection. According to UNHCR data, from 2008 to March 2018, a total of 18 434 persons applied for asylum in Romania. From 2012 to 2018, 4 773 persons were granted international protection (refugee status or subsidiary protection). Persons who have been granted refugee or subsidiary protection status have the right to work, as well as access to health care, education and social housing, on an equal footing with Romanian citizens.<sup>123</sup>

201. In 2019, there were 2 500 asylum applications in Romania. Among the asylum seekers, 366 vulnerable individuals were identified, out of whom about 80% were children. UNHCR reports have observed indicators of THB among asylum seekers, but no victims of THB have so far been formally identified. The UNHCR considers the lack of qualified interpreters in Romania as a major difficulty in the context of asylum seekers and in identifying victims of THB among them.

202. GRETA notes that there are continuing gaps in the identification of foreign victims of THB in Romania. Irregular migrants and asylum seekers are particularly vulnerable to trafficking. Further, there is still lack of awareness among stakeholders about trafficking for the purpose of labour exploitation and not sufficient attention is paid to identifying such cases and not treating them as labour law violations.

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<sup>120</sup> Suzanne Hoff, Rights Work! Tackling Labour Exploitation in Poland, Bulgaria and Romania, March 2019, pp. 107, available at: <http://lastradainternational.org/doc-center/3301/rights-at-work-tackling-labour-exploitation-in-poland-bulgaria-and-romania>, p. 103.

<sup>121</sup> For more details, see pp 6-7 at <https://rm.coe.int/cp-2017-32-rr2-rom-en/16807647cc>

<sup>122</sup> See Suzanne Hoff, Rights Work! Tackling Labour Exploitation in Poland, Bulgaria and Romania, March 2019, pp. 121.

<sup>123</sup> ECRI Report on Romania (Fifth monitoring cycle), published on 5 June 2019, p. 29, available at: <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/romania>

**203. GRETA urges the Romanian authorities to further improve the identification of victims of THB, including by:**

- **ensuring that the NIRM adopts a multi-disciplinary approach, involving specialised NGOs working with victims, and making a budgetary allocation of the implementation of the NIRM;**
- **training labour inspectors throughout the country, as well as law enforcement officers, prosecutors and judges, on combating THB for the purpose of labour exploitation and the rights of victims;**
- **ensuring that the Labour Inspectorate has adequate resources to carry out inspections and outreach work with a view to preventing and detecting cases of THB for the purpose of labour exploitation, including in remote locations;**
- **strengthening co-operation between labour inspectors, law enforcement officers, tax authorities, trade unions and other civil society actors, with a view to collecting evidence necessary for successfully investigating and prosecuting cases of THB for the purpose of labour exploitation;**
- **providing systematic training to asylum officials, migration officials, border police staff, as well as social workers, medical and other staff working at facilities for asylum seekers and detained migrants, on the identification of victims of trafficking and the procedures to be followed, including by providing operational indicators to enable staff to proactively identify victims of trafficking and refer them to specialised structures which can support them prior to their formal identification. In this respect, reference is made to GRETA's Guidance note on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection;<sup>124</sup>**
- **enabling specialised NGOs with experience in identifying and assisting victims of trafficking to have regular access to facilities for asylum seekers and detained migrants;**
- **systematically informing all asylum seekers, in a language they can understand, about their rights in the framework of the asylum procedure, and the legal rights and the services available to victims of trafficking.**

#### **4. Assistance measures**

204. In its second report on Romania, GRETA urged the Romanian authorities to provide a sufficient number of shelter places around the country for all victims of trafficking who need safe accommodation for the duration necessary to achieve their recovery, based on individual needs assessment.

205. According to the Romanian authorities, there are currently five centres providing assistance to victims of THB run by the General Directorates for Social Assistance and Child Protection (DGASPC) in the cities of Galați, Iași, Mehedinți, Craiova and Cluj. However, only three of these centres provide residential social services (i.e. shelters) for adult victims of THB. They are located in Craiova (Dolj county), Leorda (Botoșani county) and Iasi (Iasi county). According to updated information provided by the authorities, the shelter in Leorda can accommodate up to four adult victims of trafficking, in two rooms. In 2020, the shelter did not accommodate any victim of trafficking and there was therefore no need to allocate a budget. The shelter in Iasi functions within the structure of the Centre for Social Services for Adult Persons in Difficulty and has a capacity of accommodating six victims of trafficking. The budget allocated to this centre was 285 851 Lei (58 662 Euros) in 2020 and 205 002 Lei in 2021.

206. GRETA visited the shelter in Craiova, which can accommodate both men and women victims of THB for up to 90 days, with a possibility of extension at the request of the DGASPC. The centre can accommodate up to eight victims. It employs a psychologist, a social worker, two lawyers and five educators who fulfil other tasks at the DGASPC when there are no or few victims staying at the shelter. Counselling can also be provided to victims who are not accommodated at the shelter. Since 2016, 32 adult victims of THB had been accommodated at the shelter, some 90% of whom were women, mostly victims of trafficking for the purpose of sexual exploitation. Another 34 victims of THB have refused the offer to stay at the shelter. According to staff, victims usually spend only a few days at the shelter. At the time of GRETA's visit in early March 2020, no victims had stayed at the shelter since the autumn of 2019. The shelter comprises two apartments in a residential building. Its address is kept secret and there is a security guard at the entrance of the building. Meals are provided by hired catering services. The budget allocated to the shelter in 2020 was 284 132 Lei (58 260 Euros).

207. A number of shelters for victims of THB are operated by civil society and faith-based organisations which do not receive public funding. People to People Foundation is the only private provider of social services<sup>125</sup> that currently runs a licensed shelter for victims of trafficking.<sup>126</sup> This is a Christian charity running a shelter for adult victims of THB in the city of Oradea, which also accepts child victims of THB.

208. The Open Doors Foundation operates a shelter for victims of THB in Bucharest, which GRETA visited during the third evaluation visit. It is located in a spacious two-story house, with 16 places for female victims of THB who can be accommodated with their children. The shelter is funded by private donations. The staff consists of the Executive Director, a psychologist with a Master's degree on working with victims of THB, two lawyers, two social workers and four guards. In addition to this full-time staff, there are a number of volunteers providing literacy classes, handicraft classes and art therapy. GRETA was impressed by the family atmosphere prevailing at the shelter and observed that the victims of THB and their children enjoyed trusting relations with the staff and participated in daily activities.

209. Further, the NGO ADPARE and the Micul Bogdan Foundation run shelters referred to as protected homes for victims of THB. In the city of Deva, the Conexiuni Foundation, which works mainly with victims of domestic violence, occasionally provides shelter and other assistance to victims of THB. In addition, there are several faith-based organisations, including Caritas, Solwodi and Casa Debora-Missio Link International, which offer assistance and at times accommodation to victims of THB who have been exploited abroad and returned to Romania with the help of partners in other EU countries. These organisations focus on the reintegration of the victims into Romanian society. They have reportedly very limited co-operation with ANITP, which means that the Romanian authorities may not always be informed of the victims in the care of these organisations. GRETA was informed that despite the fact that most NGOs have concluded partnership protocols with ANITP, there is still a pressing need for strengthening and improving the co-operation with civil society. The offer and quality of the assistance varies depending on the provider, and there are no country-wide minimum standards.

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<sup>125</sup> According to the current data from National Register of Licensed Social Services (<http://mmuncii.ro/j33/index.php/ro/2014-domenii/familie/politici-familiale-incluziune-si-asistenta-sociala/4848>), there are 2 169 private providers of social services in Romania, of which 1 730 are NGOs (associations and foundations).

<sup>126</sup> Both private and public sector service providers should obtain an accreditation and a license granted by the competent public authorities (the Ministry of Labour and Social Protection and in the case of services for children, the National Authority for the Rights of the Persons with Disabilities, Children and Adoption). An NGO should submit the following documents to be accredited as a private provider of social services: 1) application for accreditation, 2) certificate of registration in the Register of Associations and Foundations, 3) commitment to establish a social service within three years after obtaining the accreditation as provider, 4) the statute of the association/foundation which must specify activities regarding social services. The term of response is 30 days.

210. According to statistics provided by the Romanian authorities, the number of victims of THB who received assistance from public institutions was 166 in 2016, 215 in 2017, 133 in 2018 and 60 in the first half of 2019. The majority of those assisted were children (343 girls and 80 boys), who are assisted by the child protection authorities. The number of victims who received assistance from NGOs was 88 in 2016, 48 in 2017, 70 in 2018 and 33 in the first half of 2019. In the case of NGO assistance, the majority of the victims were women (some 60%). The authorities have also provided the number of victims assisted through public-private partnership<sup>127</sup> (60 in 2016, 44 in 2017, 33 in 2018 and 15 in the first half of 2019).

211. GRETA notes that the proportion of victims who received assistance from the total number of identified victims is around 48%. While noting with appreciation the fact that many civil society and faith-based organisations provide assistance to victims of THB, GRETA remains concerned by the very limited capacity of state-run shelters, as well as the absence of public funding for NGOs.

212. Access to health care for victims of THB remains a problem. Many victims do not have health insurance and therefore can only receive short-term emergency medical assistance. NGOs try to fill this gap by paying for medical assistance to the best of their abilities. The government does not finance medical care costs of victims of THB.

213. **GRETA once again urges the Romanian authorities to step up their efforts to provide assistance to victims of trafficking, regardless of their nationality, in particular by:**

- **providing a sufficient number of shelter places around the country for all victims of trafficking who need safe accommodation for the duration necessary to achieve their recovery, based on individual needs assessment;**
- **ensuring adequate funding and staff to work with victims of THB and facilitate the reintegration of victims of trafficking into society by providing them with vocational training and access to the labour market;**
- **providing adequate financing to ensure the range and quality of the services delivered by NGOs;**
- **continuing to build strategic partnerships with NGOs and other civil society actors;**
- **guaranteeing access to health care to all victims of THB.**

#### **4. Identification of, and assistance to, child victims of trafficking**

214. In its second report, GRETA urged the Romanian authorities to improve the identification of child victims of THB and to provide adequate support and services which are adapted to their needs, including appropriate accommodation, access to education and vocational training.

215. As noted in paragraph 20, the NIRM was updated by ANITP in the summer of 2019. It contains a specific provision with regard to the identification and referral to assistance of child victims of THB.<sup>128</sup>

<sup>127</sup> Assistance provided in public-private partnerships refers to the situation of victims for whom, depending on the individual needs identified, some forms of assistance (such as accommodation, legal and psychological assistance, emotional and social support) were provided jointly by public institutions and NGOs.

<sup>128</sup> See paragraph 122 of GRETA's second report on Romania.

216. Other relevant provisions are contained in Government Decision No. 1443/2004 on the repatriation of unaccompanied children and/or victims of trafficking, which establishes a procedure for returning Romanian child victims. Pursuant to that instrument, the relevant General Directorate for Social Assistance and Child Protection (DGASPC) draws up an individual plan regarding the preparation of the social reintegration of children returning to Romania. On the request of the National Authority for the Protection of the Rights of the Child and Adoption, DGASPC carries out a social assessment of the family and other circumstances of the child, which must be completed within 20 days. The assessment serves as a basis for deciding whether to return a child to his/her family or whether to place him/her in a child residential institution. An individual plan is prepared for the child which includes measures to integrate the child victim into the school system or, depending on the age of the child, vocational training. The plan includes monitoring of the child's situation for at least six months after repatriation.

217. Most child victims of THB are accommodated in child residential institutions, including for children with disabilities. According to the Romanian authorities, there is a public shelter for child victims of THB, in Campia Turzii (Cluj County),<sup>129</sup> which can accommodate 10 victims, including under certain conditions victims up to the age of 20 and 26, e.g. when the person faces the risk of social exclusion or to allow the person to continue the educational process. The sum of 902 831 Lei (185 279 Euros) was allocated in 2020 to this shelter from the local budget. According to the authorities, there is also a shelter (St. Mina Center) in Iasi (Iasi county) destined exclusively to child victims of THB with a capacity of 15 places. The shelter was allocated from the local budget 306 204 Lei (62 786 Euros) in 2020 and 401 625 Lei in 2021.

218. There is also a shelter for child victims of THB, which is operated by the NGO Reaching Out in Pitesti. GRETA visited this shelter during the visit and observed that it offered a caring and supportive environment. The shelter has 12 beds and was accommodating 10 girls at the time of the visit. The staff of the shelter consists of its Director, one administrator and four social workers, with a visiting psychologist.

219. Minimum quality standards for social housing services, organised as residential care and assistance centres for child victims of trafficking in human beings, are provided in Order No. 1335/2020 of 31 August 2020 by the Ministry of Labour and Social Justice.<sup>130</sup> The authorities stressed that the new standards improve a number of aspects, such as initial evaluation and psychological rehabilitation, mandatory staff (psychologist and social worker), and reconsideration of the relation with the family when the family is involved in the trafficking. However, this Order also obliges all NGOs and public social service providers which work directly with child victims of THB to re-apply for accreditation, even when NGOs have been active for decades in the area of assistance of child victims. This has raised concerns about pressure being put on civil society through the licensing procedure.

220. GRETA is concerned by reports about children placed in child residential institutions being particularly vulnerable to sexual violence and trafficking, especially those with disabilities.<sup>131</sup>

<sup>129</sup> Visited by GRETA during its second evaluation round visit to Romania, see paragraph 108 of GRETA's second report.

<sup>130</sup> See [ORDIN 1335 31/08/2020 - Portal Legislativ \(just.ro\)](https://www.just.ro/ordin/1335-31-08-2020) (in Romanian).

<sup>131</sup> See, for example, End of Mission Statement of the UN Working Group on discrimination against women and girls, official visit to Romania, 24 February – 6 March 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25687&LangID=E> as well as the following sources in Romanian: <http://www.crj.ro/raportul-crj-in-urma-vizitei-de-monitorizare-in-centrul-de-plasament-pentru-copii-cu-probleme-psihsociale-din-oradea-judetul-bihor/>; [http://www.crj.ro/minora-abuzata-sexual-si-lipsita-de-protectie-demisia-directorului-dgaspc-galati-si-reformarea-efectiva-a-intregului-sistem-de-protectie-a-copilului/?fbclid=IwAR3Zd2\\_dGCnCO7OqUJ9Xa9rw86fu\\_132QhAwtbKyppZMydGCYNc6QjjZV80](http://www.crj.ro/minora-abuzata-sexual-si-lipsita-de-protectie-demisia-directorului-dgaspc-galati-si-reformarea-efectiva-a-intregului-sistem-de-protectie-a-copilului/?fbclid=IwAR3Zd2_dGCnCO7OqUJ9Xa9rw86fu_132QhAwtbKyppZMydGCYNc6QjjZV80)

221. GRETA notes with concern the continuing prevalence of child trafficking in Romania and the shortage of specialised shelters for child victims of THB. **GRETA once again urges the Romanian authorities to strengthen their efforts to identify child victims, including when the recruitment and/or exploitation take place online, and provide them with adequate assistance, in particular by:**

- **ensuring that child victims of THB benefit from specialised accommodation and services across the country;**
- **ensuring that proper risk assessment is conducted before returning children to their parents, taking into account the best interests of the child;**
- **providing long-term monitoring of the social inclusion of child victims of trafficking.**

## **5. Recovery and reflection period**

222. In its second report, GRETA considered that the Romanian authorities should take steps to ensure that all possible foreign victims of trafficking are offered an effective recovery and reflection period and all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention during this period.

223. Article 39 of the Anti-Trafficking Law provides for a reflection period of up to 90 days for foreign citizens about whom there are reasonable grounds to believe that they are victims of THB, for the purpose of recovering, escaping from the influence of traffickers or taking a decision regarding their co-operation with the competent authorities. According to the Romanian authorities, there are no data available on the number of recovery and reflection periods issued to victims of THB. The number of identified foreign victims of THB remains low: four in 2016, two in 2017, one in 2018 and 12 in 2019. According to information provided by the Romanian authorities, some of the victims refused assistance and returned to their countries of origin and the others remained in Romania and were provided assistance by the public authorities and/or NGOs.

224. As noted in paragraph 202, there may be a certain reluctance by the Romanian authorities to formally identify foreign victims of THB and to grant them a recovery and reflection period, given their associated obligation to investigate the offences and provide assistance to the victims, which is why foreign victims are allegedly repatriated as soon as possible or deported if their stay is irregular.

225. **GRETA reiterates its previous recommendation and considers that the Romanian authorities should take steps to ensure that all possible foreign victims of trafficking are offered a recovery and reflection period, as well as all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention during this period. Officers performing identification should be issued with clear instructions stressing the need to offer the recovery and reflection period as defined in the Convention, i.e. not making it conditional on the victim's co-operation and offering it to victims before formal statements are made to investigators. A system for recording the recovery and reflection periods granted to victims of THB should be introduced.**

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

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

### **Topics related to the third evaluation round of the Convention**

#### ***Right to information (Articles 12 and 15)***

- GRETA considers that the Romanian authorities should strengthen the provision of information to presumed and formally identified victims of THB about their rights, the services available to victims and how to access them, as well as the implications of being identified as a victim of THB, including by:
  - training relevant officials on how to explain to victims their rights in a way which takes into account their cognitive skills and psychological state, at the first point of contact as well as through later stages of the procedures;
  - ensuring that the information is given in a language which the victim understands, including with the help of qualified interpreters sensitised to the phenomenon of THB, and in a child-friendly manner where applicable (paragraph 43).

#### ***Legal assistance and free legal aid (Article 15)***

- GRETA considers that the Romanian authorities should strengthen their efforts to facilitate and guarantee access to justice for all presumed victims of THB, in particular by ensuring that:
  - a lawyer is appointed as soon as there are reasonable grounds for believing that a person is a victim of THB, before the person concerned has to decide whether or not to co-operate with the authorities and/or make an official statement;
  - the authorities and Bar Associations encourage training and specialisation of lawyers to provide legal aid to trafficking victims, and trafficking victims are systematically appointed a specialised lawyer;
  - access to free legal aid for victims of THB is unconditional and does not depend on proof of lack of financial means to pay for a lawyer;
  - review Law No. 211/2004 on Certain Measures to Ensure the Information, Support and Protection of Victims of Crime so that it specifically mentions victims of THB among the categories of victims entitled to legal assistance and free legal aid (paragraph 56).

#### ***Psychological assistance (Article 12)***

- GRETA considers that the Romanian authorities should take further steps to ensure that victims of THB are provided with psychological assistance to help them overcome the trauma they have been through, and to achieve a sustained recovery and social inclusion (paragraph 61).

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

- GRETA considers that the Romanian authorities should strengthen effective access to the labour market for victims of THB, as well as their economic and social inclusion through the provision of vocational training and job placement, awareness-raising amongst employers, and the promotion of micro-businesses, social enterprises and public-private partnerships, including through state-supported employment programmes, with a view to creating appropriate work opportunities for victims of trafficking (paragraph 67).
- GRETA considers that the Romanian authorities should ensure that asylum seekers are provided with effective access to the labour market, including by providing them with vocational and language training (paragraph 68).

***Compensation (Article 15)***

- GRETA urges the Romanian authorities to make additional efforts to facilitate and guarantee access to compensation for victims of THB, in particular by:
  - ensuring that the collection of evidence about the harm the victim has suffered, including the financial gain from the exploitation of the victim or loss sustained by the victim, is part of the criminal investigation with a view to supporting compensation claims in court;
  - making full use of the legislation on the freezing and forfeiture of assets, as well as international co-operation, to secure compensation to victims of THB, and ensure that recoverable property which is seized in criminal proceedings is returned as soon as possible to the victim;
  - reviewing the procedure to facilitate access to judicial public aid for victims who wish to claim compensation in civil proceedings;
  - supporting victims to effectively enforce compensation orders, including by ensuring that they have access to free legal aid;
  - including the topic of compensation in training programmes for lawyers, prosecutors and judges and encouraging them to use all the possibilities the law offers to uphold compensation claims by victims of THB;
  - facilitating access to state compensation by setting up as a matter of priority a victim compensation fund which uses confiscated assets of perpetrators of human trafficking to fund compensation and reparation, and simplifying the procedure and eligibility criteria for claiming compensation (paragraph 87).
- GRETA considers that the Romanian authorities should take additional steps to enable access to compensation for victims of trafficking by making compensation awarded in criminal proceedings payable by the State in advance, and the State taking the responsibility to recover the amount from the offender (paragraph 88).



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

- GRETA urges the Romanian authorities to take measures to strengthen the criminal justice response to THB, including by:
  - ensuring that human trafficking offences are proactively and promptly investigated, regardless of whether a complaint about the reported crime has been submitted or not, making use of all possible evidence, including evidence collected through special investigative techniques and financial investigations, in order not to rely exclusively on testimony by victims or witnesses;
  - requiring consideration of allocation of specialist financial investigators to every THB case;
  - sensitising prosecutors and judges to the rights of victims of THB, and encouraging the development of specialisation amongst prosecutors and judges to deal with THB cases;
  - strengthening efforts to investigate, prosecute and convict traffickers of labour exploitation;
  - ensure that THB cases are prosecuted as such and lead to effective, proportionate and dissuasive sanctions for those convicted, including in cases involving public officials. If an alternative charge is preferred in THB cases, this should be recorded and monitored by the Prosecutor's Office. The plea-bargaining procedure should be used only exceptionally in human trafficking cases, subject to appropriate safeguards, where the reduction of a sentence is clearly outweighed by the advantages offered by the plea agreement (these advantages being indicated in the judicial decision approving the agreement) and the agreement is not in any way detrimental to the rights of the victims, including their access to compensation;
  - ensuring that the length of court proceedings in cases of trafficking of human beings is reasonable, in line with the case-law of the European Court of Human Rights (regarding Article 6, paragraph 1, of the ECHR) and the standards set by the European Commission for the Efficiency of Justice (CEPEJ) (paragraph 108);
- GRETA invites the Romanian authorities to make the necessary legal amendments in order to enable the allocation of confiscated assets for use by specialised anti-trafficking NGOs (paragraph 109).

***Non-punishment provision (Article 26)***

- GRETA remains concerned that the scope of Article 20 of the Anti-Trafficking Law is rather narrow and urges the Romanian authorities to extend it to cover all offences (including administrative ones) which victims of THB have been compelled to commit (paragraph 114);
- GRETA considers that the Romanian authorities should take measures to ensure effective compliance with the principle of non-punishment of victims of THB for their involvement in unlawful activities, to the extent that they were compelled to do so. Such measures should include the development of guidance for police officers and prosecutors on the scope and application of the non-punishment provision, including with regard to the application of Article 20 of the Anti-trafficking Law (paragraph 115).

***Protection of victims and witnesses (Articles 28 and 30)***

- GRETA urges the Romanian authorities to make full use of the available measures to protect victims and witnesses of THB and to prevent their intimidation during the investigation, as well as during and after the court proceedings, including by applying the measures provided for particularly vulnerable victims and threatened witnesses, making more frequent use of the witness protection programme, banning the publication of trafficking victims' names on judicial websites, without affecting the ability of civil society to monitor cases with suspicion of corruption, and effectively investigating any cases of intimidation and threats against victims and witnesses (paragraph 125).

***Specialised authorities and co-ordinating bodies (Article 29)***

- While welcoming the existence of police investigators and prosecutors specialised in trafficking in human beings, GRETA urges the Romanian authorities to ensure that there is a sufficient number of specialised, trained and well-resourced investigators and prosecutors to deal with THB cases throughout the country (paragraph 136);
- GRETA considers that the Romanian authorities should promote specialisation and training of judges to deal with THB cases in a victim-sensitive and trauma-sensitive manner (paragraph 137);
- GRETA considers that training on THB should be integrated into the regular training curricula of relevant professional groups, including law enforcement officials, prosecutors, judges, labour inspectors, social workers, child welfare staff, health-care staff, immigration officials, asylum case workers and staff of immigration detention centres (paragraph 138).

***International co-operation (Article 32)***

- GRETA welcomes the Romanian authorities' participation in JITs in THB cases and EMPACT and considers that they should continue their efforts in the area of international co-operation against trafficking and make increased use of evidence obtained through international co-operation (see also paragraph 108) (paragraph 143).

***Gender-sensitive criminal, civil, labour and administrative proceedings***

- GRETA invites the Romanian authorities to promote a gender-responsive approach to access to justice for victims of THB, including through gender mainstreaming, training and increasing women's participation in law enforcement (paragraph 148).

***Child-sensitive procedures for obtaining access to justice and remedies***

- GRETA urges the Romanian authorities to ensure that all child victims of THB are in practice afforded the protection measures foreseen by law. In this context, GRETA refers to the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (paragraph 156);
- GRETA considers that the Romanian authorities should increase the number of special rooms used for interviewing child victims of crime, including THB, and make the existing ones fully operational (paragraph 157).

### ***Role of businesses***

- GRETA considers that the Romanian authorities should continue to strengthen engagement with the private sector, in line with the UN Guiding Principles on Business and Human Rights and Council of Europe Committee of Ministers Recommendation CM/Rec(2016)3 on human rights and business, with a view to raising awareness of the important role and responsibility of businesses in supporting the rehabilitation and recovery of victims, and to provide access to effective remedies (paragraph 163);
- GRETA considers that the Romanian authorities should step up their efforts to investigate and prosecute cases of corporate involvement in THB offences, paying particular attention to recruitment companies based in Romania and involved in recruiting third-country nationals (paragraph 164);
- GRETA considers that the Romanian authorities should adopt legislation promoting transparency in supply chains, to enable scrutiny of corporate performance in preventing THB and labour exploitation (paragraph 165).

### ***Measures to prevent and detect corruption***

- GRETA considers that the Romanian authorities should include measures against corruption in a THB context in the national anti-corruption strategy, in particular with a view to ensuring that the integrity of the investigation is protected (see paragraphs 101 and 103) (paragraph 170).

## **Follow-up topics specific to Romania**

### ***Developments in the institutional and policy framework for action against human trafficking***

- GRETA reiterates its recommendation from the second evaluation report that the Romanian authorities should examine the possibility of establishing an independent National Rapporteur or designating another already existing mechanism as an independent organisational entity, with a view to ensuring an effective monitoring of the anti-trafficking activities of state institutions and making recommendations to persons and institutions concerned (see Article 29, paragraph 4, of the Convention and paragraph 298 of the Explanatory Report) (paragraph 19).

### ***Measures to prevent trafficking in children***

- GRETA considers that the Romanian authorities should strengthen their efforts to prevent and combat child trafficking, and in particular:
  - continue raising children’s awareness of their rights and the risks of human trafficking (including recruitment and abuse through the Internet and social networks), paying particular attention to children in institutional care or leaving institutions, children from Roma communities and unaccompanied children;
  - sensitise and train child protection professionals and teachers across the country on the risks and indicators of THB, including for the purpose of forced marriage (paragraph 181).

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***Social, economic and other initiatives for groups vulnerable to THB (Article 5)***

- GRETA considers that the Romanian authorities should continue to strengthen the prevention of THB through sustained social, economic and other measures to empower groups vulnerable to THB, especially members of Roma communities, women, children, young people and persons with disabilities, including by promoting access to the labour market and by providing access to vocational education. Further efforts should be made to promote gender equality, combat gender-based violence and stereotypes, and support specific policies for the empowerment of women as a means of combating the root causes of THB (paragraph 190);
- GRETA considers that the Romanian authorities should provide additional resources to Roma health mediators to enable them to identify potential and actual victims of trafficking within the Roma communities, and strengthen efforts to ensure access to justice for persons from these communities (paragraph 191).

***Identification of victims of THB***

- GRETA urges the Romanian authorities to further improve the identification of victims of THB, including by:
  - ensuring that the NIRM adopts a multi-disciplinary approach, involving specialised NGOs working with victims, and making a budgetary allocation of the implementation of the NIRM;
  - training labour inspectors throughout the country, as well as law enforcement officers, prosecutors and judges, on combating THB for the purpose of labour exploitation and the rights of victims;
  - ensuring that the Labour Inspectorate has adequate resources to carry out inspections and outreach work with a view to preventing and detecting cases of THB for the purpose of labour exploitation, including in remote locations;
  - strengthening co-operation between labour inspectors, law enforcement officers, tax authorities, trade unions and other civil society actors, with a view to collecting evidence necessary for successfully investigating and prosecuting cases of THB for the purpose of labour exploitation;
  - providing systematic training to asylum officials, migration officials, border police staff, as well as social workers, medical and other staff working at facilities for asylum seekers and detained migrants, on the identification of victims of trafficking and the procedures to be followed, including by providing operational indicators to enable staff to proactively identify victims of trafficking and refer them to specialised structures which can support them prior to their formal identification. In this respect, reference is made to GRETA's Guidance note on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection;
  - enabling specialised NGOs with experience in identifying and assisting victims of trafficking to have regular access to facilities for asylum seekers and detained migrants;
  - systematically informing all asylum seekers, in a language they can understand, about their rights in the framework of the asylum procedure, and the legal rights and the services available to victims of trafficking (paragraph 203).

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***Assistance measures***

- GRETA once again urges the Romanian authorities to step up their efforts to provide assistance to victims of trafficking, regardless of their nationality, in particular by:
  - providing a sufficient number of shelter places around the country for all victims of trafficking who need safe accommodation for the duration necessary to achieve their recovery, based on individual needs assessment;
  - ensuring adequate funding and staff to work with victims of THB and facilitate the reintegration of victims of trafficking into society by providing them with vocational training and access to the labour market;
  - providing adequate financing to ensure the range and quality of the services delivered by NGOs;
  - continuing to build strategic partnerships with NGOs and other civil society actors;
  - guaranteeing access to health care to all victims of THB (paragraph 213).

***Identification and assistance of child victims of trafficking***

- GRETA once again urges the Romanian authorities to strengthen their efforts to identify child victims, including when the recruitment and/or exploitation take place online, and provide them with adequate assistance, in particular by:
  - ensuring that child victims of THB benefit from specialised accommodation and services across the country;
  - ensuring that proper risk assessment is conducted before returning children to their parents, taking into account the best interests of the child;
  - providing long-term monitoring of the social inclusion of child victims of trafficking (paragraph 221).

***Recovery and reflection period***

- GRETA reiterates its previous recommendation and considers that the Romanian authorities should take steps to ensure that all possible foreign victims of trafficking are offered a recovery and reflection period, as well as all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention during this period. Officers performing identification should be issued with clear instructions stressing the need to offer the recovery and reflection period as defined in the Convention, i.e. not making it conditional on the victim's co-operation and offering it to victims before formal statements are made to investigators. A system for recording the recovery and reflection periods granted to victims of THB should be introduced (paragraph 225).

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

### **Public bodies**

- Ministry of Justice
- Ministry of Labour and Social Protection
  - Labour Inspectorate
  - Social Policies Services Directorate
  - National Agency for Employment
- Ministry of Foreign Affairs
- Ministry of Education and Research
- Ministry of the Interior
  - National Agency against Trafficking in Persons (ANITP)
  - Department for Combating Trafficking in Human Beings of the Police Directorate for Combating Organised Crime (DCCO)
  - General Inspectorate of the Romanian Police (GIRP)
  - General Directorate of the Romanian Border Police
  - General Inspectorate of the Romanian Gendarmerie
- Directorate for Investigating Organised Crime and Terrorism (DIICOT) of the Prosecutor's Office
- State Compensation Board for Victims of Crime
- Superior Council of Magistracy
- National Agency for Roma
- General Ombudsman
- Ombudsman for Children
- Romanian Parliament's Group for Combating Trafficking in Persons

### **Intergovernmental organisations**

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

### **Non-governmental organisations and other civil society organisations**

- ADPARE
- Agentia Impreuna (Roma NGOs)
- Association for the Development of Alternative Practices for Education and Reintegration (ADPARE)
- Christiana Association

- Ecumenica Association of Romanian Churches
- eLiberare
- European Centre for Legal Education and Research
- Freedom House Romania
- Jesuit Refugee Service in Romania
- Open Door Foundation
- Micul Bogdan Foundation
- Plus Value Foundation
- Reaching Out Romania
- Romanian Bar Association
- Save the Children Romania
- Young Generation

## **Government's comments**

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

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

The Convention requires that "the report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned." GRETA transmitted its final report to the Romanian authorities on 23 April 2021 and invited them to submit any final comments. The comments of the authorities, submitted on 21 May 2021, are reproduced hereafter.



**ROMANIAN AUTHORITIES' RESPONSE TO THE REPORT CONCERNING THE  
IMPLEMENTATION OF THE COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST  
TRAFFICKING IN HUMAN BEINGS**

**Third evaluation round**

**Bucharest, May 2021**

**Abbreviations:**

ANABI	National Agency for the Management of Seized Assets
ANITP	National Agency against Trafficking in Persons
CP	Criminal Code
CPP	Code of Criminal Procedure
DCCO	Directorate for Combating Organized Crime
DIICOT	Directorate of Investigation of Organized Crime and Terrorism Offenses
GRETA	Group of Experts on Action against Trafficking in Human Beings
IGI	General Inspectorate for Immigration
IGPF	General Inspectorate of Romanian Border Police
IGPR	General Inspectorate of the Romanian Police
IM	Labour Inspectorate
MMPS	Ministry of Labour and Social Protection
MNIR/NIRM	National Identification and Referral Mechanism
MO	Official gazette
NGO	Non-governmental Organization
SCTP	Combating Trafficking in Persons Unit
SIFGCO	Organized Crime Groups Financial Investigation Service
SNITP	National Strategy against Trafficking in Persons

**DRAFTED BY THE NATIONAL AGENCY AGAINST TRAFFICKING IN PERSONS BASED ON THE  
CONTRIBUTION OF OTHER INSTITUTIONAL ACTORS**

## **II. Overview of the current situation and trends in the area of trafficking in human beings in Romania**

**Para. 13.** Further, according to NGOs, the scale of trafficking of foreign nationals to Romania, in particular for the purpose of labour exploitation, is much larger than the limited number of identified foreign victims of THB suggests. The number of work permits issued to third-country nationals has grown exponentially in recent years, which has reportedly led to an increase in cases of labour exploitation. NGOs report cases of persons from Ethiopia, Eritrea, the Philippines, Sri Lanka and Vietnam being trafficked to Romania by organised crime groups and exploited in the hospitality, food processing, construction and domestic work sectors.

**Para. 159.** There have been a number of reports about foreign workers (e.g. from Ethiopia and the Philippines) having been recruited to work in hotels and the food processing industry under exploitative conditions (see paragraph 13). Civil society sources consider that there are victims of THB among them, even though no such victims have been formally identified by the Romanian authorities.

**Comment:** Workers coming from Asian countries, mostly from Vietnam, Sri Lanka, Bangladesh and India have been recruited in order to make up for the labour force deficit in Romania, over the past few years. Such communities of migrant workers have started to form in all regions across the country. Most of them are being housed in dorms on their employer's premises. Labour force import has also led to the set up and development of criminal networks whose purpose is to traffick migrants in the Schengen area, particularly in Germany and Italy, as well as in the United Kingdom. National authorities have documented the activity of such networks dealing with trafficking of migrants from Vietnam and Sri Lanka and have established cooperation with EUROPOL and INTERPOL.

While, we cannot exclude cases of migrants' exploitation in transit or destination countries, there are no cases on record of migrants being trafficked with a purpose of labour exploitation in Romania. Were such a case reported, the anti-trafficking mechanism will be activated (irrespective of their status, all migrants shall be treated as victims).

In the annual EMPACT –JAD THB actions, ANITP, IGPF together with IGI and IM look to identify possible victims of trafficking in persons among foreign national, asylum seekers or employees of Romanian companies.

Identifying possible victims of trafficking among foreign nationals is one of the main priorities of the anti-organised crime structures since 2019. Companies employing more than 10 persons coming from countries at risk of generating irregular migration are being monitored and any unruly facts or disappearances of migrant workers reported.

So far, monitoring has only highlighted cases of offences under the labour law (inappropriate work conditions, payment of workers etc.).

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

**Para. 16.** A new National Strategy against Trafficking in Human Beings for the period 2018-2022, together with a National Action Plan for 2018-2020, were approved by Government Decision 861/2018. The drafting of the strategy involved a range of institutions, but civil society was reportedly not sufficiently involved.

**Comment:** While 27 non-governmental organisations have been invited to consultations when the SNITP 2018-2022 and PNA 2018-2020 were being drafted, only one of them has responded and joined the preparatory meeting.

**Para. 19:** Therefore, GRETA reiterates its recommendation from the second evaluation report that the Romanian authorities should examine the possibility of establishing an independent National Rapporteur or designating another already existing mechanism as an independent organisational entity, with a view to ensuring an effective monitoring of the anti-trafficking activities of state institutions and making recommendations to persons and institutions concerned (see Article 29, paragraph 4, of the Convention and paragraph 298 of the Explanatory Report).

**Comment:** The establishment of ANITP as National Rapporteur is in complete accordance with the provisions of EU Directive 2011/36 and the Council of Europe Convention on Action against Trafficking in Human Beings (2005). **None of these legal instruments mention the obligation or the recommendation to have an independent rapporteur.**

**The EU Directive 2011/36**, stipulates at Art 1, paragraph 27 that “National monitoring systems such as national rapporteurs or equivalent mechanisms should be established by Member States, in the way in which they consider appropriate according to their internal organisation, and taking into account the need for a minimum structure with identified tasks, in order to carry out assessments of trends in trafficking in human beings, gather statistics, measure the results of anti-trafficking actions, and regularly report.” At the same time, Art 19 of the **EU Directive** stipulates the “Member States shall take the necessary measures to establish national rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field, and reporting.”

**The Council of Europe Convention on Action against Trafficking in Human Beings (2005)** – stipulates at Art 29, paragraph 4 that “Each Party shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements.”

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

### **2. Right to information (Articles 12 and 15)**

**Para. 38:** According to specialised NGOs, the information on rights tends to be given in a formalistic manner, without making an effort to ensure that the victim understands it. Information about the right to free legal aid has reportedly not always been provided to presumed victims of THB, because Law No. 211/2004 does not explicitly mention victims of THB among the beneficiaries of this legal instrument, and some officials are not aware that it has to be read in conjunction with the Anti-trafficking Law, according to which victims of THB are entitled to free legal aid in accordance with Law No. 211/2004 (see paragraph 47).

**Comment:** Whilst we do not exclude entirely the possibility that, in some cases, information about the rights of the victim may be provided in a formalistic manner, these cases tend to be exceptions. As per agreed practice, the victim is informed about her/his rights in a manner that she/he can understand, by the actors involved (police, prosecutors, social workers, ANITP).

The importance of professionals providing victims with accurate and complete information about their rights (according to Art 4, paragraph 1 of Law no. 211/2004) is always highlighted during trainings and seminars regarding THB.

Information regarding rights should be provided explicitly and clearly, in an accessible manner, for all victims, in any given situation and to any kind of victim, not only THB victims. Rights, access to services and procedures applying to victims of THB are regulated under Law 211/2004.

**Para. 43:** GRETA considers that the Romanian authorities should strengthen the provision of information to presumed and formally identified victims of THB about their rights, the services available to victims and how to access them, as well as the implications of being identified as a victim of THB, including by:

- training relevant officials on how to explain to victims their rights in a way which takes into account their cognitive skills and psychological state, at the first point of contact as well as through later stages of the procedures;
- ensuring that the information is given in a language which the victim understands, including with the help of qualified interpreters sensitised to the phenomenon of THB, and in a child-friendly manner where applicable.

**Comment:** Training for specialists who (may) come into contact with persons in vulnerable situations or victims of human trafficking is an ongoing and adaptative process, tailored to the specific needs identified in this field. In this regard, Romanian institutions, in collaboration with non-governmental organizations, have recently developed a series of projects aimed at training relevant officials on the management of human trafficking cases, based on a victim-centred approach, including on the above mentioned concerns. Examples include the projects: "Strengthening the proactive criminal response to trafficking in human beings in Romania" (implemented by the International Justice Mission, the National Agency Against

Trafficking in Persons, the Directorate for the Investigation of Organized Crime and Terrorism, the Directorate for Combating Organized Crime within the Romanian Police) and the project “ProActiv: Detection and notification of cases of human trafficking in the community” (implemented by the eLiberation Association and the National Agency Against Trafficking in Persons).

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

**Para. 46:** In Romania, Article 44 of the Anti-trafficking Law provides that victims of THB are entitled to free legal counselling, which includes legal representation, to help them exercise their rights within criminal proceedings, as well as at all stages of the proceedings. As already noted in paragraph 38, the Anti-trafficking Law refers to Law No. 211/2004 on Measures to Ensure the Protection of Victims of Crime which, however, does not specifically mention victims of THB among the categories of victims entitled to legal assistance and free legal aid. GRETA notes that Article 14, paragraph 1, of Law No. 211/2004 specified that free legal aid is to be provided, upon request, to several categories of victims, including those against whom “an offence of serious bodily harm as provided in Article 182 of the CC” has been committed. While Article 182 of the CC defines exploitation, it is Articles 210 and 211 of the CC which criminalise, respectively, trafficking in adults and child trafficking, and these articles are not specifically mentioned in Law No. 211/2004. As a result, courts reportedly do not always grant free legal aid to victims of THB who have been subjected to forms of exploitation other than sexual if no reference is specifically made to the entitlement under the Anti-trafficking Law.

**Comment:** Law no. 678/2001 on preventing and combating trafficking in human beings, as subsequently amended, states in Art. 44 that victims of THB must be provided with free legal assistance in order to be able to exercise their rights in the criminal proceedings, according to the law, at all stages of the criminal process, and to pursue their civil claims against their perpetrators. This right to legal assistance cannot be waived.

**Para. 47:** Article 16 of Law No. 211/2004 sets out the following conditions for granting free legal aid: i) the victim has notified the prosecution or court within 60 days of the offence being committed (this condition does not apply to children and persons who do not have full legal capacity); ii) for victims covered by Article 14, paragraph 1, of the Law, the term of 60 days is calculated from the date when the victim learned about the commission of the offence; iii) if the victim was physically or mentally unable to do so, the 60-day term is calculated from the date when that inability ceased. The application must be submitted personally by the victim or by his/her legal representative in the case of children, or by NGOs operating in the area of victims protection provided that the victim signs the application. The request has to be submitted to the district court in the court jurisdiction in which the victim is resident and the decision is taken by at least two judges who are members of the court commission for granting financial compensation to victims of crime. The application must include the monthly income per victim’s family member and other supporting documents. Free legal aid is granted up to the equivalent of two gross minimum monthly salaries. Access to free legal aid is therefore means tested and has to be requested by the victim.

**Comment:** We underline the difference between:

- the free legal aid provided in the Romanian Criminal Code by *ex officio* lawyers, which is offered irrespective of the proof of means - art. 93. (4) *Legal assistance is mandatory when the injured person or the civil party lacks mental competence or has a limited mental competence; (5) when the judicial body considers that for certain reasons the injured person, the civil party or the civilly responsible party could not defend himself, it shall order the taking of measures for the appointment of an ex officio lawyer;*

- the free legal aid mentioned in the art. 17 para (2), letter e) from Law no. 211/2004 which provides that the application for granting free legal aid must include „*if case may be, the monthly income per victim’s family member*”.

**50. Based on Article 14 of Law No. 211/2004, in conjunction with Article 44, paragraph 2, of the Anti-trafficking Law, a victim of THB can decide to choose a specific lawyer, rather than being appointed an ex officio lawyer. However, there is a limited number of lawyers specialised in representing victims of THB. It should be noted that specialised lawyers chosen by victims are entitled to higher fees than ex officio lawyers appointed by the county Bar Associations.**

**Comment:** There is no provision regarding differences in payment of the fees to which the ex officio or designated lawyers are entitled. However, for ex officio lawyers, the State covers the fees, while for designated lawyers, the victim covers the fees in the criminal proceedings.

## **7. Investigation, prosecutions, sanctions and measures (Articles 22, 23 and 27)**

**Para. 97. The statistics on investigations provided by DIICOT and DCCO vary and do not differentiate between THB cases and cases related to other crimes, such as pimping and pandering. According to the DCCO, the crime of THB and pandering/pimping by an organised criminal group (Article 213 in conjunction with Article 367) cannot be dealt with separately because in practice, many cases are initiated as pimping/pandering and subsequently the police identify victims of THB among those engaged in prostitution for the benefit of the members of the criminal group. There has been a decrease in registered cases of THB for the purpose of sexual exploitation at the expense of cases of pimping/pandering because perpetrators increasingly use the “loverboy” modus operandi, and their victims do not consider themselves as victims. GRETA was told of cases in which traffickers were living with their victims while awaiting trial or had married the victim. Pimping/pandering is easier to prosecute, as there is no need to provide evidence of the element of “action” which is part of the definition of human trafficking, but attracts milder penalties, while the victims do not have access to the entitlements of victims of THB.**

**Comment:** Data collected by DCCO are disaggregated according to the legal classification of crimes (articles of the Criminal code or of special laws). The status of the investigated crime may change before referral to court, based on the findings.

For example, approximately 20% of cases fall under art. 213 and 367 (pimping by organised crime groups; such cases were investigated by anti-trafficking structures following a mandate given by DIICOT) and not

under art. 210 and 211 (trafficking in persons and trafficking in minors). This trend is on the rise since perpetrators prefer pimping to coercion (avoiding thus standard trafficking), an equally lucrative activity, with less chances of being identified by the authorities.

Anti-trafficking officers are familiar with the *loverboy* method, recurrent in most cases of THB with a purpose of sexual exploitation. However, this *modus operandi* does not equate the crime of trafficking with pimping, as the above paragraph of the GRETA report infers. Anti-trafficking officers employ all necessary investigative means to gather evidence, without prejudice to the ease/ difficulty to obtain it („pimping is easier to prosecute”).

The High Court of Cassation and Justice ruled on the co-existence of the crimes of pimping and trafficking in human beings, even in cases concerning the same victim (decision no. 16/2007, published in MO no. 542/ 17.07.2008, available at

<http://intralegis.mai.intranet/oficiala/afis.php?f=95694>)

**Para. 99. (...) The Romanian authorities have noted that evidence of the exploitation of Romanian citizens is often located abroad, which makes it more difficult for Romanian agencies to investigate the offence. There is a heavy reliance on victim and witness testimony, which investigators try to match with verifiable records, such as of travel or flat rentals.**

**Comment:** The length of investigations of cross-border cases of trafficking depends indeed on the pace of cooperation with local authorities in the destination state.

**Para. 103. (...) GRETA was informed that there had been cases in which DIICOT preferred to investigate without the support of DCCO or other police forces, as they were concerned that the police could have been involved in the case, or at least might have reasons to neglect their duty to investigate.**

**Comment:** According to the current legislation the prosecutors within the Directorate for Investigating Organized Crime and Terrorism (DIICOT), both at the central and territorial level, personally prosecute all cases related to their activity, including those related to human trafficking (art. 210, Criminal Code) and trafficking in minors (art. 211 Criminal Code).

This is not only possible, but also mandatory by law, respectively Government Order (G.O.) no.78/2076 approved and amended by Law no. 120/2018, by exception being possible the delegation of activities to the judicial police, based on art.324 para.3 Criminal Procedure Code, corroborated with art. 6 of the aforesaid G.O.

Moreover, there are certain prosecutions that can never be the subject of delegation to the police structures, under the sanction of nullity (art. 324 para. last CPP).

It should also be mentioned that there is no obligation in the law to order the delegation to the judicial police, solving each case being the exclusive task of the case prosecutor, from the moment of registration within the DIICOT.

As a result, there are some situations in which the **case prosecutor does not consider it necessary the delegation of judicial bodies** to carry out criminal prosecutions, **personally performing all procedural acts.**

At the same time, it is not impossible that after a period in which the criminal investigation was carried out only by the prosecutor, he orders the delegation of activities to DCCO, but this can also happen in the following year, not in the year of the case registration (e.g. - a case registered in August 2019 by DIICOT, the prosecutor personally carrying out the criminal investigation acts, and in January 2020 he also orders the delegation of some workers within DCCO - which only then register the file as a new case).

There is also the possibility that some files will be created by disjunction (one case can be split in many cases), and these new registered files may not be ever delegated to DCCO, the prosecutor completing the investigations and ordering the legal solution by himself, no other involvement of the police.

**These aspects cannot represent and they should not represent by any means a lack of trust in the judicial police of IGPR-DCCO.**

In practice, given **the nature and complexity of the cases** within the competence of DIICOT, including the trafficking in persons and trafficking in children cases, the prosecutors order the delegation of prosecution activities to the specialized police bodies of IGPR-DCCO, in most of the cases. **DIICOT states a close and good cooperation with the police officers specialized in this field.**

Finally, it should be mentioned that in the matter of trafficking in persons - art. 210 CP and trafficking in minors - art. 211 CP, DIICOT prosecutors did not order the delegation of criminal prosecution acts to other police structures outside the I.G.P.R. - Directorate for Combating Organized Crime.

Such delegations were ordered by prosecutors only in the matter of crimes of forming an organized criminal group - art. 367 CP for the purpose of committing the crime of pimping - art. 213 CP and only in the situation where the notification came from another structure within the I.G.P.R.

Moreover, we specify that in the same cases invoked in the Report to paragraph 103, the case prosecutors from the Covasna Territorial Office respectively Ploiești Territorial Service ordered the delegation to judicial police workers from the territorial structures of the Directorate for Combating Organized Crime, the cases being solved with success although some of the suspects were police officers.

**Para. 106. (...) Too much emphasis is put on the victim's testimony during criminal investigations. If proceedings are built solely upon the victim's testimony, this puts an exorbitant amount of pressure upon the victim, who is often vulnerable and possibly traumatised. (...)**

**Comment:** With regard to the administration of evidence, **no case file is prepared and referred to court based exclusively on the victim's statement.** Notwithstanding its importance during the investigation, the statement must be backed up by other evidence – statements by witnesses, recordings, bank transactions, apprehension of assets and documents, surveillance etc.

In anti-trafficking casework, there is no irrefutable evidence, and all acquired evidence must be corroborated, as provided by the Criminal procedure code.

**Para. 87. GRETA urges the Romanian authorities to make additional efforts to facilitate and guarantee access to compensation for victims of THB, in particular by:**

**- ensuring that the collection of evidence about the harm the victim has suffered, including the financial gain from the exploitation of the victim or loss sustained by the victim, is part of the criminal investigation with a view to supporting compensation claims in court. (...)**



**Para. 108.** GRETA stresses that failure to convict traffickers and the absence of effective punishment engenders a feeling of impunity and undermines efforts to support victims to testify. **GRETA urges the Romanian authorities to take measures to strengthen the criminal justice response to THB, including by:**

- ensuring that human trafficking offences are proactively and promptly investigated, regardless of whether a complaint about the reported crime has been submitted or not, making use of all possible evidence, including evidence collected through special investigative techniques and financial investigations, in order not to rely exclusively on testimony by victims or witnesses;
  - requiring consideration of allocation of specialist financial investigators to every THB case;
- (...)

**Comment:** The filing of a complaint is not mandatory for investigations to start in a THB case. According to criminal law, THB cases are investigated either at the initiative of law enforcement entities (police, judiciary), either following the THB victim's complaint, the denouncement by a witness or after a written report filed by entitled bodies, as provided by art. 61 of the Criminal procedure code.

During investigations, DCCO-SCTP judiciary police officers and DIICOT prosecutors pay close attention to financial or assets flows connected to THB crimes. Even in the absence of SIFGCO financial investigators working on a case, international monetary transactions are always checked for, as they may provide evidence and give an estimate of profits from criminal activity. Officers seek to obtain evidence regarding financial gains obtained from victims' exploitation, including with a view to support compensation claims in court (in civil suits).

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

**Para. 136.** While welcoming the existence of police investigators and prosecutors specialised in trafficking in human beings, GRETA urges the Romanian authorities to ensure that there is a sufficient number of specialised, trained and well-resourced investigators and prosecutors to deal with THB cases throughout the country.

**Comment:** The concern of the Romanian authorities for ensuring an appropriate level of resources involved in combating trafficking in human beings is also highlighted by the draft 2021-2024 National Strategy against organized crime, currently under public debate, which provides, within Strategic Objective no. 2 - Development of the institutional capacity at national level to fight against organized crime, Action - Resources: *ensuring specialized human resource, material and financial means necessary to develop the institutional capacity of the competent authorities, based on a rigorous planning and effectiveness evaluation process of their use.*

**Para. 138.** GRETA also considers that training on THB should be integrated into the regular training curricula of relevant professional groups, including law enforcement officials, prosecutors, judges, labour inspectors, social workers, child welfare staff, health-care staff, immigration officials, asylum case workers and staff of immigration detention centres.

**Comment:** By order no. 27/21.03.2020 of the General Inspector of the Romanian Police, prevention and fighting against trafficking in human being and against sexual exploitation are now mandatory subjects for all central and local police structures' training schemes.

## 11. International co-operation (Article 32)

**Para. 140. Romania is the European country with the highest number of agreements on joint investigation teams (JITs) for investigating THB offences for different forms of exploitation, having 35 ongoing JITs in 2019. The majority of JIT requests are initiated by other EU countries. (...)**

**Comment:** Each joint investigation team is set up as a result of bilateral cooperation, following common coordination meetings in the EUROJUST framework. The drafting process seeking to establish such teams is a mere formality, and does not imply lack of initiative from the other party concerned.

## 12. Cross-cutting issues

### d. measures to prevent and detect corruption

**168. The Council of Europe body with the main role to play in the fight against corruption is the Group of States against Corruption (GRECO). In its 4th evaluation round report on Romania, which focused on prevention of corruption in respect of members of parliament, judges and prosecutors, GRECO noted that judges and prosecutors are subject to a career system and procedural rules which limit a number of risks for their integrity. That said, the conditions for the appointment and dismissal of some of the holders of top prosecutorial functions exposes them excessively to possible government influence. The added value of the code of ethics adopted in 2005 appears to be limited, especially since it provides neither concrete guidance nor examples on how to deal with certain situations which could be problematic.<sup>108</sup> GRECO's recommendations have only been partially implemented by the Romanian authorities**

**Comment:** The paragraph quotes incompletely from the Evaluation Report on Romania, adopted by GRECO in December 4, 2015, within its fourth evaluation round.

With regard to the GRECO's recommendation concerning the Code of Ethics for judges and prosecutors, please take into account that this recommendation was assessed by the anti-corruption body as being satisfactorily treated within the Compliance Report on Romania adopted in December 8, 2017.

For updated information, the latest report on Romania was adopted by GRECO in June 21, 2019 (Interim Compliance Report).

**Para. 169. (...) GRETA was informed about a petition addressed in November 2019 by NGOs to the Prime Minister and other government ministers, raising concerns about a secret club in Bacau in which public officials were reportedly secretly filmed having sexual relations with teenage girls who were under the influence of drugs. The owner of the club where this happened was in possession of the recordings and used them to blackmail the public officials and the victims. As far as GRETA was informed, two separate investigations have been opened into this case: one for corruption and pimping which involves police officers and influential persons who were the clients of the club, and another one against other clients of the club. The investigations were ongoing at the time of writing.**

**Comment:** Investigations concerning 29 defendants (including police officers) were carried out and 48 individual charges indicted, as follows: trafficking in minors (art. 211 CC), drug trafficking (art. 2, paragraph 2, Law no. 143/ 2000, republished), trafficking of/ buying influence (art. 291, 292 CC), abuse of office (art. 297 CC, art. 132 Law 78/2000), providing a location for illegal drug consumption (art. 5, Law no. 143/ 2000 ,republished), owing high risk drugs for personal use art. 4, paragraphs 1, 2, Law no. 143/ 2000, republished), leaving an accident scene (art. 338 CC), driving without license (art. 335 CC), child prostitution (art. 2161 CC), child pimping (art. 213, paragraphs 1, 3 CC), child pornography (art. 374,

paragraphs 1, 2 CC), sexual acts with a minor (art. 220, paragraph 1 CC), influencing statements (art. 272, paragraph 1 CC), misappropriation (art. 308/ 295 CC), favouring the offender (art. 269 CC).

Some of the victims pursued civil suits and claimed for compensations. Several seizures of perpetrators' assets were ordered.

Following completion of the probatory stage in this case, the indictment was issued by DIICOT in 2020.

## V. Follow-up topics specific to Romania

### 3. Identification of victims of THB

**Para. 192:** In its second report, GRETA urged the Romanian authorities to take further steps to improve the timely identification of victims of THB, (...) and to pay increased attention to detecting victims of trafficking among foreign workers and asylum seekers.

**Comment:** As of January 2021, the IGI *Procedure concerning needs identification, evaluation and referral of persons in vulnerable situations* came into force. IGI staff is now better equipped to identify possible THB victims among asylum seekers.

**Para. 202:** GRETA notes that there are continuing gaps in the identification of foreign victims of THB in Romania. Irregular migrants and asylum seekers are particularly vulnerable to trafficking. Further, there is still lack of awareness among stakeholders about trafficking for the purpose of labour exploitation and not sufficient attention is paid to identifying such cases and not treating them as labour law violations.

**Comment:** IGI and IM have concluded a joint protocol on preventing and combatting unlawful employment of foreign nationals. The document is updated yearly, to better respond to the needs of both institutions. IGI and IM run information campaigns twice a year, targeted for foreign students (on work and employment conditions and rights), for employers of foreign nationals (on work and employment conditions and obligations) and for asylum seekers living in regional housing centres (on work and employment conditions and rights).

The project "Strengthening the proactive criminal response to trafficking in human beings in Romania" implemented jointly by the International Justice Mission and Romanian authorities, provides regional trainings for labour inspectors.

### 4. Assistance measures

**Para. 209.** GRETA was informed that despite the fact that most NGOs have concluded partnership protocols with ANITP, there is still a pressing need for strengthening and improving the cooperation with civil society. The offer and quality of the assistance varies depending on the provider, and there are no country-wide minimum standards.

**Comment:** The statement is erroneous since public and private social services providers are able to licence their services based on the MMPS Order no. 29/2019 on *Approving minimum standards for licensing social services for the elderly, homeless, youth coming from the child care system and adults in other situations of vulnerability, as well as for community services and social canteens*. Provisions of the above-mentioned order apply for day centres and residential and care centres for persons victims of THB (Annex 6 and Annex 7; information available also at:

<http://mmuncii.ro/j33/index.php/ro/2014-domenii/familie/politici-familiale-incluziune-si-asistenta-sociala/5427>).

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

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

➤ GRETA urges the Romanian authorities to take measures to strengthen the criminal justice response to THB, including by:

– ensuring that human trafficking offences are proactively and promptly investigated, regardless of whether a complaint about the reported crime has been submitted or not, making use of all possible evidence, including evidence collected through special investigative techniques and financial investigations, in order not to rely exclusively on testimony by victims or witnesses;

**Comment:** A large number of criminal files concerning THB follows the *ex officio* notification of IGPR-DCCO judiciary police officers, so that investigations are proactive and not based on the victim's complaint/statement.

Special investigation techniques and measures are employed in most cases concerning this type of crime, regardless of their reactive or proactive nature.

DIICOT prosecutors focus on capitalising criminal investigations in view of applying precautionary measures, with the support of DCCO specialised financial investigators.

– requiring consideration of allocation of specialist financial investigators to every THB case;

– sensitising prosecutors and judges to the rights of victims of THB, and encouraging the development of specialisation amongst prosecutors and judges to deal with THB cases;

**Comment:** The Combatting trafficking in persons branch of the Combatting organised crime section of DIICOT was established on April 28, 2021. The branch is staffed with specialized prosecutors (7 prosecutors and 1 head prosecutor). Out of the current 7 prosecutors working for the branch, 5 are women.

– strengthening efforts to investigate, prosecute and convict traffickers of labour exploitation;

– ensure that THB cases are prosecuted as such and lead to effective, proportionate and dissuasive sanctions for those convicted, including in cases involving public officials. If an alternative charge is preferred in THB cases, this should be recorded and monitored by the Prosecutor's Office. The plea-bargaining procedure should be used only exceptionally in human trafficking cases, subject to appropriate safeguards, where the reduction of a sentence is clearly outweighed by the advantages offered by the plea agreement (these advantages being indicated in the judicial decision approving the agreement) and the agreement is not in any way detrimental to the rights of the victims, including their access to compensation;

**Comment:** DIICOT prosecutors employ only justifiably and in exceptional cases the plea agreement, based on the gravity of the deed and the defendant's profile. Suing by indictment is the general rule applying to THB cases.

In plea agreements, conviction limits are reduced by one third. Even after referral to court by indictment, the defendant may claim the simplified trial procedure and may equally benefit from the one third reduction of prison sentences.

In both cases, access to compensation for victims (in civil suits) is not affected. In the case of a plea agreement, the civil suit continues in the absence of a mediation procedure (no stamp tax is required in this situation), while in the case of a simplified trial, the courts rules on both the criminal and the civil side.

**– ensuring that the length of court proceedings in cases of trafficking of human beings is reasonable, in line with the case-law of the European Court of Human Rights (regarding Article 6, paragraph 1, of the ECHR) and the standards set by the European Commission for the Efficiency of Justice (CEPEJ) (paragraph 108).**

**➤ GRETA invites the Romanian authorities to make the necessary legal amendments in order to enable the allocation of confiscated assets for use by specialised anti-trafficking NGOs (paragraph 109).**

**Comment:** This proposal is currently under public consultation as part of the new Strategy for Assets Recovery.