



# **G R E T A**

Group of Experts on Action  
against Trafficking in Human Beings

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

First evaluation round

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## Preamble

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

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

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

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

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

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

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

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

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

GRETA is composed of 15 independent and impartial experts chosen for their recognised competence in the fields of human rights, assistance and protection of victims, and action against trafficking in human beings, or because of their professional experience in the areas covered by the Convention. The task of GRETA is to evaluate the implementation of the Convention by the Parties, following a procedure divided into rounds. At the beginning of each round, GRETA defines autonomously the provisions to be monitored and determines the most appropriate means to carry out the evaluation, being guided by the Rules of procedure for evaluating implementation of the Convention adopted at GRETA's 2nd meeting (16-19 June 2009). GRETA has decided that the duration of the first evaluation round shall be four years starting at the beginning of 2010 and finishing at the end of 2013.

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

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

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

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

## Executive summary

Estonia has taken a number of steps to prevent and combat trafficking in human beings. The national legal framework related to combating human trafficking has evolved over the years, in the light of the country's international commitments. The offence of trafficking in human beings was introduced in the Criminal Code (CC) in 2012. In order to be fully consistent with the definition of trafficking in human beings in the Convention, GRETA urges the Estonian authorities to add to the definition of human trafficking under Article 133 of the CC the component of "action", to ensure that all the "means" provided for in the Convention are adequately reflected, and to include forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs among the forms of exploitation. Further, GRETA asks the Estonian authorities to ensure that the criminalisation of trafficking in children fully reflects the provisions of Article 4 of the Convention.

The Criminal Policy Department of the Ministry of Justice acts as the National Co-ordinator on action against trafficking in human beings. A National Co-ordination Network on trafficking in human beings has also been set up, consisting of representatives of relevant public bodies, academic institutions and specialised NGOs. There are specialised police investigators and prosecutors dealing with human trafficking offences in each of the four regions of the country.

GRETA notes that since the expiry of the first National Action Plan for Combating Trafficking in Human Beings in 2009, Estonia has not had a dedicated policy document on combating human trafficking. GRETA urges the authorities to ensure that national anti-trafficking action is comprehensive, through the adoption of a dedicated action plan against human trafficking addressing all forms of human trafficking and taking into account the gender dimension of trafficking and the particular vulnerability of children.

The Estonian authorities have taken a number of measures in the area of prevention of human trafficking, through awareness raising, education and training of relevant professionals, in partnership with civil society actors. However, GRETA considers that targeted preventive measures should be implemented for groups vulnerable to trafficking, such as children in residential institutions and foster homes and persons seeking employment abroad. Further, GRETA considers that the Estonian authorities should enhance their efforts to discourage demand for the services of trafficked persons for all forms of exploitation, in partnership with NGOs, trade unions, international organisations and the private sector, and should raise awareness of the criminalisation of the use of services of persons trafficked for the purposes of sexual exploitation, with the knowledge that they were victims of trafficking.

In Estonia, the formal identification of a person as a victim of human trafficking is linked to the opening of a criminal investigation into human trafficking or a related offence and can only be carried out by law enforcement authorities or the Prosecutor's Office. If no criminal investigation is initiated due to the lack of evidence, the presumed victim is entitled to specialised assistance for the duration of up to 60 days. GRETA urges the authorities to ensure that the formal identification of a person as a victim of human trafficking does not depend on the presence of elements to prove trafficking or a related offence and to introduce a formalised National Referral Mechanism for the identification of victims for different purposes of exploitation, defining the roles and responsibilities of all relevant public and non-State actors. Further, GRETA urges the Estonian authorities to improve the identification of victims of trafficking among children and foreign nationals.

Specialised assistance to victims of trafficking is provided by NGOs contracted by the Social Insurance Board through a public tender. Assistance to victims may also be provided by social assistance structures, set up by local governments in their respective counties. GRETA considers that the authorities should provide assistance to victims of trafficking for as long as necessary, ensuring that all assistance measures provided for in law are guaranteed in practice, and facilitating the reintegration of victims of trafficking into society. Further, GRETA urges the Estonian authorities to improve specialised assistance of child victims of trafficking and to provide effective access to guardianship.

GRETA urges the Estonian authorities to review the legislation with a view to ensuring that the recovery and reflection period is defined in law as provided for in Article 13 of the Convention and that all presumed victims of trafficking are offered and effectively granted such a period with all the measures of assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention. Further, GRETA considers that the Estonian authorities should take steps to ensure that victims of trafficking can fully benefit from the right to obtain a renewable residence permit, including owing to their personal situation, without prejudice to the right to seek and enjoy asylum.

Despite the existence of legal possibilities for victims of trafficking to claim compensation from the perpetrator and the State, access to compensation in Estonia is not effective. GRETA urges the Estonian authorities to adopt measures to facilitate and guarantee access to compensation for victims of trafficking, including by systematically informing victims of the right to seek compensation and the procedures to be followed, ensuring their effective access to legal aid and building the capacity of legal practitioners to support victims' compensation claims.

GRETA is concerned with the relatively high proportion of suspended sentences delivered for human trafficking offences, with only a few judgments resulting in confiscation of criminals' assets. GRETA urges the authorities to ensure that trafficking offences for different types of exploitation are proactively investigated and prosecuted, by developing the training and specialisation of investigators, prosecutors and judges, and providing law enforcement agencies with the necessary resources and tools. Finally, GRETA considers that the authorities should make full use of the available measures to protect victims and to prevent intimidation during the investigation and during and after the court proceedings. As regards the protection measures provided for in law for children, GRETA stresses that they should apply to all child victims of trafficking.



## I. Introduction

1. Estonia deposited the instrument of accession to the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) on 5 February 2015. The Convention entered into force for Estonia on 1 June 2015.<sup>1</sup>

2. As established in Article 36(1) of the Convention, the Group of Experts on Action against Trafficking in Human Beings (“GRETA”) monitors the implementation of the Convention by the Parties. GRETA does so in conformity with the procedure laid down in Article 38 of the Convention and the Rules on the evaluation procedure of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties.

3. In accordance with Article 38 of the Convention, GRETA proceeded with the examination of the measures taken by Estonia to implement the provisions set out in the Convention. The “Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties – first evaluation round” was sent to Estonia on 13 December 2016. The deadline for replying to the questionnaire was 13 April 2017. Estonia submitted its reply on 11 April 2017.<sup>2</sup>

4. In preparation of the present report, GRETA used the reply to the questionnaire by Estonia, the reply to the urgent request for information by the Estonia, authorities, other information collected by GRETA and information received from civil society. In addition, an evaluation visit to Estonia took place from 15 to 19 May 2017, carried out by the following delegation:

- Ms Kateryna Levchenko, member of GRETA;
- Mr Mihai Şerban, member of GRETA;
- Mr David Dolidze, Administrator at the Secretariat of the Convention on Action against Trafficking in Human Beings.

5. During the visit, the GRETA delegation met officials of the Ministry of Justice, including the National Co-ordinator for Action against Trafficking in Human Beings, the Ministry of Social Affairs, including the Social Insurance Board and the Labour Inspection, the Ministry of the Interior, the Ministry of Foreign Affairs, and the Tax and Customs Board. Meetings were also held with representatives of the prosecution, the judiciary and a member of the Estonian Parliament.

6. The GRETA delegation held separate meetings with representatives of non-governmental organisations (NGOs) and officials from the local office of the International Organization for Migration (IOM). GRETA is grateful for the information provided by them.

7. Further, in the context of the evaluation visit, the GRETA delegation visited a shelter for victims of trafficking in Tallinn and an SOS Children’s Village in Keila, which also accommodates child victims of trafficking. The delegation also visited the reception centre for asylum seekers in Vao.

8. GRETA is grateful for the valuable assistance provided by the contact person appointed by the Estonian authorities, Ms Anu Leps, Advisor in the Analysis Division of the Criminal Policy Department in the Ministry of Justice.

9. The draft version of the present report was adopted by GRETA at its 30th meeting (20-24 November 2017) and was submitted to the Estonian authorities for comments on 22 December 2017. The authorities’ comments were received on 28 February 2018 and were taken into account by GRETA when drawing up its final evaluation report, which was adopted at GRETA’s 31st meeting (19-23 March 2018).

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

<sup>2</sup> The reply of the Estonian authorities to GRETA’s questionnaire is available at: <http://rm.coe.int/doc/168070ad21>

## **II. National framework in the field of action against trafficking in human beings in Estonia**

### **1. Overview of the current situation in the area of trafficking in human beings in Estonia**

10. Estonia is predominantly a country of origin and transit of victims of trafficking in human beings (THB) and to a certain degree also a country of destination. According to the statistical information provided by the authorities, four victims of THB were identified in 2014, 13 in 2015 and 10 in 2016. The majority of victims were trafficked for the purpose of sexual exploitation (19 children and two women), four victims (one man, one woman and two children) for the purpose of forced labour or services, and the remainder (two men) for slavery or practices similar to slavery. While the majority (85%) of the identified victims were Estonian nationals, there were also six foreign victims (four from Vietnam, one from Romania and one from the Russian Federation). The main countries of destination of the victims were Finland, Ireland, the United Kingdom and Cyprus. The Estonian authorities informed GRETA that a further nine victims of THB were identified in 2017, without providing a breakdown by sex, age and form of exploitation.

11. The above figures of formally identified victims probably do not reflect the real scale of the phenomenon of THB in Estonia as insufficient attention is paid to detecting human trafficking for purposes other than sexual exploitation and there are shortcomings in the identification procedure. There are reports of foreign nationals trafficked to Estonia, mostly for the purpose of labour exploitation, who were deported as irregular migrants (see paragraph 55).

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

#### **a. Legal framework**

12. At the international level, in addition to the Council of Europe Convention on Action against Trafficking in Human Beings, Estonia is Party to the United Nations Convention against Transnational Organized Crime (ratified in 2003) and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (ratified in 2004). Estonia is also Party to the UN Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (ratified, respectively, in 1991 and 2004), the Convention on the Elimination of All Forms of Discrimination against Women (ratified in 1991), as well as to relevant conventions elaborated under the International Labour Organization (ILO).<sup>3</sup> Further, Estonia is Party to a number of Council of Europe conventions in the criminal field which are relevant to action against THB.<sup>4</sup>

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<sup>3</sup> In particular, the Convention concerning Forced or Compulsory Labour (No. 29), the Convention concerning the Abolition of Forced Labour (No. 105), and the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182).

<sup>4</sup> The European Convention on Mutual Assistance in Criminal Matters and its two Additional Protocols, the European Convention on the Transfer of Proceedings in Criminal Matters, the European Convention on Extradition and its two Additional Protocols, the European Convention on Information on Foreign Law and its Additional Protocol, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and the European Convention on the International Validity of Criminal Judgments.

13. As a member of the European Union (EU), Estonia is bound by Directive 2011/36/EU of the European Parliament and of the Council of the EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims;<sup>5</sup> Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who co-operate with the competent authorities; Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims; and Directive 2012/29/EU of the European Parliament and the Council of the EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Framework Decision 2001/220/JHA of 15 March 2001 of the Council of the EU on the standing of victims in criminal proceedings.

14. The Estonian legal framework related to combating THB has evolved over the years, in the light of the country's international commitments. The offence of trafficking in human beings was introduced into the Criminal Code (CC) in 2012 under Article 133 ("trafficking in human beings"), which is complemented by Article 133<sup>1</sup> ("facilitating human trafficking"). Several other articles of the CC are relevant, namely Article 175 ("human trafficking in order to take advantage of minors"), Article 133<sup>2</sup> ("pimping"), Article 133<sup>3</sup> ("aiding prostitution"), Article 138 ("illegal conduct of research on a human being"), Article 138<sup>1</sup> ("forcing a person to donate organs or tissue"), Article 139 ("illegal removal of organs or tissue") and Article 140 ("inducing a person do donate organs or tissue").

15. The Victim Support Act, in force since 1 February 2004, with subsequent amendments, provides definitions of "victim of trafficking in human beings" and "alleged victim of trafficking in human beings", the assistance measures to which they are entitled and the granting of State compensation.

16. The Estonian authorities have referred to other legal acts containing provisions of relevance to action against THB, including the Criminal Procedure Code (CPC), Aliens Act, Employment Contracts Act, State Legal Aid Act, Obligation to Leave and Prohibition on Entry Act, Social Welfare Act, Child Protection Act, and Basic Schools and Upper Secondary Schools Act.

#### b. National Strategy for Preventing Violence

17. The first National Action Plan for Combating Trafficking in Human Beings (2006-2009) was adopted by the Estonian Government on 30 January 2006. In 2010, a decision was taken to include action against THB into a broader policy document, entitled Development Plan for Reducing Violence (2010-2014) which was adopted on 1 April 2010 by Government Regulation No. 117. The plan covered the areas of domestic violence, violence against children and trafficking in human beings.

18. The Strategy for Preventing Violence (2015-2020), which was adopted by the Estonian Government on 27 February 2015, aims to address, *inter alia*, trafficking in human beings. The Estonian authorities have indicated that the National Action Plan for Reducing Violence (2016-2020) includes activities in the area of combating THB, such as awareness-raising, measures to reduce demand, training of professionals, providing assistance to victims of trafficking, and voluntary return of foreign victims of trafficking to their countries of origin.

19. The implementation of the Strategy for Preventing Violence is co-ordinated by the Ministry of Justice, which submits annual reports to the Government on the basis of contributions from other relevant ministries and public bodies. Other ministries responsible for the implementation of the Strategy are the Ministry of Education and Research, the Ministry of Culture, the Ministry of Economic Affairs and Communications, the Ministry of the Interior, the Ministry of Social Affairs, the Ministry of Foreign Affairs, the Estonian Forensic Science Institute, the Prosecutor's Office, the Police and Border Guard Board, the National Social Insurance Board, and the National Institute for Health Development. The implementation of the Strategy takes place in co-operation with state authorities and health-care and educational institutions. In 2018 the Ministry will present to the Government an intermediate report concerning the first three years of implementation of the Strategy.

<sup>5</sup> Replacing Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings.

20. The estimated budget for the implementation of the Strategy for Preventing Violence over the period 2015-2020 is €14 million. This amount is supplemented by the operational expenses of the relevant ministries, their subordinate agencies and external projects. According to the authorities, the budget envisaged for the activities on THB under the National Action Plan for Reducing Violence was €175 000 in 2015, €12 600 in 2016 and €97 000 in 2017.

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

#### **a. National Co-ordinator of action against trafficking in human beings**

21. The Criminal Policy Department of the Ministry of Justice has been designated as the National Co-ordinator of action against THB and in addition, has been designated as a mechanism equivalent to a National Rapporteur (see paragraph 59). Its tasks include co-ordinating the implementation of anti-trafficking policies, analysing crime statistics, collecting data and reporting to international organisations. Further, it prepares the agenda of the meetings of the National Co-ordination Network (see paragraph 23), collects information on the implementation of the measures foreseen by the Strategy for Preventing Violence, as well as inputs and suggestions from stakeholders for the annual reporting to the Government.

22. The National Co-ordinator represents Estonia in international organisations and networks focussing on action against THB, including the Task Force against Trafficking in Human Beings of the Council of the Baltic Sea States (CBSS), and co-ordinates any other internal or international co-operation on the field of action against THB.

#### **b. National Co-ordination Network**

23. The National Co-ordination Network on trafficking in human beings is led by the Ministry of Justice and consists of representatives of the Ministry of Education and Research, the Ministry of Foreign Affairs, the Ministry of the Interior, the Ministry of Social Affairs, the Social Insurance Board, the Labour Inspectorate, the Prosecutor General's Office and the regional Prosecutor's Offices, the National Police, the Border Guard Board, the European Migration Network contact point, Tartu and Tallinn Universities, the Estonian Unemployment Fund (including EURES Network), the Office of the Chancellor of Justice (Ombudsman), the NGOs Living For Tomorrow, Lifeline, SOS Children's Villages and Estonian Human Rights Centre, as well as the IOM Office in Tallinn, the Embassy of the United States of America in Estonia and Ericsson networking and telecommunications company.

24. The National Co-ordination Network is based on a Government protocol, which ascribes the role of co-ordinating the anti-trafficking efforts to the Ministry of Justice. As a rule, the Network meets twice a year, pursuant to an informal agreement by the stakeholders. Membership of the Network is open to agencies, NGOs and other relevant actors specialising in the prevention and combating of THB. While there are no specific criteria for being a member of the National Co-ordination Network, NGOs providing services to victims of THB enjoy full membership.

#### **c. Police and prosecution**

25. There is one regional Police and Border Guard Board in each of Estonia's four regions, with two specialised investigators dealing with THB offences in the Northern region and one in the South, East and West regions. In addition, the National Criminal Police has a division for combating organised crime, covering internal and transnational offences, which has specialised investigators dealing with THB offences, who also work on other organised crimes.

26. In each region there is one specialised prosecutor dealing with THB cases, and one more specialised prosecutor in Tallinn.

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d. Social Insurance Board

27. The National Social Insurance Board is involved in the identification of victims of THB (see paragraphs 118-119), funding and co-ordinating assistance to victims (paragraphs 138-141), training relevant professionals and carrying out preventive activities. A representative of the Social Insurance Board is a member of the National Co-ordination Network on trafficking in human beings.

e. NGOs, other members of civil society and international organisations

28. Specialised NGOs working on THB provide valuable contribution to Estonia's efforts as regards the prevention of THB through awareness-raising, training of relevant stakeholders and assistance to victims. Among the main NGOs contributing to the anti-trafficking action are Living for Tomorrow, Lifeline, SOS Children's Villages and the Estonian Human Rights Centre. The NGO Living for Tomorrow has been involved in anti-trafficking work since 2000. It operates an anti-trafficking telephone hotline, provides training to relevant professionals and organises awareness-raising activities. The NGO Lifeline provides, as of 2013, legal, psychological and social counselling to victims and potential victims of trafficking, operates a shelter for adult victims of THB and organises preventive and training activities. SOS Children's Villages provides accommodation and assistance to different categories of children in need, including child victims of trafficking in Estonia since 2013. The Estonian Human Rights Centre focuses, *inter alia*, on advancing the human rights of asylum-seekers and refugees and, on the basis of a partnership agreement with UNHCR, provides legal counselling to asylum-seekers and irregular migrants in Estonia. It also contributes to conducting campaigns to raise awareness of THB in Estonia.

29. The office of the International Organization for Migration (IOM) in Estonia contributes to counter-trafficking campaigns, capacity building and training of relevant professionals. It also implements the assisted voluntary return programme and provides pre-departure and post-arrival assistance to victims of trafficking, including in-kind assistance.

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

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

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

30. Article 1(1)(b) of the Convention establishes as one of its purposes the protection of the human rights of the victims of trafficking. Further, Article 5(3) includes the obligation for Parties to promote a human rights-based approach in the development, implementation and assessment of the policies and programmes to prevent THB. The Explanatory Report on the Convention states that the main added value of the Convention is its human rights perspective and focus on victim protection. In the same vein, the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking emphasise that “the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims”<sup>6</sup>.

31. THB constitutes an offence to the dignity and fundamental freedoms of the human being and thus a grave violation of human rights. GRETA emphasises the obligations of States to respect, fulfil and protect human rights, including by ensuring compliance by non-State actors, in accordance with the duty of due diligence. A State that fails to fulfil these obligations may, for instance, be held accountable for violations of the European Convention on Human Rights and Fundamental Freedoms (the ECHR). This has been confirmed by the European Court of Human Rights in its judgment in the case of *Rantsev v. Cyprus and Russia*, where the Court concluded that THB within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the European Convention on Human Rights<sup>7</sup> (which prohibits slavery, servitude and forced or compulsory labour). The Court further concluded that Article 4 entails a positive obligation to protect victims or potential victims, as well as a procedural obligation to investigate trafficking.<sup>8</sup>

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

33. GRETA wishes to stress the need for States to also address THB as a form of violence against women and to take account of gender-specific types of exploitation, as well as the particular situation of child victims of trafficking, in line with the relevant international legal instruments.<sup>9</sup>

<sup>6</sup> Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

<sup>7</sup> *Rantsev v. Cyprus and Russia*, application No. 25965/04, judgment of 7 January 2010, ECHR 2010, paragraph 282.

<sup>8</sup> See: *Siliadin v. France*, application No. 73316/01, judgment of 26 July 2005, ECHR 2005 VII; *C.N. and V. v. France*, application No. 67724/09, judgment of 11 October 2012, and *C.N. v. United Kingdom*, application No. 4239/08, judgment of 13 November 2012.

<sup>9</sup> Such as the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the United Nations Convention on the Rights of the Child and the Optional Protocol thereto on the sale of children, child prostitution and child pornography, and the United Nations Convention on the Elimination of All Forms of Discrimination against Women.

34. In their reply to GRETA's questionnaire concerning human trafficking being considered as a human rights violation, the Estonian authorities have referred to the Constitution of Estonia.<sup>10</sup> Article 123 of the Constitution stipulates that "when laws or other legislation of Estonia are in conflict with an international treaty ratified by the Parliament, the provisions of the international treaty apply." The Supreme Court of Estonia has established that international treaties to which Estonia is Party may be used to interpret the provisions of domestic law. Any person can take action to defend his/her rights in court and, having exhausted the domestic remedies, apply to the European Court of Human Rights. Further, the authorities have indicated that the offence of THB is included in Chapter 9, Division 2, subdivision 6 of the CC entitled "Offences against liberty", and the Victim Support Act contains provisions aiming to safeguard the rights of victims of criminal offences, including THB.

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

b. Definitions of "trafficking in human beings" and "victim of THB" in Estonian law

i. *Definition of "trafficking in human beings"*

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

37. In Estonia, THB as a separate criminal offence was introduced on 14 April 2012 under Article 133 of the CC, which reads as follows:

"133. Trafficking in human beings

(1) Placing a person in a situation where he or she is forced to marry, work under unusual conditions, engage in prostitution, beg, commit a criminal offence or perform other disagreeable duties, and keeping a person in such a situation, if such an act is performed through deprivation of liberty, violence, deceit, threat to cause damage, by taking advantage of the dependence on another person, or the helpless or vulnerable situation of a person,

is punishable by one to seven years' imprisonment.

(2) The same act if:

- 1) committed against two or more persons;
- 2) committed against a person of less than 18 years of age;
- 3) committed against a person in a helpless situation;
- 4) committed in a torturous or cruel manner;
- 5) causing serious health damage;
- 6) causing danger to life;

<sup>10</sup> In particular, the prohibition of torture or cruel or degrading treatment or punishment; the right to free self-realisation; the right to liberty and security of person; the prohibition of compelling someone to work against his or her free will. For more details, see the reply to Question 4 on page 4 of the Reply of Estonia to GRETA's questionnaire, available at: <https://rm.coe.int/168070ad21>

- 7) committed by a group;
- 8) committed by taking advantage of official position;
- 9) causing serious consequences;
- 10) committed by a person who has previously committed a criminal offence provided for in this section or §§ 133<sup>1</sup>, 133<sup>2</sup>, 133<sup>3</sup> or 175;

is punishable by three to fifteen years' imprisonment.

(3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

(4) For the criminal offence provided for in this section, the court may impose extended confiscation of assets or property acquired through the criminal offence pursuant to the provisions of § 83<sup>2</sup> of this Code.

(5) For the purposes of this section, vulnerable situation is a situation where a person lacks an actual or acceptable opportunity not to commit any of the acts specified in subsection (1) of this section."<sup>11</sup>

38. Further, there is a related provision of the CC, Article 133<sup>1</sup>, which reads as follows:

"133<sup>1</sup>. Facilitating human trafficking

(1) Transportation, delivery, escorting, acceptance, concealment or accommodation without prior authorisation of a person placed in a situation specified in Article 133 (1) of this Code, buying sex from him or her or aiding the forced acts against the person in any other way, is punishable by up to five years' imprisonment.

(2) The same act if:

- 1) committed against two or more persons;
- 2) committed against a person of less than 18 years of age;
- 3) committed against a person in a helpless situation;
- 4) committed by taking advantage of an official position;

is punishable by two to ten years' imprisonment.

(3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

(4) For the criminal offence provided for in this section, the court may impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 83<sup>2</sup> of this Code."<sup>12</sup>

39. Reference should also be made to Article 175 of the CC, which reads as follows:

"175. Human trafficking in order to take advantage of children

(1) Influencing of a person of less than 18 years of age in order to cause him or her to commence or continue commission of a criminal offence, begging, engagement in prostitution or working under unusual conditions or to marry against his or her will or to appear as a model or actor in a pornographic or erotic performance or work, if it does not contain the necessary elements of an offence provided for in Article 133 of this Code, and aiding a person of less than eighteen years of age in another manner in the activities specified in this section,

is punishable by two to ten years' imprisonment.

(11) The same act if committed by a person who has previously committed a criminal offence provided for in this section or Articles 133-1333, Article 175<sup>1</sup> or Articles 178-179, is punishable by three to ten years' imprisonment."<sup>13</sup>

<sup>11</sup> Unofficial translation.

<sup>12</sup> Unofficial translation.

<sup>13</sup> Unofficial translation.



40. GRETA notes that the definition of THB under Article 133 of the Estonian CC does not cover all the concepts of the definition under Article 4 of the Convention. In particular, the element of “action” is missing from Article 133. Instead, the actions are criminalised separately in Article 133<sup>1</sup> of the CC. The Estonian authorities have referred to the explanatory comments to Article 133 of the CC, according to which “placing a person in a situation” should be construed to cover a wide range of actions, including all the actions listed in the Convention, as well as actions included in Article 133<sup>1</sup> of the CC.

41. GRETA notes that several of the “means” listed in the Convention appear to be missing from the definition of THB in the Estonian CC. The authorities have stated that “deception” and “fraud” are covered by the Estonian word “*pettuse*” (translated as “deceit”). According to the authorities, “abduction” would be covered by “deprivation of liberty”, which the authorities consider it to be a broader concept than “abduction”. As regards “giving or receiving of payments or benefits to achieve the consent of a person having control over another person”, the authorities have stated that it would be covered by the broader concept “taking advantage of the dependence on another person”.

42. GRETA notes that Article 133 of the CC does not refer to “exploitation” as being the purpose of human trafficking. Representatives of the prosecution and the judiciary met during GRETA’s evaluation visit expressed diverging views as to the need to prove the act of exploitation in order to establish the offence of THB. In their comments to the draft report, the authorities stated that the actual exploitation does not have to occur for there to be an offence under Articles 133, 138<sup>1</sup> and 175 of the CC.

43. Further, GRETA notes that several forms of exploitation which, in accordance with Article 4 of the Convention, should be included in the definition of THB, at a minimum, are missing in Article 133, paragraph 1, of the CC, namely forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs. The Estonian authorities have referred to the explanatory comments to Article 133 of the CC, according to which “working under unusual conditions” covers situations where a person is working without payment or with a very low salary, or has his/her salary or identity documents withheld. As regards THB for the purpose of the removal of organs, the authorities have indicated that it would be covered by Article 138<sup>1</sup> of the CC entitled “Forcing a person to donate organs or tissue”. Article 133 of the CC was amended on 26 June 2017 to include forced marriage among the forms of exploitation.

44. Article 133 of the CC does not refer to the irrelevance of the consent of a victim to exploitation, where any of the means have been used. According to the authorities, the explanatory comments to Article 133 of the CC state that the consent of the victim is irrelevant when any of the means are used; however, GRETA was not provided with relevant case-law which could illustrate the practical application of this principle.

45. The Estonian authorities have noted that an express reference to the irrelevance of the victim’s consent is not included in other criminal offences and adding it to the offence of THB would not be consistent with the Estonian penal law. GRETA stresses that setting out this pivotal principle in law could facilitate its use by investigators, prosecutors and judges when dealing with cases of human trafficking and help obtaining a more consistent approach. Consent is an important factor at different stages of human trafficking cases, for instance: if victims refuse to self-identify as they consider that they consented to exploitation; when taking a decision on whether to investigate and prosecute a case as THB where the victim apparently consented to exploitation; when deciding on the penalty for offenders where there are assertions of consent.<sup>14</sup> As stated in paragraph 97 of the Explanatory Report of the Convention, “in trafficking, some people do not know what is in store for them, while others are perfectly aware that, for example, they will be engaging in prostitution. However, while someone may wish employment, and possibly be willing to engage in prostitution, that does not mean that they consent to be subjected to abuse of all kinds. For that reason Article 4(b) provides that there is trafficking in human beings whether or not the victim consents to be exploited.”

<sup>14</sup> See UNODC Issue Paper, *The Role of Consent in the Trafficking in Persons Protocol*, United Nations, Vienna, 2014, available at: [www.unodc.org/documents/human-trafficking/2014/UNODC\\_2014\\_Issue\\_Paper\\_Consent.pdf](http://www.unodc.org/documents/human-trafficking/2014/UNODC_2014_Issue_Paper_Consent.pdf)

46. Pursuant to Article 4(c) of the Convention, trafficking in children has only two constituent elements: action and purpose of exploitation. Article 133 of the CC does not specify that the use of means is immaterial for establishing the offence of trafficking against children. The Estonian authorities have stated that trafficking in children committed without the use of means would be covered by Article 175 of the CC (see paragraph 39), while if any means are used in respect of a child, the offence would fall under Article 133, paragraph 2, of the CC. GRETA notes that the sanction envisaged for the commission of an offence under Article 175 of the CC is less severe than the one for human trafficking committed against a child under Article 133. This risks creating an inconsistent legal practice when adjudicating cases of trafficking in children and may impede the achieving of effective, proportionate and dissuasive sanctions for trafficking offences.

47. GRETA refers to paragraph 72 of the Explanatory Report of the Convention, which states that “it is of fundamental importance to use a definition of trafficking in human beings on which there is international consensus.” **GRETA urges the Estonian authorities to bring the definition of THB into conformity with Article 4 of the Convention, in particular, by:**

- **including the component of “action” in the definition of THB under Article 133 of the CC and ensuring that all the “means” provided for in the Convention are adequately reflected;**
- **explicitly including forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs among the forms of exploitation under Article 133 of the CC;**
- **clearly stating the irrelevance of the consent of a victim of THB to establishing a trafficking offence where any of the means have been used;**
- **ensuring that the criminalisation of trafficking in children fully reflects the provisions of Article 4 of the Convention.**

48. For further analysis of the definition of THB and related offences from a substantive criminal law perspective, see paragraphs 180-187.

#### *ii. Definition of “victim of THB”*

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

50. The definition of a victim of THB is contained in Article 3 the Victim Support Act, which reads as follows:

“(1<sup>1</sup>) For the purposes of this Act, a victim of trafficking in human beings is a person in the case of whom criminal proceedings have been initiated with regard to the criminal offence committed against him or her based on the elements of a criminal offence provided for in articles 133 to 133<sup>3</sup>, 138 to 140 or 175 of the Criminal Code<sup>15</sup> or based on the elements of a criminal offence provided for in any other similar foreign penal code.

(1<sup>2</sup>) For the purposes of this Act, a presumed victim of trafficking in human beings is a person:

- 1) who has been preliminarily identified in Estonia by an organisation engaged in helping victims of trafficking in human beings and has informed the Estonian National Social Insurance Board about a suspicion that the person may be a victim of trafficking in human beings; or

<sup>15</sup> Articles 133<sup>1</sup> (“facilitating human trafficking”), 133<sup>2</sup> (“pimping”), 133<sup>3</sup> (“aiding prostitution”), 138 (“illegal conduct of research on a human being”), 138<sup>1</sup> (“forcing a person to donate organs or tissue”), 139 (“illegal removal of organs or tissue”), 140 (“inducing a person to donate organs or tissue”) and 175 (“human trafficking in order to take advantage of minors”) of the CC,

2) in respect of whom a competent foreign authority has submitted information to the Estonian National Social Insurance Board about falling victim of trafficking in human beings in that state.”<sup>16</sup>

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

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

*i. Comprehensive approach and co-ordination*

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

53. The Estonian authorities have taken steps to develop the legal and policy framework for action against human trafficking, which is intended to cover all victims of THB subjected to different types of exploitation, both transnationally and nationally, whether or not connected with organised crime.

54. As noted in paragraph 17, following the expiry of the first National Action Plan for Combating Trafficking in Human Beings in 2009, Estonia has not had a dedicated policy document on combating THB. Action against THB was included in the Development Plan for Reducing Violence (2010-2014) and, most recently, the National Strategy for Preventing Violence (2015-2020) and its Action Plan for 2016-2020 (see paragraphs 17-18). The Strategy refers to certain challenges in combating human trafficking, such as the lack of information about the extent of THB for the purpose of labour exploitation and the need to address it more effectively, the lack of structured needs-based services for victims of trafficking and their sustainable funding, the risk of secondary victimisation during the criminal proceedings, and the lack of trained specialists to work with victims. While none of the Strategy's sub-goals target specifically THB, there are a number of activities related to combating THB in the National Action Plan accompanying the Strategy (see paragraph 18).

55. Several NGOs as well as reports in the Estonian media<sup>17</sup> have referred to cases of construction workers from Ukraine, Moldova, Georgia and other non-EU countries arriving to Estonia as “posted workers” with contracts to work in other EU member States, notably Poland, who find themselves in an irregular migration and employment situation, are not paid salaries and are held in slavery-like conditions. However, no victims of trafficking have apparently been identified among these workers who have been treated instead as irregular migrants.

**56. GRETA urges the Estonian authorities to ensure that national action to combat THB is comprehensive, through the adoption of a dedicated action plan against THB, in which priorities, objectives, concrete activities and stakeholders responsible for their implementation are clearly defined and budgetary resources allocated. The action plan should be accompanied by a mechanism for monitoring of its implementation and should aim to:**

<sup>16</sup> Unofficial translation.

<sup>17</sup> See: <https://news.postimees.ee/4170017/nobody-wants-to-take-responsibility-for-foreigners-working-on-construction-sites> ; <https://news.postimees.ee/4280405/ten-illegal-workers-removed-from-parnu-construction-site> ; <https://etvpluss.err.ee/v/arutelu/insight/videod/1218178e-dff7-4548-a6e0-091af04a7fdf/estonskie-stroitelnye-firmy-i-nechestnye-posredniki-delayut-dengi-na-lyudyakh> (in Russian)

- **address all victims of trafficking, including migrants and asylum seekers, for all forms of exploitation (including sexual exploitation, forced labour and services, the removal of organs, exploitation of criminal activities, forced begging, exploitative sham marriages), while taking into account the gender-dimension of trafficking and the particular vulnerability of children;**
- **strengthen action to combat both transnational and internal trafficking for different types of exploitation, by reviewing the legislative framework, improving the identification of, and assistance to victims of THB, and involving labour inspectors, civil society, trade unions and the private sector;**
- **strengthen action to combat THB for the purpose of labour exploitation by reviewing the legislative framework, improving the identification of, and assistance to, victims of THB for the purpose of labour exploitation, and involving civil society, trade unions, labour inspectorates and the private sector.**

57. As noted in paragraph 23, the Ministry of Justice is responsible for co-ordination of anti-trafficking efforts, which is carried out by the Criminal Policy Department. GRETA was informed that this task has been assigned to the Ministry by virtue of a protocol adopted by the Estonian Government. Among the tasks of the Criminal Policy Department of the Ministry of Justice is the annual reporting to the Government on the implementation of development plans and strategies relevant to combating THB. However, GRETA notes that no independent evaluation of these policy documents has been carried out so far. The authorities informed GRETA of plans to commission such an evaluation, possibly when the implementation of the Strategy for Preventing Violence reaches the three-year mark.

58. The National Co-ordination Network (see paragraphs 23-24) is a consultative body consisting of officials of relevant ministries and public bodies. Specialised NGOs, international organisations, diplomatic missions and private enterprises enjoy full membership of the National Co-ordination Network. The meetings of the National Co-ordination Network are organised by the Criminal Policy Department of the Ministry of Justice. As a rule, the Network meets twice a year and may also hold sessions in a reduced composition, depending on the subject to be discussed. GRETA notes with satisfaction that representatives of NGOs have full membership in the National Co-ordination Network, which demonstrates the willingness of the Estonian authorities to ensure a multi-stakeholder approach in developing and implementing anti-trafficking policy. Further, GRETA notes the involvement of private sector representatives (e.g. Ericsson telecommunication company) in the National Co-ordination Network. The Network has no formal terms of reference or any other document setting out its tasks and the roles of its members. Interlocutors met by GRETA in the course of the evaluation visit stated that the *modus operandi* of the National Co-ordination Network allowed all stakeholders to participate in discussions and preparation of policy documents on action against THB. Nevertheless, **GRETA invites the Estonian authorities to set up formalised procedures or agreements clarifying the roles and responsibilities of different stakeholders.**

59. As mentioned in paragraph 21, the Criminal Policy Department of the Ministry of Justice acts as the equivalent mechanism to National Rapporteur. In GRETA's view, the key features of National Rapporteurs' mechanisms in the sense of Article 29, paragraph 4, of the Convention<sup>18</sup> should be the ability to critically monitor the efforts and effectiveness of all state institutions, including national coordinators, and to that end maintain a constant exchange with civil society, the research community and other relevant stakeholders. The human rights-based approach to anti-trafficking policies advocated by the Convention requires adequate monitoring and evaluation. A structural separation between monitoring and executive functions enables an objective evaluation of the implementation of anti-human trafficking legislation, policy and activities, identification of lacunae and shortcomings, and the formulation of comprehensive legal and policy recommendations.<sup>19</sup> **GRETA considers that the Estonian authorities should examine the possibility of designating as a National Rapporteur a separate organisational entity or another independent mechanism for monitoring the anti-trafficking activities of State institutions.**

60. As a member of the Council of Baltic Sea States, Estonia implemented a project entitled "Strengthening the Role of Municipalities in the Work against Trafficking in Human Beings in the Baltic Sea Region" (STROM II) from May 2016 to September 2017.<sup>20</sup> The activities under this project included an assessment of the role of municipalities in the provision of assistance to victims of trafficking, and the development of guidelines for municipalities on how to deal with cases of THB and how to develop local referral mechanisms. In Estonia the project was implemented in two counties, Läänemaa and Ida-Virumaa.<sup>21</sup> The main implementing partner was the NGO Living for Tomorrow, in co-operation with the Ministry of Social Affairs, the Ministry of Justice, the county governments and the local Social Insurance Board units. Three multidisciplinary meetings were held in Tallinn, Haapsalu (Läänemaa county) and Jõhvi (Ida-Virumaa county), followed by working group meetings of local actors and training sessions (see paragraph 67).

*ii. Training of relevant professionals*

61. The Ministry of Social Affairs provides annual funding for training different professionals on issues related to combating THB. The training covers social welfare staff, police officers, prosecutors, judges, labour inspectors and other professionals involved in assisting and protecting victims of trafficking. By way of example, in 2016 a joint training was organised for police officers, labour inspectors and Tax and Customs Board officers to improve their co-operation in identifying and investigating cases of THB for labour exploitation. Some of the training sessions are organised through public procurement and have been conducted by the NGO Living for Tomorrow.

62. Since 2010 action against THB has been included in the training curriculum of the Police Academy and is also covered during periodic retraining of acting police officers. According to the authorities, in 2015-2017, around 300 police and border guard officers were trained on THB, using training materials developed by the European Union Agency for Law Enforcement Training (CEPOL) and the European Border and Coast Guard Agency (Frontex).

63. GRETA was informed that specialised prosecutors organise yearly round-table meetings to share their experiences from relevant cases, but THB has not been among the topics discussed for several years. In 2017 the Senior Prosecutor of the Northern District Prosecutor's Office attended a seminar entitled "Financial Investigation and Asset Recovery related to THB: Involvement of the Public Prosecutors".

<sup>18</sup> "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."

<sup>19</sup> In this context, see also the Summary report on the Consultative Meeting on Strengthening Partnerships with National Rapporteurs on Trafficking in Persons and Equivalent Mechanisms organised by the UN Special Rapporteur on trafficking in persons, especially in women and children, in Berlin, 23-24 May 2013.

<sup>20</sup> The project was a follow-up to the projects ADSTRINGO, DEFLECT, "Development of the model MoU", and "Fostering NGO-Law Enforcement Cooperation in Preventing and Combating Human Trafficking in, from and to the Baltic Sea Region", implemented by the CBSS Task Force Against Trafficking in Human Beings (TF-THB).

<sup>21</sup> Additional information is available at: <http://lft.ee/human-trafficking/projects-2-1/strom-i-and-ii>

64. There are no judges specialising on THB cases, following a decision to discontinue the specialisation of judges in 2017. The Supreme Court National Training Centre for Judges develops yearly training plans and the authorities informed GRETA of plans to include in the training plan for 2018 a two-day session on recent legislative amendments, including those relevant to THB.

65. In September 2015 Estonia completed the implementation of the EU-supported project VISUP (Victim Support During Criminal Proceeding: Anti-Trafficking Training for Criminal Justice System Practitioners). The objective of this project was improving the knowledge of criminal justice practitioners about supporting victims of THB in criminal proceedings and better protecting their rights. It included a training programme for criminal justice practitioners, consisting of workshops and study visits. Training topics covered detecting signs of THB or domestic violence and the consequences of abuse, techniques of interviewing and principles of treating potential victims or persons filing a complaint.

66. The Ministry of Foreign Affairs provides training on THB issues in the context of the annual sessions for new consular staff and personnel already working in consular representations abroad. Since 2010, the Ministry of Foreign Affairs has been implementing a training programme concerning safe travel abroad, which covers issues relating to THB.

67. Under the previously mentioned STROM II project (see paragraph 60), two training sessions were organised in the pilot counties, Haapsalu (West), Jõhvi and Narva (East) for social service providers, police offices and border guards (20 participants per session). The training was aimed at enhancing the role and capacity of municipalities to identify and assist victims of trafficking.

68. The Estonian authorities informed GRETA that two labour inspectors participated in the training sessions organised in Vicenza, Italy, in June and September 2017, aimed at enhancing the capacity to identify trafficked persons along migration routes and effectively investigate and prosecute THB, by promoting a multi-agency approach.

69. However, according to representatives of specialised NGOs, some of the training previously funded by donors has been discontinued and public funding allocated for this purpose is insufficient. The lack of training and specialisation of judges and lawyers to deal with THB cases, and the limited training provided to prosecutors, social workers and labour inspectors, were highlighted as problematic.

70. **GRETA urges the Estonian authorities to step up their efforts to provide regular training on issues related to THB for different forms of exploitation to all professionals who may come into contact with victims of THB, including labour and tax inspectors, social workers, prosecutors, judges, staff of reception centres for asylum seekers and migrants, health-care staff, specialists working with children. Training programmes should be designed with a view to improving the knowledge and skills of relevant professionals to enable them to identify victims of trafficking, to assist and protect them, to facilitate compensation for victims, and to secure convictions of traffickers.**

### *iii. Data collection and research*

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

72. The Ministry of Social Affairs and the Social Insurance Board are responsible for collecting data on victims of trafficking who receive assistance and state compensation. The NGOs mandated to provide assistance to victims of THB collect relevant data and transmit it either to the Social Insurance Board or to the Ministry of Social Affairs. To protect personal information, the authorities use DigiDoc3 Crypto document encryption, which allows determining those entitled to access data and restricts access of any unauthorised persons.

73. The Ministry of Justice is responsible for collecting and analysing crime statistics, an overview of which is published online.<sup>22</sup> The Criminal Policy Department of the Ministry of Justice has access to the Registry of Criminal Proceedings and receives information from the Office of the Prosecutor General and the National Police and Border Guard Board upon request. The information contained in the yearly overview of crime statistics can be disaggregated according to offences.

74. The Court Information System is a unified information management system for Estonian courts (first and second instance as well as the Supreme Court), enabling the registration of court cases and judgments. The data from the system can be disaggregated according to specific offences.

75. GRETA notes that data on trafficking in human beings is collected by several actors, but there is no body centralising the data. **For the purpose of preparing, monitoring and evaluating anti-trafficking policies, GRETA urges the Estonian authorities to develop and maintain a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical data on measures to protect and promote the rights of victims, as well as on the investigation, prosecution and adjudication of human trafficking cases. Statistics regarding victims should be collected from all main actors and allow disaggregation concerning sex, age, type of exploitation, country of origin and/or destination. This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection, including when NGOs working with victims of trafficking are asked to provide information for the national database.**

76. Estonia has participated in several regional research projects prior to ratifying the Council of Europe Convention on Action against Trafficking in Human Beings. In 2012-2014, the University of Tartu was an implementing partner together with the European Institute for Crime Prevention and Control (HEUNI) and the CBSS Task Force against Trafficking in Human Beings (TF-THB) in the EU-funded project "ADSTRINGO: Addressing Trafficking in Human Beings for Labour Exploitation through Improved Partnerships, Enhanced Diagnostics and Intensified Organisational Approaches". A sociological research was carried out under this project regarding the methods of recruiting victims of THB for forced labour and the role of employment agencies and employers in Lithuania, Estonia, Sweden and Finland. The report reflecting the outcome of this research was published in 2013.<sup>23</sup>

77. In 2015-2016, Estonia was involved in an EU-funded project entitled "Preventing Human Trafficking and Sham Marriages: A Multidisciplinary Solution (HESTIA)", which was co-ordinated by the Ministry of the Interior of Latvia and also involved the Slovak Republic, Finland, Ireland and Lithuania. The main objectives of the project was to study the phenomenon of human trafficking and sham marriages, to provide a definition of sham marriage as a form of human trafficking and to initiate comprehensive action for its prevention. The research resulted in the publication of a study edited by the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), with input from partner organisations from different countries, containing recommendations for action at EU and national level.<sup>24</sup> According to the findings from this project, recruiters target women of Estonian and Russian ethnic origins and mainly operate through Russian-language online social networks. The report refers to a case where a woman recruiting women in Estonia for sham marriages in Ireland was found guilty of trafficking under Article 133 of the CC, as well as to two other cases of exploitative sham marriages of Estonian women, in the Netherlands in 2010 and in Cyprus in 2011.

<sup>22</sup> <http://www.kriminaalpoliitika.ee/et/statistika-ja-uuringud/kuritegevus-eesistis> (in Estonian).

<sup>23</sup> Available at: [http://heuni.fi/material/attachments/heuni/reports/6KZycU1Lj/HEUNI\\_report\\_75\\_15102013.pdf](http://heuni.fi/material/attachments/heuni/reports/6KZycU1Lj/HEUNI_report_75_15102013.pdf)

<sup>24</sup> Minna Viuhko, Anni Lietonen, Anniina Jokinen and Matt Joutsen (eds.), *Exploitative Sham Marriages: Exploring the Links between Human Trafficking and Sham marriages in Estonia, Ireland, Latvia, Lithuania and Slovakia*, HEUNI, Helsinki 2016.

78. The “Survey of the Estonian Population in the Area of Sexual Violence and Trafficking in Human Beings 2016” was carried out by the Ministry of Social Affairs with the financial support of the Norway Grants. The survey indicated problematic attitudes towards sexual exploitation, which was considered by 26% of participants as “necessary because it helps to relieve men’s sexual tension and stress.” As a follow-up to the survey, a project was launched to raise awareness of THB and discourage demand for sexual services (see paragraph 100). Another outcome was the development of a new programme targeting sex buyers and awareness-raising activities which will be implemented in 2019-2022 with Norway Grant funding.

79. GRETA refers to the Concluding Observations of the Committee on the Elimination of Discrimination against Women (CEDAW) on the combined fifth and sixth periodic reports of Estonia,<sup>25</sup> where the CEDAW notes that there is a lack of information about exploitation of prostitution in Estonia and its relationship with THB.

**80. GRETA considers that the Estonian authorities should conduct and support further research on THB as an important source of information for the evaluation and planning of policy measures. Areas where research should be carried out include trafficking for the purpose of labour exploitation, trafficking taking place within Estonia, including for the purpose of sexual exploitation, child trafficking, as well as recruitment of victims through the Internet.**

*iv. International co-operation*

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

82. Chapter 19 of the CPC regulates international co-operation in criminal matters. In particular, Article 433 of the CPC sets out the general principles of such co-operation, including on extradition of persons to foreign states, mutual assistance in criminal matters, execution of the judgments of foreign courts, transfer of criminal proceedings, and co-operation with the International Criminal Court and Eurojust. As per Article 435 of the CPC, the central authority for international co-operation in criminal matters is the Ministry of Justice. Courts, the Prosecutors’ Offices, the Police and Border Guard Board, the Security Police Board, the Tax and Customs Board, the Environmental Inspectorate, the Competition Board and the Military Police may also engage in international co-operation in criminal matters in areas under their direct competence.

83. Estonia has concluded bilateral agreements on legal co-operation with Belarus, Latvia, Lithuania, Poland, the Russian Federation, the United States of America and Ukraine.

84. Co-operation with EU Member States is governed by the relevant EU Council Framework Decisions, including Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the EU Member States. Directive 2014/41/EU of the European Parliament and of the Council regarding the European Investigation Order in criminal matters<sup>26</sup> entered into force on 22 May 2017, enabling law enforcement authorities of EU countries to mutually recognise and carry out requests relating to obtaining evidence in criminal cases.

85. Police co-operation is carried out through Europol, of which Estonia is a member since 2005, and Interpol. Currently, Estonia has two police liaison officers and one customs officer in Europol.

<sup>25</sup> Adopted by the Committee at its 65th session (24 October - 18 November 2016).

<sup>26</sup> On 21 May 2010 Estonia was among the seven EU Member States having proposed the adoption of the European Investigation Order. More information is available via the following link: [http://europa.eu/rapid/press-release\\_IP-17-1388\\_en.htm](http://europa.eu/rapid/press-release_IP-17-1388_en.htm)



86. Article 471 of the CPC regulates the setting up of joint investigation teams (JITs) and designates the Office of the Prosecutor General and the National Member for Estonia in Eurojust as the competent authorities to submit request for setting up such teams. GRETA was informed of two THB-related JITs, with Finland in 2014-2016 and with Denmark in 2013-2016.

87. Estonia is a member of the Council of the Baltic Sea States (CBSS) and participates in activities and projects implemented by the CBSS Task Force against Trafficking in Human Beings (see paragraphs 22 and 76).

**88. GRETA considers that the Estonian authorities should continue to develop international co-operation in the field of action against THB, with a view to preventing THB, identifying and assisting victims of THB, and prosecuting THB cases.**

## **2. Implementation by Estonia of measures aimed to prevent trafficking in human beings**

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

### **a. Measures to raise awareness**

90. The latest campaign to raise awareness of THB in Estonia, entitled “1 Life”, was carried out during the period from January to June 2017 and covered the largest towns of Estonia. The campaign was co-funded by the Ministry of the Interior and the European Commission’s Internal Safety Fund, and was implemented jointly by the Ministry of Justice, the Ministry of Social Affairs and the NGOs Living for Tomorrow and Estonian Human Rights Centre. During the campaign, information was disseminated by means of the Internet (YouTube) and social media (Facebook), commercials in shopping centres, cinemas, bus stations, the airport and port of Tallinn, and ferries. The information communicated during the campaign focused on THB for the purpose of labour exploitation, sexual exploitation, with a focus on clients of sexual services, and THB of children for the commission of criminal acts. An impact assessment of the campaign was carried out, based on interviews with the focus group. Further, a web-based survey was carried out among 300 respondents in the age group 15-55.

91. Another campaign with a THB component, entitled “Domestic and gender-based violence”, was implemented from 2012 to 2016 by the Ministry of Social Affairs under the Norway Grants programme. According to the authorities, the impact assessment of this campaign demonstrated an improved availability of information about THB and an increased awareness about the nature of THB and its indicators.

92. An on-line awareness-raising campaign was conducted in 2015 in order to provide information about safe employment abroad, including a checklist of issues to verify before accepting a job offer in a foreign country.<sup>27</sup> The impact assessment of this campaign demonstrated that general awareness about labour rights and recruitment policies had increased by an approximate 3% and among special focus groups by around 7%.

93. GRETA was informed that as part of the education policy measures developed by the Ministry of Education, THB is discussed in the context of two subjects: society studies and family studies. Further, as of 2013, training provided to students in vocational schools includes the topic of THB. According to the authorities, every year, 30 lectures are given to around 300-400 vocational school students, both Estonian and Russian speaking, boys and girls in equal proportion. In 2015, lectures were given in four schools, in 2016 in seven schools, and in 2017 in three schools.

<sup>27</sup> Additional information is available at: <http://toovahendus.ti.ee/>

94. The authorities have concluded an agreement with the Estonian National Television on airing information to raise awareness of THB, violence and sexual exploitation among children during TV programmes dedicated to children.

95. The NGO Living for Tomorrow has been operating a telephone hotline since October 2004 with a view to providing information about work, study or marriage abroad and to direct presumed victims of THB to assistance and services. The hotline is accessible daily from 10:00 to 18:00 and there are three people available to take calls in Estonian, Russian, English, Ukrainian, Polish and Finnish. In 2016 a total of 420 calls were received, including 42 requests for legal consultation on possible cases of labour exploitation, two cases of labour exploitation, six suspected cases of exploitative sham marriages, and one call concerned sexual exploitation of a child. During 2006-2013 the hotline was funded by the Ministry of Social Affairs, in 2013-2015 by the Norway Grants and the state budget, and since 2016 it is again fully funded by the Ministry of Social Affairs. Funding of the telephone hotline amounted to €48 000 in 2015, €40 000 in 2016 and €38 000 in 2017.

96. According to civil society representatives, there is a need for more awareness-raising among school teachers and university lecturers to enhance their role in preventing THB and enable them to better inform pupils and students about this phenomenon. Representatives of NGOs consider that awareness-raising of THB should increase in the North-East and East regions of Estonia, and should more effectively cover the Russian-speaking population. Further, a vulnerable group to THB for sexual exploitation were child victims of abuse and children in residential institutions.

97. GRETA was not provided with information about awareness-raising measures conducted in the hospitality and entertainment sectors, as well as in construction and agricultural sectors.

98. While welcoming the campaigns conducted in Estonia to raise awareness of THB, **GRETA considers that the Estonian authorities should take additional measures to inform the general public of THB for different purposes of exploitation, including exploitative sham marriages. Targeted measures should be implemented for groups particularly vulnerable to THB, such as children in residential institutions, persons seeking employment abroad, migrant workers and asylum seekers. Future information, awareness-raising and education campaigns should be planned with the involvement of civil society, on the basis of the assessment of the impact of previous preventive measures.**

b. Measures to discourage demand

99. In accordance with the Convention, measures to discourage demand for the services of victims of trafficking, especially women and children should be understood as a positive obligation on Parties to adopt and reinforce such measures as regards THB for the purpose of any form of exploitation (see paragraph 108 of the Explanatory Report of the Convention). As it is stated in the Recommended Principles and Guidelines on Human Rights and Human Trafficking, strategies aimed at preventing THB shall address demand as a root cause of trafficking.<sup>28</sup>

100. According to the authorities, the awareness-raising campaign “1 Life” was also designed to discourage demand for prostitution (see paragraph 90). In addition, the NGOs Lifeline and Estonian Women’s Studies and Resource Centre have conducted campaigns against the purchase of sex. The Ministry of Social Affairs has published a research report entitled “The hidden side of prostitution – sex buyers speak”.

<sup>28</sup> Principle 4 of Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

101. Through amendments to Article 133<sup>1</sup> of the CC (“facilitating human trafficking”), adopted on 26 June 2017, the Estonian Parliament criminalised the purchase of sex from a victim of trafficking, with the knowledge that the person is a victim. According to information provided by the authorities, no investigations have been conducted so far under this provision. **GRETA welcomes this development and invites the Estonian authorities to ensure the effective application of this provision in practice.**

102. As regards measures to discourage demand which results in THB for the purpose of labour exploitation, the authorities have referred to a seminar conducted for construction businesses in 2017, where the issue of safe supply chains was discussed.

103. **GRETA considers that the Estonian authorities should enhance their efforts to discourage demand for services of trafficked persons, for all forms of exploitation, in partnership with NGOs, trade unions, international organisations and the private sector. Particular attention should be paid to prevention of trafficking in supply chains and outsourced services.**

104. **Further, GRETA invites the Estonian authorities to consider establishing as a criminal offence the use of services which are the object of labour exploitation, with the knowledge that the person is a victim of trafficking in human beings.**

c. Economic, social and other initiatives for groups vulnerable to THB

105. The Estonian authorities have referred to programmes aimed at reducing gender inequality, combating violence against women and eradicating poverty, which are root causes for THB. In June 2016, the Government adopted a Welfare Development Plan, which contains measures to reduce the gender-based pay gap and achieve balanced participation of women and men in all levels of decision-making. In 2017, gender equality training was provided to career counsellors to enable them to give a gender-stereotype-free career advice and thus enable men and women to make more diverse employment and career choices. Training on gender equality and gender mainstreaming was also provided to teachers and school administrations to assist them in implementing gender awareness into education.

106. In addition, the authorities have referred to the Welfare Development Plan, adopted in June 2016, which is the first comprehensive strategy bringing together social and labour policy. Under the Welfare Development Plan it is planned to reduce the gender pay gap by providing the Labour Inspectorate with the mandate to monitor the equal pay for women and men for work of equal value, and to achieve balanced participation of women and men in all levels of decision-making.

107. The previously mentioned National Strategy for Preventing Violence for the period 2015-2020 (see paragraph 18) addresses violence between children, abuse of children, domestic violence, sexual violence and THB. The authorities have introduced service co-ordinators for victims of sexual violence who meet victims at the earliest possible stages of incidents, most often already in the emergency room.

108. GRETA was informed that the authorities are implementing social and economic empowerment measures for the Russian-speaking minority residing in the East region of Estonia, which could be vulnerable to THB due to lack of employment opportunities.

109. To reduce the vulnerability of refugees and asylum seekers to human trafficking, the Estonian authorities are implementing the Strategy of Integration and Social Cohesion entitled “Integrating Estonia 2020”. In 2014 an action plan entitled “Welcoming Programme” was adopted, which has as its main goal to support the integration of refugees and asylum seekers by providing them with information on the functioning of the Estonian state and society, daily life, working, studying and family matters, and facilitating the learning of the Estonian language. The programme is co-funded by the European Social Fund (ESF), the European Commission’s Asylum, Migration and Integration Fund (AMIF) and the state budget. Measures under this action plan are implemented by public bodies and relevant NGOs, such as the Estonian Human Rights Centre (EHRC), Estonian Refugee Council (ERC), JMC and Pagula. In addition, the EHRC has a partnership agreement with UNHCR on the provision of legal counselling to asylum-seekers. Further, the International Organization for Migration (IOM) office in Estonia offers adaptation courses for refugees, which are co-financed by AMIF and the Ministry of the Interior.

**110. GRETA notes with appreciation the above-mentioned efforts made by the Estonian authorities and considers that they should continue strengthening prevention of THB through targeted social and economic empowerment measures for persons vulnerable to THB, which address root causes of THB, such as gender inequality, gender-based violence, and absence of employment opportunities.**

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

111. The Police and Boarder Guard Board introduced in 2015 a new national border control database, which allows conducting real-time inquiries into Estonian and international databases. It was developed in co-operation with the Information Technology and Development Centre of the Ministry of the Interior and was financed by the European External Borders Fund (EBF).

112. Estonian embassies and consular representations abroad provide information about the conditions of legal entry and stay in Estonia and in the Schengen area by different means of communication, including by placing this information on their websites, in co-operation with the Police and Boarder Guard Board. Detailed information about visa and entry conditions is available in leaflets distributed in embassies and consulates. Further, the Consular Department of the Ministry of Foreign Affairs provides relevant information on immigration and THB issues via social media, including Facebook, Twitter and the “Web Consul” page, as well as through the consular emergency helpline, operating 24/7. Some Estonian embassies and consulates abroad have liaison officers posted by the Police and Boarder Guard Board, who provide information and assistance on migration and THB issues. As of 1 March 2017, Estonian foreign representations promote the new Police and Boarder Guard Board’s immigration helpline service, involving four specialised migration advisors who give advice and legal consultation to foreigners wishing to settle in Estonia.

113. All applicants for Estonian visa should pass an individual interview and their application has to be approved by the Security Police Board and Police and Border Guard Board. At the border crossing points, border guard officials have access to the online national visa register and VIS system and are able to check additional information, including biometric data.

114. The port of Tallinn is one of the busiest passenger harbours in the Baltic region, having served in 2016 some 10 million passengers. Some of the awareness-raising material mentioned in paragraph 112 was distributed at the port of Tallinn and on passenger ferries operated by Tallink ferry company. According to the authorities, in the course of 2017 the police carried out 13 raids in the port of Tallinn and are also conducting random checks of passengers, as well as checks of passenger lists prior to the arrival of ferries.

**115. GRETA considers that the Estonian authorities should strengthen their efforts to detect cases of THB in the context of border controls, including through further training of border guards on the identification of victims of THB.**

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

116. Two types of identity documents are issued in Estonia: identification cards and biometric passports. According to the authorities, both documents are produced in accordance with the security standards established by the International Civil Aviation Organisation (ICAO) and other high security standards. Identity documents are machine readable and have enhanced security features, such as a high quality security printing, ICAO chip with biometrical data and an ultra-violet secondary facial image. Identity cards carry polycarbonate laser engraved personal data and other different high security features.

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

- a. Identification of victims of trafficking in human beings

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

118. The Victim Support Act envisages two ways through which a person may be identified as a victim of THB. As noted in paragraph 50, Article 3(1<sup>1</sup>) of this Act states that a victim of THB is a person in respect of whom criminal proceedings have been initiated with regard to the offence committed against him or her, based on the elements provided for in several articles of the CC. or based on the elements of a similar criminal offence provided for in the CC of another state. Further, Article 3(1<sup>2</sup>) of the Victim Support Act defines an “alleged victim of THB” as a person who has been preliminarily identified in Estonia by a specialised NGO providing assistance to victims of THB, which then informed the Social Insurance Board that the person may be a victim of THB, or in respect of whom a competent foreign authority has submitted information to the Social Insurance Board about him/her falling victim of THB in that state.

119. A presumed victim of THB may be identified by the police, prosecution, specialised NGOs assisting victims of THB (through outreach activities, information received through the anti-trafficking hotline etc.), labour inspectors, social workers and competent foreign authorities. These actors should notify the Social Insurance Board of having detected a presumed victim of THB, following which information is provided to the law enforcement authorities to allow the initiation of criminal investigation into THB. The formal identification of a person as a victim of THB is linked to the opening of a criminal investigation into THB or a related offence and can only be carried out by law enforcement authorities or the Prosecutor’s Office. If no criminal investigation is initiated due to the lack of evidence, the presumed victim of THB is entitled to specialised assistance for the duration of up to 60 days. The Social Insurance Board has 27 staff members working in police stations in the regions and two specialised on THB cases working in Tallinn; most of this staff are social workers providing counselling and assistance to victims of crimes, including THB. Since the entry into force of amendments to the Victim Support Act on 1 January 2017, the Social Insurance board has received information about three presumed victims of THB in 2017 (two Estonian women trafficked for sexual exploitation and one Ukrainian woman trafficked for labour exploitation).

120. GRETA was informed that guidelines on the identification of victims of THB, including roles and responsibilities of different actors, were drawn up in 2009 and there are plans to update these guidelines in 2018.

121. According to the statistical information provided by the authorities, the majority of the identified victims of THB in Estonia in 2014-2016 were children (see paragraph 10). The identified child victims comprised 13 Estonian and one Romanian girls trafficked for the purpose of sexual exploitation, four Estonian boys subjected to sexual exploitation, two Vietnamese girls subjected to labour exploitation and one Vietnamese boy subjected to labour exploitation.

122. According to different interlocutors, changes in traffickers' *modus operandi* make the identification of victims more difficult. In recent years, traffickers reportedly use less violence and resort to other means for controlling victims. Representatives of civil society consider that the knowledge of the police of indicators of THB needs to be improved as police officers who are not trained or specialised in dealing with THB cases expect victims of trafficking to behave in a stereotypical way (e.g. female victims to show signs of physical abuse).

123. GRETA was informed that in January 2017 the NGO Lifeline started implementing an outreach project aimed at proactively identifying presumed victims of THB for the purpose of sexual exploitation, but no such victims have so far been detected.

124. Due to its supervisory function, which covers all sectors of economy in Estonia, the Labour Inspectorate has a role to play in detection of victims of THB for the purpose of labour exploitation. However, GRETA was informed that there are some 4000 registered employers and companies subject to supervision by the Labour Inspectorate and that the available human resources of the Labour Inspectorate are not sufficient to ensure regular inspections. There are a total of 48 labour inspectors (including nine who are lawyers by education).

125. The Police and Border Guard Board and the Labour Inspectorate have a co-operation agreement providing for joint inspections for the purpose of detecting cases of irregular employment, which are not announced in advance. Agriculture and construction have been priority sectors for inspections.<sup>29</sup> In the course of 2016, the Labour Inspectorate and the Police and Border Guard Board carried out 18 joint inspection visits to 91 companies. In 2017, some 24 similar joint inspections were carried out, most of them on construction sites. Several unregistered workers were detected, but no victims or presumed victims of THB were identified as the result of inspections.

126. GRETA was informed that private recruitment agencies offering employment abroad are no longer licenced in Estonia and that the only requirement they have to fulfil is to notify the Ministry of the Economy of their intention to provide employment in foreign countries. Representatives of the Labour Inspectorate informed GRETA that the Ministry of Social Affairs in charge of administrative supervision had limited possibility to supervise private recruitment agencies. Thus there seems to be no effective supervision of these agencies as they are only checked in case of a complaint submitted to the Ministry of Social Affairs. GRETA was informed that draft amendments had been prepared by the Ministry of Social Affairs with a view to allowing the Labour Inspectorate to carry out covert inspections of such agencies. The amendments were pending adoption by Parliament, allowing their entry into force by 12 May 2018. **GRETA would like to be kept informed about the adoption of these amendments.**

127. As mentioned in paragraph 55, GRETA received reports concerning third-country nationals found in Estonia in a situation of irregular employment, after having arrived as "posted workers", contracted by firms registered in other EU Member States, mostly Poland, Latvia and Lithuania. Representatives of the Labour Inspectorate informed GRETA that there had been an increase in the arrival of Ukrainian and Moldovan unregistered workers since 2014 and that in at least one case detected in 2016, illegally employed Ukrainian nationals may have been subjected to labour exploitation (in particular, they were not aware who their employer was or what salary they were supposed to be receiving, and lived in very poor conditions).

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<sup>29</sup> According to the Tax and Customs Board, currently the three most active sectors of economy in Estonia are construction, hospitality (hotels, restaurants, other catering facilities) and transportation. Transportation, hospitality and entertainment sectors have not been subject to inspections in the last three years.

128. The Tax and Customs Board<sup>30</sup> conducts inspections of employers in different sectors of economy, some of which are not announced in advance. It also operates an electronic register of all taxable employees. The register is accessible to the police, the Social Insurance Board and other relevant bodies, having the necessary authorisation.

129. Asylum applications are processed by the Police and Border Guard Board.<sup>31</sup> If an asylum seeker applies for protection at the moment of arrival to the border, the first interview is conducted by border guards, after which the person is transported to one of the two reception centres for asylum seekers in Estonia. The application is then transmitted for examination and decision. Only manifestly unfounded applications may be dismissed by the border guards and the authorities reported that this had not happened in recent years. Migration Board officials dealing with asylum applications and the staff of reception centres attend training sessions on THB provided by the National Roundtable and the IOM. Further, they have at their disposal guidelines for detecting persons with special needs prepared by the European Asylum Support Office (EASO), which include indicators for the identification of victims of THB. No victims of THB have been identified in Estonia among asylum seekers and refugees.

130. During the evaluation visit, the GRETA delegation visited one of the reception centres for asylum seekers, located in the village of Vao. This open-door facility also accommodates persons already granted refugee status, prior to their moving to other places of residence. The overall capacity of the accommodation centre is 70 people, with places envisaged for men, women and families with children.<sup>32</sup> There are five staff members (a legal counsel, social worker, two pedagogues and one pedagogue for persons with special needs) who provide residents with social and psychological assistance, legal consultation, and assist them in filing appeals if their initial asylum claims are refused. Children are enrolled in the local school upon arrival and adults are offered three Estonian language classes per week at the centre. Six months after their arrival at the centre, the local unemployment office provides asylum seekers with vocational training. Representatives of the centre informed GRETA of the need for additional training on THB to enable them to better detect different vulnerabilities manifested by the residents of the centre.

131. Irregular migrants and failed asylum applicants, including children, who are subject to removal from Estonia are held in the immigration detention facility run by the Police and Border Guard Board. A foreigner subject to removal from the country may be detained with the authorisation of an administrative court if the latter considers that alternatives to detention cannot be applied efficiently. The administrative court may authorise the detention of a foreigner for up to two months, which can be reviewed, and the overall duration of such detention may not exceed 18 months. In this respect, GRETA notes the concern of the UN Committee on the Rights of the Child, expressed in its Concluding Observations on the combined second to fourth periodic reports of Estonia,<sup>33</sup> over reports suggesting that the detention of asylum-seeking and refugee children in Estonia was increasing.

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<sup>30</sup> The Tax and Customs Board is an authority operating under the Ministry of Finance which is responsible for administering and supervision of payment of taxes by private persons and businesses.

<sup>31</sup> In 2014-2015, Estonia experienced an increase in asylum applications (from 50 up to 250). The main countries of origin of the applicants were Syria, Sudan, Iraq, Yemen, Ukraine and the Russian Federation. In 2016, the authorities received 111 asylum applications. In the context of the EU's emergency relocation and resettlement schemes, Estonia accepted to resettle 500 refugees, mainly from Greece, Italy and Turkey. These persons are screened by officials of the Police and Border Guard Board prior to arriving to Estonia and are exempt from undergoing the asylum procedure once in Estonia.

<sup>32</sup> At the time of GRETA's visit, the centre had 35 residents, including 10 Georgian nationals (two families), eight Ukrainian nationals (two families and a single person), seven Albanians (two families), nine Sri Lankans (two families), five Sudanese (two families), two persons from the Russian Federation, and one each from Belarus, Iran and Uzbekistan.

<sup>33</sup> Adopted by the Committee at its seventy-fourth session (16 January-3 February 2017).

132. GRETA was informed that international organisations and NGOs working on the protection of the rights of migrants may visit the immigration detention facility. It is also regularly inspected by the Chancellor of Justice (Ombudsman) who publishes summaries of findings and recommendations addressed to the authorities. Further, the Ministry of the Interior is implementing a co-operation agreement with the Estonian Red Cross to monitor detention facilities, observe the compliance with relevant procedures during the removal of foreign nationals from Estonia, and provide quarterly reports and recommendations to the Ministry.

133. The funding of a project allowing specialised NGOs to interview asylum seekers and detect persons with special needs has reportedly been discontinued by the Ministry on the Interior. A small-scale project with a similar objective, funded by UNHCR, only allows conducting such interviews in a limited number of cases. The authorities informed GRETA that if a victim of THB, including a child, is identified in the immigration detention centre, he/she would be transferred to an appropriate facility by the Social Insurance Board. As noted in paragraph 120, there are guidelines on the identification of victims of THB, which are used together the EASO online tool for the identification of persons with special needs and the internal guidelines on interviewing presumed victims and detecting human trafficking and smuggling of migrants.

134. GRETA notes the absence of a formalised National Referral Mechanism (NRM) for victims of THB in Estonia. Representatives of public bodies expressed the view that, even though they experience no difficulties as regards exchanging information concerning victims of THB, a formalised NRM could make the identification of victims of THB more effective.

**135. GRETA urges the Estonian authorities to take further steps to ensure that all victims of trafficking are identified as such and can benefit from the assistance and protection measures provided for under the Convention, and in particular to:**

- **ensure that the formal identification of a person as a victim of human trafficking does not depend on the presence of elements to prove THB or a related offence;**
- **introduce a formalised NRM for the identification of victims of THB for different purposes of exploitation, which defines the roles and responsibilities of all relevant actors, including specialised NGOs, and provide training for its implementation;**
- **adopt harmonised indicators, guidance and toolkits to be used in the identification process, disseminate them to all relevant professionals to ensure that they adopt a proactive approach to detecting and identifying victims of trafficking; the indicators should be regularly updated in order to reflect the changing nature of human trafficking, types of exploitation and any amendments in the relevant legislation and used for training purposes;**
- **enhance the role and capacity of labour inspectors in the detection of THB for labour exploitation in Estonia and improve the identification of victims of THB among foreign nationals;**
- **strengthen the monitoring of recruitment agencies, including by introducing licensing procedures and reviewing the legislative framework for any loopholes;**
- **improve the identification of victims of THB among children by developing an integrated identification mechanism which takes into account the special circumstances and needs of child victims of THB, involves child specialists and ensures that the best interests of the child are the primary consideration, including refugee and migrant children;<sup>34</sup>**
- **improve the identification of victims of trafficking among asylum seekers, migrant workers and irregular migrants.**

<sup>34</sup> Reference is made to the Council of Europe's Action Plan on protecting refugee and migrant children (2017-2019), accessible via the following link: <https://www.coe.int/en/web/children/-/council-of-europe-action-plan-on-protecting-refugee-and-migrant-children-adopted>



b. Assistance to victims

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

137. In Estonia, the provision of assistance to victims of trafficking is regulated by the Victim Support Act<sup>35</sup> which stipulates that the assistance measures envisaged for victims of THB include safe accommodation, catering, access to health services, material assistance, psychological assistance, translation and interpretation services and other services necessary for their physical and psycho-social rehabilitation. The duration of the assistance provided to victims of THB is not limited by law and should be provided "until the need for the services ceases to exist."

138. Articles 4 and 5 of the Victim Support Act regulate the principles of providing victim support services by the Social Insurance Board, as well as the rules for outsourcing the provision of services and co-operation with local governments, legal persons and private persons contracted to provide assistance. Article 5(5) of the Act states that the Social Insurance Board exercises administrative supervision over the provider of victim support services.

139. Pursuant to Article 3(2<sup>2</sup>) of the Victim Support Act, persons who have not been formally identified as victims of THB, but may have been subjected to THB, are entitled to the same assistance measures as formally identified victims of THB. If the Social Insurance Board has reasons to believe that a person has been subjected to a criminal offence under Articles 133 to 133<sup>3</sup>, 138 to 140, or 175 of the CC, it has inform an investigative body or the Prosecutor's Office of the possible commission of a criminal offence so that criminal proceedings can be initiated. It is also possible for the person concerned, another person, an NGO or competent foreign authorities to report to the Social Insurance Board about a suspected case of THB and the Social Insurance Board has the mandate to provide assistance to the presumed victim. If no criminal proceedings are initiated in cases of THB, assistance is provided to presumed victims of THB for up to 60 days, starting from the notification of the Social Insurance Board of the refusal to initiate criminal proceedings.

140. The Social Insurance Board contracts NGOs through a public tender to provide assistance to victims of THB (the NGO Lifeline to adult victims and the NGO SOS Children's Villages to child victims). According to the authorities, the annual budget for victim assistance amounts to €132 400. Medical assistance and translation are covered separately.

141. The network of victim support centres, which is run by the Social Insurance Board, has at least one victim support specialist in each county (altogether 27 persons), mostly placed in police premises. Two persons in Tallinn/Harjumaa are specifically dealing with THB cases and provide advice to colleagues if necessary.

<sup>35</sup>

Available at: <https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/502012017002/consolide>

142. In the course of the visit, the GRETA delegation visited the “Atoll” shelter for victims of trafficking, operated by the NGO Lifeline. It occupies a flat with three rooms (one single room and two double rooms). At the time of GRETA’s visit, two victims of THB (a man and a woman) were placed at the shelter. Victims receive psychological and medical assistance, but no vocational training is provided. The shelter has two permanent staff, the Director and a social worker specialised in rehabilitation of victims with intellectual disability, as well as volunteers. The NGO Lifeline used to receive some funding from foreign donors, which enabled the recruitment of an additional staff member who could be present at the shelter overnight, but this is no longer the case, which raises staff’s concerns over the security of victims at night.

143. GRETA refers to the findings of the UN Committee on the Elimination of Discrimination against Women in its Concluding observations on the combined fifth and sixth periodic reports of Estonia<sup>36</sup> which note with concern the uncertain funding prospects for NGOs running shelters and providing assistance to victims of trafficking, the lack of gender-sensitive support services for victims of trafficking, the and the lack of prevention and rehabilitation measures for victims of sexual exploitation.

144. The provision of assistance to child victims of THB is regulated by Article 3<sup>1</sup> of the Victim Support Act, according to which if a child needs safe accommodation, he/she may be placed in alternative accommodation or foster care, rather than accommodation facilities provided for adult victims of THB. All the assistance measures envisaged for adult victims of THB are available for child victims (see paragraph 137). Child victims of THB are provided with assistance in accordance with an individual case plan, approved by the Social Insurance Board official and the legal representative of the child.

145. In the course of the evaluation visit, the GRETA delegation visited an accommodation and assistance facility run by the NGO SOS Children’s Villages. It was set up in 1994 and consists of 13 houses, one of which is intended for unaccompanied children and child victims of trafficking. The house can accommodate up to seven children at a time, but the budget provided to SOS Children’s Villages under the contract with the Social Insurance Board only covers five such children. The facility employs an overall staff of 50 people, including two child psychologists and three therapists, and there is staff presence around the clock. Three child victims of THB for the purpose of labour exploitation were accommodated at the facility (two Vietnamese girls in 2015 and one Vietnamese boy in 2016).

146. The new Child Protection Act entered into force on 1 January 2016. It focuses on prevention of and early intervention into cases of child abuse, multi-sectorial approach and integration of services, and co-operation between the state and local municipalities. In January 2017 the first Children’s House was opened in Tallinn, which is a child-friendly interdisciplinary service for child victims of sexual abuse where children are interviewed and provided with necessary medical examinations, assistance and educational activities. The state-funded Children’s House is run by the Social Insurance Board, with support of the Ministry of Social Affairs, the Ministry of Justice and the Ministry of the Interior. According to the authorities, it is envisaged that the assistance of child victims of trafficking is integrated into the Children’s House by 2020.

147. Local governments are responsible for providing emergency social assistance to all children in need for the initial 72 hours, while the court decides on the legal guardianship of such children. All local governments have child protection officers and/or social worker(s) responsible for ensuring the rights and well-being of children, including the duties of guardianship. In 2016, a state child protection department was set up with the task of supporting child protection activities at the local level. Following emergency assistance measures, unaccompanied children should be placed as soon as possible to the service provider specialised to work with vulnerable children.

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<sup>36</sup>

Adopted by the CEDAW at its sixty-fifth session (24 October-18 November 2016).

148. In the course of the visit, GRETA was informed by representatives of public bodies and NGOs that local government officials, social workers and child protection authorities lack experience in dealing with child victims of trafficking. Representatives of an NGO informed GRETA of a possible case of THB involving a child victim, who was allegedly trafficked by the child's family, but the social worker alerted of this situation did not refer the child for identification and assistance due to failure to recognise signs of THB. In this context, GRETA refers to the UN Committee on the Rights of the Child's Concluding Observations on the combined second to fourth periodic reports of Estonia<sup>37</sup> regarding the insufficient number of child protection workers in Estonia, the failure to adequately regulate the obligations of local governments with regard to establishing the position of child protection workers, and the fact that local governments do not sufficiently assume their duties as guardianship authorities.

149. While welcoming the involvement of NGOs in the provision of assistance to victims of trafficking and the funding provided for the purpose from the state budget, **GRETA considers that the Estonian authorities should strengthen their efforts to provide assistance to victims of trafficking, and in particular to:**

- **ensure that assistance is provided for as long as necessary to presumed and formally identified victims of trafficking and is not discontinued after 60 days if the presumed victim is not formally identified in criminal proceedings or if no such proceedings are initiated;**
- **ensure that all assistance measures provided for in law are guaranteed in practice, including by respecting the State's obligation to provide adequate financing and to guarantee the services when assistance is delegated to NGOs or other non-state actors as service providers;**
- **provide gender-sensitive support services, including safe accommodation with a sufficient number of places, and ensure that the services available are adapted to the specific needs of trafficking victims;**
- **facilitate the reintegration of victims of trafficking into society and prevent re-trafficking by providing them with long-term assistance, including vocational training and access to the labour market.**

150. **Further, GRETA urges the Estonian authorities to take steps to improve the specific assistance for child victims of trafficking, taking into account the best interests of the child, to ensure effective access to guardianship and to train all professionals working with child victims of trafficking to recognise and respond appropriately to their needs.**

c. Recovery and reflection period

151. As victims of trafficking are extremely vulnerable after the trauma they have experienced, Article 13 of the Convention introduces the obligation for Parties to provide in their internal law for a recovery and reflection period of at least 30 days. The recovery and reflection period, in itself, is not conditional on co-operation with the investigative or prosecution authorities and should not to be confused with the issue of a residence permit under Article 14(1) of the Convention. Pursuant to the Convention, the recovery and reflection period should be granted when there are reasonable grounds to believe that the person concerned is a victim of trafficking, i.e. before the identification procedure has been completed. During this period, Parties must authorise the person concerned to stay on their territory and expulsion orders cannot be enforced.

<sup>37</sup>

Adopted by the CRC at its seventy-fourth session (16 January-3 February 2017).

152. Articles 204 and 205 of the Aliens Act provide for a so-called “cooling-off” period which may be granted to a foreign victim or witness of THB and related offences by a prosecutor or an investigator upon a prosecutor’s request. The “cooling-off period” may last from 30 to 60 days and has the purpose of allowing the person concerned to decide whether he/she wishes to co-operate with the investigative authority or prosecution. The Aliens Act stipulates that the Prosecutor’s Office or an investigative authority shall notify an alien of the services offered during this period and the possibility and conditions for issuing a temporary residence permit for the purpose of participation in criminal proceedings or international protection.

153. According to information provided by the Estonian authorities, two child victims of trafficking were granted a recovery and reflection period in 2014-2016.

154. GRETA is concerned that the Aliens Act does not state the purpose of the recovery and reflection period as it is stated in the Convention, i.e. to enable possible victims of trafficking to escape the influence of the traffickers and/or to take an informed decision on co-operating with the competent authorities. GRETA recalls that according to the Convention, the recovery and reflection period, in itself, is not conditional on co-operation with the investigative or prosecution authorities and should not to be confused with the issue of a residence permit under Article 14(1) of the Convention. The recovery and reflection period should be granted when there are reasonable grounds to believe that the person concerned is a victim of trafficking, i.e. before the identification procedure has been completed.

**155. GRETA urges the Estonian authorities to review the legislation with a view to ensuring that the recovery and reflection period is defined in law as provided for in Article 13 of the Convention and that all presumed victims of trafficking are offered and effectively granted such a period with all the measures of assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention.**

d. Residence permits

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

157. Pursuant to Article 203 of the Aliens Act, a third-country national may be granted a temporary residence permit in order to participate in criminal proceedings if he/she is a victim or a witness in a criminal procedure initiated for the commission of THB or a related offence. The conditions for issuing such a temporary residence are that the person facilitates the ascertaining of facts relating to the criminal offence or has agreed to do so, has broken off all relations with the persons suspected or accused of the offence, and does not constitute a threat to public order or national security. The duration of the temporary residence permit is from six to 12 months, renewable for up to a year at a time. The temporary residence permit may be revoked when the criminal proceedings are terminated, or if the person is no longer contributing to the clarification of facts relating to the criminal offence, or has voluntarily and on his/ her own initiative renewed contacts with the suspected or accused persons.

158. As of 1 January 2016, the Police and Boarder Guard Board may also issue temporary residence permits on humanitarian grounds, if it has become evident that fulfilling the obligation to leave the country would be unduly burdensome to the person concerned, he/she lacks the possibility of obtaining the residence permit on other grounds and does not constitute a threat to public order and national security. However, the issuing a residence permit on humanitarian grounds is not expressly envisaged for victims of THB on the basis of their personal situation. GRETA notes that granting a residence permit on account of the personal situation of the victim takes into account a range of situations, such as the victim’s safety, state of health and family situation, and tallies with the human-rights based approach to combating THB.

159. According to information provided by the Estonian authorities, two child victims of trafficking were granted temporary residence permits on the grounds of their co-operation in the criminal proceedings in 2014-2016. Further, a Vietnamese national was granted a residence permit for the purpose of her participation in criminal proceedings when she was a child, which was later renewed on humanitarian grounds and subsequently transformed into a five-year residence permit.

**160. GRETA considers that the Estonian authorities should take steps to ensure that victims of THB can fully benefit from the right to obtain a renewable residence permit, including owing to their personal situation, without prejudice to the right to seek and enjoy asylum.**

e. Compensation and legal redress

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

162. The right to compensation is enshrined in the Constitution of Estonia, Article 25 of which states that everyone is entitled to compensation for intangible and tangible harm that he or she has suffered because of the unlawful actions of another person. Estonian legislation provides for three ways of claiming compensation: through civil action in criminal proceedings; through civil proceedings; and by applying for state compensation, pursuant to the Victim Support Act.

163. Pursuant to Article 38(2) of the CPC, in conjunction with Article 225(1) of the CPC, a civil action must be filed not later than within 10 days after the completion of pre-trial proceedings, when the victim has been provided the materials of the criminal case.<sup>38</sup> Article 38(5) of the CPC states that an investigative body or a prosecutor shall explain to victims their rights, the procedure and conditions for filing a civil action, and the procedure for accessing legal aid provided by the state. However, according to representatives of the prosecution and the judiciary, victims very seldom file compensation claims during criminal proceedings. Representatives of NGOs informed GRETA that in practice, access to compensation in Estonia is not effective owing to the lack of legal professionals with experience in representing victims of THB.

164. According to information provided by the authorities, no victims of THB have been awarded compensation in recent years. GRETA was informed by representatives of NGOs of a judgment delivered in a criminal case on 1 July 2014 by the Tartu County Court where a victim's civil action for compensation in the amount of €150 000 was granted. The court took into consideration the suffering caused to the victim and the losses in material terms, as well as the conclusions of the forensic psychiatry and psychology experts. There is reportedly an on-going case of THB for the purpose of forced begging where the victims requested compensation.

<sup>38</sup> Anni Säär, Study on the determination and compensation of moral damage to victims of trafficking, available at: [http://norway-grants.eluiliin.ee/images/pdf/lnimkaubandus-moraalne\\_kompensatsioon.pdf](http://norway-grants.eluiliin.ee/images/pdf/lnimkaubandus-moraalne_kompensatsioon.pdf).

165. Pursuant to Article 7 of the Victim Support Act, victims of violent crimes committed in Estonia and their dependents are entitled to compensation by the State. State compensation is also accessible to a victim of a violent crime committed abroad if he/she is a permanent resident of Estonia or an Estonian national not residing permanently in Estonia who was abroad for reasons related to studies, employment, service duties or other appropriate reasons, and if the victim is not entitled to a similar compensation under the law of the country where the offence was committed. As per Article 8(1) of the Victim Support Act, a violent crime is an act committed against the life or health of a person, punishable under criminal law, which resulted in either the death of the person or serious damage to health or health disorder lasting for at least four months. According to the authorities, victims of trafficking, including foreign victims, are entitled to State compensation regardless of the legality of their stay in Estonia.

166. Pursuant to Article 19 of the Victim Support Act, an application for State compensation should be submitted to the Social Insurance Board within three years of the commission of the crime or the date of death of the victim. An application submitted later than this period shall be reviewed if: 1) the victim's dependant became aware of the death of the victim more than one year after it occurred, and the application is submitted within three years as of the date of becoming aware of the death of the victim; 2) the applicant sustained a health disorder lasting longer than one year and the timely submission of the application was not possible due to his or her state of health, provided that the application was submitted within three years following the improving of the state of health; 3) the application relates to a sexual offence and was submitted within three years after the victim became an adult, unless the reason for the criminal proceedings became evident before he or she became an adult. The amount of State compensation is determined on the basis of the material damage caused by the violent crime and covers damage arising from incapacity to work, expenses incurred due to damage caused to the victim's health, and damage arising from the death of the victim and the funeral expenses. Article 15 of the Victim Support Act stipulates that the amount of State compensation shall not exceed €9 590 per victim.

167. GRETA was informed by the Estonian authorities that no victims of THB have applied for State compensation.

168. The State Legal Aid Act entitles Estonian and EU citizens and residents to receive free legal aid if their financial situation is such that they cannot pay themselves. Further, legal aid is available to the injured party in criminal proceedings if their legal capacity is limited, regardless of their economic situation.

169. **GRETA urges the Estonian authorities to adopt measures to facilitate and guarantee access to compensation for victims of trafficking and in particular to:**

- **ensure that victims of trafficking are systematically informed in a language that they can understand of the right to seek compensation and the procedures to be followed;**
- **enable victims of trafficking to exercise their right to compensation by ensuring their effective access to legal aid, by building the capacity of legal practitioners to support victims to claim compensation and by including the issue of victim compensation in training programmes for lawyers, law enforcement officials, prosecution and the judiciary;**
- **examine the reasons for the lack of applications for state compensation from victims of THB and ensure that victims are informed of the possibility to apply for state compensation and are effectively enabled to receive it.**

170. **In addition, GRETA invites the Estonian authorities to develop a system for recording compensation claims of and awards to victims of trafficking and to consider using assets confiscated from perpetrators for paying compensation to victims of THB.**

f. Repatriation and return of victims

171. Article 16 of the Convention requires Parties to establish repatriation programmes which aim at avoiding re-victimisation and involve relevant national or international institutions and NGOs, as well as to make efforts to favour the reintegration of victims into the society of the State of return. Parties must also make available to victims of trafficking contact information or structures that can assist them in the country of return, such as law enforcement offices, NGOs, legal professionals and social welfare agencies. The return of victims of trafficking must preferably be voluntary and needs to be carried out with due regard for the rights, safety and dignity of the person and for the status of any legal proceedings related to the fact that the person is a victim of THB. Furthermore a victim may not be returned where such action would be in contravention of the State's obligation of international protection, recognised in Article 40(4) of the Convention.

172. According to Article 6<sup>7</sup> of the Obligation to Leave and Prohibition on Entry Act, the authority responsible for taking measures relating to the removal of foreigners from Estonia is required to take into account the specific needs of children, unaccompanied children, disabled persons, elderly persons, pregnant women, single parents with small children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence. The decision to return a person is taken in respect of any foreign nationals who have no legal basis for staying in Estonia. Such foreigners have 30 days from the notification of the return decision to voluntarily fulfil the obligation to leave the territory. In view of the personal situation of the foreign national, the period for voluntary departure may be exceeded.

173. Article 3(2<sup>6</sup>) of the Victim Support Act states that the provision of services provided for in paragraphs 3(2<sup>3</sup>) to 3(2<sup>5</sup>) of this Article does not constitute a legal basis for the stay of a foreigner in Estonia or for postponing the fulfilment of the obligation to leave Estonia. It appears that even though a person may be in the process of formal identification, or be considered a presumed victim of THB (see paragraphs 50 and 118), he/she may be subject to removal from the country before the 60-day period of assistance has elapsed.

174. The IOM Office in Estonia has been implementing since 2010 an assisted voluntary return and reintegration programme, which includes needs-based support at pre-departure and post-arrival stages. This programme is funded by the Ministry of the Interior and the AMIF. Persons are referred to IOM by the Police and Border Guard Board, the Social Insurance Board and specialised NGOs. GRETA was informed that a Russian national with disability, who was exploited in begging, was returned through this programme in 2016.

175. In addition, GRETA received information about a recent case of an Estonian woman, victim of an exploitative sham marriage, who was returned from the Netherlands with the assistance of the Estonian consulate.

176. GRETA notes that there are no regulations in place regarding the procedure for the return of victims of THB, including children, which specify the pre-return risk assessment procedure. According to the Estonian authorities, the guidelines on the identification and assistance of victims (see paragraph 120) cover these issues.

177. **GRETA considers that the Estonian authorities should take additional steps to:**

- **ensure that the return of victims of trafficking is conducted with due regard for their rights, safety and dignity. This means informing victims about existing return programmes, protecting them from re-victimisation and re-trafficking and, in the case of children, fully respecting the principle of the best interests of the child;**
- **develop international co-operation in order to ensure pre-return risk assessment, safe return and reintegration of victims of THB;**

- **ensure compliance with the *non-refoulement* obligation under Article 40, paragraph 4, of the Convention.** In this context, the Estonian authorities should give full consideration to the UNHCR's Guidelines on the application of the Refugees Convention to trafficked people and their possible entitlement to asylum when deciding upon applications for asylum of persons who are at risk of being re-trafficked or otherwise persecuted should they be obliged to return to their State of origin or residence.

178. **Further, GRETA urges the Estonian authorities to introduce pre-return risk and security assessment procedures by specialised bodies prior to returning unaccompanied and separated migrant children, to ensure that the best interests of the child are effectively respected, protected and fulfilled, in co-operation with relevant partners in countries of return.**

#### **4. Implementation by Estonia of measures concerning substantive criminal law, investigation, prosecution and procedural law**

##### a. Substantive criminal law

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

180. As noted in paragraph 37, Article 133 of the CC envisages an imprisonment penalty from one to seven years for the basic offence of THB. The aggravating circumstances listed in Article 133, paragraph 2, of the CC include the aggravating circumstances envisaged under Article 24 of the Convention and carry a heavier penalty (three to 15 years' imprisonment).

181. As noted in paragraph 39, trafficking in children committed without the use of means is covered by Article 175 of the CC, while the use of means against a child is treated as an aggravating circumstance under Article 133, paragraph 2, of the CC. GRETA notes that the sanction envisaged for the commission of the offence under Article 175 of the CC ("human trafficking in order to take advantage of children") is less severe than the one envisaged under Article 133, paragraph 2, of the CC.

182. As noted in paragraph 43, the removal of organs is not included as a form of exploitation in Article 133 of the CC, but is criminalised separately under Article 138<sup>1</sup> of the CC ("forcing a person to donate organs of tissue"), which envisages a penalty of up to five years' imprisonment. GRETA notes that this risks creating legal uncertainty and inconsistent practice when adjudicating cases of trafficking for the purposes of the removal of organs.

183. Articles 344 to 349 of the CC establish several conducts relating to counterfeiting, falsification, fraudulent use, destruction, damaging, theft, withholding or concealment, falsification, obtaining, use or granting permission to use falsified identity and other important documents as criminal offences.

184. Article 133<sup>1</sup> of the CC criminalises the use of services of a victim of trafficking for sexual exploitation, with the knowledge that a person was a victim. So far, no case law has been developed under this Article as no investigations have been carried out.



185. Pursuant to Article 14 of the CC (“liability of legal persons”), a legal person shall be held responsible for an act that is committed in the interests of the legal person by its body, a member thereof or by a senior official or competent representative in the cases provided by law,. Criminal liability of legal persons for THB offences is provided under Articles 133-133<sup>3</sup>, 138, 138<sup>1</sup>, 139, 140 and 175 of the CC, subjecting legal persons to pecuniary sanctions for their involvement in the offences proscribed under the respective articles. No criminal proceedings have been conducted so far against legal persons for their involvement in THB offences.

186. Article 25 of the Convention requires Parties to provide for the possibility to take into account final sentences passed by another Party against the same person in relation to THB offences when determining the penalty. According to Article 6(7) of the Criminal Records Database Act, information concerning a foreign conviction in a criminal matter which has entered into force against an Estonian citizen or a foreigner with the right to reside in Estonia shall be entered in the database if the information concerning his or her punishment has been communicated by a foreign state, or if an Estonian court recognised the judgment of conviction. Article 5 of the same Act stipulates that information concerning punishments of persons contained in the database has legal effect for ascertaining the punishment record of the person and the recurrence of criminal offences or misdemeanours committed by the person until deletion of such information.

187. **GRETA considers that the Estonian authorities should conduct a comprehensive assessment of the criminal law provisions related to THB which are currently contained in several articles (in particular Article 133, Article 133<sup>1</sup>, Article 138<sup>1</sup>, Article 175) with a view to clarifying the differences and avoiding overlaps which risk creating legal uncertainty and inconsistent application.** Reference is made in this respect to the recommendation in paragraph 47.

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

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

189. Estonian legislation does not contain a specific provision allowing for not imposing penalties on victims of trafficking for their involvement in unlawful activities, to the extent that they have been compelled to do so. The authorities have referred to Article 29 of the CC (“necessity”) which states that an act is not unlawful if the person commits it in order to avert a direct or immediate danger to the legal rights of the person or of another person, and if the means chosen by the person are necessary for the aversion of the danger and the interest protected is evidently of higher importance than the interest subject to damage.

190. Further, Article 202 of the CPC (“termination of criminal proceedings in case of lack of public interest in proceedings and negligible guilt”) provides for a possibility to terminate criminal proceedings if their object is a criminal offence in the second degree and the guilt of the person suspected or accused of the offence is negligible, and the person has remedied or has commenced to remedy the damage caused by the offence, or has paid the expenses relating to the criminal proceedings, or assumed the obligation to pay such expenses, and there is no public interest in the continuation of the criminal proceedings. In such circumstances, the Prosecutor’s Office may request the court to terminate the criminal proceedings, with the consent of the suspect or accused.

191. The authorities have also referred to Article 205 of the CPC (“termination of criminal proceedings in connection with assistance received from person upon ascertaining facts relating to subject of proof”) which allows the Prosecutor’s Office to terminate criminal proceedings if the suspect or accused has significantly facilitated the ascertaining of facts relating to proof of a criminal offence, which is important from the point of view of public interest in the proceedings and if, without such assistance, detection of the criminal offence and taking of evidence would have been precluded or especially complicated.

192. Representatives of the prosecution and the police referred to round-table meetings at which the application of the non-punishment provision of the Convention was discussed. However, there is no written guidance on this issue.

193. GRETA was informed of several cases in which groups of Vietnamese nationals who had been illegally transported across the Estonian border were not punished for their illegal entry; however, they were not identified as victims of trafficking.

194. **GRETA urges the Estonian authorities to ensure 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, as contained in Article 26 of the Convention. Such measures should include the adoption of a specific legal provision and/or the development of guidance for police officers and prosecutors on the scope of the non-punishment provision. While the identification procedure is on-going, presumed victims of trafficking should not be punished for their involvement in unlawful activities, to the extent that they have been compelled to do so.** Reference is made in this context to the recommendations on non-punishment for legislators and prosecutors contained in the paper issued by the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings in consultation with the Alliance against Trafficking in Persons Expert Co-ordination Team.<sup>39</sup>

c. Investigation, prosecution and procedural law

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

196. Article 6 of the CPC sets out the principle of mandatory criminal proceedings whereby investigative bodies and the prosecution are obliged to initiate criminal investigation upon the discovery of facts referring to a criminal offence.<sup>40</sup> Pursuant to Article 30(1) of the CPC, the Prosecutor's Office directs pre-trial proceedings and ensures their legality and efficiency. As per Article 38 (1) (1) of the CPC, a victim has the right to appeal against the refusal to initiate or terminate criminal proceedings, in accordance with the procedure provided under Articles 207 and 208 of the CPC.

197. The investigation of THB cases is carried out by specialised investigators (see paragraph 25) under the supervision of a specialised prosecutor (see paragraph 26). Representatives of law enforcement bodies informed GRETA that combating THB offences has been among their priorities in recent years, as confirmed during annual meetings between the Prosecutor General and relevant ministers. In the opinion of law enforcement representatives, the human resources dedicated to THB within the police are sufficient.

198. As of June 2017, THB cases are dealt with by specialised prosecutors in the four District Prosecutor's Offices.<sup>41</sup> The Western and Southern Offices are responsible for THB cases related to trafficking from/to Latvia and Russia, the Viru office is responsible for cases related to trafficking from/to Russia, and Northern office is responsible for cases related to trafficking from/to Scandinavian countries. The Office of the Prosecutor General is responsible for more serious THB cases.

<sup>39</sup> <http://www.osce.org/secretariat/101002?download=true>

<sup>40</sup> Unless the circumstances provided for in Article 199 of the CPC exist, which preclude criminal procedure, or unless the grounds to terminate criminal proceedings pursuant to Articles 201(2), 202, 203, 2031, 204, 205, 2051, 2052 or Article 435 (3) of the CPC exist.

<sup>41</sup> The Northern District Prosecutor's Office (Tallinn and Harju counties), the Western District Prosecutor's Office (Pärnu and neighbouring counties), the Southern District Prosecutor's Office (Tartu and nearby counties), and Viru District Prosecutor's Office (Jõhvi and neighbouring counties).

199. According to representatives of specialised NGOs, the lack of interpretation and translation services was an acute problem, often resulting in missing procedural deadlines and failure to initiate criminal proceedings. Article 10 of the CPC provides for the right to have interpretation in the course of criminal proceedings for suspects, accused, victims, civil parties and third persons, who are not proficient in the Estonian language; however, no information on ensuring interpretation services in practice was provided to GRETA.

200. The use of special investigation techniques is provided for in Chapter 3<sup>1</sup> of the CPC (“surveillance activities” and, pursuant to Article 126<sup>2</sup>(2) of the CPS, can be used in THB offences. The CPC includes the following special investigation techniques: covert surveillance of a person, object or area covert taking of comparative samples and performing initial examinations, covert examination of an object and replacing it, covert examination of a postal item, observing or wire-tapping information, using a police agent, covert entry into a building, premises, vehicle, enclosed area or computer system. GRETA was informed that covert surveillance was one of the main investigation techniques used in THB cases for obtaining evidence.

201. GRETA was informed that the police were utilising an IT tool for screening Internet-based announcements of offers of sexual services and approached persons proposing such services to establish whether cases of THB for sexual exploitation or other related crimes were taking place.

202. The Estonian legislation contains provisions allowing for confiscation of criminal assets, in particular, Articles 83, 83<sup>1</sup> (“confiscation of assets acquired through an offence”), 83<sup>2</sup> (“extended confiscation of assets acquired through a criminal offence”) and 84 (“substitution of confiscation”) of the CC. Assets obtained through the commission of THB and related crimes (Articles 133, 133<sup>1</sup>, 133<sup>2</sup>, 138<sup>1</sup> and 175) are subject to extended confiscation.<sup>42</sup> If the assets acquired by an offence have been transferred, consumed or the confiscation thereof is impossible or unreasonable for another reason, the court may order payment of an amount which corresponds to the value of the assets subject to confiscation.

203. GRETA welcomes the existence of legislation regarding confiscation of criminal assets. However, according to information provided to GRETA, there was confiscation of assets in THB cases in 2015 and two in 2016.

204. According to information provided by the Estonian authorities, the number of criminal proceedings initiated for THB was five in 2014, four in 2015, 15 in 2016 and 10 in 2017. The number of convictions with deprivation of liberty was as follows: four in 2014, four in 2015, 11 in 2016 and 15 in 2017. The sentences ranged from six months to 10 years of imprisonment. Four of the 15 convictions in 2017 were replaced by suspended sentences from one to five years.

205. **GRETA urges the Estonian authorities to strengthen their efforts to ensure that THB offences for the purposes of different types of exploitation are proactively investigated and prosecuted. In this context, the Estonian authorities should:**

- **identify gaps in the investigation and prosecution of THB cases, including by reviewing the existing legal provisions and court rulings on THB and related offences (see also paragraph 187);**
- **develop the training and specialisation of investigators, prosecutors and judges to deal with THB cases;**
- **provide law enforcement agencies with the necessary resources and tools to detect and investigate THB cases, including by making use of special investigation techniques;**

<sup>42</sup> The ability to confiscate assets that go beyond the proceeds of crime so that there is no need to establish a connection between suspected criminal assets and specific criminal conduct.

- **carry out financial investigations to locate and seize the traffickers' assets and take steps to guarantee the effective application of the legal provisions to confiscate such assets.**

d. Protection of victims and witnesses

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

207. Article 12 of the CPC allows the court to restrict public access to court hearings and declare that a session or a part thereof is held *in camera*, in the interests of a child or a victim. According to Article 37(3) of the CPC, the provisions applicable to witnesses also apply to victims in the performance of procedural acts, including provisions regarding protection. A preliminary investigation judge may, as provided in Article 67 of the CPC, declare a witness or a victim anonymous by a ruling in order to ensure his/her safety. In a court proceeding, a witness/victim bearing a fictitious name shall be heard by telephone, using voice distortion equipment, if necessary. In addition, Article 67 of the CPC provides that a body conducting the proceedings may organise hearing of a witness or victim via video-link if a direct hearing would involve excessive costs or if it is necessary to protect the witness or the victim. According to representatives of the prosecution, court proceedings involving vulnerable victims of THB cases are systematically conducted *in camera*. They also referred to cases when a judge placed a victim of trafficking, accompanied by a court official, in a different court building and enabled to give testimony through a video link.

208. Article 70 of the CPC stipulates that the body conducting proceedings may involve a child protection official, social worker, teacher or psychologist in the hearing of a child witness. If the body conducting proceedings has not received the necessary training, the involvement of a child protection official, social worker, teacher or psychologist in the hearing of a child is mandatory in the following cases: the witness is up to 10 years of age and repeated hearing may have harmful effect on his/her mind; the witness is up to 14 years of age and the hearing is related to domestic violence or sexual abuse; or the witness is with speech impairments, sensory or learning disabilities or mental disorders. If necessary, the hearing of a child can be video recorded. Taking into consideration the mental or physical condition and the age of a witness, the court may suspend the questioning by the parties and examine the witness on its own initiative or on the basis of the written questions prepared by the parties to the court proceeding. For children aged 14-17, video hearing options are used. According to the authorities, investigators working with children have received special training and therefore it is not necessary to ask a child protection specialist to be present. Further, Article 290 of the CPC states that children under 14 years of age who are witnesses in criminal proceedings shall not be cross-examined, which means that children above that age may be subjected to cross examination.

209. GRETA was informed of the availability of five child-friendly facilities in different regions of Estonia which can be used for interviewing child victims or witnesses. However, it would appear that there child-friendly rooms are rarely used in trafficking cases, as most child victims are above the age of 14. Representatives of specialised NGOs informed GRETA of a case involving two Vietnamese girls identified in Estonia while being allegedly trafficked to Germany who participated in criminal proceedings as witnesses, but were not provided with a child protection specialist, psychologist or legal representation as they were older than 14 years of age. GRETA recalls that, pursuant to Article 4(d) of the Council of Europe Convention, "child" shall mean any person less than 18 years of age. therefore, special protection measures, including the presence of a child protection official, should be made available to child victims and/or witnesses of THB, where the best interests of the child so require.

210. Pursuant to Article 38 (5) of the CPC, a victim has the right to receive information concerning taking into custody of a person suspected of a criminal offence and may request to be notified of the release of that person in the event of any danger, to request to be notified of the release of the convicted offender before the imprisonment term elapses, or of the escape of the convicted offender from the penitentiary institution, in the case the information can prevent danger to the victim.

211. Further, the Witness Protection Act contains measures for witness protection during pre-trial proceedings and during and after judicial proceedings. The duration of witness protection depends on the degree of risk to the protected person and the conditions of the protection agreement and compliance with the conditions by the protected person. Witness protection is provided by the Police and Border Guard Board.

212. **GRETA urges the Estonian authorities to review the legislation in order to provide all protection measures envisaged under CPC to all child victims of trafficking and to ensure their application in practice.** In this context, GRETA refers to the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.<sup>43</sup>

213. **GRETA also considers that the authorities should make full use of the available measures to protect victims, and to prevent intimidation during the investigation and during and after the court proceedings.** In this context, GRETA refers to Opinion No. 12 of the Consultative Council of European Prosecutors (CCPE) CCPE Opinion No. 12 (2017) on “The role of prosecutors in relation to the rights of victims and witnesses in criminal proceedings.”<sup>44</sup>

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<sup>43</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)

<sup>44</sup> Adopted during the 12th plenary meeting of the CCPE on 23-24 November 2017 in Strasbourg, available at: <https://rm.coe.int/opinion-no-12-on-the-role-of-prosecutors-in-relation-to-the-rights-of-/168076fd32>

## 5. Concluding remarks

214. The Estonian authorities have taken a number of measures to combat trafficking in human beings and support its victims, through the adoption of relevant legislation, the setting up of specialised structures, training of relevant professionals and raising awareness of THB. The involvement of specialised NGOs in the prevention of THB and assistance to victims is an important feature of the Estonian response to human trafficking.

215. While GRETA acknowledges the steps taken by the Estonian authorities, a number of challenges remain to be tackled through legislative, policy or practical measures in order to meet the requirements of the human rights-based approach outlined in paragraphs 30-35. GRETA calls on the Estonian authorities to ensure that all persons subjected to human trafficking for different purposes of exploitation are identified as such, regardless of whether criminal investigations into trafficking cases are initiated, so that they can fully benefit from the assistance and protection measures provided for under the Convention. For this purpose it is recommended to introduce a formalised National Referral Mechanism and provide all relevant actors with training, guidance and tools for its effective implementation.

216. The scope of application of the recovery and reflection period should be extended to cover presumed victims of THB, to avoid their removal from the country and to allow them taking an informed decision whether to participate in the investigation and criminal proceedings. Further, victims of trafficking should have effective access to compensation from perpetrators and from the State, and should systematically be informed of and granted temporary residence permits, including on the basis of their personal situation.

217. To ensure that anti-trafficking action is comprehensive, as required by the Convention, GRETA stresses the need for a dedicated national action plan and/or strategy, addressing human trafficking for all forms of exploitation, while taking into account the gender-dimension of trafficking and the particular vulnerability of children. Further, GRETA urges the authorities to set up a comprehensive and coherent data collection system for compiling reliable statistical data on measures to protect and promote the rights of victims of trafficking, accompanied by personal data protection measures.

218. GRETA welcomes the awareness-raising campaigns conducted in Estonia and considers that future information, awareness-raising and education campaigns should be planned on the basis of the assessment of the impact of previous preventive measures. GRETA also recommends conducting further research on trafficking for the purpose of labour exploitation, internal trafficking, child trafficking, and recruitment of victims of trafficking through the Internet.

219. The Estonian authorities should further strengthen the effectiveness of investigations and prosecutions to secure proportionate and dissuasive sanctions for the traffickers, including effective enforcement of imprisonment sentences. GRETA also recommends to better protect victims, and to prevent their intimidation during the investigation and during and after the court proceedings.

220. All professionals who may come into contact with victims of human trafficking, including police officers, social workers, staff of reception centres for asylum seekers and migrants, labour and tax inspectors, health-care staff and specialists working with children, must be continuously informed and trained about the need to apply a human rights-based approach to action against human trafficking on the basis of the Convention and the case law of the European Court of Human Rights.

221. GRETA invites the Estonian authorities to keep it informed on a regular basis of developments in the implementation of the Convention and looks forward to continuing the co-operation in achieving the purposes of the Convention.

## Appendix I: List of GRETA's proposals

### Core concepts and definitions

1. GRETA urges the Estonian authorities to bring the definition of THB into conformity with Article 4 of the Convention, in particular, by:
  - including the component of "action" in the definition of THB under Article 133 of the CC and ensuring that all the "means" provided for in the Convention are adequately reflected;
  - explicitly including forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs among the forms of exploitation under Article 133 of the CC;
  - clearly stating the irrelevance of the consent of a victim of THB to establishing a trafficking offence where any of the means have been used;
  - ensuring that the criminalisation of trafficking in children fully reflects the provisions of Article 4 of the Convention.

### Comprehensive approach and co-ordination

2. GRETA urges the Estonian authorities to ensure that national action to combat THB is comprehensive, through the adoption of a dedicated action plan against THB, in which priorities, objectives, concrete activities and stakeholders responsible for their implementation are clearly defined and budgetary resources allocated. The action plan should be accompanied by a mechanism for monitoring of its implementation and should aim to:
  - address all victims of trafficking, including migrants and asylum seekers, for all forms of exploitation (including sexual exploitation, forced labour and services, the removal of organs, exploitation of criminal activities, forced begging, exploitative sham marriages), while taking into account the gender-dimension of trafficking and the particular vulnerability of children;
  - strengthen action to combat both transnational and internal trafficking for different types of exploitation, by reviewing the legislative framework, improving the identification of, and assistance to victims of THB, and involving labour inspectors, civil society, trade unions and the private sector;
  - strengthen action to combat THB for the purpose of labour exploitation by reviewing the legislative framework, improving the identification of, and assistance to, victims of THB for the purpose of labour exploitation, and involving civil society, trade unions, labour inspectorates and the private sector.
3. GRETA invites the Estonian authorities to set up formalised procedures or agreements clarifying the roles and responsibilities of different stakeholders.
4. GRETA considers that the Estonian authorities should examine the possibility of designating as a National Rapporteur a separate organisational entity or another independent mechanism for monitoring the anti-trafficking activities of State institutions.

### Training of relevant professionals

5. GRETA urges the Estonian authorities to step up their efforts to provide regular training on issues related to THB for different forms of exploitation to all professionals who may come into contact with victims of THB, including labour and tax inspectors, social workers, prosecutors, judges, staff of reception centres for asylum seekers and migrants, health-care staff, specialists working with children. Training programmes should be designed with a view to improving the knowledge and skills of relevant professionals to enable them to identify victims of trafficking, to assist and protect them, to facilitate compensation for victims, and to secure convictions of traffickers.

## **Data collection and research**

6. For the purpose of preparing, monitoring and evaluating anti-trafficking policies, GRETA urges the Estonian authorities to develop and maintain a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical data on measures to protect and promote the rights of victims, as well as on the investigation, prosecution and adjudication of human trafficking cases. Statistics regarding victims should be collected from all main actors and allow disaggregation concerning sex, age, type of exploitation, country of origin and/or destination. This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection, including when NGOs working with victims of trafficking are asked to provide information for the national database.

7. GRETA considers that the Estonian authorities should conduct and support further research on THB as an important source of information for the evaluation and planning of policy measures. Areas where research should be carried out include trafficking for the purpose of labour exploitation, trafficking taking place within Estonia, including for the purpose of sexual exploitation, child trafficking, as well as recruitment of victims through the Internet.

## **International co-operation**

8. GRETA considers that the Estonian authorities should continue to develop international co-operation in the field of action against THB, with a view to preventing THB, identifying and assisting victims of THB, and prosecuting THB cases.

## **Measures to raise awareness**

9. GRETA considers that the Estonian authorities should take additional measures to inform the general public of THB for different purposes of exploitation, including exploitative sham marriages. Targeted measures should be implemented for groups particularly vulnerable to THB, such as children in residential institutions, persons seeking employment abroad, migrant workers and asylum seekers. Future information, awareness-raising and education campaigns should be planned with the involvement of civil society, on the basis of the assessment of the impact of previous preventive measures.

## **Measures to discourage demand**

10. GRETA invites the Estonian authorities to ensure the effective application in practice of the provision criminalising the purchase of sex from a victim of trafficking, with the knowledge that the person is a victim.

11. GRETA considers that the Estonian authorities should enhance their efforts to discourage demand for services of trafficked persons, for all forms of exploitation, in partnership with NGOs, trade unions, international organisations and the private sector. Particular attention should be paid to prevention of trafficking in supply chains and outsourced services.

12. GRETA invites the Estonian authorities to consider establishing as a criminal offence the use of services which are the object of labour exploitation, with the knowledge that the person is a victim of trafficking in human beings.

## **Social, economic and other initiatives for groups vulnerable to THB**

13. GRETA considers that the Estonian authorities should continue strengthening prevention of THB through targeted social and economic empowerment measures for persons vulnerable to THB, which address root causes of THB, such as gender inequality, gender-based violence, and absence of employment opportunities.



## **Border measures to prevent THB**

14. GRETA considers that the Estonian authorities should strengthen their efforts to detect cases of THB in the context of border controls, including through further training of border guards on the identification of victims of THB.

## **Identification of victims of trafficking in human beings**

15. GRETA urges the Estonian authorities to take further steps to ensure that all victims of trafficking are identified as such and can benefit from the assistance and protection measures provided for under the Convention, and in particular to:

- ensure that the formal identification of a person as a victim of human trafficking does not depend on the presence of elements to prove THB or a related offence;
- introduce a formalised NRM for the identification of victims of THB for different purposes of exploitation, which defines the roles and responsibilities of all relevant actors, including specialised NGOs, and provide training for its implementation;
- adopt harmonised indicators, guidance and toolkits to be used in the identification process, disseminate them to all relevant professionals to ensure that they adopt a proactive approach to detecting and identifying victims of trafficking; the indicators should be regularly updated in order to reflect the changing nature of human trafficking, types of exploitation and any amendments in the relevant legislation and used for training purposes;
- enhance the role and capacity of labour inspectors in the detection of THB for labour exploitation in Estonia and improve the identification of victims of THB among foreign nationals;
- strengthen the monitoring of recruitment agencies, including by introducing licensing procedures and reviewing the legislative framework for any loopholes;
- improve the identification of victims of THB among children by developing an integrated identification mechanism which takes into account the special circumstances and needs of child victims of THB, involves child specialists and ensures that the best interests of the child are the primary consideration, including refugee and migrant children;<sup>45</sup>
- improve the identification of victims of trafficking among asylum seekers, migrant workers and irregular migrants.

## **Assistance to victims**

16. GRETA considers that the Estonian authorities should strengthen their efforts to provide assistance to victims of trafficking, and in particular to:

- ensure that assistance is provided for as long as necessary to presumed and formally identified victims of trafficking and is not discontinued after 60 days if the presumed victim is not formally identified in criminal proceedings or if no such proceedings are initiated;
- ensure that all assistance measures provided for in law are guaranteed in practice, including by respecting the State's obligation to provide adequate financing and to guarantee the services when assistance is delegated to NGOs or other non-state actors as service providers;
- provide gender-sensitive support services, including safe accommodation with a sufficient number of places, and ensure that the services available are adapted to the specific needs of trafficking victims;

<sup>45</sup> Reference is made to the Council of Europe's Action Plan on protecting refugee and migrant children (2017-2019), accessible via the following link: <https://www.coe.int/en/web/children/-/council-of-europe-action-plan-on-protecting-refugee-and-migrant-children-adopted>

- facilitate the reintegration of victims of trafficking into society and prevent re-trafficking by providing them with long-term assistance, including vocational training and access to the labour market.

17. Further, GRETA urges the Estonian authorities to take steps to improve the specific assistance for child victims of trafficking, taking into account the best interests of the child, to ensure effective access to guardianship and to train all professionals working with child victims of trafficking to recognise and respond appropriately to their needs.

### **Recovery and reflection period**

18. GRETA urges the Estonian authorities to review the legislation with a view to ensuring that the recovery and reflection period is defined in law as provided for in Article 13 of the Convention and that all presumed victims of trafficking are offered and effectively granted such a period with all the measures of assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention.

### **Residence permits**

19. GRETA considers that the Estonian authorities should take steps to ensure that victims of THB can fully benefit from the right to obtain a renewable residence permit, including owing to their personal situation, without prejudice to the right to seek and enjoy asylum.

### **Compensation and legal redress**

20. GRETA urges the Estonian authorities to adopt measures to facilitate and guarantee access to compensation for victims of trafficking and in particular to:

- ensure that victims of trafficking are systematically informed in a language that they can understand of the right to seek compensation and the procedures to be followed;
- enable victims of trafficking to exercise their right to compensation by ensuring their effective access to legal aid, by building the capacity of legal practitioners to support victims to claim compensation and by including the issue of victim compensation in training programmes for lawyers, law enforcement officials, prosecution and the judiciary;
- examine the reasons for the lack of applications for state compensation from victims of THB and ensure that victims are informed of the possibility to apply for state compensation and are effectively enabled to receive it.

21. GRETA invites the Estonian authorities to develop a system for recording compensation claims of and awards to victims of trafficking and to consider using assets confiscated from perpetrators for paying compensation to victims of THB.

### **Repatriation and return of victims**

22. GRETA considers that the Estonian authorities should take additional steps to:

- ensure that the return of victims of trafficking is conducted with due regard for their rights, safety and dignity. This means informing victims about existing return programmes, protecting them from re-victimisation and re-trafficking and, in the case of children, fully respecting the principle of the best interests of the child;
- develop international co-operation in order to ensure pre-return risk assessment, safe return and reintegration of victims of THB;
- ensure compliance with the *non-refoulement* obligation under Article 40, paragraph 4, of the Convention.

23. Further, GRETA urges the Estonian authorities to introduce pre-return risk and security assessment procedures by specialised bodies prior to returning unaccompanied and separated migrant children, to ensure that the best interests of the child are effectively respected, protected and fulfilled, in co-operation with relevant partners in countries of return.

### **Substantive criminal law**

24. GRETA considers that the Estonian authorities should conduct a comprehensive assessment of the criminal law provisions related to THB which are currently contained in several articles (in particular Article 133, Article 1331, Article 1381, Article 175) with a view to clarifying the differences and avoiding overlaps which risk creating legal uncertainty and inconsistent application.

### **Non-punishment of victims of trafficking in human beings**

25. GRETA urges the Estonian authorities to ensure 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, as contained in Article 26 of the Convention. Such measures should include the adoption of a specific legal provision and/or the development of guidance for police officers and prosecutors on the scope of the non-punishment provision. While the identification procedure is ongoing, presumed victims of trafficking should not be punished for their involvement in unlawful activities, to the extent that they have been compelled to do so.

### **Investigation, prosecution and procedural law**

26. GRETA urges the Estonian authorities to strengthen their efforts to ensure that THB offences for the purposes of different types of exploitation are proactively investigated and prosecuted. In this context, the Estonian authorities should:

- identify gaps in the investigation and prosecution of THB cases, including by reviewing the existing legal provisions and court rulings on THB and related offences (see also paragraph 187);
- develop the training and specialisation of investigators, prosecutors and judges to deal with THB cases;
- provide law enforcement agencies with the necessary resources and tools to detect and investigate THB cases, including by making use of special investigation techniques;
- carry out financial investigations to locate and seize the traffickers' assets and take steps to guarantee the effective application of the legal provisions to confiscate such assets.

### **Protection of victims and witnesses**

27. GRETA urges the Estonian authorities to review the legislation in order to provide all protection measures envisaged under CPC to all child victims of trafficking and to ensure their application in practice.

28. GRETA considers that the authorities should make full use of the available measures to protect victims, and to prevent intimidation during the investigation and during and after the court proceedings.

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## **Appendix II: List of public bodies, intergovernmental organisations, non-governmental organisations and other civil society actors with which GRETA held consultations**

### **Public bodies**

Ministry of Justice

Ministry of Social Affairs

- Social Insurance Board
- Labour Inspection

Ministry of the Interior

- Investigators responsible for combating THB
- Police and Border Guard Board

Ministry of Foreign Affairs

Prosecution

Judiciary

Tax and Customs Board

Parliament of Estonia

### **NGOs**

Estonian Human Rights Centre

SOS Children's villages

NGO Eluliin

Living for Tomorrow

## **Government's Comments**

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

GRETA engaged in a dialogue with the Estonian 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 Estonian authorities on 4 May 2018 and invited them to submit any final comments within one month. The Estonian authorities' comments, submitted on 4 June 2018, are reproduced hereafter.



REPUBLIC OF ESTONIA  
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12.06.2018

Our ref.

**Final comments of the Government of Estonia  
on the final report drawn up by the Group of  
Experts on Action against Trafficking in Human  
Beings concerning the implementation of the  
Council of Europe Convention on Action against  
Trafficking in Human Beings by Estonia**

The Government acknowledges the receipt of the final report drawn up by the Group of Experts on Action against Trafficking in Human Beings (GRETA) concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Estonia, which was adopted by GRETA at its 31st meeting, held from 19-23 March 2018.

Having regard to Article 38, paragraph 6, of the Convention and Rule 14 of GRETA's Rules of Procedure for evaluating implementation of the Convention, the Estonian authorities have now been invited to submit any final comments they may have on the report.

In this connection, the Government wishes to note that it has also been requested to provide comments on the draft version of the report approved by GRETA at its 30th meeting, held from 20-24 November 2017. At the same time the Government provided replies to the requests for information made throughout the draft report. The Government submitted also further additional information requested by the Secretariat.

Following the invitation by GRETA, the Government would like to submit the following final comments on the final report. These comments are made in a chronological order.

Paragraph 24. Government wishes to reflect, that in Estonia, in the fight against THB, NGOs/service providers are considered as important as government officials, and that is why they are considered to have full membership in national network.

Paragraph 27. Government clarifies, that Social Insurance Board (SiB) is involved in the identification of (alleged) victims, who come to contact with victim support officials. SiB is not involved in criminal investigations nor official identification in the criminal proceedings of victims.

Paragraph 47. Estonian authorities appreciate the recommendations concerning the definition of THB made by GRETA, but expresses the opinion that implementing some of them, in particular concerning enumeration of the „actions“, might be detrimental for prevention and prosecution of THB offences and there has not been any of the obstacles in the proceedings so far.

Paragraph 58. Government reflects, that most of the state level stakeholders, who are working with THB issues have the obligation defined in inner regulations of their organisations, so that there has not been any of the need to set up special criteria or guidelines for the work done in the national network.

Paragraph 64. Government updates that trainings for judges referred in the paragraph took place in May 2018, as one-day sessions in Tallinn and Tartu, altogether 64 judges and court officials participated.

Paragraph 93. Government notifies, that the trainings provided for the vocational schools are financed and procured by the Ministry of Social Affairs.

Paragraph 109. Government notifies that “welcoming programme” and its action is coordinated namely by the Internal Security Development Plan 2015–2020 ([https://issuu.com/siseministeerium/docs/creating\\_a\\_safe\\_country](https://issuu.com/siseministeerium/docs/creating_a_safe_country)), but is also part of the Strategy of Integration and Social Cohesion entitled “Integrating Estonia 2020”. Part of the welcoming programme is targeted to the beneficiaries of international protection and these special activities are financed by AMIF and state budget and is run by the IOM Office in Tallinn. NGOs are offering the assistance and support services, such as Estonian Human Rights Centre namely specializing to appeal cases of applying and/or issuing the residence permits.

Paragraph 119. Government wishes to update the information about the number of the victim support workers, which is for the time of report in total 27 staff members working mostly in police stations in the regions and two specialised on THB cases working in Tallinn; most of this staff really are social workers, but they do not provide psychological counselling, but counselling in general, on how to seek services, how to communicate with the state and local government institutions, and they also enable victims to receive psychological counselling done by professional psychologists and psychotherapists.

Paragraph 126. Government notifies, that some of the misunderstandings are found in the text of the paragraph, so the suggestion is to replace it with updated and with factual correct information as follows: “GRETA was informed that private recruitment agencies acting in Estonia as intermediary of temporary agency work, have an obligation to submit a notice of economic activities to the register of economic activities before commencing with economic activities. With permanent intermediation of temporary agency workers, the foreign undertaking must register a branch in the Estonian business register and submit a notice of economic activities to the registrar. A notice of economic activities is not necessary for undertakings of the Contracting States of the European Economic Area who provide the service in Estonia on a temporary basis. Representatives of the Labour Inspectorate informed GRETA of that the Ministry of Social Affairs who exercises governmental administrative supervision over undertakings has limited possibility to supervise private recruitment agencies. Thus there seems to be no effective supervision of these agencies as they are only checked in case of a complaint submitted to the Ministry of Social Affairs. GRETA was informed that draft amendments had been prepared by the Ministry of Social Affairs and soon will be sent for discussion to Government. GRETA would like to be kept informed about the adoption of these amendments.”

Paragraph 141. Government clarifies, that the number of victim support specialists have grown, so that network of victim support centres, which is run by the Social Insurance Board, has at least one victim support specialist in each county (altogether in May 2018 27 persons), mostly placed in police premises. Two persons in Tallinn/Harjumaa are specifically dealing with THB cases and provide advice to colleagues if necessary.

Paragraph 146. Government notifies, that The Children's House is funded by the state budget and run by the Social Insurance Board. Cooperation on the service providing level has been done with the Ministry of Social Affairs, the Ministry of Justice and the Ministry of the Interior and state organisations related to the ministries.

Paragraph 172. Government clarifies, that according to the article § 72 (4) of the Obligation to Leave and Prohibition on Entry Act the term from 7 to 30 days shall be assigned for voluntary compliance with the obligation to leave by the precept to leave. The time may be extended as well.

Paragraph 209. Government notifies, that child-friendly rooms are in use in all of the cases related to children, as well trafficking cases committed against children.

We thank you for the possibility to look through the report and to give our feedback. We remain at your disposal if you have any further questions related to the report.

Yours sincerely

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