



EVALUATION REPORT

LUXEMBOURG

Third evaluation round

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

GRETA

Group of Experts
on Action against
Trafficking
in Human Beings

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Executive summary

Since the second round of evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, Luxembourg has continued to develop the legislative framework relevant to action against trafficking in human beings, including by amending the Code of Criminal Procedure and the Law on the Legal Profession. Further, the institutional framework has evolved, by expanding the composition of the monitoring committee and providing it with a specific budget.

Luxembourg is a country of destination and transit for victims of trafficking in human beings. The total number of presumed victims of trafficking in the period 2018-2021 was 68, of whom 20 were formally identified as victims by the police. All the victims were foreign nationals, mainly from Romania, China, Ukraine and Portugal. The majority of the identified victims were men, trafficked for the purpose of labour exploitation, which has emerged as the predominant form of exploitation, followed by forced begging and sexual exploitation.

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

While there is an information sheet in several languages which is handed out to victims of crime, it does not contain information about the specific rights of victims of trafficking, such as the possibility of being granted a reflection period and a residence permit. GRETA considers that the Luxembourg authorities should ensure that all presumed and formally identified victims of trafficking are proactively informed of their rights, including by preparing a specific brochure about the rights of victims of trafficking, available in the languages of the countries from which victims mainly originate.

Furthermore, GRETA considers that the Luxembourg authorities should facilitate and guarantee access to legal aid for victims of trafficking, in particular by revising the legislation so that access to free legal aid for victims of trafficking is not subject to means-related, nationality or residence requirements.

Since 2018, only two victims of human trafficking have been awarded compensation from the perpetrators as part of criminal proceedings. Even if there is a legal possibility to claim state compensation, no victims of trafficking have made such claims. Consequently, GRETA urges the Luxembourg authorities to guarantee effective access to compensation for victims of trafficking, and in particular to ensure that the collection of evidence about the harm suffered by victims is part of criminal investigations and labour inspections, to include compensation in training programmes for lawyers, prosecutors and judges, and to ensure that state compensation is not conditional on failure to obtain compensation from the perpetrator of the offence.

In the period 2018-2020, 11 persons were convicted for human trafficking offences. The sentences ranged from 9 to 48 months' imprisonment, and all of them were suspended. The near-systematic application of mitigating circumstances by judges and the demanding requirements laid down by Luxembourg courts for the recognition of aggravating circumstances lead to sentences that are extremely lenient. GRETA stresses that the absence of effective sentences engenders a feeling of impunity and undermines efforts to encourage victims to testify against traffickers, and urges the authorities to take additional measures to ensure that trafficking cases are investigated proactively, prosecuted effectively, and result in effective, proportionate and dissuasive sentences.

Luxembourg legislation contains a specific provision on the non-punishment of victims of trafficking for unlawful activities they were compelled to commit by the traffickers. GRETA considers that the authorities should continue ensuring the practical application of this provision, including through training of police officers, prosecutors and judges.

Concerned by indications that adult victims of trafficking are routinely cross-examined in the presence of their traffickers in the courtroom, GRETA urges the Luxembourg authorities to make full use of the measures available in law to protect victims and witnesses of trafficking, including by using videoconferencing and other appropriate arrangements to avoid cross-examination of victims of trafficking in the presence of the trafficker.

The report also examines progress made on the implementation of previous GRETA recommendations on selected topics. A number of measures have been taken since the second evaluation to prevent and combat trafficking for the purpose of labour exploitation, including increasing the number of labour inspectors trained on trafficking and their involvement in the detection of victims of trafficking. GRETA considers that the Luxembourg authorities should strengthen co-operation between labour inspectors, law enforcement officers, trade unions and civil society, and step up efforts to prevent and detect cases of domestic servitude. Further, the authorities should introduce safe reporting procedures for foreign workers and punish the offence of employing illegally present third-country nationals more severely.

Noting with concern continuing difficulties in detecting victims of human trafficking in Luxembourg, GRETA once again urges the authorities to ensure that the identification of presumed victims is not dependent upon the opening or continuation of criminal proceedings, to increase the multi-agency involvement in the identification of victims, and to ensure that all stakeholders involved in the identification of trafficking victims take a more proactive approach.

GRETA welcomes the increase in the resources of victim support services. However, the provision of assistance to trafficking victims is still linked to criminal prosecutions. Consequently, GRETA once again urges the Luxembourg authorities to change this practice. Further action is also recommended to develop a long-term support and integration programmes for trafficking victims.

No children have been formally identified as trafficking victims since 2018, and therefore GRETA urges the Luxembourg authorities to prioritise the identification of child victims of trafficking, in particular by establishing a clear identification procedure and ensuring that the competent stakeholders step up their work on the ground to identify child victims of trafficking, especially among street children and unaccompanied children.

Finally, GRETA considers that the Luxembourg authorities should take additional measures to ensure that victims of trafficking can benefit fully from the right to obtain a residence permit.

Preamble

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

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

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

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

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

I. Introduction

1. The Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) entered into force for Luxembourg on 1st August 2009. GRETA’s first evaluation report¹ was published on 15 January 2014, and the second evaluation report,² on 6 November 2018.

2. On the basis of GRETA’s second report, on 9 November 2018 the Committee of the Parties to the Convention adopted a recommendation to the Luxembourg authorities, requesting them to inform the Committee of measures taken to comply with the recommendation within a one-year period. The report submitted by the Luxembourg authorities was considered at the 26th meeting of the Committee of the Parties (12 June 2020) and was made public.³

3. On 16 October 2020, GRETA launched the third round of evaluation of the Convention in respect of Luxembourg by sending the questionnaire for this round to the Luxembourg authorities. The deadline for submitting the reply to the questionnaire was 16 February 2021 and the authorities’ reply was received on 2 March 2021.

4. In preparation of the present report, GRETA used the reply to the third-round questionnaire by the Luxembourg authorities, the above-mentioned report and additional information submitted by them in reply to the Committee of the Parties’ recommendation, and information received from civil society. An evaluation visit to Luxembourg took place from 25 to 28 October 2021 in order to hold meetings with relevant governmental and non-governmental actors, collect additional information and examine the practical implementation of adopted measures. The visit was carried out by a delegation composed of:

- Mr Peter Van Hauwermeiren, member of GRETA;
- Ms Dorothea Winkler, member of GRETA;
- Mr Mesut Bedirhanoglu, Administrator in the Secretariat of the Convention.

5. During the visit, the GRETA delegation met Ms Sam Tanson, Minister of Justice, as well as representatives of the Ministry of Justice and the Ministry of Interior Security, the Ministry of Equal Opportunities (MEGA), the Ministry of National Education, Children and Youth, the Ministry of Labour, Employment and Social and Solidarity Economy, the Ministry of Foreign and European Affairs, the Ministry of Health, the Criminal Investigations Police Department, the Mines and Labour Inspectorate (ITM), the National Office for Children (ONE), and the National Reception Office (Office national de l’accueil - ONA). A meeting was also held with prosecutors and a representative of the Victim Support Service (Service d’aide aux victimes - SAV) of the Central Social Assistance Service. Discussions also took place with Ms Fabienne Rossler, Secretary General of the Advisory Committee on Human Rights (Commission consultative des Droits de l’Homme - CCDH), designated as National Rapporteur on trafficking in human beings, Ms Claudia Monti, the Ombudsperson, and Mr Charel Schmit, the Ombudsman for children and young people. In addition, the GRETA delegation met members of the Justice Committee of the Chamber of Deputies, chaired by Mr Charles Margue, and members of the Chamber of Deputies Delegation to the Parliamentary Assembly of the Council of Europe, chaired by Mr Gusty Graas.

6. During the visit, the GRETA delegation visited a shelter for male victims of trafficking managed by the Caritas NGO and a shelter for female victims of trafficking managed by the COTEH (Centre Ozanam – Traite des Êtres Humains) of the *Foundation Maison de la Porte Ouverte* (FMPO) NGO. The GRETA delegation also visited the holding centre for foreigners in Findel.

¹ <http://rm.coe.int/greta-2013-18-fgr-lux-w-comments-fr/168078d263>

² <https://rm.coe.int/greta-2018-18-frg-lux-en/16808ee46c>

³ <http://rm.coe.int/cp-2019-03-luxembourg/16809eb4d8> (French only)

7. Separate meetings were organised with representatives of the International Organization for Migration (IOM), non-governmental organisations, trade unions, lawyers, as well as victims of trafficking in human beings.
8. The list of national authorities, NGOs and other organisations with which the delegation held consultations is set out in Appendix 2 to this report. GRETA is grateful for the information provided by them.
9. GRETA wishes to thank the Luxembourg authorities for their excellent co-operation, and in particular Ms Pascale Millim, Advisor at the Directorate of Criminal and Penitentiary Law of the Ministry of Justice and the contact person appointed by the Luxembourg authorities to liaise with GRETA, as well as Ms Lisa Schuller, Administrator in the same directorate.
10. The draft version of the present report was approved by GRETA at its 43rd meeting (from 28 March to 1 April 2022) and was submitted to the Luxembourg authorities for comments. The authorities' comments were received on 8 June 2022 and were taken into account by GRETA when adopting the final report at its 44th meeting (27 June to 1 July 2022). The report covers the situation up to 1 July 2022; developments since that date are not taken into account in the following analysis and conclusions. GRETA's conclusions and proposals for action are summarised in Appendix 1.

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

11. Luxembourg is a country of destination and transit for victims of trafficking in human beings (THB). The number of presumed victims of THB reported to the criminal investigations police, which is the authority competent for formally identifying victims, was 14 in 2018, 13 in 2019, 10 in 2020 and 31 in 2021.⁴ Among them, three were formally identified as THB victims in 2018, one in 2019, five in 2020 and 11 in 2021. Whereas two-thirds (42 of 65) of the presumed or identified victims during the previous reference period (2013-2017) were women trafficked for the purpose of sexual exploitation, most of the presumed or identified victims during the period 2018-2021 were men (35), followed by women (23) and children (10). This change is due to the increase in cases of labour exploitation, detected mainly by labour inspectors in the hospitality industry (15 victims), the construction sector (15 victims) and domestic work (6 victims). In addition, 13 victims of trafficking for the purpose of exploitation through forced begging, 12 victims of trafficking for the purpose of sexual exploitation and one victim of trafficking for the purpose of forced criminality were detected. All the victims were foreigners. The main countries of origin of the victims were Romania (14), China (10), Ukraine (8), Portugal (7) and Nepal (3).

12. The Luxembourg authorities stated that, following the closure of night-clubs and bars due to the Covid-19 pandemic, sexual exploitation shifted to flats and other premises that were difficult to access and victims were recruited and services offered increasingly via the Internet, especially on social networks. The Luxembourg authorities have also recorded an increase in the last several years in cases of presumed victims who say that they have been exploited in another country (see paragraphs 166-167).

III. Developments in the institutional and strategic framework for action against trafficking in human beings

13. There have been several legislative developments relevant for action against THB since GRETA's second evaluation. Firstly, the Law of 1 August 2018 transposing Directive 2014/41/EU regarding the European Investigation Order in criminal matters introduced a new Article 553 of the Code of Criminal Procedure (CCP) providing for the possibility of using means of telecommunication for statements, interviews or questioning of a person, as well as when cross-examining several persons (see paragraph 103). Secondly, a law of 15 December 2020 added a paragraph to Article 37-1 of the Law of 10 August 1991 on the Legal Profession specifying that victims intending to lodge a claim for damages in civil proceedings taking place in Luxembourg shall be entitled to legal aid without any requirement of residence or nationality (see paragraph 39). Finally, a parliamentary bill tabled on 24 August 2021 aims to increase the statutory limitation period for prosecuting THB offences committed against children from 10 to 30 years.⁵

14. Regarding the institutional framework, in a regulation of 19 August 2020 amending the Grand-ducal Regulation of 10 March 2014 on the composition, organisation and functioning of the Inter-ministerial Committee tasked with co-ordinating activities to prevent and evaluate the phenomenon of trafficking in human beings (Monitoring Committee), the Victim Support Service of the Central Social Assistance Service was added as a member of the Monitoring Committee. This Committee brings together representatives of all the state bodies concerned. The Monitoring Committee has had its own annual budget since 2018, fixed at €15 000. This budget has been used for awareness-raising campaigns, among other activities. Since July 2018, the Monitoring Committee has met 11 times (two or three times a year)

⁴ By way of comparison, in the previous reference period, there were 10 victims in 2013, 12 in 2014, 7 in 2015, 20 in 2016 and 16 in 2017. See GRETA's report on Luxembourg, paragraph 14.

⁵ This period will begin only once the minor in question has reached adult age or upon their death if this occurs beforehand. For adult victims of THB, the statutory limitation period will continue to be 5 years for a misdemeanour (if there are no aggravating circumstances) and 10 years for a crime (where there are aggravating circumstances).

and discussed topics such as the recommendations of GRETA and the National Rapporteur (see paragraph 16), the Trafficking in Persons Reports of the Department of State of the USA, the preparation of a new National Action Plan against Trafficking in Human Beings and the implementation of the current one, the update of the roadmap on the identification of victims of THB (see paragraphs 162 and 164), training and awareness-raising in relation to human trafficking, and issues related to the identification indicators and assistance to victims of trafficking. The Committee has established sub-groups on legislation, communication and victim protection. The first two sub-groups met once in 2019. In addition, GRETA was informed that certain members of the Committee, such as representatives of the Ministry of Justice, the Ministry of Equal Opportunities, the Judicial Police, the Directorate of Immigration, and the services providing assistance to victims of trafficking, often meet as a select committee on an informal basis to discuss specific cases of victims and devise solutions for specific problems encountered in the area of anti-trafficking.

15. Civil society is represented in the Monitoring Committee by the victim assistance services officially contracted by the Ministry of Equal Opportunities, namely the SAVTEH (Service d'Assistance aux Victimes de la Traite des Êtres Humains) of the NGO *Femmes en détresse* (FED) and the COTEH (Centre Ozanam - Traite des Êtres Humains) of the NGO *Foundation Maison de la Porte Ouverte* (FMPO). In October 2020, the COTEH and the SAVTEH brought their services together under the common banner of the Infotraite service, setting up in a shared office, with a single address, telephone number and e-mail address, with each continuing to be run by their own management body. The purpose of this merging of support services was to make them more effective, accessible and visible for THB victims as well as for the individuals and institutions who may detect victims.

16. As GRETA previously noted in its second report,⁶ the role of National Rapporteur on trafficking in human beings has been fulfilled since 2014 by the Advisory Committee on Human Rights (CCDH), in its capacity of independent administrative authority. Its brief is to identify trends in THB, assess the results of initiatives to combat the phenomenon of THB and collect national statistics on it. The CCDH must submit a report to the Chamber of Deputies every two years to keep it up to date on the situation. It published its third report in December 2020.⁷

17. The National Action Plan against Trafficking in Human Beings, drawn up by the Monitoring Committee and endorsed by the Government Council in December 2016, is still in force. GRETA was informed that a new action plan will be adopted in the course of 2022 and that the implementation of the current plan will be assessed by the Monitoring Committee. In this connection, GRETA refers to paragraph 28 of its second report, in which it invited the Luxembourg authorities to introduce a system of independent assessment of the action plan's implementation, in order to measure the impact of the activities carried out and plan future measures and policies for action against trafficking in human beings.

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

1. Introduction

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

⁶ See GRETA's second report on Luxembourg, paragraph 25.

⁷ https://ccdh.public.lu/content/dam/ccdh/dossiers_th%C3%A9matiques/traite_des_%C3%AAtres_humains/rapports/Rapport-TEH3-03122021-FINAL.pdf (in French)

19. The right to effective remedies is a reflection of the human-rights based approach underpinning the Convention. Regardless of whether a State is implicated in the trafficking or directly responsible for the harm, the positive obligations arising from international human rights law require States to facilitate and guarantee effective access to remedies if they have failed to take reasonable steps to prevent human trafficking, protect potential or actual victims of trafficking, and effectively investigate trafficking offences.⁸

20. According to the *Basic principles on the right to an effective remedy for victims of trafficking in persons*,⁹ the right to an effective remedy is considered to include restitution,¹⁰ compensation,¹¹ rehabilitation,¹² satisfaction¹³ and guarantees of non-repetition.¹⁴ All victims of trafficking require access to appropriate and effective remedies, starting with access to justice. The provision of effective remedies serves multiple purposes. The remedy of compensation, for instance, for any injury, loss or harm sustained, can provide critical support in victims' recovery and empowerment, help their social inclusion and prevent re-victimisation. The remedy of rehabilitation can similarly help in the victims' recovery and social inclusion. Of relevance in this respect is also the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which outlines the main steps to be taken to improve access to justice, and fair treatment, restitution, compensation and social assistance for victims of crime.¹⁵

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

⁸ *Rantsev v. Cyprus and Russia*, application no. 25965/04, judgment of 7 January 2010; *L.E. v. Greece*, application No. 71545/12, judgment of 21 January 2016; *Chowdury and Others v. Greece*, application No. 21884/15, judgement of 30 March 2017; *S.M. v. Croatia*, application No. 60561/14, Grand Chamber judgment 25 June 2020.

⁹ UN General Assembly, *Basic principles on the right to an effective remedy for victims of trafficking in persons*, Annex to the Report by the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, 6 August 2014, A/69/269, available at: <https://undocs.org/A/69/269>

¹⁰ Restitution includes restoration of liberty, including release of the victim from detention; enjoyment of human rights and family life, including reunification and contact with family members; safe and voluntary repatriation; temporary or permanent residence status, refugee status, complementary/subsidiary protection or third-country resettlement; recognition of the victim's legal identity and citizenship; restoration of the victim's employment; assistance and support to facilitate social integration or reintegration; return of property, such as identity and travel documents and other personal belongings.

¹¹ Compensation may cover damages for physical or non-pecuniary harm; damages for loss of chance, including employment, education and social benefits; reimbursement of costs of necessary transportation, child care or temporary housing; material damages and loss of earnings; moral or non-material damages; reimbursement of legal fees and other costs relating to the participation of the victim in the criminal justice process; reimbursement of costs incurred for legal, medical or other assistance.

¹² Rehabilitation includes medical and psychological care, legal and social services, shelter, counselling and linguistic support, independently of the capacity or willingness of the victims to co-operate in legal proceedings.

¹³ Satisfaction includes effective measures aimed at the cessation of continuing violations; verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety, privacy and other interests of the victims of their families; an official declaration or a judicial decision restoring the dignity, reputation and rights of the victim; public apologies; judicial and administrative sanction against the perpetrators.

¹⁴ Guarantees of non-repetition include ensuring the effective investigation, prosecution and sanctioning of traffickers; all measures necessary to protect victims from re-trafficking; providing or strengthening training of relevant officials; strengthening the independence of the judiciary; modifying practices that cause, sustain or promote tolerance to trafficking, including gender-based discrimination and situations of conflict and post-conflict; effectively addressing the root causes of trafficking; promoting codes of conduct and ethical norms for public and private actors; protecting legal, medical and other professionals and human rights defenders who assist victims.

¹⁵ United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by General Assembly resolution 40/34 of 29 November 1985, available at: https://www.unicef-irc.org/portfolios/documents/472_un-declaration-crime.htm

22. Children need special support to access remedies, the best interests of the child being the primary consideration in all actions concerning trafficked children. The appointment of legal guardians to represent unaccompanied or separated children plays a vital role in enabling child victims of trafficking to access justice and remedies. Further, facilitating family reunification can be an important element of restitution.¹⁶

23. Civil society, such as NGOs, trade unions, diaspora organisations and employer organisations, plays a vital role in enabling victims of THB to claim compensation and other remedies.¹⁷ In this context, reference should be made to the international projects COMP.ACT - European Action on Compensation for Trafficked Persons¹⁸ and Justice at Last - European Action for Compensation of Victims of Crime,¹⁹ which aim to enhance access to compensation for trafficked persons.

24. The private sector should also play a role in enabling access to, as well as providing, remedies to trafficked persons, in accordance with the UN 'Protect, Respect and Remedy' Framework and the United Nations Guiding Principles on Business and Human Rights.²⁰ The role of businesses includes steps to ensure that their supply chains are free of trafficked labour, as well as the adoption and implementation of measures to facilitate access to remedies for victims for any harm that occurs. Further, businesses have the potential to help trafficked persons regain economic autonomy.²¹ States should therefore ensure that business enterprises implicated in human trafficking are held responsible and take steps to reduce barriers that could lead to a denial of access to remedies.

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

2. Right to information (Articles 12 and 15)

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

27. The information that victims of trafficking must be provided with deals with essential matters, including availability of protection and assistance arrangements, the various options open to the victim, the risks they run, the requirements for legalising their presence in the Party's territory, the various possible forms of legal redress, how the criminal-law system operates (including the consequences of an investigation or trial, the length of a trial, witnesses' duties, the possibilities of obtaining compensation from persons found guilty of offences or from other persons or entities, and the chances of a judgment being fully and effectively enforced). The information and counselling should enable victims to evaluate their situation and make an informed choice from the various possibilities open to them.²²

¹⁶ UNODC, ICAT Issue Paper, Providing Effective Remedies for Victims of Trafficking in Persons, 2016, pp. 7-8.

¹⁷ OSCE Compensation for Trafficked and Exploited Persons in the OSCE Region, 2008, pp. 48-53.

¹⁸ <http://www.compactproject.org/>

¹⁹ <http://lastradainternational.org/about-lsi/projects/justice-at-last>

²⁰ United Nations Guiding Principles on Business and Human Rights, implementing the UN 'Protect, Respect and Remedy' Framework, Doc. A/HRC/17/31 (2011).

²¹ UNODC, ICAT Issue Paper, Providing Effective Remedies for Victims of Trafficking in Persons, 2016, pp. 8-9.

²² See Explanatory Report on the Convention, paragraphs 160-162.

28. Many victims do not speak, or barely speak, the language of the country they have been brought to for exploitation. Ignorance of the language adds to their isolation and is one of the factors preventing them from claiming their rights. The provision of translation and interpretation, where needed, is an essential measure for guaranteeing access to rights, which is a prerequisite for access to justice. GRETA has stressed the need for ensuring the availability, quality and independence of interpreters.²³

29. In Luxembourg, under Article 3-7 of the Code of Criminal Procedure (CCP), a victim of an offence must be informed by the police or the prosecutor's office, without delay and in a language that they understand, of the following :

- the type of support that the victim can receive and from whom they can receive it, including, where applicable, basic details of access to medical care, any specialist care, such as psychological care, and accommodation;
- procedures of filing a complaint and the victim's role in these procedures;
- how and on what conditions protection, compensation and access to lawyers and legal assistance can be obtained and the right to interpretation and translation can be exercised;
- the procedures available for making a complaint if the victim's rights are not respected;
- useful contact details for sending correspondence in relation to the victim's case;
- mediation and restorative justice options;
- how and on what conditions expenses incurred by the victim in order to participate in criminal proceedings can be reimbursed;
- the fact that the victim has the right to individual assessment by the Victim Support Service in order to ascertain whether special treatment is necessary to prevent secondary victimisation;
- the fact that the victim has the right to be accompanied by a person of their choice during their first contact with police officers, except where this is contrary to the victim's interests or the interests of the proceedings;
- the fact that child victims have the right to be accompanied by their legal representative or a person of their choice during hearings.

30. Victims receive an information sheet entitled "Infodroit" which is available in several languages²⁴ and contains the details of assistance services for victims of trafficking. If the required language is not available, the victim must be provided with the information orally through an interpreter. For any complaint that is made, a record mentioning the compliance with the obligation to inform the victim shall be drawn up and a receipt and a copy of the complaint shall be issued to the victim in a language they understand (Article 4-1 of the CCP).

31. GRETA observes that the "Infodroit" sheet does not give any information about the specific rights of victims of trafficking. The authorities stated that where a person is identified by the police as a victim of trafficking, a police officer trained in the protection of trafficking victims shall inform them orally of their special rights, including the possibility of being granted a reflection period and a residence permit. They are then immediately referred to the Infotraite service, which also informs them of their rights and the available support services, through an interpreter if necessary. After that, the appointed lawyer gives them detailed explanations about the legal procedures (see paragraph 42). Nevertheless, as explained in paragraphs 167 and 175, persons who have been trafficked in a third country during their immigration to Europe are not identified as victims by the police, referred to the Infotraite service and informed of their rights and the existing support services.

²³ See 8th General report on GRETA's activities, paragraphs 168-169.

²⁴ The sheet is available in French, German, English, Portuguese, Italian, Spanish, Dutch, Chinese, Arabic, Greek, Serbo-Croat, Hungarian, Albanian, Romanian, Polish and Russian. It can be accessed online: [INFODROIT for victims — Portal of the Grand Ducal Police – Luxembourg \(public.lu\)](https://public.lu/infodroit)

32. All victims of crime have the right to be informed *ex officio* of a decision to take no further action in relation to their complaint and the reasons for that, and, upon request, of a decision to commence an investigation, decisions to schedule court hearings and any final decision on the criminal proceedings. They shall also be informed, upon request, of the stage reached in the criminal proceedings unless such notification would be detrimental to the interests of the proceedings. Some of GRETA's interlocutors underlined that victims receive little information about the progress made in their case. GRETA stresses the importance of direct interaction between support services and judicial authorities, including prosecutor's offices, to ensure that victims are informed within a reasonable time of the progress made in their case, which is vital in establishing and maintaining their trust in the country's judicial system.

33. Under Article 3-4 of the CCP, a victim who does not speak or understand the language of the criminal proceedings is entitled to assistance from an interpreter free of charge, including when filing a complaint or when they are interviewed during the course of the investigation, the preliminary investigation or before trial courts. Interpretation is provided on condition that it does not draw out the proceedings unreasonably. Victims are also entitled to translation free of charge of all documents necessary to exercise their rights during criminal proceedings, such as the copy of the complaint, the decision of the prosecutor to take no further action and the reasons for that, the indictment, and judgments delivered in the criminal proceedings (Article 3-5 of the CCP). If, when a complaint is filed or during proceedings, it transpires that the victim does not understand the language of the proceedings, they must be informed immediately of these rights in a language that they understand. Victims are also entitled to interpretation when they make use of a support service and for all administrative processes undertaken with various authorities, such as the Immigration Directorate.

34. With regard to victims who are not in contact with any authority or NGO that can refer them to the police or the Infotraite service, a special leaflet was recently drawn up by the Monitoring Committee. This leaflet provides concise information about signs of exploitation and the contact details of the relevant organisations in the languages most commonly spoken by victims or potential victims, namely English, German, French, Spanish, Portuguese, Serbian, Croatian, Romanian, Farsi, Chinese, Arabic, Tigrinya, Albanian and Russian. It also contains pictograms for illiterate people. The leaflet is available in all public premises. Because it is pocket-sized, this leaflet enables the police and other frontline officials, such as labour inspectors, to give it discreetly to potential victims of trafficking, for example during police checks or labour inspections.

35. While welcoming the production of a leaflet for potential victims of trafficking, GRETA considers that the Luxembourg authorities should continue to make efforts to ensure that all presumed and formally identified victims of trafficking are proactively informed of their rights, including the right to a recovery and reflection period, the services available and how to access them, the implications of being identified as a victim of trafficking and the progress of the criminal proceedings in their case. Among other things, the authorities should produce a brochure specifically about the rights of victims of trafficking and ensure that it is available in the languages of the countries from which victims mainly originate.

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

36. Article 15(2) of the Convention obliges Parties to provide in their internal law for the right of victims of trafficking to legal assistance and free legal aid. As court and administrative procedures are often very complex, legal assistance is necessary for victims to be able to claim their rights. It is for each Party to decide the requirements for obtaining such free legal aid. Parties must have regard not only to Article 15(2) of the Convention, but also to Article 6 of the ECHR. Even though Article 6(3)(c) of the ECHR provides for free assistance from an officially appointed lawyer only in criminal proceedings, European Court of Human Rights case-law²⁵ also recognises, in certain circumstances, the right to free legal assistance in a civil matter on the basis of Article 6(1) of the ECHR. Thus, even in the absence of legislation

²⁵ *Airey v. Ireland* judgment, 9 October 1979.

granting free legal assistance in civil matters, it is for the courts to assess whether, in the interest of justice, an applicant who is without financial means should be granted legal assistance if unable to afford a lawyer.

37. GRETA's reports highlight the value of a lawyer being appointed as soon as there are reasonable grounds for believing that a person is a victim of trafficking, before the person makes an official statement and/or decides whether to co-operate with the authorities. Early access to legal assistance is also important to enable victims to take civil actions for compensation and redress.²⁶

38. In Luxembourg, presumed trafficked persons often receive legal aid only after being questioned by the police, as once detected they are referred to the police, who question them without ensuring that they have first consulted a lawyer (see paragraph 152). Decisions to grant legal aid to victims of trafficking are taken by the President of the Bar Association and are subject to the requirements of Article 37-1 of the Law of 10 August 1991 on the Legal Profession, namely: 1) the action must not appear to be manifestly inadmissible, unfounded, unreasonable or disproportionate in terms of its subject matter to the costs to be incurred (this requirement is only applicable to civil proceedings); 2) the applicant for legal aid must be a national of Luxembourg, a national of a Member State of the EU, a foreign national with permission to settle in Luxembourg or a foreign national who is treated in the same way as nationals of Luxembourg for the purposes of legal aid under an international treaty; and 3) the applicant must not possess sufficient financial means for legal representation.

39. The residence and nationality requirement does not apply to legal proceedings concerning asylum, residence and deportation of foreigners or to a national of a third country who is illegally present for the purpose of recovering remuneration owed under Article L. 572-7 of the Labour Code, or to victims who intend to claim damages in criminal proceedings. However, a victim who is illegally present cannot receive free legal aid in order to lodge civil proceedings in a civil court for damages against the presumed perpetrator.

40. As for the lack of sufficient means requirement, this is assessed on the basis of the total gross income and the applicant's assets. If the applicant is a child, legal aid is granted regardless of their parents' resources. Beneficiaries of legal aid are required to inform the Bar Association if their financial situation changes. GRETA was informed that in most cases, victims of trafficking lose full legal aid if they find full-time employment, even if they only earn the minimum social wage (MSW).²⁷ However, it is unlikely that a victim earning the MSW could pay a lawyer's fees and procedural costs in order to take part in the proceedings. It should be noted that a victim of trafficking who works must contribute to the costs of his/her rent even where they are being accommodated in a shelter for victims of trafficking (see paragraph 178). GRETA was informed of the situation of two victims of trafficking who, at the time of the evaluation visit, were thinking of withdrawing from criminal proceedings as injured parties because, having begun to work, they could no longer receive free legal aid (see paragraph 178). In this context, GRETA was informed that the draft Law No. 7959 on the Organisation of Legal aAd,²⁸ which is currently pending before the Chamber of Deputies, will make legal aid more accessible by introducing partial legal aid for persons who cannot have full legal aid because of their resources.

41. Another obstacle to accessing legal aid, which was highlighted by specialised lawyers whom GRETA met, is the difficulty of proving that a victim who has a contract of employment has not in fact received the salary stated in the contract and therefore does not have sufficient income to hire a lawyer. It should be noted that according to Article 37-1 of the Law of 10 August 1991 on the Legal Profession, a person can be recognised as being entitled to legal aid where they would otherwise be excluded from it on the grounds of their means if compelling reasons relating to their social, family or physical situation justify

²⁶ 8th General report on GRETA's activities.

²⁷ The MSW is €2 089 gross for unskilled workers over 18 years of age and €2 507 gross for skilled workers.

²⁸ Available at <https://gouvernement.lu/dam-assets/documents/actualites/2022/02-fevrier/07-tanson-assistance-judiciaire-partielle/PL-7959-Assistance-judiciaire.pdf>

such eligibility. However, GRETA was informed that this provision, which is applied at the discretion of the President of the Bar Association, had never been applied to a victim of trafficking.

42. Where the victim meets the aforementioned requirements, they can be granted legal aid for extrajudicial, judicial, non-contentious or contentious matters. This aid covers all legal costs, including lawyers' fees. Legal aid is available for all actions brought before an ordinary or administrative court and for enforcement of judicial decisions (Article 37-1 of the Law of 10 August 1991). A victim can be granted legal aid in order to obtain legal advice before joining criminal proceedings as an injured party or to make a complaint. Free legal advice is also provided by bar associations.

43. Beneficiaries of legal aid are entitled to receive assistance from a lawyer and auxiliary legal personnel, such as notaries, bailiffs, translators and interpreters, without having to pay fees. Lawyers and auxiliary legal personnel are chosen by the recipient. Victims can ask for their lawyer to be replaced.

44. There is no training module on trafficking in initial or continuous training for lawyers. Very few lawyers have experience in trafficking cases. Representatives of the Infotraite service underlined that they routinely referred the victims they assisted to these lawyers. GRETA met some of these lawyers and the presidents of the Bar Associations of Luxembourg and Diekirch, who said that they intended to develop a training module focusing specifically on trafficking.

45. **GRETA considers that the Luxembourg authorities should take additional measures to facilitate and guarantee access to legal aid for victims of trafficking, in particular by:**

- **ensuring that legal aid is granted in all cases where there are reasonable grounds for believing that a person is a victim of human trafficking, before the person concerned has to decide whether or not to co-operate with the authorities and/or make an official statement;**
- **revising the Law of 10 August 1991 on the Legal Profession so that access to free legal aid for victims of trafficking is not subject to means-related, nationality or residence requirements;**
- **raising awareness among Bar Associations of the need to encourage training and specialisation of lawyers so that they can provide legal assistance to victims of trafficking and ensuring that victims are systematically assigned a specialised lawyer.**

4. Psychological assistance (Article 12)

46. Human trafficking and exploitation may have serious psychological and physical consequences for the victims, including mental health problems and loss of self-esteem. Psychological assistance is needed to help victims of trafficking overcome the trauma they have been through and achieve a sustained recovery and social inclusion. Some victims require long-term therapeutic attention due to the violence that they have suffered. Every victim of trafficking should have a clinical assessment tailored to include an evaluation of their particular readiness for therapy conducted by an experienced clinician.²⁹

47. Under Article 2 of the Law of 8 May 2009 on the Assistance, Protection and Safety of Victims of THB, identified victims are entitled to medical, psychological or therapeutic assistance according to their needs. Psychological support is provided by the psychologist of the Infotraite service, who refers the most serious cases externally for more specialised therapy. If the victim has no insurance, the Infotraite service pays the psychologist's fees and, where applicable, the costs of interpreting. If a person is not identified

²⁹ OSCE, *Trafficking in Human Beings Amounting to Torture and Other Forms of Ill-Treatment* (2013), Vienna, p.115.

as a victim by the police, they are entitled to only one month's psychosocial support through the Infotraite service.

48. As GRETA noted in its second report,³⁰ the Victim Support Service (SAV) can, upon request, assist victims of trafficking before and during a hearing or trial in order to prepare them psychologically for the proceedings. For victims who have not approached the SAV but would need to receive such support, prosecutors can contact the SAV directly so that it can offer its services to the victim.

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

49. Article 12, paragraph 4, of the Convention requires State Parties to enable victims of trafficking who are lawfully present in the country to have access to the labour market, vocational training and education. An important element of the recovery and successful social inclusion of trafficked persons is their economic empowerment, which can be achieved through job placement, microbusinesses and social enterprises.³¹ GRETA has stressed the need to develop public-private partnerships with a view to creating appropriate work opportunities for victims of trafficking.³²

50. Under Article 95, paragraph 1, of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, a victim who is a third-country national can obtain a residence permit if they have filed a complaint or given statements about presumed perpetrators of trafficking, if their presence in the country is necessary for the purposes of the investigation or proceedings or because of their personal situation. According to Article 97, paragraph 1, of the same law, this permit allows the person concerned to undertake paid work if they have the professional qualifications required for the type of work in question and have a contract of employment for a post that has been declared vacant to the Employment Development Agency (ADEM).

51. GRETA was informed that many employers are reluctant to employ victims of trafficking who are third-country nationals because of the complexity of the rules surrounding their recruitment. In addition, the latter cannot register with the ADEM as they lack long-term resident status.³³ However, most of them are unable to find a job without special help, for reasons including the trauma they have suffered and/or their lack of professional qualifications and knowledge of the languages spoken in Luxembourg. On the other hand, they have to provide financial support to family members who are their dependants; this pushes them to work illegally, at the risk of falling victim to exploitation again. Their registration with the ADEM is therefore essential for their professional and social integration; not only would this give them access to training offered by the ADEM and thereby increase their chances of finding employment³⁴ but also, once they are registered with the ADEM, they can apply for social inclusion income (REVIS).³⁵ GRETA was informed by the authorities that during the period 2018-2021 seven victims of trafficking registered with the ADEM and 19 victims found a job.

52. GRETA notes with regret that the rules referred to in Article 97, paragraph 2, of the Law of 29 August 2008 which should establish the conditions in which a holder of the residence permit referred to in Article 95 can access vocational training courses have not yet been adopted. However, the Luxembourg authorities stated that by analogy with the entitlements of applicants for international protection, access to vocational training should be possible under Article 7 of the Law of 18 December 2015 on the Reception

³⁰ See the second GRETA report on Luxembourg, paragraph 184.

³¹ Rebecca Surtees, NEXUS Institute, *Re/integration of trafficked persons: supporting economic empowerment*, Issue paper No. 4, King Baudouin Foundation (2012).

³² See the 8th General report on GRETA's activities.

³³ According to Article 80, paragraph 1, of the Law of 29 August 2008, to apply for long-term resident status, the third-country national must prove that they have lived legally in Luxembourg for at least five years without interruption.

³⁴ Having a job would increase the victim's chances of gaining a residence permit after the criminal proceedings end, as renewal of a residence permit granted on the basis of Article 95 is conditional on the existence of criminal proceedings (see paragraph 192).

³⁵ <https://guichet.public.lu/fr/citoyens/sante-social/action-sociale/aide-financiere/revenu-inclusion-sociale-revis.html>

(French only)

of Applicants for International Protection. At the same time, the authorities indicated that during the period 2018-2021 no victims of trafficking had received vocational training.

53. GRETA considers that the Luxembourg authorities should strengthen the effective access to the labour market for all victims of trafficking who are legally resident in the country, including those who are third-countries nationals, and their economic and social inclusion through the provision of vocational training, language courses and job placement, raising awareness among potential employers, and the promotion of micro-businesses, social enterprises and public-private partnerships, including through state-supported employment programmes, with a view to creating appropriate work opportunities for victims of trafficking.

6. Compensation (Article 15)

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

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

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

57. The legal framework applicable to compensation for victims of trafficking in Luxembourg has remained unchanged since the second GRETA evaluation report.³⁶ According to Articles 56 and 183-1 of the CCP, a THB victim has the right to join criminal proceedings as an injured party in order to seek compensation from the perpetrator of the offence for the harm caused to them. The victim must be informed by letter from the Prosecutor's Office of this right and of the date and time of the hearing (Articles 3-7, 4-1 and 182-1 of the CCP). If the prosecutor decides not to prosecute, the victim can issue proceedings by way of a private prosecution or a complaint accompanied by a request for joining criminal proceedings as an injured party. They can also ask the Principal State Prosecutor to order the prosecutor in charge of the case to issue proceedings (Article 23, paragraph 5, of the CCP). Lastly, they can, within

³⁶ See the second GRETA report on Luxembourg, paragraphs 132-135.

the limitation period applicable to civil proceedings, bring a civil action against the presumed perpetrator for compensation (Article 3 of the CCP).

58. In principle, all damage (financial, physical or psychological) resulting from civil wrongs can be compensated by criminal courts. There is no calculation method or specific criterion for the evaluation of damage. The applicant must prove the damage suffered by means of documents (medical certificates, costs of treatment, etc.). The court assesses the personal harm resulting directly from the offence on the basis of these documents and pieces of supporting evidence. Although they can order an expert assessment and grant an advance payment to the victim, in the reporting period, the courts always carried assessments out on an *ex aequo et bono* basis and never granted any advances in trafficking cases.

59. The copies of judicial decisions sent by the authorities show that in the great majority of cases, the victims of trafficking did not join criminal proceedings as an injured party. According to the authorities, victims very often decide to return to their country of origin as quickly as possible instead of accepting the protection measures offered to them.

60. The authorities made reference to two judgments delivered in criminal proceedings which awarded compensation to victims of trafficking in 2018-2021, both of which are final.³⁷ The first case concerned an immigrant worker who worked without a residence permit and a work permit in exploitative conditions over a period of 29 months in an Indian restaurant.³⁸ He had claimed €29 000 for non-pecuniary damages but was only awarded €5 000. The victim's appeal was dismissed by the Court of Appeal.³⁹ While the Court acknowledged that the illegal and undignified working conditions had caused him distress, it held that compensation "*for the non-pecuniary harm suffered cannot constitute additional pay*". The authorities had no information as to whether the compensation awarded had actually been paid. In the second case, a girl from Guinea-Bissau had claimed €10 000 for non-pecuniary damages for being subjected to domestic servitude for just over two years by her uncle and aunt (see paragraph 80). The court awarded her €2 000. According to the information provided to GRETA, the victim waived her right to be paid the awarded damages and interest under pressure from her parents. GRETA observes that the amounts awarded in these two cases make up only a minimal percentage of the amounts claimed and seem very low when weighed against the gravity of the offences. Furthermore, the judgments concerned do not make the reasons for the dismissal of the remainder of the compensation claims sufficiently clear.

61. According to the authorities, victims of sexual exploitation can, in theory, seek compensation for sums that they were forced to earn through prostitution and give to traffickers, but there are no examples of judgments on such matters because in most cases, these victims refrain from joining criminal proceedings as an injured party and sometimes even attend hearings in order to testify in favour of the presumed perpetrators.

62. GRETA notes that under Article 3-1 of the CCP, an NGO that specialises in the field of trafficking and has been approved by the Ministry of Justice can exercise the rights of an injured party in relation to acts constituting a trafficking offence provided that the victim explicitly states in writing that they do not object to this. Regrettably, specialised NGOs have never joined criminal proceedings as an injured party in trafficking cases. There appears to be a lack of awareness of this option.

³⁷ In another case, since the presumed offenders were acquitted of THB, the claim brought by the injured party was dismissed (see paragraph 84). Luxembourg District Court, judgment No. 1014/2020 of 25 March 2020.

³⁸ Luxembourg District Court, judgment No. 1836/2018 of 14 June 2018. According to the judgment, the victim had worked 10 hours a day for six or seven days a week for a wage of between €100 and €700, had had to sleep on a mattress placed on the floor of the restaurant, and could only eat and drink what the couple wanted to give him.

³⁹ Court of Appeal, judgment No. 34/2019 X of 23 January 2019.

63. Damages and interest awarded by judicial decision are recovered amicably or by enforcement of the judgment through a bailiff if the convicted perpetrator refuses to compensate the victim voluntarily. For beneficiaries of legal aid, the costs of enforcement are paid by the State. Where a criminal court has suspended the sentence of a convicted person, it can make this suspension conditional upon a requirement to compensate the victim within a specified time, failing which the court may enforce the sentence (Articles 629 and 633-7 of the CCP). However, this has never happened in any trafficking cases. In addition, Luxembourg law does not allow confiscated assets to be used to compensate victims. GRETA was informed that the draft Law No. 7452 on the Management and Recovery of Seized or Confiscated Assets, which is pending before the Chamber of Deputies, will allow such use.

64. Although criminal courts have jurisdiction to take decisions on all civil wrongs in theory, recovery of unpaid wages appears to be excluded from this jurisdiction by case-law.⁴⁰ Victims must therefore bring an action before a labour tribunal in parallel with the criminal proceedings in order to obtain payment of their unpaid wages and other allowances within a three-year limitation period (Article 221-2 of the Labour Code). GRETA was informed that in such cases, the labour tribunal stays the proceedings until the criminal court takes a decision.

65. Under Articles L. 572-7 and L. 572-9 of the Labour Code, employers who hire third-country nationals who are illegally present in the country must pay them the agreed wages, and at least the minimum social wage for a period of three months, unless it is proved that the employment lasted longer. The employer must also pay the costs of sending unpaid wages to the country to which the employee is returned. The Labour and Mines Inspectorate (ITM) has a duty to ensure that before any decision to return an employee is taken, the employee is informed of their rights in relation to remuneration, including the possibility of obtaining free legal aid (Article L. 572-7). The authorities stated that the ITM must also ensure that employees receive their remuneration.

66. There are no data concerning compensation claimed and obtained by victims of trafficking in labour tribunals. No victims assisted by the Infotraite service have attempted to recover unpaid wages. Specialised lawyers highlighted the difficulty of proving the existence of an employment relationship and in particular the number of hours worked by the victim. In this regard, GRETA underlines that during inspections carried out by labour inspectors, it is important to gather evidence of work done by victims, which currently does not happen, at least not in all cases.

67. With regard to state compensation, as stated in GRETA's second report,⁴¹ under the Law of 12 March 1984 on Compensation for Certain Victims of Corporal Harm Resulting from an Offence and the repression of fraudulent insolvency, a victim of an offence can claim compensation for pecuniary or non-pecuniary damage from the Minister of Justice, who must take a decision within six months on the basis of an opinion of the Compensation Committee of the Ministry of Justice. Victims of trafficking are exempt from the obligation to be legally and habitually resident in Luxembourg for the purposes of such a claim. However, they must meet all of the three requirements of Article 1 of the Law of 12 March 1984: the acts must have caused bodily harm; the victim must have suffered damage entailing serious disruption to their living standards; and the victim must be unable to obtain damages in any way. This article establishes a presumption that the first two requirements are met by victims of an offence under Articles 372 to 376 of the CC (concerning indecent assault and rape). As recommended by GRETA,⁴² Article 1 of the Law of 12 March 1984 was amended in April 2014. However, the presumption established in this article was only extended to victims of trafficking who are children.

⁴⁰ Luxembourg District Court, judgment No. 2016/2016 of 30 June 2016.

⁴¹ See the second GRETA report on Luxembourg, paragraphs 133 and 134.

⁴² See GRETA's first report on Luxembourg, paragraph 132.

68. To date, the Compensation Committee has not received any requests from victims of trafficking. According to the authorities, lawyers are still unfamiliar with this law, as is demonstrated by, for instance, the fact that the Compensation Committee receives many claims outside the statutory limitation period or with applications that are not correctly drawn up. However, the specialised lawyers whom GRETA met stated that the requirement to have suffered bodily harm prevents many victims from accessing this compensation, especially victims of labour exploitation. According to the CCDH, the fact that victims of trafficking do not apply to the Committee is due, at least in part, to the restrictive legal requirements.⁴³

69. While welcoming the availability of legal means of claiming compensation, GRETA is concerned about the lack of claims for state compensation and the fact that the amounts awarded by criminal courts to victims of trafficking are low. Therefore, **GRETA urges the Luxembourg authorities to make additional efforts to guarantee effective access to compensation for victims of trafficking, in particular by:**

- **ensuring that the collection of evidence about the harm the victim has suffered, including the financial gain from the exploitation of victims, is part of the criminal investigations and labour inspections with a view to supporting compensation claims in court;**
- **including the topic of compensation in the training programmes for lawyers, prosecutors and judges and encouraging them to use all the possibilities the law offers them to uphold compensation claims by victims of THB;**
- **reviewing the eligibility criteria for state compensation to ensure that it is not conditional on failure to obtain compensation from the perpetrator and extending the presumption under Article 1 of the Law of 12 March 1984 to all victims of trafficking.**

70. **Further, GRETA invites the Luxembourg authorities to establish a system to record compensation claimed and obtained by victims of trafficking in proceedings before labour tribunals and to raise NGOs' awareness of the possibility, under Article 3-1 of the Code of Criminal Procedure, of exercising the rights of an injured party in criminal proceedings concerning human trafficking cases.**

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

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

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CCDH, Report on trafficking in human beings in Luxembourg, 2019-2020, page 108.

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

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

74. In Luxembourg, the penalties for the basic offence of trafficking in human beings under Article 382-1 of the CC are three to five years’ imprisonment and a fine of €10 000 to €50 000. As GRETA pointed out in its first report, under Luxembourg law, the means do not form part of the definition of trafficking, but they are regarded as aggravating circumstances listed in Article 382-2 of the CC.⁴⁴ Under the latter article, the offence of trafficking is punishable by five to 10 years’ imprisonment and a fine of €50 000 to €100 000 where it was committed by abusing the particularly vulnerable situation of a person, including because of their illegal or precarious administrative situation, their precarious social circumstances, pregnancy, illness, disability or physical or mental impairment; by threatening to use or using force or other forms of coercion; by offering or accepting payments or advantages in order to obtain the consent of a person having authority over the victim; by an ascendant of the victim or a person with authority over them or through abuse of authority that they have by virtue of their duties; by an official or civil servant; or where the offence endangered the victim’s life. The offence is punishable by 10 to 15 years’ imprisonment and a fine of €100 000 to €150 000 where it was committed by means of torture or other violence; by a criminal association or a criminal organisation; or where it was committed against a minor or resulted in the victim’s unintended death.

75. GRETA once again underlines that the Luxembourg authorities should keep under close and regular review the possibility that the fact that the means do not form part of the definition of trafficking may lead to confusion with other criminal offences.⁴⁵ GRETA notes that there is indeed a real risk of confusion between the offence of pimping under Article 379bis of the CC and the basic offence of human trafficking.⁴⁶ The copies of the judgments provided by the authorities show that in practice, in all cases where the offence of pimping was found to have occurred, the defendants were also convicted of the basic offence of human trafficking even though the means defined in Article 4 of the Convention had not been used. For example, in a 2018 case, two Brazilians (a woman and a man) were convicted of pimping because they had rented a flat and made it available to four female prostitutes who had lived in it with the defendants. They had all contributed to the rent and other shared expenses. The court held that none of these women had been exploited by the defendants and that they had come to Luxembourg voluntarily to work as prostitutes. However, it also convicted the defendants of the basic offence of trafficking merely because they had received and harboured the four women.⁴⁷ In addition to a real risk of confusion between these two offences, the fact that the means are not a constituent element of the definition of trafficking could potentially cause difficulties in the context of judicial co-operation with countries that have included the means component in their national definitions of human trafficking. This is because, as

⁴⁴ See GRETA’s first report on Luxembourg, paragraph 38.

⁴⁵ See GRETA’s first report on Luxembourg, paragraph 38, and the second GRETA report on Luxembourg, paragraph 146.

⁴⁶ According to Article 379bis of the CC, a person who in any way knowingly helps, assists or protects the prostitution of another person or soliciting with a view to prostitution can be punished as the offence of pimping. On the other hand, under Article 382-1, paragraph 1, of the CC, the recruitment, transportation, transfer, harbouring or receipt of a person for the purpose of committing an offence of pimping against that person constitutes the offence of trafficking.

⁴⁷ Diekirch District Court, judgment No. 533/2018 of 25 October 2018.

illustrated by the case described in paragraph 118, an act that constitutes the offence of human trafficking in Luxembourg may not be an offence in another country where the means are a constituent element of trafficking, and the authorities of that country may therefore be disinclined to co-operate with Luxembourg in a case regarded by Luxembourg as relating to trafficking.

76. As has already been explained in the previous GRETA reports,⁴⁸ under Article 34 of the CC, where a crime is committed for and in the interests of a legal person by one of its governing bodies or a person in charge of it, that legal person incurs the penalties provided for in Articles 35 to 38 of the CC: a fine of up to €750 000, confiscation, exclusion from participation in public procurement procedures and dissolution. Furthermore, under Article 379 septies taken in conjunction with Article 382-3 of the CC, the court can order temporary or permanent closure of any site or place open to the public or used by the public where an offence of trafficking or pimping has been committed. No legal persons were convicted of THB between 2018 and 2020. In both of the cases concerning exploitation in cabarets that were ruled on over the 2018-2021 period, the cabarets were closed down pursuant to judicial decisions (see paragraphs 78 and 81). However, in the case concerning exploitation in an Indian restaurant mentioned in paragraph 60, the restaurant was not closed down. The judges whom GRETA met explained that restaurants are often run by migrant families and that if they are closed down, not only the offender but also their family and illegally present employees, who will lose their jobs, will be penalised.

77. According to the statistics provided by the Luxembourg authorities, 13 investigations were initiated into human trafficking offences in 2018, 18 in 2019 and 20 in 2020. Criminal prosecutions for human trafficking were initiated in 3 cases in 2018 (involving 6 defendants and 5 victims), 2 cases in 2019 (involving 4 defendants and 2 victims) and 5 cases in 2020 (involving 7 defendants and 8 victims). The number of persons convicted was 11 in 2018, 3 in 2019 and 3 in 2020. The sentences ranged from 9 to 48 months' imprisonment. All of the prison sentences were suspended; 11 were fully suspended and 10 were suspended in part, generally for half of the sentence. In almost all of these cases, the perpetrators were also sentenced to unsuspended fines of between €500 and €20 000.

78. The authorities provided copies of the judgments and decisions delivered over the 2018-2021 period in trafficking cases; they included 9 district court judgments and 7 Court of Appeal decisions delivered in 11 cases in which trafficking offences had been alleged by the prosecution. Of these cases, 7 concerned sexual exploitation (including 2 in a cabaret) and 4 concerned labour exploitation (2 cases of domestic servitude and 2 cases of exploitation in a restaurant). The defendants were acquitted in only two cases, which concerned labour exploitation (paragraph 84).

79. The analysis of these judgments and decisions reveals that the prosecution alleged aggravating circumstances in all of the trafficking cases and in respect of all of the perpetrators, so the trafficking offences of which the perpetrators had been accused should have been regarded as crimes in all cases. However, in all of the cases, except the one described in paragraph 80, it was decided in Chambers' Council (*Chambres de conseil*) that the offences would be tried as misdemeanours on account of mitigating circumstances, so the sentences that the judges were eventually able to pass were limited to those available for misdemeanours.⁴⁹ In all but one⁵⁰ of these cases that were brought before a misdemeanours section of the district court, mitigating circumstances were also recognised by the trial courts and the sentences were reduced accordingly. Among other factors, the trial courts took into

⁴⁸ See GRETA's first report on Luxembourg, paragraph 143, and GRETA's second report on Luxembourg, paragraph 157.

⁴⁹ Mitigating circumstances can come into play at several different stages of proceedings. On the one hand, a decision can be taken in Chambers' Council at the end of the investigation to try a crime as a misdemeanour and to commit the defendant for trial before the misdemeanours section of the district court (Article 130-1 of the CC). On the other hand, trial courts can take mitigating circumstances into account when trying the defendant and deciding on the sentence. Under Article 74 of the CC, if there are mitigating circumstances, the sentence of 10 to 15 years' imprisonment is replaced with a prison sentence of five to 10 years or even imprisonment for at least three years. The sentence of five to 10 years' imprisonment is replaced with imprisonment for at least three months. Mitigating circumstances may only be considered by courts and tribunals, which must mention them in their decisions and judgments (Article 79 of the CC). Once a decision to try a crime as a misdemeanour has been taken in Chambers' Council, the trial court can only impose the penalties that are available for misdemeanours (Article 130-1 of the CC).

⁵⁰ Luxembourg District Court, judgment No. 534/18 of 15 February 2018; Luxembourg Court of Appeal, judgment No. 270/18 of 3 July 2018.

account the special family contexts in which the offences had been committed, the low level of disruption of public order, the fact that the victim had not suffered physical abuse, the perpetrator's rather passive role, the perpetrator's precarious personal situation, their lack of previous convictions, the partial confessions and remorse expressed at the hearing, and the minor financial consequences of the perpetrator's actions.

80. Aggravating circumstances were invoked by the prosecution in all human trafficking cases over the 2018-2021 period but were only recognised by the courts in three: the first, which was the only one to be sent to a criminal section for trial, concerned the exploitation of a girl from Guinea-Bissau as a home help by her aunt and uncle for just over two years. Her teacher had alerted the police. Because the victim was a minor, the court found that there had been an aggravating circumstance under Article 382-2 (2) 3 of the CC. However, by applying mitigating circumstances,⁵¹ the court reduced the couple's sentences below the statutory minimum and sentenced them to 36 and 42 months' imprisonment respectively, suspended in full, and fined each of them €500.⁵²

81. The second case concerned sexual exploitation in a cabaret. The district court held that the fact that the dancers had been required to make a particular amount of money through prostitution, otherwise their pay would be reduced or they would be dismissed, and the fact that one dancer had been beaten for refusing to work as a prostitute, constituted the aggravating circumstance of coercion, a threat to use force and use of force under Article 382-2 (1) of the CC, which is punishable by five to 10 years' imprisonment.⁵³ However, although it was found that the offence of assault and battery had been committed, the district court and the Court of Appeal held that to apply the aggravating circumstance of "use of violence" under Article 382-2 (2) of the CC (punishable by 10 to 15 years' imprisonment), "serious violence" would have to have been committed, despite the fact that the blows sustained by the victim had caused haematomas to her ribs, thighs and feet, causing her to be unfit for work for three days. In this case, the five perpetrators were sentenced to between one and three years' imprisonment. The three-year sentence was suspended in full and the other sentences were partially suspended even though the perpetrators had criminal records.

82. The third case concerned exploitation of an immigrant worker in exploitative conditions for a period of 29 months in an Indian restaurant (described in paragraph 60). In this case, having found that the abuse of the victims' particularly vulnerable situation was an aggravating circumstance,⁵⁴ the court sentenced each of the perpetrators to 18 months' imprisonment, suspended in full, and a fine of €3 000.

83. It is noteworthy that the aggravating circumstance of abuse of a vulnerable situation was found to have existed on only one occasion even though it had been alleged by the prosecution in all but one of the human trafficking cases over the 2018-2021 period. The copies of judgments and decisions provided by the authorities show that Luxembourg judges take a strict approach when interpreting the requirements for this aggravating circumstance. For example, in a case of sexual exploitation involving several victims, most of whom were from China, the prosecution argued that they had been in a precarious administrative and social situation because they were Chinese nationals, had no valid residence permit or had fake residence permits, did not speak any of the languages ordinarily spoken in the country and had been encouraged to work as prostitutes when they had no other source of income. Despite this, the court found that the women had not been exploited "on account of their disadvantaged situation".⁵⁵ In drawing its conclusion, the court held that three victims "came to Luxembourg of their own free will in order to work as prostitutes and no one forced them into prostitution" and that they had been able to "go back whenever they wanted". However, one victim had

⁵¹ The Criminal Section held that "the special family context in which the offences were committed and the fact that the victim did not suffer physical abuse" were mitigating circumstances.

⁵² Luxembourg District Court, judgment No. 7/2020 of 4 February 2020.

⁵³ Court of Appeal, judgment No. 69/18 of 13 February 2018; Luxembourg District Court, judgment No. 480/2017 of 9 February 2017.

⁵⁴ The court took into account the fact that the victims had been illegally present in the country, did not speak any of the languages ordinarily spoken in Luxembourg, did not have residence permits or work permits and had been in a vulnerable financial situation "as [they] had no other means of subsistence".

⁵⁵ Luxembourg District Court, judgment No. 185/2019 of 23 January 2019.

stated that she had worked as a prostitute in order to repay a debt she had run up in China, and under Article 382-2 (3) and (4) of the CC, a victim's consent cannot exempt the perpetrator from liability or constitute a mitigating circumstance. The court also took into consideration the fact that there had been no violence or threats against the prostitutes in determining whether vulnerability had been exploited even though these factors are separate aggravating circumstances.

84. As for the two cases where the defendants were acquitted of THB (paragraph 78), one concerned domestic servitude and the other concerned exploitation in a Chinese restaurant. The judicial decisions taken in these cases were analysed in detail by the National Rapporteur.⁵⁶ According to the latter, the pressure and distress to which a potential victim of trafficking is exposed, especially where they are illegally present in the country, was not adequately taken into account. On the other hand, although the victim's consent need not be taken into account when determining whether the offence of trafficking has been committed, it has been taken into consideration by courts.⁵⁷ In this regard, the police investigators whom GRETA met highlighted the difficulty of distinguishing trafficking for the purpose of labour exploitation from other offences under employment law, including the offence of employing illegally present third-country nationals in particularly exploitative working conditions under Article 572-5 (1) of the Labour Code, due to a lack of case-law and clear criteria in relation to this. They stated that in cases where workers do not see themselves as victims and accept the working conditions, it is unlikely that judges will find that trafficking has occurred, as would happen in the great majority of cases identified by labour inspectors.

85. "Plea-bargaining judgments" as provided for in Articles 563-578 of the CCP are only possible where the perpetrator is prosecuted for a misdemeanour. Because traffickers have thus far always been prosecuted for trafficking with at least one aggravating circumstance, with the result that the offence has always been dealt with as a crime, there have never been any plea-bargaining judgments.⁵⁸

86. With regard to the length of proceedings, GRETA was informed that trafficking cases go on for three years on average and that they are not prioritised unless the defendants are being held in custody. It should be noted that in complex cases, proceedings can last much longer, especially if appeals to the Court of Appeal and the Court of Cassation are lodged. For example, in the case described in paragraph 81, the investigation began in June 2011 and the Court of Cassation delivered its decision eight and a half years later, in January 2019.

87. Persons who are found guilty of trafficking are additionally sentenced to confiscation of their property as listed in Article 31, paragraph 2, of the CC. It is the investigating judge who has authority to seize this property (Article 66 of the CCP). If a person is caught red handed, his/her property can also be seized by the criminal investigations officer (Article 31 of the CCP). The authorities responsible for identifying proceeds of crime are prosecutors, investigating judges, the police, the Asset Recovery Office (BRA), the Financial Intelligence Unit (CRF) and the Customs and Excise Authority. No requests for judicial co-operation were made to foreign courts in trafficking cases over the 2018-2021 period in order to gather evidence and identify proceeds of crime and assets of suspects. The authorities stated that following a trail of money through international co-operation channels is often very complex and difficult.

⁵⁶ CCDH, Report on trafficking in human beings in Luxembourg, 2019-2020, pages 54 and 91.

⁵⁷ With regard to the domestic servitude case, see Luxembourg District Court, judgment No. 1014/2020 of 25 March 2020 and Court of Appeal, judgment No. 347/20 of 13 October 2020. With regard to the case of exploitation in a Chinese restaurant, see Luxembourg District Court, judgment No. 209/2021 of 28 January 2021. The latter judgment states that three victims who had not wished to make statements to the police or join criminal proceedings as an injured party had been deported to China in July and August 2018, i.e. two and three months after the case had come to light.

⁵⁸ However, it should be noted that the CCP gives guarantees for the protection of victims' interests in the event of a plea-bargaining judgment; the person who has made a claim for damages must be informed of this process, must be heard by the judge before the agreement between the prosecutor and the prosecuted individual is approved, and can ask for their claim for damages to be sent to a civil section of the district court if they do not accept the part of the agreement that deals with the damages they are claiming.

88. According to the information provided by the authorities, between 2018 and 2020, there was confiscation in seven trafficking cases. However, the total value of the property confiscated was just €300 000. Confiscated property is usually transferred to the Fund to Tackle Certain Forms of Crime (FLC)⁵⁹ or remains in the Treasury. The first public awareness-raising campaign with regard to trafficking, which took place in December 2016,⁶⁰ was financed by the FLC.

89. The authorities stated that the number of cases of trafficking for the purpose of labour exploitation has risen considerably, partly because of the increase in the number of labour inspectors who have been trained on THB. However, this situation has put a lot of pressure on the organised crime division of the police, which has difficulties, due to a lack of investigators, in investigating all instances of exploitation detected by labour inspectors. These investigations are therefore assigned by the prosecutor's office to other police departments which are not trained on THB. Because labour inspectors do not have explicit authority to establish, or any power to investigate, possible cases of trafficking that they detect, interviews that they conduct with potential victims are not admissible as evidence in criminal proceedings. Inspectors can only inform the prosecutor's office by submitting a report, in accordance with Articles L. 612-1 and L. 614-12 of the Labour Code. The prosecutor's office then refers the case to the police to be investigated. The police must re-interview potential victims and gather other evidence, resulting in duplication of effort. There is also a risk that evidence will be destroyed before the police arrive and that presumed victims who are illegally present in the country will flee for fear of prosecution and/or deportation. The National Rapporteur and the investigators whom GRETA met were in favour of investigating status being granted to some ITM inspectors, as happens with certain officers of other administrative entities,⁶¹ which would effectively give inspectors' findings more legal weight and end the duplication of effort by the police.

90. In addition to a shortage of staff, investigators also face other difficulties that hinder their efforts to combat human trafficking: firstly, the legislative limitation of online investigations conducted under a pseudonym (Article 48-26 of the CCP) to offences against national security and acts of terrorism and financing of terrorism restricts the means available to investigators in a situation where trafficking by criminal organisations is increasingly involving use of the Internet.⁶² Furthermore, Article 11 (4) of the CCP,⁶³ as amended in February 2018, seriously restricts police access to flats used for prostitution at a time when sexual exploitation is increasingly being carried out in flats and other private locations. GRETA has been informed that Article 11(4) of the CCP will soon be reviewed by the Ministry of Justice.

91. With regard to training for members of the law enforcement agencies, prosecutors and judges, see the section about specialised authorities and co-ordinating bodies (paragraphs 112-114).

92. GRETA notes with concern the low prosecution rate, the absence of effective sentences and the low level of seizure of perpetrators' assets, which engenders a feeling of impunity and undermines efforts to encourage victims to testify against traffickers. The near-systematic application of mitigating circumstances by judges in Chambers' Council and trial courts and the demanding requirements laid down by Luxembourg courts for the recognition of aggravating circumstances lead to sentences that are extremely lenient given the gravity of the criminal offences committed, raising concerns that they are not effective, proportionate and dissuasive, within the meaning of Article 23 of the Convention. It is essential

⁵⁹ The FLC's role is to promote the development, co-ordination and implementation of methods of tackling certain forms of crime, especially drug trafficking, money laundering and financing of terrorism.

⁶⁰ For more details of this campaign, see the second GRETA report on Luxembourg, paragraph 47.

⁶¹ For example, Article 15 of the Law of 27 June 2018 on the Protection of Animals gives certain public officials the status of investigating police officers in the discharge of their duties, such as officers of the Customs and Excise Authority, veterinary surement that deals with the damages they are claiming.

⁶² However, other special investigation methods (call tracing, interception of communications, undercover work, etc.) can be used in trafficking cases. See the second GRETA report on Luxembourg, paragraph 170.

⁶³ Article 11 (4) provides that police officers "can, with authorisation from the State Prosecutor, enter premises at any time where there is certain and precise corroborative evidence indicating that acts of pimping are being committed on them." Before 2018, police officers could carry out a search of any premises at any time if it was "a matter of common knowledge" that sexually immoral activity was taking place there.

for judges and prosecutors to be made more aware of human trafficking and in particular the impact it can have on victims' lives. The concept of "abuse of a position of vulnerability", which forms part of the international definition of THB, should be correctly understood and applied in practice by judges and prosecutors, who should be made aware of the psychological pressure that traffickers put on victims.

93. Consequently, **GRETA urges the Luxembourg authorities to take additional measures to ensure that trafficking cases are investigated proactively and prosecuted effectively and lead to effective, proportionate and dissuasive sanctions. In this context, they should in particular:**

- **continue developing the training and specialisation of investigators, prosecutors and judges so that they are better able to deal with trafficking cases and in order to prevent human trafficking offences being reclassified as other offences carrying lighter sentences, which also deprives trafficking victims of access to protection, support and compensation;**
- **strengthen proactive investigation of trafficking cases, regardless of whether a complaint about the reported crime has been submitted or not, by making use of special investigation techniques in order to gather evidence and not have to exclusively rely on testimony by victims. In this context, the Code of Criminal Procedure needs to be amended to enable the police to conduct online investigations under a pseudonym in cases of trafficking in human beings;**
- **strengthen co-operation between law enforcement officers, labour inspectors, financial police, trade unions and other civil society actors, with a view to collecting evidence necessary for successfully investigating and prosecuting cases of THB, including cases of trafficking for the purpose of labour exploitation.**

94. **GRETA considers that the Luxembourg authorities should keep under close and regular review the possibility that the fact that the means are not a constituent element of the definition of trafficking in Luxembourg law may lead to confusion with other offences and create difficulties in judicial co-operation with countries that have included the means in their own definitions of trafficking.**

95. **GRETA also invites the authorities to consider giving labour inspectors investigative powers so that evidence of cases of trafficking in human beings gathered by labour inspectors, including evidence taken by them during labour inspections, can be used in criminal proceedings.**

8. Non-punishment provision (Article 26)

96. Pursuant to Article 26 of the Convention, Parties must provide for the possibility of not imposing penalties upon victims of THB for their involvement in unlawful activities, to the extent that they have been compelled to do so. As previously stressed by GRETA, the criminalisation of victims of THB not only contravenes the state's obligation to provide services and assistance to victims, but also discourages victims from coming forward and co-operating with law enforcement agencies, thereby also interfering with the state's obligation to investigate and prosecute those responsible for THB.⁶⁴ Furthermore, GRETA has noted that the absence of a specific provision on the non-punishment of victims of trafficking entails a risk of differential treatment, depending on the prosecutor in charge of the case.

⁶⁴ See GRETA's 2nd General Report, paragraph 58.

97. The legislative provisions that allow for the non-punishment of victims of trafficking in Luxembourg have not changed since GRETA's second report. Article 71-2, paragraph 2, of the CC provides that victims of THB shall not be considered criminally responsible for the illegal activities in which they were compelled to take part. Paragraph 3 provides that victims of exploitation through prostitution, pimping and human trafficking are not criminally responsible for a soliciting offence. The authorities stated that in the majority of trafficking cases, victims break the law in a variety of ways, such as by using forged documents or not being registered for social security, but once the person has been identified as a victim of trafficking, the Prosecutor's Office takes no further action in these cases. However, where a case is not classified as THB by the court, there is a risk that the person will be punished for these offences, even if they were initially identified as a victim of THB.

98. Child victims of forced criminality and forced begging, like all other children who commit serious offences, are placed in a secure centre with a capacity of 12 which was opened in November 2017 (Secure Unit of the State Socio-Educational Centres – UNISEC) to prevent them from running away.⁶⁵ In a possible THB case concerning young people of Roma origin (see paragraph 185), one of the presumed victims was placed at UNISEC and another was placed in a secure centre for young offenders. The other victims were placed in France. At the time of GRETA's visit, these young people had not been formally identified as victims of trafficking but were presumed to be victims.

99. **GRETA considers that the Luxembourg authorities should continue to take steps to ensure the application of the non-punishment principle in practice, including through training of police officers, prosecutors and judges.**⁶⁶

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

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

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

⁶⁵ Before 2017, Luxembourg did not have a special secure facility for minors, so minors who committed serious offences were placed, under Article 26 of the Law of 10 August 1992, in prison but were separated from adult prisoners and subject to a special regime. According to information received by the Ombudsman for Children and Young People, since UNISEC was opened, the number of minors placed in prison has fallen very sharply. Since February 2018, only one minor has been placed in prison, and only for a few hours.

⁶⁶ See OSCE, Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking, 2013: <https://www.osce.org/secretariat/101002?download=true>. With regard to the non-punishment provision, see also European Court of Human Rights, *V.C.L. and A.N. v. United Kingdom* (applications No. 77587/12 and No. 74603/12), 16 February 2021.

102. As expressly provided in Article 3-7 of the CCP, it is the responsibility of the Infotraite service and the SAV, among others, to assess victims in order to ascertain their specific needs, including their needs for protection, together with the victim protection unit of the police which is responsible for identifying victims of trafficking. As stated in paragraph 48, the SAV can assist victims before and during the hearing or trial to prepare them psychologically for the proceedings. The SAV and chief clerks try to ensure that witnesses and victims in trafficking cases do not come face to face with perpetrators or their families when they come to court. All victims who approach the SAV benefit from this service automatically. The representative of the SAV stated that if attempts to intimidate the victim are made during the hearing, the SAV's staff can take practical measures (for example, by positioning themselves in front of the victim or suggesting to the victim that they leave the courtroom for a moment) or ask the police officer in the courtroom or the judge to take action.

103. An audio or audio-visual recording can be made with the prosecutor's permission when a witness is heard during a preliminary investigation (Article 48-1 of the CCP). According to Article 70 of the CCP, "witnesses shall be heard separately and not in the presence of the defendant" before the investigating judge, who can have the hearing recorded (Article 79-1 of the CCP). The investigating judge can also restrict access to the investigation file where such access poses a serious risk to the life or fundamental rights of a third party (Article 85 (2) of the CCP). In addition, the court can hold a hearing *in camera* (Article 190 of the CCP). GRETA welcomes the possibility incorporated into the CCP (Articles 553 to 557) by a law of 1 August 2018 of using means of telecommunication at courts for statements and in order to hear witnesses. However, GRETA is deeply concerned by information indicating that adult victims of trafficking, even those who are most vulnerable, are still routinely cross-examined in the presence of their traffickers in the courtroom. In their comments on GRETA's draft report, the Luxembourg authorities explained that there was no special room in the Luxembourg and Diekirch law courts for the hearing of victims, but that, when necessary, such hearings were conducted via a secure connection set up by the IT department and a laptop from any room or office in the law court, and were relayed to the courtroom or the investigating office, where mobile television screens and laptops were installed.

104. For more information about the protection of children in criminal proceedings, see the separate section below (paragraphs 127-131).

105. Luxembourg law does not make provision for anonymous evidence-giving or changes of identity. As was also the case during the second evaluation round, in the absence of a witness protection scheme in Luxembourg, the authorities co-operate with neighbouring countries in order to place victims and sensitive witnesses in trafficking cases abroad. Recently, a victim of sexual exploitation was placed in Belgium and accommodated at a secret location. In less serious cases, where a victim, their family or an acquaintance of theirs is at risk of intimidation or retaliation, the president of the district court can issue an injunction forbidding an individual to go to certain places or to make contact with the person to be protected (Article 1017-13 of the CCP).

106. According to Article 673, paragraph 8, of the CCP, which was introduced by a law of 20 July 2018, any victim of an offence who so wishes must be notified by the prosecutor of any decision that sets the perpetrator of the offence free or of the evasion of the latter. However, GRETA notes the low rate of remand in custody of defendants in human trafficking cases: judicial decisions taken on such cases between 2018 and 2021 show that in only two cases the defendants were in custody when the judgments were delivered.

107. The COTEH Centre, a shelter for victims of trafficking which GRETA visited during the third evaluation visit, had an emergency telephone which could be used to contact the police 24 hours a day, seven days a week. The addresses of shelters where victims are accommodated are kept secret and the office of the Infotraite service is their official address. However, during the visit to the Infotraite office, the GRETA delegation noticed a gap in the protection of victims' identities which could pose a risk to their safety. **GRETA considers that the Luxembourg authorities should ensure that the identities of**

trafficking victims are effectively protected in accordance with Article 11 of the Convention, particularly in order to prevent their names from being made public.

108. **GRETA urges the Luxembourg authorities to make full use of the available measures intended to protect victims and witnesses of trafficking from intimidation or further trauma during the investigation and during and after court proceedings, including by using videoconferencing and other appropriate arrangements to avoid cross-examination of victims of trafficking in the presence of the trafficker.**

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

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

110. In 2018, a migrant trafficking division was added to the organised crime division of the police, which is competent, *inter alia*, to carry out investigations into pimping and THB. The new expanded division has 26 investigators, including 12 who are responsible for investigating cases of trafficking, pimping and rape and sexual abuse committed against adults. These investigators have all been trained on THB. Where necessary, the division can request support from the new technologies and money laundering divisions of the police. GRETA nonetheless points out with concern that the organised crime division does not have the human resources necessary to do its job properly in relation to trafficking cases (see also paragraph 89).

111. Since February 2018, the police have had a Victim Protection and Fugitive Search Unit which is responsible for identifying victims of trafficking and implementing and managing the protection scheme, including by determining the degree of danger that victims face and supervising them. It is made up of an officer in charge of searches for fugitives and an officer who is assigned solely to the task of trafficking victim protection. The latter closely co-operates with the Infotraite service and is actively engaged in combating THB as a trainer. GRETA welcomes the fact that in October 2021, a new officer joined the unit. This officer will partly work on victim protection.

112. Five prosecutors in Luxembourg and one prosecutor in Diekirch deal with THB cases among other things. These prosecutors have received training on THB at the French National College for the Judiciary (ENM) in Paris.⁶⁷ According to the National Rapporteur, the Luxembourg Prosecutor's Office is currently understaffed by 15-20% and is having difficulties in recruiting staff, partly due to a lack of suitable candidates.⁶⁸

113. Since 2016, the Institute of Public Administration (INAP) has provided basic training on THB. As stated in GRETA's second report,⁶⁹ this basic training is aimed at any interested individual concerned by the issue and NGO staff. The main aim of the training, which lasts for six hours, is to inform and sensitise the target audience of human trafficking and of how victims of trafficking can be identified. According to the statistics provided by the authorities, INAP held two basic training sessions in 2018, two in 2019, one in 2020 and six in 2021. The participants were mostly from the ONA, ITM, the Ministry of Foreign Affairs, the police, the Detention Centre, the Customs and Excise Authority, the Immigration Directorate, the Red Cross, Caritas and the Infotraite service. The authorities stated that the training sessions are always fully booked. In 2019, training was given to medical personnel to inform them, in particular, about the

⁶⁷ According to the data provided by the authorities, 2 Luxembourg prosecutors received this training in 2018, 8 in 2019, 7 in 2020 and 3 in 2021.

⁶⁸ CCDH, Report on trafficking in human beings in Luxembourg, 2019-2020, page 56.

⁶⁹ See the second GRETA report on Luxembourg, paragraph 30.

psychiatric care of victims. On four occasions in June and November 2021, INAP provided training on “approaching and supporting victims of THB” which lasted for one or two days: two for ONA officers, one for personnel working within the Refugees Department of the Immigration Directorate and one for the team in charge of au pair cases at the National Youth Service. In addition, the Red Cross and the IOM held several training courses in 2021 which were attended by police officers, social workers and officers responsible for international protection applicants.

114. With regard to police officers more specifically, a module on human trafficking forms part of their basic training. Officers who are already serving can also attend a course on human trafficking as part of their further training. The authorities stated that during these training courses, the relevant legal provisions, the way in which victims should be treated and their rights, including the right to compensation, are explained in detail.

115. GRETA welcomes the recent increase in the number of staff of the Victim Protection and Fugitive Search Unit and considers that the Luxembourg authorities should ensure that there are enough specialised investigators, trained and provided with adequate resources, to deal with trafficking cases.

116. In addition, while welcoming the increasing efforts made to train specialised officials, GRETA considers that the authorities should step up these efforts to ensure that all relevant professionals are trained regularly and systematically on preventing and combating THB, identifying victims and referring them to assistance. The training should be integrated in the regular training curricula of different professional groups, including health-care and education staff.

11. International co-operation (Article 32)

117. Article 32 of the Convention requires parties to co-operate to the widest extent possible to prevent and combat THB, to protect and to provide assistance to victims, and to investigate and prosecute cases of THB. International co-operation between parties to the Convention is also essential for enabling access to effective remedies for victims of trafficking. Parties must co-operate with one another “to the widest extent possible”. This principle requires them to engage in extensive co-operation with one another and to minimise impediments to the smooth and rapid flow of information and evidence internationally. As regards international co-operation in criminal matters for the purposes of investigations or proceedings, the Convention neither cancels nor replaces relevant international or regional instruments⁷⁰ on mutual legal assistance and extradition, reciprocal arrangements between Parties to such instruments and relevant provisions of domestic law concerning international co-operation.

118. No joint investigation teams were set up to deal with a trafficking case during the 2018-2021 period. At the request of the authorities of other countries, the Financial Intelligence Unit implemented two account freezes in 2018 and two in 2020 in relation to human trafficking. In human trafficking and pimping cases, the Luxembourg authorities issued four requests for judicial co-operation with other countries in 2018 and five in 2019.

⁷⁰ For example, the European Convention on Extradition, the European Convention on Mutual Assistance in Criminal Matters and its protocols, Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member states, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.

119. The authorities reported difficulties experienced by prosecutors in co-operation with the German judicial authorities in relation to sexual exploitation. In a pimping and trafficking case with connections in Germany, by a decision of 1 April 2019, the Public Prosecutor's Office of Koblenz refused to extradite a suspect of German nationality against whom a European Arrest Warrant had been issued by the Luxembourg investigating judge. The suspect had been running a club in Germany which employed prostitutes to provide sex services in Germany and Luxembourg. The decision taken by the Koblenz Prosecutor's Office states that because the acts had been committed partially in Germany, they had, in principle, to be investigated by the German authorities according to the case-law of the Federal Constitutional Court. It is also noted that an investigation is currently being conducted by the Koblenz Prosecutor's Office and that there is no proof as yet of criminal offences of THB, forced prostitution or punishable pimping,⁷¹ but the investigation is ongoing because the suspect stands accused of complicity in a breach of the law in relation to residence.

120. In order to share information with their foreign colleagues, investigators of the organised crime division use the Interpol, Europol and Eurojust communication networks. Information concerning inspections of working conditions and workplace health and safety is shared between the ITM and the various liaison offices of other EU Member States through the electronic Internal Market Information (IMI) System. In a case of trafficking for the purpose of labour exploitation involving two construction companies which was detected in 2021, the ITM carried out inspections at the workplace in Luxembourg and, together with French labour inspectors, at the employees' homes in France. The ITM also regularly carries out joint inspections with the German and Belgian inspection authorities, sometimes through the intermediation or under the supervision of the ELA (European Labour Authority), including in cases where employees work in Luxembourg but are housed in Belgium or Germany. The ITM also attends EMPACT labour exploitation action days.

121. Within the Benelux Union, there is a working group which enables the authorities of the member countries to exchange views on trafficking-related matters. Each presidency of the Benelux Union decides the subject to be dealt with by this group: the chosen subjects of discussion were medical workers' awareness of trafficking in 2018, the vulnerability of migrants and exploitation risks in 2019, sexual exploitation and possible punishment of clients in 2020 and labour exploitation in 2021. Furthermore, the information brochure about Benelux co-operation for the reception of victims of trafficking which was published at the end of 2015 was updated in March 2021.

122. **GRETA welcomes the participation of the Luxembourg authorities in international co-operation against human trafficking and considers that they should strengthen their efforts in this respect, including by establishing joint investigation teams with other countries concerned.**

12. Cross-cutting issues

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

123. As noted by the Committee on the Elimination of Discrimination against Women in its General Recommendation No. 33 on women's access to justice, discrimination against women, based on gender stereotypes, prejudices, harmful and patriarchal cultural norms, and gender-based violence affecting women in particular, has a negative impact on their ability to access justice on an equal footing with men⁷². The Council of Europe Gender Equality Strategy 2018-2023 notes that while accessing justice may be difficult for everyone, it is even more so for women due to gender inequality in society and the justice system. One of the goals of the Strategy is therefore to guarantee equality of access to justice for

⁷¹ This decision explains that it was not possible to establish that prostitutes had been exploited in this case because the income of many of the prostitutes had been split 40/60 in the prostitutes' favour and the prosecuted business had provided advertising, intermediary, transportation and protection services to the prostitutes.

⁷² UN, CEDAW, General recommendation No. 33 on women's access to justice, paragraph 8, CEDAW/C/GC/33, 3 August 2015: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/33&Lang=en.

women.⁷³ GRETA notes that in the case of trafficking in human beings, sexist stereotypes, prejudice, cultural barriers, fear and shame have an impact on women's access to justice, and these barriers can persist during investigations and trials. This is particularly true of some groups of women such as victims of gender-based violence, migrant women, refugee and asylum-seeking women, ethnic minority women and disabled women. On the socio-economic level the obstacles include lack of awareness of one's legal rights and legal procedures or of how to access legal aid, which can stem from gender differences in educational levels, and access to information. A further obstacle may be the lack of financial resources, including the means to pay for legal representation, legal fees, judicial taxes, transportation to courts or child care.⁷⁴ Such obstacles, and remedies to them, are listed in a Council of Europe training manual for judges and prosecutors on ensuring women's access to justice, as well as in the publication "Women's Access to Justice: Guide for Legal Professionals".⁷⁵

124. The Luxembourg authorities stated that under the principle of systematic integration of the gender dimension the Infotraitement service has an obligation to incorporate the gender dimension into its assistance and supervision services and to take the sex, gender identity, age and specific needs of a victim into account when they are detected.

125. Representatives of the police stated that they take the sex of trafficking victims into account as far as possible when choosing interpreters for interviews with them and that if the victims request it, they can be interviewed by a female police officer. Interviews with women for the purposes of international protection applications are also conducted by a female official when the person concerned so requests. In its third report on THB, the National Rapporteur called on the Immigration Directorate to guarantee that all interviews with women are automatically conducted by a female officer.⁷⁶ Highlighting the importance of creating conditions allowing the vulnerable persons to speak about their experience, GRETA seconds this recommendation.

126. GRETA welcomes Luxembourg's ratification on 7 August 2018 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

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

127. According to the existing legal provisions, if a child victim of trafficking is not taken into the care of an adult who can keep them safe and protect them, or if a conflict of interests exists between them and the holders of parental responsibility, or if there is doubt as to whether they are a minor, they are assigned an *ad hoc* administrator by the family affairs judge for procedural steps (Article 388-2 of the Civil Code) and a guardian by the juvenile court judge for their day-to-day living activities. These two persons must work closely together with the Infotraitement service, which is competent for providing care to children and young adults up to the age of 27 who are in acute distress.

128. In addition, under Article 18 of the Law of 10 August 1992 on the Protection of Young People, a juvenile court judge can appoint a lawyer for a child who must inform the child of their rights throughout the proceedings. However, according to the Ombudsman for Children and Young People, appointed lawyers are not trained to communicate with children or assess their best interests.⁷⁷ Furthermore, the Ombudsman for Children and Young People stated that because these lawyers are appointed by a judge, they tend not to appeal decisions taken by the judge so that they can continue to be appointed in cases concerning children.

⁷³ Council of Europe Gender Equality Strategy 2018-2023, pp. 27-29, <https://www.coe.int/en/web/genderequality/gender-equality-strategy>

⁷⁴ Council of Europe training manual for judges and prosecutors on ensuring women's access to justice, page 13, available at <https://rm.coe.int/training-manual-women-access-to-justice/16808d78c5>

⁷⁵ Available at: <https://rm.coe.int/factsheet-womens-access-to-justice/16808ff44e>

⁷⁶ CCDH, Report on trafficking in human beings in Luxembourg, 2019-2020, page 83.

⁷⁷ OKaJu, [Rapport 2020 de l'OKaJu "L'intérêt supérieur de l'enfant - Bilan d'un mandat de 8 ans"](#) (French only), pages 43-45.

129. In principle, child victims are interviewed immediately after the offence becomes known to the police, in a room within the Judicial Police Service (SPJ) which is specially equipped and adapted for interviews with children, with a friendly atmosphere and concealed video cameras. The interviews are conducted by investigators from the youth protection division of the SPJ who are specially trained in interviewing children. The investigator can be replaced during the interview if it becomes apparent that they do not have a good communication with the child.

130. Under Articles 48-1 and 79-1 of the CCP, when a child is interviewed during the investigation, they have the right to be accompanied by their statutory representative or a person of their choice unless a reasoned decision against this person is taken by the State Prosecutor or the investigating judge in the child's best interests or in the interests of establishing the truth. In practice, although the child can be accompanied by the person of their choice at the police station, this person is not present during the interview so that they cannot influence the child, unless the child categorically refuses to be interviewed without them being present. Interviews with children are video-recorded as a rule unless, because of an objection from the child or their statutory representative, the State Prosecutor or investigating judge decides that recording is not necessary. These recordings are used as evidence and are viewed during the trial hearing, making it unnecessary for the child to be present at this hearing. It is possible for a child to be examined at the hearing, but a reasoned decision to this effect must be taken by the court. Representatives of the Infotraite service stated that it was extremely rare for a child to be heard at a hearing.

131. GRETA welcomes the effective implementation of protection measures in child trafficking cases, which prevents victims from being re-traumatised or intimidated during investigations and legal proceedings, and invites the Luxembourg authorities to continue taking measures to ensure that procedures conducted in the context of investigations, prosecutions and decisions on trafficking cases are child-friendly. In this context, GRETA refers to the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice,⁷⁸ which recommend that all professionals who work with children, including lawyers and judges, receive the necessary interdisciplinary training on the rights and specific needs of children.

c. role of businesses

132. In December 2019, the Government Council adopted the second National Action Plan of Luxembourg for the implementation of the United Nations Guiding Principles on Business and Human Rights (PAN) (2020-2022).⁷⁹ The plan provides for, *inter alia*, greater awareness of the government's obligations, corporate responsibility and remedies in relation to respect for human rights through information and awareness-raising campaigns aimed at the general public and training for the relevant professionals.

133. A draft law on the implementation of the EU Regulation laying down supply chain due diligence obligations for EU importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas is currently pending before the Chamber of Deputies. In addition, the "Businesses and Human Rights" National Agreement⁸⁰ was launched in July 2021. This is a voluntary commitment aimed at business managers who wish to implement the United Nations Guiding Principles on Business and Human Rights.

⁷⁸ [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#) (adopted by the Committee of Ministers on 17 November 2010 at the 1 098th meeting of the Ministers' Deputies).

⁷⁹ <https://maee.gouvernement.lu/dam-assets/directions/d1/pan-entreprises-et-droits-de-l-homme/2020-2022/PAN-LU-entreprises-et-DH-2020-2022-FR.pdf> (French only). The first plan (2018-2019) had been adopted in June 2018.

⁸⁰ [Le pacte national – Ministère des Affaires étrangères et européennes // Le gouvernement luxembourgeois](#) (French only).

134. At the request of the Ministry of Foreign and European Affairs, the University of Luxembourg prepared a study⁸¹ which highlighted the need to legislate on the due diligence obligation of businesses without waiting for a possible EU directive. In addition, since March 2018, an Initiative for a Duty of Vigilance (the Initiative) representing 17 civil society organisations has been running a campaign for the adoption of a law on due diligence.⁸² Furthermore, a report recently published by the Luxembourg NGO ASTM (Action Solidarité Tiers Monde) highlighted the involvement of certain businesses registered in Luxembourg in potential human rights violations in countries in the South.⁸³ The poor working conditions in supply chains and risks of THB, forced labour and child labour are cited in it as particularly serious risks to human rights.

135. In addition, in its report on THB, the CCDH makes reference to the case of a company registered in Luxembourg which was accused of having contributed to the sexual exploitation of women and children. In 2019, it was revealed that on pornography websites owned by the company, there was also material depicting sexual abuse and rapes of children and women. It appears that this material had been published directly with no monitoring by the website of the ages of the persons shown and the legality of the material posted.⁸⁴ GRETA notes that this case and the examples cited in the ASTM report show that an approach based solely on voluntary measures taken by businesses is not enough on its own to prevent and eradicate trafficking within businesses and their supply chains. In this regard, GRETA supports the CCDH's position that a legal requirement for due diligence procedures that are binding, effective and monitored will considerably reduce the occurrence and risk of human rights violations, including THB, by businesses.⁸⁵ Therefore, **GRETA invites the Luxembourg authorities to adopt a due diligence procedure for businesses as soon as possible.**

136. **GRETA considers that the Luxembourg authorities should strengthen engagement with the private sector and continue with their efforts to raise awareness of the important role and responsibility of businesses to prevent and eradicate trafficking in human beings in their businesses and supply chains.**

137. **GRETA also considers that the authorities should adopt legislative provisions which incorporate the prevention of trafficking in human beings into policies on public procurement and encourage transparency in supply chains, with a view to making it possible to monitor businesses' performance in preventing trafficking in human beings.**

d. measures to prevent and detect corruption

138. Trafficking in human beings may be engaged in by organised criminal groups, which frequently use corruption to circumvent the law, and money laundering to conceal their profits, but it can occur in other contexts. Consequently, other Council of Europe legal instruments are also relevant to combating human trafficking, in particular those designed to combat corruption, money laundering and cybercrime. The Council of Europe body with the main role to play in the fight against corruption is the Group of States against Corruption (GRECO). Its country reports are relevant in addressing structural shortcomings in preventing corruption, including potentially in a THB context.

139. In its Fifth Round Evaluation Report on Luxembourg (2018), GRECO mentioned the high level of trust placed in the police in Luxembourg society. While noting this positive aspect, GRECO considered that the police should improve its internal corruption prevention efforts through better assessment and management of risks and the reinforcement of ethics-related in-service training and confidential

⁸¹ Başak Bağlayan, *Etude sur la possibilité de légiférer sur un devoir de diligence an matière de droits de l'Homme à Luxembourg*, available at <https://maee.gouvernement.lu> (French only).

⁸² [Luxembourg | Initiative pour un devoir de vigilance \(initiative-devoirdevigilance.org\)](https://initiative-devoirdevigilance.org) (French only)

⁸³ Action solidarité tiers monde, *Risques d'impacts des activités des entreprises sur les populations dans les pays du Sud : Études de cas du Luxembourg*, 2020, available at https://nocorporateimpunity.org/wp-content/uploads/2020/10/Rapport-ASTM_webFINALE.pdf (French only).

⁸⁴ CCDH, Report on trafficking in human beings in Luxembourg, 2019-2020, page 36.

⁸⁵ CCDH, Report on trafficking in human beings in Luxembourg, 2019-2020, page 38.

counselling. In order to counter risks of security breaches more effectively, GRECO called, *inter alia*, for the introduction of checks on the good moral character and integrity of candidates when decisions were taken on promotions, for the implementation of the rules on abstention from acting in a case/matter and for conducting an analysis of practices regarding activities conducted by police officers after leaving the force with a view to adopting stricter rules where necessary. GRECO also recommended better protection for whistle-blowers within the police.⁸⁶ GRECO's interim compliance reports (2019, 2020 and 2022) concluded that several of these recommendations had been implemented by the Luxembourg authorities.⁸⁷

140. According to the Luxembourg authorities, no cases of officials involved in trafficking activities were detected over the 2018-2021 period. In a case concerning trafficking and pimping against a cabaret manager, three police officers were convicted in 2014 of complicity in pimping, bribery and breaching professional confidentiality.⁸⁸ They had knowingly informed the cabaret manager of the dates and times of inspections carried out by their police colleagues in these establishments. However, the Court of Appeal did not uphold the sentence of disqualification from public posts or offices under Article 11 of the CC which had been delivered at first instance,⁸⁹ meaning that two police officers who were convicted of bribetaking, pimping and breaching professional confidentiality are still serving at present, as the disciplinary case did not lead to suspension. The third officer resigned.

141. **GRETA invites the Luxembourg authorities to include measures against corruption in a THB context in the overall policies against corruption, and to implement them effectively.**

V. Follow-up topics specific to Luxembourg

1. Data collection and research

142. In its second evaluation report, GRETA considered that the Luxembourg authorities should continue their efforts to develop and manage a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical data from all the main actors.

143. GRETA notes with satisfaction that in addition to the police, the Prosecutor's Office and the Infotraitement service, since 2019, the ITM has recorded situations of trafficking for the purpose of labour exploitation. GRETA also welcomes the efforts made by the authorities since 2019 to improve the consistency and accuracy of human trafficking data. In this context, GRETA refers to the third CCDH report, which noted an improvement in co-ordination and co-operation and more regular interaction between the various departments that collect human trafficking data. However, the CCDH, which receives data from all actors concerned, also noted several discrepancies between statistics held by the judicial police and data held by the Prosecutor's Office. The statistics on new investigations held by the Prosecutor's Office do not tally with judicial police statistics as cases can be recorded at different times.⁹⁰ Because the system used by the judicial authorities is different from the one used by the Judicial Police, it is not possible to reconcile the statistics of the two institutions or to track a case from the time when the complaint is made at the police station to the time of a possible conviction.⁹¹ It also happens that a police station sends a case directly to the Prosecutor's Office without going through the Judicial Police

⁸⁶ <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/16808b7252>

⁸⁷ First interim compliance report (<https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/168093ab40>), Second interim compliance report (<https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a0424d>), Third interim compliance report (<https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a5f164>).

⁸⁸ Luxembourg District Court, judgment No. 2202/14 of 15 July 2014.

⁸⁹ Court of Appeal, judgment No. 133/15 V of 31 March 2015.

⁹⁰ The police record a case on the basis of the date when it was opened, whereas the prosecutor's office can only open a case when it receives the police report.

⁹¹ See CCDH, Report on trafficking in human beings in Luxembourg, 2019-2020, pages 61-63.

Service. This means that the Judicial Police Service is not informed of all THB cases which are registered at the Prosecutor's Office.

144. GRETA also observes that the number of presumed and identified victims reported by the Judicial Police (see paragraph 11) does not include all presumed victims of trafficking identified by ITM inspectors. The authorities stated that some trafficking cases reported by the ITM to the Prosecutor's Office have not been classified as such by the latter. There have also been two occasions when numerous presumed victims were detected during inspections carried out by ITM inspectors without these data being included in Judicial Police statistics because the persons responsible for data collection were on leave.

145. **While noting the efforts made to collect data on THB, including by involving the ITM, GRETA considers that the Luxembourg authorities should pursue their efforts to improve the data collection system on victims of trafficking in order to ensure that there are no discrepancies between the data held by different entities and it is possible to track a trafficking case from the complaint to the final judicial decision. These efforts should include developing computer software for this purpose, which should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection.**

146. GRETA remains concerned about the lack of any studies on the phenomenon of THB in Luxembourg, despite its repeated requests. **GRETA therefore urges the Luxembourg authorities to carry out and support research on trafficking in human beings for different forms of exploitation, including labour exploitation (particularly in the construction and catering sectors and domestic work) and trafficking in children, including children in street situations.**

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

147. In its second evaluation report, GRETA considered that the Luxembourg authorities should intensify their efforts to prevent trafficking for the purpose of labour exploitation, in particular by continuing to raise relevant officials' awareness of trafficking, increasing the resources available to labour inspectors, and working closely with trade unions, civil society and the private sector.

148. As recommended by GRETA, the number of labour inspectors on the ground has risen considerably, increasing from 22 in 2018 to 66 in October 2021, which equates to a ratio of one inspector per 6 940 employees.⁹² The ITM also has 29 labour inspectors who perform administrative tasks and 36 trainees who will join labour inspectors on the ground in 2022 and 2023. According to figures from the ITM, over the 2018-2021 period, 82 labour inspectors completed the basic training on trafficking provided by the INAP and 29 completed the INAP's in-depth training on "approaching and supporting victims of THB". On two occasions in November 2021, the INAP provided labour inspectors with tailored training. It is anticipated that 57 inspectors will receive in-depth training from INAP in 2022.

149. In 2019 and 2020, the ITM carried out a total of 18 410 inspections and detected 138 illegally employed third-country nationals who were illegally present in the country. A large majority of these persons were employed in the hospitality industry (50) and the construction sector (51). An employer who employs a third-country national who is illegally present in the country can be ordered to pay an administrative fine of €2 500 per illegally present third-country national (Article L. 572-4 of the Labour Code), which is not a sufficiently dissuasive penalty. This offence is punishable by a prison term of between eight days and one year and a fine of €2 501 to €20 000 per illegally present third-country national or just one of these sentences where the offence is committed in the aggravating circumstances

⁹² This is higher than the ratio recommended by the International Labour Organisation (ILO) for industrial market economies. See ILO, Committee on Employment and Social Policy, Strategies and practice for labour inspection (2006), GB.297/ESP/3, paragraph 13.

specified in Article L. 572-5 of the Labour Code.⁹³ GRETA notes that the maximum sentence allowed by the latter article is shorter than those applicable in most other EU Member States (three to five years).⁹⁴ According to official data, five reports regarding the employment of illegally present third-country nationals with aggravating circumstances, punished under Article L. 572-5 of the Labour Code, were submitted to the Prosecutor's Office by the ITM in 2019, 8 in 2020, 14 in 2021 and 5 until 15 May 2022.

150. Illegally present third-country nationals who are detected by labour inspectors are informed of their entitlements to remuneration and how and on what basis they can access free legal aid. They are placed in a detention centre and can potentially be sent back to their country of origin. As a result, illegally present third-country nationals do not report their exploitative working conditions for fear of deportation. For instance, in a case mentioned by lawyers, a person went to a police station to report a case of human trafficking of which he/she had been a victim. The Immigration Directorate, which had been notified by the police as required, issued a deportation order against the individual. This order was only withdrawn by the minister after an NGO had got involved and the case had received media coverage. Article 98bis of the Law of 29 August 2008 on Free Movement and Immigration allows a residence permit to be issued to an illegally present third-country national who is employed illegally where the offence is associated with particularly exploitative working conditions. However, since this article was enacted in 2012, no residence permits of this type have been issued. The non-implementation of this article is attributed in the third CCDH report to the lack of clarity over the circumstances where it applies and fears that overgenerous implementation of this provision would create risks of abuse by a large number of people who would then apply for residence permits on this basis.⁹⁵ The Luxembourg authorities explained, in their comments to GRETA's draft report, that since 2018, 27 presumed victims of trafficking for the purpose of labour exploitation had been detected but none of them had obtained a residence permit on the basis of Article 98bis for the following reasons: the victims had the nationality of an EU member state (one victim); the victims had already left Luxembourg when the offence was detected (eight victims); the victims refused to co-operate with the police (seven victims); or the public prosecutor's office had closed the case without further action after a short investigation because it considered that there was no evidence of trafficking (10 victims). GRETA points out that illegally present third-country nationals are at high risk of exploitation and only a real possibility that their administrative situation would be resolved could encourage them to report their exploitative working conditions, which would also make it possible to combat trafficking for the purpose of labour exploitation more effectively.

151. Thanks to an increase in the number of its staff members and the training given to its inspectors, the ITM has been proactive in detecting trafficking cases since 2019, as demonstrated by the large increase in the number of victims of trafficking for the purpose of labour exploitation who were detected between 2018 and 2021 (paragraph 11). According to figures provided by the ITM, the latter identified two possible cases of trafficking involving a total of 18 presumed victims in 2019, four cases involving 18 presumed victims in 2020, six cases involving 49 presumed victims in 2021, and a further three cases involving five presumed victims by 15 May 2020. These cases were detected primarily in the hospitality industry and construction sectors. GRETA was informed that many other possible trafficking cases have been detected by ITM since 2021, such as a recent case of exploitation on a building site involving 21 presumed victims, two of whom were being assisted by the Infotraite service at the time of GRETA's visit.

⁹³ Where the third-country national is a child, the offence is repeated persistently, the offence relates to simultaneous employment of a significant number of illegally present third-country nationals, the offence is associated with particularly exploitative working conditions, or the offence is committed by an employer who uses the work or services of an illegally present third-country national in the knowledge that this person is a victim of trafficking. Where the employer is a subcontractor, the main contractor may be ordered to pay the fines imposed on the subcontractor unless the main contractor performed its obligations to check the employee's residence permit and to notify the competent authority of the start date of the employee's employment (Article 572-10 of the Labour Code).

⁹⁴ See FRA, *Severe labour exploitation: workers moving within or into the European Union*, Summary, March 2016, page

10.

⁹⁵ See CCDH, *Report on trafficking in human beings in Luxembourg, 2019-2020*, page 52.

152. The ITM carries out inspections in response to complaints as well as unannounced inspections in sectors with high risk of human trafficking. Because the victims of offences detected by the ITM often do not speak the languages that are spoken in Luxembourg, the ITM has recruited inspectors who can speak different languages (Serbian, Turkish, Portuguese, Italian, Dutch, Indian, Mandarin, etc.). These inspectors can talk to victims and gain their trust more easily without the employer being able to understand what is said. The ITM can also call in an interpreter provided by the NGO ASTI. However, in practice, when inspectors find signs of THB during an inspection, the victim is taken to a police station where they are interviewed by the police through an interpreter. Inspectors stay where the inspection is taking place and make sure that they do not lose sight of the potential victim until the police arrive, as victims usually try to run away for fear of being prosecuted and/or deported (see paragraph 150). Representatives of the Infotraite service stated that the fact that the ITM contacts only the police poses problems in relation to victims who do not want to come into contact with the police.

153. Labour inspectors do not have authority to carry out inspections in private homes unless they are acting on the basis of a warrant from an investigating judge, which can only be obtained if there are strong suspicions that an offence has been committed. This makes it particularly difficult to gather evidence of domestic servitude and identify victims of it. In addition, GRETA was informed by the authorities that although domestic workers go to the Immigration Directorate once to be fingerprinted and once more to pick up their work permit, no interview is conducted with them to inform them of their rights and/or detect their vulnerabilities. GRETA notes that domestic work is a sector where there is a high risk of trafficking, which requires special attention and special measures to prevent potential situations of abuse.

154. Luxembourg ratified Additional Protocol No. 29 of 2014 to the Forced Labour Convention of the International Labour Organisation (ILO) in December 2020 but has not yet signed ILO Convention No. 189 on Decent Work for Domestic Workers. **GRETA encourages the Luxembourg authorities to sign and ratify this Convention, which lays down measures to give domestic workers effective protection against malpractices.**

155. During the third evaluation visit to Luxembourg, the GRETA delegation met representatives of trade unions and noted that their awareness of, and involvement in, action against trafficking were very limited. Trade unions are not members of the Committee for monitoring action against THB, have no regular discussions with the ITM and are not involved in training or other efforts to combat trafficking. This was explained by the fact that potential victims of trafficking usually work for small businesses where there is no trade union representation, which is mandatory for companies with at least 15 employees. Despite this, GRETA underlines that the extensive network of trade union representatives that exists in Luxembourg could play a vital role in preventing trafficking and detecting victims, provided that trade union representatives are trained on trafficking and that the detection of THB cases is included in their mandates.

156. **While welcoming the measures taken since the second evaluation to prevent and combat trafficking for the purpose of labour exploitation, particularly the considerable increase in the number of labour inspectors trained on trafficking and their active involvement in the detection of victims of trafficking, GRETA considers that the Luxembourg authorities should:**

- **continue to provide training to labour inspectors on trafficking prevention and victims' rights and include trade union representatives in it;**

- **strengthen co-operation between labour inspectors, law enforcement officers, trade unions and other civil society actors in order to identify, protect and support victims of trafficking for the purpose of labour exploitation and collect the evidence necessary for successfully conducting investigations and prosecutions concerning cases of trafficking for the purpose of labour exploitation. In this context, joint inspections carried out by labour inspectors and police officers can prevent repeated interviews of trafficking victims (see paragraph 89);**
- **step up efforts to prevent and detect cases of domestic servitude;**
- **introduce safe reporting procedures for foreign workers;**
- **review the existing legal provisions with a view to punishing the offence of employing illegally present third-country nationals more severely and clarifying the basis on which residence permits can be granted to illegally present third-country nationals who are employed illegally in particularly exploitative working conditions.**

3. Measures to raise awareness of trafficking and discourage demand

157. In October 2019, Luxembourg participated along with 23 other European countries in the campaign run by the European Crime Prevention Network (EUCPN) which focuses on raising human trafficking victims' awareness. This campaign involving posters⁹⁶ and publications on social media platforms aims to inform victims of their rights and the assistance and protection that they can request. Large posters conveying the same message in English, French and Arabic were put up at all tram stops over the Christmas period in 2020. In addition, NGOs such as Caritas and others ran awareness-raising campaigns such as "Decent work"⁹⁷ and "Rethink your clothes"⁹⁸ in order to raise public awareness of labour exploitation.

158. As stated in GRETA's second report,⁹⁹ the Law of 28 February 2018 Reinforcing Action against Exploitation of Prostitution, Pimping and Trafficking in Human Beings for Sexual Purposes supplemented the Criminal Code with provisions criminalising clients of a person engaging in prostitution if that person is a child, a particularly vulnerable person (Article 382-7) or a victim of exploitation of prostitution, pimping or trafficking for the purpose of sexual exploitation (Article 382-6). This law exempts clients who disclose information about prostitution or trafficking networks from prosecution. Since 2018, the police have interviewed about 30 clients as persons suspected of having committed this offence. Although no one has yet been prosecuted for the offence, several cases are waiting to be dealt with by the Prosecutor's Office. According to police officers, these provisions are difficult to implement because it must be proved that the perpetrator was aware that the victim was a child or especially vulnerable or that the person engaging in prostitution was a victim of pimping or trafficking. They have, however, had an impact on the behaviour of some clients who co-operated more actively with the police.

159. Article 1 of the Law of 28 February 2018 provides for the creation of a "Prostitution" Committee to monitor prostitution, analyse its development and consequences and monitor the implementation of the action plan for prostitution.¹⁰⁰ This Committee is supposed to work closely with the Committee for monitoring action against THB. GRETA was informed that to date, prostitution has been monitored by an informal committee formed in 2012 which is made up of representatives of the Ministry of Internal Security, the Ministry of Justice, MEGA, the prosecutor's office, the police and NGOs that work with

⁹⁶ [trafficking.pdf](#)

⁹⁷ <https://www.caritas.lu/en/caritas-news/tags/travail-decent>

⁹⁸ <https://rethink.lu/> (French only)

⁹⁹ See GRETA's second report on Luxembourg, paragraph 154.

¹⁰⁰ <https://download.rtl.lu/2020/10/26/f4dd0e1a19c77086d82fe749fa847863.pdf> (French only)

prostitutes. Following the adoption of a Grand Ducal regulation, this Committee will be given the official status of Prostitution Committee. MEGA has given the informal committee the task of evaluating the prostitution exit strategy and the Law of 28 February 2018. Its report was completed at the beginning of 2022 and submitted to the relevant ministries. GRETA refers to the 2018 conclusions of the CEDAW Committee on Luxembourg¹⁰¹ which state that the authorities should enhance resource allocation in order to ensure that the action plan on prostitution is implemented, especially the planned measures to reduce demand for prostitution, and provide support and exit programmes for women in prostitution in all settings.

160. GRETA considers that the Luxembourg authorities should step up their efforts to raise public awareness of all forms of trafficking in human beings and discourage demand for services provided by victims of trafficking. In this context, recalling the recommendations made in its second report, GRETA once again invites the authorities to consider also criminalising the use of services of a person who is being subjected to labour exploitation and other forms of exploitation, with the knowledge that the person is a victim of THB.

4. Identification of victims of trafficking

161. In its second evaluation report, GRETA urged the Luxembourg authorities to take additional measures to ensure that all victims of trafficking are identified as such, in particular by ensuring that all stakeholders involved in identifying victims of THB take a more proactive approach and by increasing multi-agency involvement in the identification of victims.

162. The process of identifying victims of THB remains unchanged. It is described in the roadmap adopted in September 2017, which is confidential and intended solely for members of the Monitoring Committee. Victims can be detected by any authority, body or individual, but the Organised Crime Division of the police is the only authority that can give a person the status of presumed victim and identified victim of trafficking. In practice, the police take this decision in consultation with the Prosecutor's Office, especially if there is doubt as to whether the person is a victim. Even if the person was initially granted victim status, after the investigation, if the Prosecutor's Office decides not to prosecute the presumed perpetrator for trafficking, the person loses their status. GRETA therefore notes with regret that the recommendations it made in its first report to the Luxembourg authorities to ensure that the identification of presumed victims is not dependent upon the opening or continuation of criminal proceedings and to adopt a multi-agency approach to identifying victims of trafficking have not been implemented.

163. If a person does not want to meet the police, psychosocial assistance can be provided by the Infotraite service for up to one month so that their trust can be gained. At the end of this period, if they still refuse to meet the police, the police can, on the basis of a report drawn up by the Infotraite service, identify the person as a victim and ask the Ministry of Foreign Affairs to postpone their deportation from the country. This means that care can be provided to the victim during the 90-day reflection period without the person having to have any face-to-face contact with the police. This is an exceptional procedure which has only been implemented in rare cases for particularly vulnerable persons. However, at the end of the 90-day period, in order to obtain a residence permit and continue to receive assistance from the Infotraite service, the victim must agree to meet the police face to face and co-operate with them.

¹⁰¹ CEDAW, [Concluding observations on the combined sixth and seventh periodic reports of Luxembourg](#), 14 March 2018.

164. The September 2017 roadmap on the identification of victims of THB is being updated. Although the Benelux information brochure (paragraph 121) also provides information on the assistance procedure for trafficking victims, it does not describe the victim identification and referral procedures in detail. Furthermore, unlike the roadmap, it does not contain a list of indicators of trafficking. Therefore, **when the roadmap is updated, GRETA encourages the authorities to draw up an abridged version of it for distribution to a larger number of stakeholders, including NGOs, as was decided by the authorities during the second evaluation round.**

165. With regard to applicants for international protection, to enable social and education actors working on the ground to detect potential victims of trafficking, the National Reception Office (ONA)¹⁰² is continuing to provide training on trafficking on a regular basis. This training is compulsory for the supervising staff of the ONA and persons working for its partners engaged in managing reception of applicants for international protection, namely Caritas and the Red Cross. Over the 2018-2021 period, the INAP provided training on human trafficking to the ONA on four occasions with a total of 25 participants. In addition, ONA officers attended training on techniques for interviewing vulnerable persons which was provided by the European Asylum Support Office in 2018. GRETA has been informed that since 2018, every department of the Immigration Directorate has had a human trafficking contact person.

166. Civil society actors stated that interviews with applicants for international protection are conducted in a superficial manner and do not make it possible to detect victims of trafficking. They would simply be asked if they are victims of trafficking. However, victims of trafficking are often not able to identify themselves as such. Even where a potential victim is detected, they are not necessarily referred to support services on the ground that since the exploitation did not take place in Luxembourg, it is not possible to initiate criminal proceedings against the perpetrators. The authorities stated that if the exploitation has occurred in an EU Member State, the Infotraite service can provide assistance to enable the person concerned to make a complaint, which will then be forwarded to the country concerned by way of an official report. In 2019, the Immigration Directorate detected four presumed trafficking victims among applicants for international protection.¹⁰³ None of them have been formally identified as victims of trafficking. Two were third-country nationals who had been sexually exploited in an EU Member State. An Ethiopian woman who had been exploited in France obtained refugee status in August 2021 on the grounds of political persecution in Ethiopia. In October 2019, a Congolese woman who had been exploited in Italy was granted a 90-day reflection period. However, all of her requests for different types of residence permit, including on humanitarian grounds and as a victim of trafficking, were refused. In their comments to the draft report, the Luxembourg authorities informed GRETA that the Congolese woman had finally received a residence permit on humanitarian grounds in 2022.

167. The authorities stated that victims of trafficking are not sent back to the country where the exploitation took place because of the risk of secondary victimisation. Persons who have been victims of trafficking in their countries of origin can thus obtain international protection, but persons who have been victims of trafficking in a non-EU country during their journey to Europe cannot. In the latter cases, the person is not identified as a victim of trafficking, no assistance is provided to them by the Infotraite service and no official report is submitted to the country of exploitation. Representatives of the Infotraite service stated that they had refused in the past to assist presumed victims of trafficking for this reason. Representatives of NGOs reported cases where individuals had been sent back to the country where they had initially entered the EU under the Dublin III Regulation even though they had provided detailed and consistent accounts demonstrating that they had been trafficked in Libya and Saudi Arabia.¹⁰⁴ According to the National Rapporteur, there is also a fear that if these people are identified as victims of trafficking and granted residence permits on this basis, more people who are in similar situations will come to Luxembourg.

¹⁰² The ONA replaced the former Luxembourg Reception and Integration Office (OLAI).

¹⁰³ By way of comparison, three victims were detected over the 2017-2018 period and one victim was detected over the 2015-2016 period.

¹⁰⁴ Although it is possible to take legal action to stop the Dublin III Regulation being applied, this can only be done if a psychiatrist's report confirming that the person is vulnerable is submitted swiftly. However, such an assessment can only be made following a number of consultations with a psychiatrist.

168. GRETA underlines that the application of the Dublin procedure to victims of trafficking runs contrary to the obligation to assist and protect victims. GRETA recalls that Article 10, paragraph 2, of the Convention provides that if the competent authorities have reasonable grounds to believe that a person has been a victim of trafficking in human beings, that person shall not be removed from the territory until the identification process has been completed by the competent authorities. GRETA stresses the State's obligation to identify victims of trafficking among asylum seekers who are subject to the Dublin Regulation procedure, in order to avoid any risk of reprisals from traffickers or re-trafficking and to ensure that the State's obligations to provide a recovery and reflection period, assistance and protection to victims in accordance with Articles 12 and 13 of the Convention are fulfilled. In this context, GRETA notes that Article 17.1 of the Dublin Regulation III permits States to unilaterally take responsibility for the determination of an asylum claim, even where the objective responsibility criteria allow for a request to be submitted to another Member State of the EU.¹⁰⁵

169. The GRETA delegation revisited the holding centre for foreigners in Findel, which currently has a capacity of 74 places. At the time of GRETA's visit, the centre held 30 people, the majority of them men and mostly from countries in the Maghreb region (Tunisia, Algeria, Morocco). There were also four Chinese nationals in the centre. Detainees can stay there for up to six months. They are held in the centre for an average period of 58 days. According to the centre's management, the majority of staff have received training on THB. Each detainee is assigned a trained social worker who can gain their trust in order to find out the ways in which they are vulnerable. Since the centre was opened in 2009, three presumed victims of trafficking, including two Moroccan women who were exploited in Luxembourg, have been detected by the staff of the centre.

170. While welcoming the efforts made by the authorities to detect victims of trafficking, GRETA notes with concern that there are still major difficulties: in particular, these include the shortage of staff within the Organised Crime Division of the police, the legislative obstacles described in paragraph 90 in relation to the use of online investigations conducted under a pseudonym and police access to flats used for prostitution, the failure to proactively inform persons at high risk of exploitation of their rights and available support services, and the lack of a hotline for victims of violence, including trafficking. Furthermore, GRETA considers that the efforts made to identify and protect trafficking victims among applicants for international protection are still inadequate.

171. GRETA once again urges the Luxembourg authorities to step up their efforts to identify victims of trafficking for all forms of exploitation. In addition to training the professionals concerned to identify victims of trafficking (see the recommendations in paragraph 116), the Luxembourg authorities should:

- **ensure that the identification of presumed victims is not dependent upon the opening or continuation of criminal proceedings;**
- **increase multi-agency involvement in the identification of THB victims by involving relevant actors other than the police;**
- **ensure that all stakeholders involved in the identification of trafficking victims take a more proactive approach and step up their action on the ground to more effectively identify victims of trafficking, including among applicants for international protection;**
- **review the application of the Dublin procedure to presumed victims of trafficking and conduct risk assessments to prevent victims from being returned to the country where they first applied for asylum, but where they face the risk of being re-trafficked.**

¹⁰⁵ See GRETA, [Guidance Note on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection](#), June 2020, paragraph 45.

5. Assistance to victims

172. In its second evaluation report, GRETA urged the Luxembourg authorities not to link the assistance provided to victims of trafficking to their co-operation with the police, to systematically refer all potential victims of trafficking to specialised assistance services, and to provide services co-ordinating assistance and accommodation for trafficking victims with the necessary resources in order to guarantee that their services are available at all times.

173. The SAVTEH service of the NGO *Femmes en détresse* and the COTEH centre of the NGO *Foundation Maison de la Porte Ouverte* remain responsible for co-ordinating and providing assistance to trafficking victims. As stated in paragraph 15, in October 2020, these two services merged their trafficking-related services under the umbrella of the Infotraite service. The latter finds accommodation for victims and provides them with all necessary assistance (social, socio-educational, material, financial, linguistic, medical, psychological or therapeutic). These services and the reception centres that accommodate victims are fully financed by the government. In-facility assistance from the Infotraite service stops three months after criminal and civil judgments become final.

174. GRETA notes with satisfaction that the authorities have acted on its recommendation to increase the resources of support services: since February 2021, the number of hours of assistance services financed by the government has increased from 40 hours per week to 100 hours per week (30 hours of psychological support and 70 hours of social assistance). However, this increase is still not sufficient for assistance services to be available at all times and for victims housed in accommodation facilities to be supervised at all times.

175. GRETA notes with regret that the assistance provided to trafficking victims is still linked to their co-operation with the police. If a victim is not identified as such by the police, they are entitled to one month's psychosocial support. Although identification on the basis of a report written by the Infotraite service without a face-to-face meeting between the victim and the police has been introduced for exceptional cases, if the victim does not want to co-operate with the police at the end of the 90-day reflection period, they will not receive a residence permit as a victim of trafficking and the assistance will end. Assistance ends one month after the person loses their victim status either because the Prosecutor's Office has decided not to pursue the case, or has prosecuted the perpetrator for an offence other than human trafficking, or the human trafficking charges are dismissed by the court. The authorities stated that in this case, the Select Committee meets in order to find a way of legalising the victim's presence in the country and, if necessary, to find alternative accommodation for them through other NGOs contracted to provide assistance to victims of crime. The Select Committee agreed that the Ethiopian woman and the Congolese woman who had been sexually exploited in France and Italy (see paragraph 166) could receive full assistance through the Infotraite service even without prosecutions in Luxembourg. However, as noted in paragraph 166, the aim of this assistance was to enable these two victims to file complaints which were subsequently passed on to the French and Italian authorities. If the exploitation takes place in a third country, the Infotraite service cannot provide assistance to the victim as the authorities consider that filing a complaint is pointless as it will not be considered by the third country concerned. This shows once again that assistance is intrinsically linked to criminal prosecutions.

176. On a positive note, representatives of the Infotraite service reported a marked improvement in co-operation between assistance services and the police since the creation of the victim protection unit in February 2018 and systematic referral by the police of trafficking victims to the Infotraite service, as recommended by GRETA.

177. In addition, GRETA notes with satisfaction the creation of additional places for victims of trafficking in accommodation facilities. A total of 17 places are currently reserved for victims of trafficking (men and women) in three open accommodation facilities: five for women in the COTEH Shelter, nine mainly for men in the Caritas Villa and three for both sexes in the Etape facility run by Caritas. The latter opened in January 2021.

178. GRETA visited the first two of these centres, which were opened in 2019, and saw that they offered a welcoming and adequate environment. During the visits, four victims including two victims of labour exploitation were accommodated in the COTEH Shelter. The two labour exploitation victims had been there for four years. They had held residence permits for salaried workers for a year. Because they were working, they could no longer receive free legal aid, but at the same time, the minimum social wage that they were earning was not sufficient to enable them to pay a lawyer to represent them in the criminal proceedings. In addition, because they were employed, they had to pay part of the rent for the shelter. At the time of the visit to the Caritas Villa, eight of its nine places were occupied. Of the 15 people who were accommodated there in 2020, 12 were victims of trafficking, including 8 victims of exploitation in the construction industry, 2 victims of domestic servitude and 2 victims of exploitation in the hospitality industry. GRETA was informed that an increase in the number of victims would cause serious problems in terms of finding accommodation and supervising victims because the hours financed by the government at the time were not sufficient to provide care for more victims.

179. According to data from the Infotraite service, 3 identified victims (all identified in 2018) and 9 presumed victims were assisted in 2018, 9 identified victims (1 identified in 2019 and 8 in previous years) and 15 presumed victims were assisted in 2019, and 20 identified victims (7 identified in 2020 and 13 in previous years) and 2 presumed victims were assisted in 2020. Most of these people were victims of labour exploitation and domestic servitude. The authorities stated that people who are identified as victims of sexual exploitation want to return to their countries of origin and therefore refuse assistance. In this context, GRETA makes reference to the recommendation made in paragraph 35.

180. In December 2020, the ONA adopted an internal document explaining the action to be taken when a presumed victim of trafficking is detected. According to this procedure, when the person concerned is an adult and is not in imminent danger, they must be informed of their rights, but they must first give consent before any other action is taken. If there is doubt as to whether they are in danger, the Infotraite service must be contacted in order to obtain advice and the victim's details must be kept secret. As to which authority is competent to provide assistance, it is explained that if the person is an applicant for international protection and there are signs that they have been trafficked, all of the forms of assistance allowed by law in connection with their application for international protection continue to be provided by the ONA and it is not necessary for the Infotraite service to provide material or financial assistance to the victim, as the forms of material assistance allocated by this service are identical to those provided to applicants for international protection. However, this presupposes that the victim is safe in the ONA accommodation facility and that the perpetrator cannot put pressure on them, influence them or perpetrate violence against them there. If necessary, the victim is placed in an appropriate facility. Conversely, if a victim of trafficking assisted by the Infotraite service applies for international protection, the victim stays in the Infotraite system for the purposes of material and financial support. However, social support and assistance are provided by the ONA for all matters in connection with their application for international protection.

181. Recalling the recommendations made in its first and second reports, GRETA once again urges the Luxembourg authorities not to link the assistance provided to victims to the fact that criminal proceedings are initiated or are ongoing.

182. Furthermore, GRETA considers that the Luxembourg authorities should:

- **provide the NGOs co-ordinating assistance and accommodation for trafficking victims with sufficient human and financial resources to ensure that their services are available at all times and that they provide a sufficient number of places for all victims in need of safe accommodation;**
- **develop a long-term support and integration programme for trafficking victims.**

6. Identification of, and assistance to, child victims of trafficking

183. In its second evaluation report, GRETA urged the Luxembourg authorities to make efforts to improve the identification of child victims of trafficking and the assistance provided to these children, and in particular to establish a clear procedure for the identification of child victims of trafficking, to ensure that the competent stakeholders step up their work on the ground to identify child victims of trafficking, and to ensure that child victims of trafficking benefit from the assistance measures provided for in the Convention, including suitable accommodation.

184. As was previously pointed out in GRETA's second report,¹⁰⁶ the procedure for identifying and supporting child victims of trafficking is the same as the procedure for adult victims, although the stakeholders differ to an extent. Like adults, children are identified by the police and assisted by the Infotraite service. According to the internal ONA document adopted in December 2020, when a child who is a presumed victim of trafficking is detected, the child protection prosecutor's office and the police must be contacted immediately. After that, co-operation with the Infotraite service must be initiated.

185. No children were formally identified as trafficking victims over the 2018-2021 period. The judicial authorities reported an investigation into forced begging and forced criminality involving 12 young people, including 10 children, of Roma origin. At the time of the visit, these children had not been formally identified but were regarded as presumed victims of trafficking. Child victims of trafficking are in principle housed in accommodation centres for children in distress which have entered into contractual agreements with the Ministry of National Education, Children and Young People and the National Office for Children (ONE). Social supervision and assistance are provided by these services together with the Infotraite service and the guardian appointed a juvenile court judge. Centres for children in distress are open institutions. As already mentioned in paragraph 98, child victims of forced crime and begging who may run away from these centres are placed in a closed centre (UNISEC) on the site of the State Socio-Educational Centre. Children are placed there for a three-month period which can be renewed by decision of the judicial authorities. The concept of care entails psychological and educational supervision of every child who is placed in UNISEC on the basis of an individual plan and with the aim of getting them back into education and giving them responsibility. These children are supervised by a multi-agency team of professionals consisting of security guards and psychological, education and social workers. They also receive education and help for their reintegration into society and finding work.¹⁰⁷ While taking note of the various support services that children placed in UNISEC receive, GRETA notes that placing a child in a closed centre such as UNISEC amounts, in practice, to detention and points to Article 37(b) of the United Nations Convention on the Rights of the Child, under which the detention of a child shall be used only as a measure of last resort and for the shortest appropriate period of time.

186. Article 20 of the Law of 10 August 1992 on the Protection of Young People provides that "the geographical jurisdiction of the juvenile court and the juvenile court judge is determined by the place of residence of the parents, guardian or other persons who have custody of the child, by the child's place of residence or by the place where the offence was committed". According to the Ombudsman for Children and Young People, this residence clause has serious consequences for children who are victims of trafficking or who are exposed to the risk of it as it does not allow the judge to take protective measures for children who do not have a certificate of residence in Luxembourg before they break the law. For example, the Ombudsman reported the case of a child with divorced parents who had probably been exposed to pornography and sexual misconduct by the father in Luxembourg. The juvenile court held that it did not have jurisdiction to take protection measures because the mother, who had parental responsibility, lived in Belgium.

¹⁰⁶ See GRETA's second report on Luxembourg, paragraph 104.

¹⁰⁷ For more details, see [Centre socio-éducatif de l'État – Support and assistance – Education nationale, Enfance et Jeunesse – Luxembourg \(public.lu\)](#)

187. According to figures from the European Migration Network (EMN),¹⁰⁸ 35 unaccompanied children sought asylum in Luxembourg in 2018, 35 in 2019 and 50 in 2020. Unaccompanied children under the age of 10 are placed in accommodation centres for children in distress. If places are available, older children can also be placed in them. Otherwise, unaccompanied child applicants for international protection are placed in centres exclusively for them which provide round-the-clock supervision. The CCDH's third report on human trafficking noted a marked improvement in terms of the length of time taken to appoint guardians and ad hoc administrators for these children, which would be no more than a few weeks.¹⁰⁹ However, there is no system to provide appropriate care to unaccompanied children who do not apply for international protection. Under Article 20 of the Law of 10 August 1992, these children can only be provided with care by decision of a juvenile court if they commit an offence. According to representatives from the ONE, this category is made up of about 10 young people, mainly from the Maghreb region, most of whom were involved in drug trafficking and are potentially victims of exploitation. They sometimes deliberately get police officers to file reports on them so that they will be placed in a protected environment and looked after. As a rule, these young people are placed either in a UNISEC centre or in the detention centre in Findel with a view to their removal from the country. However, as there is no real prospect of returning them to their countries of origin owing to the lack of co-operation with these countries, they are released after six months and go back to the streets. Specialised lawyers met by GRETA said that juvenile court judges were reluctant to order protection measures for children who are present in the country illegally for fear that these measures will prevent the authorities from deporting these children. The Committee on the Rights of the Child recently recommended that the Luxembourg authorities establish a special status for these unaccompanied children.¹¹⁰

188. The authorities initiated a large-scale campaign with the publication in February 2021 of a brochure entitled *Nu sur le net* (Naked on the Net) to raise schoolchildren's awareness of online risks. However, no activities intended to raise their awareness of the dangers of trafficking specifically have taken place. Although teachers can include this topic in lessons at their own initiative, they must first be sensitised to the issue of child trafficking.

189. **GRETA once again urges the Luxembourg authorities to step up their efforts to improve the identification of child victims of trafficking in human beings and the assistance provided to them and, in particular, to:**

- **establish a clear procedure for the identification of child victims of trafficking that takes into account the particular situation and needs of child victims of trafficking;**
- **raise awareness among and train professionals who work with and for children, including guardians and ad hoc administrators, so that they can detect presumed cases of trafficking;**
- **ensure that the competent stakeholders step up their work on the ground to identify child victims of trafficking, paying special attention to street children and unaccompanied children, particularly unaccompanied children in accommodation centres for children in distress, the UNISEC centre and the Findel holding centre;**
- **amend the Law of 10 August 1992 on the Protection of Young People in order to guarantee adequate protection for unaccompanied children who are not applicants for international protection;**

¹⁰⁸ European Migration Network (EMN), Country Factsheet Luxembourg 2020, available at: https://ec.europa.eu/home-affairs/document/download/08aa37d2-add5-4602-8e4c-6b5a8d5fc39c_en

¹⁰⁹ CCDH, Report on trafficking in human beings in Luxembourg, 2019-2020, page 84.

¹¹⁰ United Nations Committee on the Rights of the Child, [Concluding observations on the combined fifth and sixth periodic reports of Luxembourg](#), 21 June 2021.

- **ensure that child victims of trafficking benefit from the assistance measures provided for in the Convention, including specialised and appropriate accommodation.**

7. Residence permits

190. As stated in paragraph 50, Article 95, paragraph 1, of the Law of 29 August 2008 on the Free Movement of Persons and Immigration provides that after the 90-day reflection period ends, the Minister of Foreign Affairs issues a renewable six-month residence permit to a victim who is a third-country national if the victim has filed a complaint or given statements about the presumed perpetrators of the trafficking, if their presence in the country is necessary for the purposes of the investigation or proceedings, or because of their personal situation.

191. According to data provided by the Immigration Directorate, five residence permits were issued to victims of trafficking under Article 95, paragraph 1, of the Law of 29 August 2008 (commonly known as "private life" residence permits) in 2018, one was issued in 2019, two were issued in 2020 and one was issued in 2021. In their comments on GRETA's draft report, the Luxembourg authorities stated that no applications for residence permits for formally identified victims of trafficking which had been sent by the police to the Ministry of Foreign Affairs had been refused. The authorities attributed the low number of "private life" residence permits issued to victims of trafficking to the fact that many victims either did not need a residence permit or were not eligible for one. This would include, for example, applicants for international protection with other more favourable residence permits or nationals of other EU countries. In addition, some victims were not eligible because the offences had no connection with Luxembourg or another EU country or because the victims refused to cooperate with law enforcement. No residence permits were issued on the basis of the victim's personal situation.

192. "Private life" residence permits are renewed for six months on each occasion. GRETA was informed that there are no problems with renewal as long as the investigation or criminal proceedings are ongoing and that the presumed perpetrators are being prosecuted for THB. However, in cases where the victim only has forged identity documents, the Immigration Directorate only grants the permit if the person brings their real identity documents, which is sometimes impossible. It is possible to obtain a residence permit on other grounds, such as the residence permit for a "salaried worker" under Article 43, paragraph 1, of the Law of 29 August 2008. However, this is not an option for victims who are too traumatised or face other barriers to finding employment. Only four "salaried worker" residence permits have been issued to victims of trafficking (2 in 2018 and 2 in 2021). In addition, one "residence permit for a family member of a citizen of the European Union" as provided for by Article 15 of the Law of 29 August 2008 was issued to a victim of trafficking in 2018 and one was issued in 2020. However, civil society representatives stated that applications for permits for trafficking victims based on humanitarian grounds are almost always refused. According to data provided by the Immigration Directorate, only the girl from Guinea-Bissau mentioned in paragraph 80 was granted a residence permit, under Article 78, paragraph 3, of the Law of 29 August 2008, on "exceptionally compelling humanitarian grounds" after the criminal proceedings ended in 2020.

193. GRETA points out that Article 14 of the Convention allows Parties to choose between granting a residence permit in exchange for co-operation with the authorities and granting a residence permit on the basis of the victim's needs, or to take both of these approaches at the same time. In some situations, victims can be afraid of co-operating with an investigation because they have been threatened by traffickers. The personal circumstances providing grounds for the granting of a residence permit to a victim can include the victim's safety, health or family situation, for example, which is in line with the human rights-based approach that must be taken in tackling human trafficking. **GRETA considers that the Luxembourg authorities should take additional measures to ensure that victims of trafficking can benefit fully from the right to obtain a residence permit, including because of their personal situation.**

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

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

Topics related to the third evaluation round of the Convention

Right to information

- While welcoming the production of a leaflet for potential victims of trafficking, GRETA considers that the Luxembourg authorities should continue to make efforts to ensure that all presumed and formally identified victims of trafficking are proactively informed of their rights, including the right to a recovery and reflection period, the services available and how to access them, the implications of being identified as a victim of trafficking and the stage reached in the criminal proceedings in their case. Among other things, the authorities should produce a brochure specifically about the rights of victims of trafficking and ensure that it is available in the languages of the countries from which victims mainly originate (paragraph 35).

Legal assistance and free legal aid

- GRETA considers that the Luxembourg authorities should take additional measures to facilitate and guarantee access to legal aid for victims of trafficking, in particular by:
 - ensuring that legal aid is granted in all cases where there are reasonable grounds for believing that a person is a victim of human trafficking, before the person concerned has to decide whether or not to co-operate with the authorities and/or make an official statement;
 - revising the Law of 10 August 1991 on the Legal Profession so that access to free legal aid for victims of trafficking is not subject to means-related, nationality or residence requirements;
 - raising awareness among Bar Associations of the need to encourage training and specialisation of lawyers so that they can provide legal assistance to victims of trafficking and ensuring that victims are systematically assigned a specialised lawyer (paragraph 45).

Access to work, vocational training and education

- GRETA considers that the Luxembourg authorities should strengthen effective access to the labour market for all victims of trafficking who are legally resident in the country, including those who are nationals of third countries, and their economic and social inclusion through the provision of vocational training, language courses and job placement, raising awareness among potential employers, and the promotion of micro-businesses, social enterprises and public-private partnerships, including through state-supported employment programmes, with a view to creating appropriate work opportunities for victims of trafficking (paragraph 53).

Compensation

- GRETA urges the Luxembourg authorities to make additional efforts to guarantee effective access to compensation for victims of trafficking, in particular by:
 - ensuring that the collection of evidence about the harm the victim has suffered, including the financial gain from the exploitation of victims, is part of the criminal investigations and labour inspections with a view to supporting compensation claims in court;

- including the topic of compensation in the training programmes for lawyers, prosecutors and judges and encouraging them to use all the possibilities the law offers them to uphold compensation claims by victims of THB;
- reviewing the eligibility criteria for state compensation to ensure that it is not conditional on failure to obtain compensation from the perpetrator and extending the presumption under Article 1 of the Law of 12 March 1984 to all victims of trafficking (paragraph 69);
- Further, GRETA invites the Luxembourg authorities to establish a system to record compensation claimed and obtained by victims of trafficking in proceedings before labour tribunals and to raise NGOs' awareness of the possibility, under Article 3-1 of the Code of Criminal Procedure, of exercising the rights of an injured party in criminal proceedings concerning human trafficking cases (paragraph 70).

Investigations, prosecutions, sanctions and measures

- GRETA urges the Luxembourg authorities to take additional measures to ensure that trafficking cases are investigated proactively and prosecuted effectively and lead to effective, proportionate and dissuasive sanctions. In this context, they should in particular:
 - continue developing the training and specialisation of investigators, prosecutors and judges so that they are better able to deal with trafficking cases and in order to prevent offences in these cases being reclassified as other offences carrying lighter sentences, which also deprives trafficking victims of access to protection, support and compensation;
 - strengthen proactive investigation of trafficking cases, regardless of whether a complaint about the reported crime has been submitted or not, by making use of special investigation techniques in order to gather evidence and not have to exclusively rely on testimony by victims. In this context, the Code of Criminal Procedure needs to be amended to enable the police to conduct online investigations under a pseudonym in cases of trafficking in human beings;
 - strengthen co-operation between law enforcement officers, labour inspectors, financial police, trade unions and other civil society actors, with a view to collecting evidence necessary for successfully investigating and prosecuting cases of THB, including cases of trafficking for the purpose of labour exploitation (paragraph 93);
- GRETA considers that the Luxembourg authorities should keep under close and regular review the possibility that the fact that the means are not a constituent element of the definition of trafficking in Luxembourg law may lead to confusion with other offences and create difficulties in judicial co-operation with countries that have included the means in their own definitions of trafficking (paragraph 94) ;
- GRETA also invites the authorities to consider giving labour inspectors investigation powers so that evidence of cases of trafficking in human beings gathered by labour inspectors, including evidence taken by them during labour inspections, can be used in criminal proceedings (paragraph 95).

Non-punishment provision

- GRETA considers that the Luxembourg authorities should continue to take steps to ensure the application of the non-punishment principle in practice, including through training of police officers, prosecutors and judges (paragraph 99).

Protection of victims and witnesses

- GRETA considers that the Luxembourg authorities should ensure that the identities of trafficking victims are effectively protected in accordance with Article 11 of the Convention, particularly in order to prevent their names from being made public (paragraph 107);
- GRETA urges the Luxembourg authorities to make full use of the available measures intended to protect victims and witnesses of trafficking from intimidation or further trauma during the investigation and during and after court proceedings, including by using videoconferencing and other appropriate arrangements to avoid cross-examination of victims of trafficking in the presence of the trafficker (paragraph 108).

Specialised authorities and co-ordinating bodies

- GRETA welcomes the recent increase in the number of staff of the Victim Protection and Fugitive Search Unit and considers that the Luxembourg authorities should ensure that there are enough specialised investigators, trained and provided with adequate resources, to deal with trafficking cases (paragraph 115);
- In addition, while welcoming the increasing efforts made to train specialised officials, GRETA considers that the authorities should step up these efforts to ensure that all relevant professionals are trained regularly and systematically on preventing and combating THB, identifying victims and referring them to assistance. The training should be integrated in the regular training curricula of different professional groups, including health-care and education staff (paragraph 116).

International co-operation

- GRETA welcomes the participation of the Luxembourg authorities in international co-operation against human trafficking and considers that they should strengthen their efforts in this respect, including by establishing joint investigation teams with other affected countries (paragraph 122).

Child-sensitive procedures for obtaining access to justice and remedies

- GRETA welcomes the effective implementation of protection measures in child trafficking cases, which prevents victims from suffering further trauma or feeling intimidated during investigations and legal proceedings, and invites the Luxembourg authorities to continue to take measures to ensure that procedures conducted in the context of investigations, prosecutions and decisions on trafficking cases are child-friendly. In this context, GRETA refers to the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, which recommend that all professionals who work with children, including lawyers and judges, receive the necessary interdisciplinary training on the rights and specific needs of children (paragraph 131).

Role of businesses

- GRETA invites the Luxembourg authorities to adopt a due diligence procedure for businesses as soon as possible (paragraph 135);
- GRETA considers that the Luxembourg authorities should strengthen engagement with the private sector and continue with their efforts to raise awareness of the important role and responsibility of businesses to prevent and eradicate trafficking in human beings in their businesses and supply chains (paragraph 136);

- GRETA also considers that the authorities should adopt legislative provisions which incorporate the prevention of trafficking in human beings into policies on public procurement and which encourage transparency in supply chains, with a view to making it possible to monitor businesses' performance in preventing trafficking in human beings (paragraph 137).

Measures to prevent and detect corruption

- GRETA invites the Luxembourg authorities to include measures against corruption in a THB context in the overall policies against corruption, and to implement them effectively (paragraph 141).

Follow-up topics specific to Luxembourg

Data collection and research

- While noting the efforts made to collect trafficking data, including by involving the ITM in them, GRETA considers that the Luxembourg authorities should pursue their efforts to improve the data collection system on victims of trafficking in order to ensure that there are no discrepancies between the data held by different entities and it is possible to track a trafficking case from the complaint to the final judicial decision. These efforts should include developing computer software for this purpose, which should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection (paragraph 145);
- GRETA therefore urges the Luxembourg authorities to carry out and support research on trafficking in human beings and the various types of exploitation, including labour exploitation (particularly in the construction and catering sectors and domestic work) and trafficking in children, including children on the streets (paragraph 146).

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

- GRETA encourages the Luxembourg authorities to sign and ratify the ILO Convention No. 189 on Decent Work for Domestic Workers, which lays down measures to give domestic workers effective protection against malpractices (paragraph 154);
- While welcoming the measures taken since the second evaluation to prevent and combat trafficking for the purpose of labour exploitation, particularly the considerable increase in the number of labour inspectors trained on trafficking and their active involvement in the detection of victims of trafficking, GRETA considers that the Luxembourg authorities should:
 - continue to provide training to labour inspectors on trafficking prevention and victims' rights and include trade union representatives in it;
 - strengthen co-operation between labour inspectors, law enforcement officers, trade unions and other civil society actors in order to identify, protect and support victims of trafficking for the purpose of labour exploitation and collect the evidence necessary for successfully conducting investigations and prosecutions concerning cases of trafficking for the purpose of labour exploitation. In this context, joint inspections carried out by labour inspectors and police officers can prevent repeated interviews of trafficking victims (see paragraph 89);
 - step up efforts to prevent and detect cases of domestic servitude;
 - introduce safe reporting procedures for foreign workers;

- review the existing legal provisions with a view to punishing the offence of employing illegally present third-country nationals more severely and clarifying the basis on which residence permits can be granted to illegally present third-country nationals who are employed illegally in particularly exploitative working conditions (paragraph 156).

Measures to raise awareness of trafficking and discourage demand

- GRETA considers that the Luxembourg authorities should step up their efforts to raise public awareness of all forms of trafficking in human beings and discourage demand for services provided by victims of trafficking. In this context, as per the recommendations made in its second report, GRETA once again invites the authorities to consider also criminalising the use of services of a person who is being subjected to labour exploitation and other forms of exploitation, with the knowledge that the person is a victim of THB (paragraph 160).

Identification of victims of trafficking

- GRETA once again urges the Luxembourg authorities to step up their efforts to identify victims of trafficking for all forms of exploitation. In addition to training the professionals concerned to identify victims of trafficking (see the recommendations in paragraph 116), the Luxembourg authorities should:
 - ensure that the identification of presumed victims is not dependent upon the opening or continuation of criminal proceedings;
 - increase multi-agency involvement in the identification of THB victims by involving relevant actors other than the police;
 - ensure that all stakeholders involved in the identification of trafficking victims take a more proactive approach and step up their action on the ground to more effectively identify victims of trafficking, including among applicants for international protection;
 - review the application of the Dublin procedure to presumed victims of trafficking and conduct risk assessments to prevent victims from being returned to the country where they first applied for asylum, but where they face the risk of being re-trafficked (paragraph 171).

Assistance to victims

- Reiterating the recommendations made in its first and second reports, GRETA once again urges the Luxembourg authorities not to link the assistance provided to victims to the fact that criminal proceedings are initiated or are ongoing (paragraph 181);
- Furthermore, GRETA considers that the Luxembourg authorities should:
 - provide the services co-ordinating assistance and accommodation for trafficking victims with sufficient human and financial resources to ensure that their services are available at all times and that they provide a sufficient number of places for all victims in need of safe accommodation;
 - develop a long-term support and integration programme for trafficking victims (paragraph 182).

Identification of, and assistance to, child victims of trafficking

- GRETA once again urges the Luxembourg authorities to step up their efforts to improve the identification of child victims of trafficking in human beings and the assistance provided to them and, in particular, to:
 - establish a clear procedure for the identification of child victims of trafficking that takes into account the particular situation and needs of child victims of trafficking;
 - raise awareness among and train professionals who work with and for children, including guardians and ad hoc administrators, so that they can detect presumed cases of trafficking;
 - ensure that the competent stakeholders step up their work on the ground to identify child victims of trafficking, paying special attention to street children and unaccompanied children, particularly unaccompanied children in accommodation centres for children in distress, the UNISEC centre and the Findel holding centre;
 - amend the Law of 10 August 1992 on the Protection of Young People in order to guarantee adequate protection for unaccompanied children who are not applicants for international protection;
 - ensure that child victims of trafficking benefit from the assistance measures provided for in the Convention, including specialised and appropriate accommodation (paragraph 189).

Residence permits

- GRETA considers that the Luxembourg authorities should take additional measures to ensure that victims of trafficking can benefit fully from the right to obtain a residence permit, including because of their personal situation (paragraph 193).

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

Public bodies

- Ministry of Justice
- Ministry of Internal Security
- Ministry of Foreign and European Affairs
- Ministry of Equal Opportunities
- Ministry of National Education, Children and Youth
- Ministry of Labour, Employment and Social and Solidarity Economy
- Ministry of Health
- Criminal Investigations Police Department
- Public Prosecutor's Office, prosecutors in Luxembourg and Diekirch, Victim Support Service (Service d'aide aux victimes)
- Mines and Labour Inspectorate (ITM)
- National Office for Children (ONE)
- National Reception Office (ONA)
- Ombudsperson
- Ombudsman for children and young people
- Advisory Committee on Human Rights (–CCDH, National Rapporteur)
- Chamber of Deputies (Justice Committee, Luxembourg Delegation to the Parliamentary Assembly of the Council of Europe)

Intergovernmental organisations

International Organization for Migration (IOM)

Non-governmental organisations and other members of civil society

- ECPAT Luxembourg
- Femmes en détresse asbl - Service d'assistance aux victimes de la traite des êtres humains (SAVTEH)
- Fondation Maison de la Porte Ouverte (FMPO) - Service d'assistance aux victimes de la traite des êtres humains (COTEH)
- Luxembourg Confederation of Christian Trade Unions (LCBG)
- Independent Trade Union Confederation of Luxembourg (OGBL)
- Passerelle

Government's comments

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

GRETA engaged in a dialogue with the Luxembourg 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 Luxembourg authorities on 12 July 2022 and invited them to submit any final comments. The comments of the authorities, submitted on 9 September 2022, are reproduced hereafter (in French only).



LE GOUVERNEMENT
DU GRAND-DUCHÉ DE LUXEMBOURG
Ministère de la Justice

**Conseil de l'Europe
Secrétariat Général
Direction Générale Droits de l'Homme et
Etat de Droit**

**Secrétaire exécutive de la Convention du
Conseil de l'Europe sur la lutte contre la
traite des êtres humains**

F-67075 Strasbourg CEDEX

Luxembourg, le 9 septembre 2022

V.réf. : /PN/MB/jrs

Madame Nestorova,

Je me réfère à votre courrier du 12 juillet 2022 valant transmission du rapport final rédigé par le Groupe d'experts sur la lutte contre la traite des êtres humains (GRETA) sur la mise en œuvre de la Convention par le Luxembourg.

Dans le prédit courrier vous nous avez accordé un délai jusqu'au 9 septembre 2022 afin de fournir d'éventuels commentaires finaux.

Je tiens à vous remercier pour cette possibilité nous accordée et qui nous a permis de soumettre le rapport aux membres de notre comité inter-ministériel pour avis.

C'est à ce titre donc que je vous adresse par la présente les commentaires finaux du Luxembourg à publier ensemble avec le rapport final du GRETA.

Veillez agréer, Madame Nestorova, l'assurance de mes sentiments distingués.

Pour la Ministre de la Justice

Laurent THYES

Conseiller de Gouvernement 1ère classe

**Commentaires quant au rapport final concernant la mise en œuvre de la
Convention du Conseil de l'Europe sur la lutte contre la traite des êtres humains
par le Luxembourg**

Commentaires de la Direction de l'immigration sur les conclusions et propositions d'actions telles
que figurant dans le rapport final du GRETA daté du 11 juillet 2022

1) Concernant la proposition d'action consistant à « intensifier les efforts visant à prévenir et détecter les cas de servitude domestique » :

Le § 153 (page 39) du rapport énonce que « le GRETA a été informé par les autorités que bien que les travailleurs domestiques se rendent à la Direction de l'immigration une fois pour la prise d'empreinte[s] et une fois pour chercher leur permis de travail, aucun entretien n'est effectué avec eux pour les informer sur leurs droits et/ou détecter leurs vulnérabilités ».

A cet égard, la Direction de l'immigration entend soulever qu'une telle procédure ayant pour objet de mener un entretien avec les travailleurs domestiques n'est, d'une part, pas prévue par la législation européenne afférente et, d'autre part, très difficilement à mettre en œuvre en pratique, dans la mesure où elle impliquerait un investissement important en ressources humaines.

Néanmoins, la Direction de l'immigration s'engage à poursuivre ses efforts visant à informer son public sur l'existence et les dangers de faire l'objet de la traite des êtres humains au Luxembourg par la mise à disposition de brochures ad hoc et l'affichage de posters dans ses guichets.

2) Concernant la proposition d'action consistant à « réexaminer les dispositions juridiques existantes en vue de punir plus sévèrement l'infraction de l'emploi des ressortissants de pays tiers en séjour irrégulier et clarifier les conditions d'octroi d'un titre de séjour aux ressortissants de pays tiers en séjour irrégulier employés illégalement dans des conditions de travail particulièrement abusives » :

Si cette recommandation semble davantage s'adresser à l'ITM, la Direction de l'immigration souhaite tout de même prendre position par rapport aux affirmations résultant du § 150 (page 38) du rapport. Il y est en effet indiqué que le ressortissant de pays tiers en séjour irrégulier

détecté par un inspecteur du travail serait placé, après avoir été informé de ses droits ainsi que des modalités et des conditions d'accès à l'assistance judiciaire gratuite, dans un centre de rétention et pourrait éventuellement être renvoyé dans son pays. Ensuite, et à titre d'illustration, le rapport s'empare d'un cas de figure suivant lequel une personne se serait rendue dans un commissariat de police pour dénoncer des « faits de traite » dont elle aurait été victime et que la Direction de l'immigration qui aurait été informée par la police, aurait pris un arrêté d'expulsion contre cette personne. Ce ne serait qu'après l'intervention d'une association et de la médiatisation de l'affaire que ledit arrêté aurait été retiré. Toujours dans ce contexte, le rapport du GRETA rappelle que l'article 98bis de la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l'immigration (ci-après la « loi du 29 août 2008 ») prévoirait la possibilité de l'octroi d'un titre de séjour aux ressortissants de pays tiers irréguliers employée illégalement et sous des conditions de travail particulièrement abusives, mais que depuis l'introduction de cet article en 2012, aucun titre de séjour de ce type n'aurait été accordé.

A cet égard, la Direction de l'immigration entend remarquer tout d'abord qu'un placement en rétention d'un ressortissant de pays tiers employé illégalement qui est détecté par l'ITM n'est pas automatique, mais qu'une évaluation au cas par cas est effectuée par les autorités luxembourgeoises. Ainsi, lorsque l'occupation illégale du ressortissant de pays tiers irrégulier présente des indices d'une occupation sous des conditions de travail particulièrement abusives et que la Direction de l'immigration en est dûment informée, une décision d'éloignement n'est pas prise. Si une enquête, respectivement une procédure pénale est ensuite engagée, le Ministre ayant l'Immigration dans ses attributions, lequel dispose d'un pouvoir discrétionnaire en la matière, pourra octroyer au ressortissant de pays tiers en cause un titre de séjour temporaire, en conformité avec l'article 98bis de la loi du 29 août 2008. A défaut d'enquête ou de procédure pénale, le Ministre pourra, le cas échéant, sur base d'une appréciation individuelle du cas d'espèce, accorder une autre catégorie de permis de séjour à l'individu concerné.

Pour ce qui est plus précisément du cas de figure particulier exposé dans le rapport, selon lequel les services de l'immigration auraient prononcé un arrêté d'expulsion à l'encontre d'un ressortissant de pays tiers qui aurait dénoncé des faits de traite auprès des forces de police, il convient de relever, en premier lieu, que, loin de constituer une pratique généralisée, il s'agit ici d'un cas isolé qui s'est déroulé de façon malencontreuse, alors qu'une erreur dans le flux d'informations entre les autorités compétentes s'est produite. En effet, la Direction de l'immigration ne s'est pas vue communiquer les renseignements utiles laissant conclure à un cas potentiel d'une occupation illégale dans des conditions de travail particulièrement abusives d'un ressortissant de pays tiers irrégulier, de sorte que les services de l'immigration ont pris les mesures légales qui s'imposent en présence d'un ressortissant de pays tiers se trouvant en séjour irrégulier, soit une décision d'éloignement du territoire. A remarquer, en deuxième lieu, que les autorités de police, au même titre que le Parquet, ont retenu qu'il ne s'agit pas d'un cas de traite

des êtres humains. Enfin, et en tout état de cause, la personne intéressée s'est vue accorder en date du 26 novembre 2021 un titre de séjour sur base de l'article 98bis de la loi du 29 août 2008.

3) Concernant la proposition d'action consistant à « veiller à ce que l'ensemble des acteurs impliqués dans l'identification des victimes de la traite adopte une approche plus proactive et renforce leur action de terrain pour identifier plus efficacement les victimes de la traite, y compris parmi les demandeurs de protection internationale » :

Le § 166 du rapport, s'appuyant sur des récits de la société civile, fait état d'une approche superficielle et peu effective dans le chef de la Direction de l'immigration pour ce qui est de la détection des victimes de la traite parmi les demandeurs de protection internationale.

A cet égard, la Direction de l'immigration se doit de contester cette version des faits. En effet, les entretiens menés par les agents du service des réfugiés – lesquels sont, par ailleurs, tous formés en matière de lutte contre la traite des êtres humains – permettent, au contraire, à tout demandeur de protection internationale d'expliquer les motifs à la base de sa demande et, partant, de relater son vécu de manière exhaustive et circonstanciée, les agents posant, de leur côté, de nombreuses questions pour connaître en détail le vécu du demandeur en cause. A cela s'ajoute que, concernant le trajet pour venir au Luxembourg, chaque demandeur retrace auprès de la Police judiciaire tout son périple l'ayant mené au Luxembourg.

Il convient encore de remarquer que l'entretien des « dublinois » est, lui aussi, depuis quelques années déjà, étoffé de questions sur le vécu du demandeur lors de son parcours migratoire.

4) Concernant la proposition d'action consistant à « revoir l'application de la procédure Dublin aux victimes présumées de la traite et procéder à des évaluations des risques pour éviter que des victimes de la traite ne soient renvoyées dans le pays où elles ont demandé l'asile pour la première fois, mais où elles pourraient être de nouveau soumises à la traite » :

A ce sujet, la Direction de l'immigration entend souligner que, avant même de prendre une décision de transfert vers l'Etat membre responsable du traitement de la demande de protection internationale, elle procède à une évaluation concrète et individuelle de la situation de chaque demandeur de protection internationale présentant un état de vulnérabilité, y compris les personnes pour lesquelles il existe des indices qu'elles ont fait l'objet de la traite dans ledit Etat responsable, étant relevé dans ce contexte que le règlement dit « Dublin III » ne s'oppose pas au transfert de personnes vulnérables à condition pour l'Etat procédant au transfert de prendre les

précautions nécessaires. Cette même évaluation de la situation individuelle du demandeur, comprenant une prise en compte du lieu de destination du transfert et, le cas échéant, la transmission à l'Etat membre responsable des informations pertinentes sur les besoins particuliers du demandeur, est opérée avant l'exécution matérielle du transfert.

Ainsi, lorsque la situation particulière du demandeur l'exige, l'Etat luxembourgeois fait application de la clause discrétionnaire ancrée à l'article 17(1) du règlement Dublin III, pratique qui est d'ailleurs illustrée par le cas de figure exposé au § 166 du rapport, suivant lequel les autorités luxembourgeoises ont décidé, sur base de l'article précité, d'examiner elles-mêmes la demande de protection internationale d'une dame de nationalité éthiopienne pour laquelle il existait des indices sérieux d'une exploitation sexuelle sur le territoire d'un autre Etat membre.
