



# EVALUATION REPORT

POLAND

## Third evaluation round

### GRETA

Group of Experts  
on Action against  
Trafficking  
in Human Beings

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

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## Preamble

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

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

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

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

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

## Executive summary

Since the second evaluation round of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, Poland has continued to develop the legislative and policy framework relevant for the action against trafficking in human beings. Amendments to the Law on Foreigners have introduced the possibility to grant a residence permit to children who are victims of human trafficking regardless of their co-operation with the authorities. The sanctions for committing human trafficking offences have been increased in the context of the war in Ukraine. Further, a National Action Plan on against trafficking in human beings (2022-2024) was adopted.

Poland remains a country of origin, transit and destination of victims of trafficking. While shortcomings in data collection do not allow to have a real picture of the phenomenon, statistics suggest that the number of victims of trafficking has increased compared to the previous reporting period. Most victims are Polish nationals. Labour exploitation has emerged as the predominant form of exploitation of identified victims. In 2021-2022, a growing number of victims originated from Latin American countries. In mid-2021, a sudden increase in arrivals of migrants at the Poland-Belarus border led to a dire humanitarian situation. The Polish authorities reported that the Border Guard had identified three children as victims of human trafficking among the migrants who crossed the border from Belarus. Following the outbreak of the war in Ukraine, Poland became the main country of arrival of Ukrainian refugees. According to information provided by the Polish authorities, a few cases of suspected human trafficking were reported and investigated, but only one case of trafficking for the purpose of sexual exploitation of two Ukrainian girls had been confirmed following an investigation.

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.

The provision of information to victims of trafficking in human beings is guaranteed prior to the first interview with the authorities. GRETA considers that the information materials should be revised so that they are easy to understand and contain explanations to victims on how to exercise their rights. The assistance of an interpreter, who is sensitised on trafficking, should be ensured to all victims who do not speak Polish.

Despite the existing provisions for victims' access to legal assistance and free legal aid, in practice, many victims are not assisted by lawyers during legal proceedings or depend on lawyers working *pro bono*. Given the complexity of proceedings in trafficking cases, effective legal assistance and free legal aid are fundamental to enabling victims of trafficking to obtain justice and assert their rights. GRETA urges the authorities to ensure that victims are systematically appointed a specialised lawyer to represent them in legal proceedings, and to secure adequate funding for the provision of legal assistance and free legal aid.

Victims of human trafficking can request compensation from the traffickers as part of criminal proceedings. Compensation can also be requested by prosecutors, or decided by courts, *ex officio*. However, in practice, victims are treated as witnesses of crime, not as injured party entitled to compensation, and the number of compensation awards granted to victims of trafficking by criminal courts is very low. Further, no victims have received state compensation. GRETA urges the authorities to ensure that victims can effectively receive compensation for the full damage suffered as part of the criminal proceedings, and to review the eligibility criteria for state compensation which should cover all victims of human trafficking committed in Poland, including third-country nationals.

GRETA positively notes the development of guidance for law enforcement officers, prosecutors and judges on human trafficking cases. However, the number of convictions for human trafficking, in particular for the purpose of labour exploitation, is low, and the sentences are often suspended. Too much emphasis is put on the victim's testimony during criminal investigations. GRETA urges the Polish authorities to ensure that human trafficking cases are proactively and promptly investigated, regardless of whether a complaint

about the reported crime has been submitted by a victim, and are prosecuted as such, rather than as offences carrying lower penalties, leading to effective, proportionate and dissuasive sanctions for those convicted.

There is still no specific provision in Polish law on the non-punishment of victims of trafficking for offences they were compelled to commit. GRETA considers that the authorities should adopt such a legal provision and provide further guidance and training to professionals on its application.

GRETA welcomes the measures provided for in law to protect victims and witnesses of human trafficking, and the existence of guidance on how to apply such measures. However, GRETA is concerned that, in practice, victims of trafficking are rarely being granted protection measures in the framework of criminal proceedings. GRETA urges the authorities to provide for the application of protection measures to all child victims of trafficking, including those aged 15 or older, in particular the principle of a single hearing, the obligation to record the interview and the absence of cross-examination with the accused.

The report also examines progress made on the implementation of previous GRETA recommendations on selected topics. GRETA remains concerned by the lack of comprehensive and coherent statistical system on human trafficking, which undermines the analysis of trends and the design of relevant policies and measures, and urges the authorities to develop data collection.

GRETA welcomes the mobilisation and solidarity in the face of the unprecedented displacement of people following the outbreak of the war in Ukraine, and considers that the Polish authorities should continue their efforts to address the vulnerabilities to trafficking of all persons fleeing the war in Ukraine, without discrimination and irrespective of their nationality or statelessness.

Efforts have been made to strengthen the role of labour inspectors in cases of trafficking, including by providing them with guidelines and training. While welcoming the amendments to the legislation on the employment of foreigners, GRETA is concerned that effective prevention and detection of cases of labour trafficking is lacking and urges the authorities to review the mandate of labour inspectors and reinforce their human resources, to establish safe reporting and effective complaint mechanisms for workers, and to further strengthen the monitoring of temporary employment agencies and recruitment intermediaries.

GRETA urges the Polish authorities to review the legislation in order to ensure that pre-removal risk assessments prior to all forced removals from Poland fully assess the risks of trafficking or re-trafficking on return, in compliance with the obligation of *non-refoulement*.

There is still no National Referral Mechanism in Poland, even though work on its preparation has been ongoing for several years. The formal identification of victims of trafficking remains the competence of the Police, the Border Guard and the National Prosecutor's Office. GRETA considers that the authorities should finalise the preparation of and putting into place a National Referral Mechanism defining the role to be played and the procedure to be followed by different stakeholders, provide further training and resources to relevant professionals, and enable specialised NGOs to have regular access to facilities for asylum seekers and administrative detention centres for migrants.

GRETA welcomes the increase in the budget allocated to National Consulting and Intervention Centre for Victims of Trafficking (KCIK) for the assistance to victims of trafficking. Nonetheless, GRETA urges the authorities to take additional steps to guarantee effective assistance to victims, including by ensuring continuous access to public health and increasing the number of places in specialised accommodation, including for male victims. It also considers that authorities should ensure the sustainability of state funding and extend the duration of the public funding allocated to KCIK.

The number of identified child victims of trafficking being low, GRETA urges the authorities to increase the capacity to detect child victims by training a larger range of professionals who may come into contact with such children, and providing safe and specialised accommodations for child victims of trafficking.

## I. Introduction

1. The Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) entered into force for Poland on 1 May 2009. GRETA’s first evaluation report<sup>1</sup> on Poland was published on 6 May 2013, and the second evaluation report<sup>2</sup> on 17 November 2017.

2. On the basis of GRETA’s second report, on 9 February 2018 the Committee of the Parties to the Convention adopted a recommendation to the Polish 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 Polish authorities was considered at the 24th meeting of the Committee of the Parties (5 April 2019) and was made public.<sup>3</sup>

3. On 13 October 2020, GRETA launched the third round of evaluation of the Convention in respect of Poland by sending the questionnaire for this round to the Polish authorities. The deadline for submitting the reply to the questionnaire was 15 February 2021 and the authorities’ reply was received on 15 February 2021.

4. In preparation of the present report, GRETA used the reply to the third-round questionnaire by the Polish authorities, the above-mentioned report submitted by them in reply to the Committee of the Parties’ recommendation, information received from civil society, as well as additional information sent by the Polish authorities. The organisation of an evaluation visit to Poland was repeatedly postponed, first because of the travel and meeting restrictions imposed by the COVID-19 pandemic, and then due to the Russian military aggression against Ukraine and the arrival of millions of refugees from Ukraine to Poland, creating important logistical challenges for the Polish authorities. The visit which finally took place from 6 to 10 June 2022 enabled GRETA to hold meetings with relevant governmental and non-governmental actors, collect additional information and examine the practical implementation of adopted measures. The visit was carried out by a delegation composed of:

- Ms Julia Planitzer, Second Vice-President of GRETA;
- Mr Aurelijus Gutauskas, member of GRETA;
- Ms Conny Rijken, member of GRETA;
- Ms Petya Nestorova, Executive Secretary of the Convention;
- Ms Parvine Ghadami, Administrator in the Secretariat of the Convention.

5. During the visit, the GRETA delegation held consultations with Mr Bartosz Grodecki, Under-Secretary of State in the Ministry of the Interior and Administration, as well as officials from the Ministry of the Interior and Administration (including the Police Headquarters and the Border Guard Headquarters), the Ministry of Justice, the Ministry of Family and Social Policy, the Ministry of Health, the Ministry of Funds and Regional Policy, the Ministry of Foreign Affairs, the National Prosecutor’s Office, the National Labour Inspectorate, and the judiciary. Further, the GRETA delegation met representatives of the Office of the Commissioner for Human Rights (Ombudsperson).

6. Separate meetings were held with representatives of non-governmental organisations (NGOs), a trade union and an employers’ organisation, as well as lawyers and researchers. The GRETA delegation also met representatives of the International Organization for Migration (IOM), the United Nations High Commissioner for Refugees (UNHCR), and the European Border and Coast Guard Agency (FRONTEX).

7. The visit provided an opportunity to visit an NGO-run shelter for female victims of trafficking and a safe house for male and female victims.

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<sup>1</sup> <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680632f48>

<sup>2</sup> <https://rm.coe.int/report-concerning-the-implementation-of-the-council-of-europe-conventi/1680a538f3>

<sup>3</sup> <https://rm.coe.int/cp-2019-11-pol-en/16809987f5>

8. In the course of the visit, the GRETA delegation travelled to Rzeszów where it held a meeting with Ms Ewa Leinart, Governor (*voivode*) of the Subcarpathian Region, and members of the regional anti-trafficking team. The delegation also visited a reception centre for persons fleeing the war in Ukraine and the border crossing point in Medyka.
9. The list of the national authorities, international organisations, 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.
10. GRETA wishes to place on record the co-operation provided by the Polish authorities before, during and after the evaluation visit, and in particular by Ms Justyna Jambor and Ms Marta Cłapka of the Department for International Affairs and Migration of the Ministry of the Interior and Administration.
11. The draft version of the present report was approved by GRETA at its 46<sup>th</sup> meeting (14-18 November 2022) and was submitted to the Polish authorities for comments. The authorities' comments were received on 27 February 2023 and were taken into account by GRETA when adopting the final report at its 47<sup>th</sup> meeting (27-31 March 2023). The report covers the situation up to 31 March 2023; developments since that date are not taken into account in the following analysis and conclusions. GRETA's conclusions and proposals for action are summarised in Appendix 1.

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

12. Poland is a country of origin, transit and destination of victims of trafficking in human beings (THB). The continued absence of a National Referral Mechanism for victims of human trafficking and the lack of a comprehensive and coherent statistical system on THB make it difficult to have an accurate picture of the situation. Data on identified victims of trafficking is collected by several authorities. The Police identified 84 victims in 2017, 97 in 2018, 98 in 2019, 10 in 2020, 23 in 2021 and 31 in 2022. The Border Guard identified 43 victims in 2017, 65 in 2018, 98 in 2019, 43 in 2020, 71 in 2021 and 110 in 2022. The National Prosecutor's Office identified 453 victims in 2017, 222 in 2018, 208 in 2019, 269 in 2020, 447 in 2021 and 277 in 2022. The National Consulting and Intervention Centre for Victims of Trafficking (KCIK), which is run by specialised NGOs selected through annual tenders (see paragraph 28), identified and assisted 187 victims in 2017, 181 in 2018, 226 in 2019, 166 in 2020, 210 in 2021 and 254 in 2022. As there is a degree of double counting between the different sets of figures, it is not possible to give a total number of the identified victims of THB in Poland; nevertheless, the preceding figures suggest that the number of victims has increased compared to the previous reporting period.<sup>4</sup>

13. Only some of the available sets of data are broken down by sex, age and form of exploitation of the victims. Nevertheless, it would appear that the majority of the victims identified by the Border Guard were men (72% ), as well as those identified by the Police (56%).<sup>5</sup> KCIK identified and assisted similar numbers of women and men.<sup>6</sup> There continues to be a relatively low number of identified child victims of THB (see paragraph 239).

14. During the reporting period, there has been an increase in trafficking for the purpose of labour exploitation, which has emerged as the main form of exploitation of the victims identified by the Border Guard and the National Prosecutor's Office (between 54% and 97% in different years).<sup>7</sup> Victims have been identified in the sectors of construction, agriculture and manufacture. There has been a trend of temporary employment agencies recruiting workers in Latin American countries using deception. Sexual exploitation is the second most common form of exploitation. In 2021 the National Prosecutor's Office identified a significant number (290) of victims of other forms of exploitation, particularly for committing benefit fraud (175).<sup>8</sup>

15. As regards the origin of the identified victims, the majority were Polish citizens. Most of the foreign victims originated from Ukraine, Romania, Moldova, Bulgaria, Belarus, Vietnam, the Philippines and Sri Lanka. Further, in 2017, the Prosecutor's Office identified 107 victims from North Korea.<sup>9</sup> In 2021-2022, a growing number of victims of THB, mainly for labour exploitation, originated from Latin American countries, in particular Guatemala, Colombia, Venezuela and Mexico.

<sup>4</sup> During the previous reporting period, the number of victims of THB identified by the Police and the Border Guard was 193 in 2013, 98 in 2014, 58 in 2015 and 119 in 2016. The National Prosecutor's Office identified 135 victims in 2013, 103 in 2014, 115 in 2015 and 79 in 2016.

<sup>5</sup> According to official data, the Police identified 63 men and 20 women as victims of THB in 2017, 3 men and 7 women in 2020, 5 men and 18 women in 2021, and 12 men and 19 women in 2022. The Border Guard identified 27 men and 16 women in 2017, 49 men and 16 women in 2018, 71 men and 27 women in 2019, 30 men and 13 women in 2020, 49 men and 22 women in 2021, and 85 men and 25 women in 2022.

<sup>6</sup> KCIK assisted 102 women and 64 men in 2020, 115 women and 95 men in 2021, and 99 women and 155 men in 2022.

<sup>7</sup> The number of victims of trafficking for the purpose of labour exploitation identified by the Police and the Border Guard were, respectively, 46 and 38 victims in 2017, 53 and 49 in 2018, 87 and 80 in 2019, 3 and 38 in 2020, 5 and 64 in 2021, and 13 and 107 in 2022. As for the National Prosecutor's Office, the numbers were 210 in 2020, 121 in 2021, and 225 in 2022.

<sup>8</sup> The number of victims of trafficking for the purpose of sexual exploitation identified by the Police and the Border Guard were, respectively, 22 and 4 victims in 2017, 34 and 5 in 2018, 8 and 8 in 2019, 6 and 0 in 2020, 17 and 7 in 2021, and 12 and 2 in 2022. As for the National Prosecutor's Office, the number was 32 in 2020, 36 in 2021, and 20 in 2022.

<sup>9</sup> See paragraph 76 of GRETA's second report on Poland.

16. In mid-2021, a sudden increase in arrivals of migrants at the Poland-Belarus border led to a dire humanitarian situation, with asylum seekers and migrants stranded for prolonged periods of time without access to basic services or international protection procedures (see paragraph 231). According to UNHCR, in 2021, Poland recorded 39,674 attempted entries at the Belarus border (mostly from citizens of Iraq, Syria and Afghanistan), including repeat attempts by the same persons. Of those, 33,788 were immediately returned to Belarus in line with the declared State of Emergency (see paragraph 20). Of those able to enter Poland, 3,592 were held in detention in 2021, including families with children and unaccompanied or separated children. The Polish authorities reported that the Border Guard had identified three children (two Congolese girls and one Guinean boy) as victims of THB among the migrants who crossed the border from Belarus, and that they were referred to KCIK for assistance.

17. Following the outbreak of the war in Ukraine on 24 February 2022, Poland became the main country of arrival of Ukrainian refugees, with some 6,8 million people entering Poland until 18 November 2022.<sup>10</sup> According to information provided by the Polish authorities, a few cases of suspected human trafficking were reported and investigated, but by the time of the authorities' comments to the draft report (February 2023), only one case of THB for the purpose of sexual exploitation of two Ukrainian girls had been confirmed following an investigation (see paragraph 259).

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

18. The legislative framework relevant to combating THB in Poland has undergone several changes since the second evaluation by GRETA in 2017. The Law of 24 November 2017 amending the Law on Foreigners introduced the possibility of withdrawing the certificate of a presumed victim of trafficking in case the person concerned has crossed (or attempted to cross) the Polish border in violation of the law. Further, it introduced the possibility to grant a temporary residence permit to child victims of THB regardless of their co-operation with the authorities (see paragraphs 276 and 279). Moreover, the Law of 20 December 2020 amending the Law of 14 July 2005 on Entering the Territory of Poland extended the possibility to be issued with a certificate of a presumed victim of trafficking to European Economic Area (EEA) and Swiss nationals (see paragraph 275).

19. The Law of 19 July 2019 amending the Code of Criminal Procedure (CCP) and certain other acts introduced additional measures on the protection of victims and witnesses of crimes (see paragraphs 140 and 176).

20. On 2 September 2021, a State of Emergency was declared, establishing an emergency zone along the border with Belarus, and restricting the access of unauthorized individuals or organisations and the monitoring by independent institutions. On 23 October 2021, amendments to the Law on Granting Protection to Foreigners authorised the Border Guard to return foreigners entering Poland through unofficial border crossings without enabling them to apply for asylum, with limited exceptions. Amendments to the Law on the Protection of the State Border extended the emergency zone until 30 June 2022.

21. Following the outbreak of the war in Ukraine, the Law of 12 March 2022 on the Assistance to the Ukrainian Citizens in Connection with the Armed Conflict provided for, *inter alia*, a temporary increase in the sanctions for committing human trafficking (see paragraph 101).

22. Since 2015, numerous laws on the judiciary have been passed in Poland. Their implications for the judicial response to THB are discussed later in the report (see, in particular, paragraph 121).

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<sup>10</sup> <https://data.unhcr.org/en/documents/download/97052>

23. As regards the institutional framework for action against THB in Poland, pursuant to Ordinance No. 6 of 15 February 2019 of the Minister of the Interior and Administration, the co-ordination of anti-trafficking policies has been entrusted to the Team for Counteracting Trafficking in Human Beings, which replaced the previous Inter-ministerial Committee against Human Trafficking.<sup>11</sup> Chaired by the Minister of the Interior and Administration, the Team comprises representatives of relevant ministries and agencies.<sup>12</sup> According to the Polish authorities, the Commissioner for Human Rights, the Children's Ombudsman and a number of NGOs (La Strada Poland, PoMOC, Itaka Foundation, Halina Nieć Legal Aid Center, Salvation Army, You Can Free Us Polska and Lighthouse Foundation) are invited to participate in the Team's work. The Team's tasks include preparing National Action Plans, monitoring their implementation and preparing annual reports. The secretariat of the Team is provided by a Unit of the Department of International Affairs and Migration of the Ministry of the Interior and Administration (see paragraph 151).

24. In December 2022, the Deputy Director of the Department of International Affairs and Migration of the Ministry of the Interior and Administration was appointed as National Rapporteur on THB and participates in the EU Network of National Rapporteurs or equivalent mechanisms. GRETA refers to its second report on Poland, where it stressed that Article 29 of the Convention makes a clear distinction between national co-ordination and National Rapporteur. In GRETA's view, the key features of National Rapporteurs' mechanisms in the sense of Article 29, paragraph 4, of the Convention<sup>13</sup> should be the ability to critically monitor the efforts and effectiveness of all state institutions, including national co-ordinators, and to that end maintain a constant exchange with civil society, the research community and other relevant stakeholders. The human rights-based approach to anti-trafficking policies advocated by the Convention requires adequate monitoring and evaluation. A structural separation between monitoring and executive functions enables an objective evaluation of the implementation of anti-human trafficking legislation, policy and activities, identification of lacunae and shortcomings, and the formulation of comprehensive legal and policy recommendations. **GRETA once again considers that the Polish authorities should examine the possibility of designating as a National Rapporteur a separate organisational entity or another independent mechanism for monitoring the anti-trafficking activities of State institutions.**

25. According to the Polish authorities, the Anti-Trafficking Team comprised four working groups: 1) on monitoring the implementation of the National Action Plan; 2) on the support of victims of human trafficking; 3) on drafting a handbook for the judiciary and law enforcement authorities; and 4) on developing guidelines for labour inspectors. The first two working groups remain operational and met periodically in 2022. The third and the fourth working groups completed their work in 2021-2022, producing, respectively, a handbook for the judiciary on THB (see paragraph 94) and guidelines for labour inspectors (see paragraph 218). Due to the COVID-19 pandemic restrictions, most of the working group meetings were held online.

26. Members of civil society expressed concerns that the setting up of the Anti-Trafficking Team had resulted in a downgrading of the national co-ordination body as previously the Inter-ministerial Committee against Human Trafficking had functioned as a consultative body of the Prime Minister. It would appear that the full composition of the Team is not defined in the above-mentioned ordinance (e.g. NGOs and the National Labour Inspectorate are not mentioned), which might undermine the stability of its membership and the continuity of the Team's works. GRETA positively notes the information provided by the Polish authorities in their comments on the draft report that there is a proposal to restore the Anti-Trafficking Team as a consultative body of the Prime Minister. The authorities also indicated

<sup>11</sup> For more information about the former Inter-ministerial Committee Against Human Trafficking, see paragraphs 23 to 26 of GRETA's first report on Poland; paragraph 19 of GRETA's second report on Poland.

<sup>12</sup> Ministry of the Interior and Administration, Commander in Chief of the Police, Commander in Chief of the Border Guard, Head of the Office for Foreigners, Ministry of Justice, Ministry of Family and Social Policy, Ministry of Foreign Affairs, Ministry of Health, Ministry of Education and Sciences, Ministry of Funds and Education, Head of the Internal Security Agency, Chief Labour Inspectorate, National School of Judiciary and National Prosecutor's Office.

<sup>13</sup> "Each Party shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements."

that, pursuant to Regulation No. 6 of 15 February 2019 of the Minister of the Interior and Administration on the establishment of the Team, the chair of the Team may invite representatives of NGOs to participate in its work and working groups, and NGOs are indeed invited and participate in the meetings as fully-fledged members. **Taking into account the important role played by civil society in implementing anti-trafficking activities and supporting victims of THB, GRETA considers that the Polish authorities should formalise the participation of specialised NGOs in the Team for Counteracting Trafficking in Human Beings and continue ensuring that they are involved in the planning, implementation and evaluation of anti-trafficking action.**

27. Regional (Voivodeship) teams for counteracting THB consisting of representatives of relevant state and non-state bodies exist in each of Poland's 16 regions.

28. The National Consulting and Intervention Centre for Victims of Human Trafficking (KCIK), set up in 2009, is operated by the NGOs La Strada Poland and PoMOC following an annual tender organised by the Ministry of the Interior and Administration. It continues to identify victims, provide assistance and run shelters.

29. A new National Action Plan against trafficking in human beings (2022-2024) was adopted by the Council of Ministers on 17 November 2021 following the expiration of the previous plan (2020-2021).<sup>14</sup> The total budget of the plan for 2022 is PLN 1,315,000 (around 280,000 €), including PLN 1,235,000 from the Ministry of the Interior and Administration and PLN 80,000 from the Ministry of Labour and Social Policy. The amount was raised to PLN 1,745,000 (about 370,000 euros) in 2023. Most of the budget goes towards the funding of the KCIK.<sup>15</sup> Additional resources are given from the regions' budgets to fund the activities of the regional anti-trafficking teams.

30. The goals of the National Action Plan are as follows: 1) raising public awareness on trafficking; 2) increasing support to victims, including children; 3) improving the prosecution of trafficking cases; (4) improving the qualifications of professionals involved in preventing trafficking and supporting victims; (5) broadening the knowledge on trafficking and the effectiveness of actions, especially on THB for the purpose of forced labour. The plan includes the development of a National Referral Mechanism (NRM), the development of a programme for the support of child victims of THB, the preparation of a handbook for the judiciary and law enforcement, the drafting of guidelines for labour inspectors, and the creation of a unified system of data collection. Legislative changes are also envisaged, notably through an analysis of the need to introduce an anti-trafficking law. GRETA welcomes the fact that several measures envisaged by the Plan reflect some of its previous recommendations.

31. The Ministry of the Interior and Administration draws up annual and final reports on the implementation of the National Action Plans. There is no external, independent evaluation of the National Action Plan. Recalling that good planning, regular monitoring and independent evaluation are key to ensuring the success of action against human trafficking, **GRETA considers that the Polish authorities should introduce an independent evaluation of the implementation of National Action Plans against THB and other anti-THB projects, as a tool for assessing the impact of the activities and planning future policies and measures to combat THB.**

<sup>14</sup> <https://www.gov.pl/attachment/cba4f451-adc9-48a7-8871-2958256e83de>

<sup>15</sup> In 2021, the annual budget of KCIK was PLN 1.1 million (approximately 239,000 euros)

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

### 1. Introduction

32. 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.

33. 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.<sup>16</sup>

34. According to the *Basic principles on the right to an effective remedy for victims of trafficking in persons*,<sup>17</sup> the right to an effective remedy is considered to include restitution,<sup>18</sup> compensation,<sup>19</sup> rehabilitation,<sup>20</sup> satisfaction<sup>21</sup> and guarantees of non-repetition.<sup>22</sup> 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,<sup>23</sup> and the Council of Europe Committee of Ministers

<sup>16</sup> *Rantsev v. Cyprus and Russia*, application no. 25965/04, judgment of 7 January 2010; *L.E. v. Greece*, application No. 71545/12, judgment of 21 January 2016; *Chowdury and Others v. Greece*, application No. 21884/15, judgement of 30 March 2017; *S.M. v. Croatia*, application No. 60561/14, Grand Chamber judgment 25 June 2020.

<sup>17</sup> UN General Assembly, *Basic principles on the right to an effective remedy for victims of trafficking in persons*, Annex to the Report by the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, 6 August 2014, A/69/269, available at: <https://undocs.org/A/69/269>

<sup>18</sup> Restitution includes restoration of liberty, including release of the victim from detention; enjoyment of human rights and family life, including reunification and contact with family members; safe and voluntary repatriation; temporary or permanent residence status, refugee status, complementary/subsidiary protection or third-country resettlement; recognition of the victim's legal identity and citizenship; restoration of the victim's employment; assistance and support to facilitate social integration or reintegration; return of property, such as identity and travel documents and other personal belongings.

<sup>19</sup> Compensation may cover damages for physical or mental harm; damages for lost opportunities, including employment, education and social benefits; reimbursement of costs of necessary transportation, childcare or temporary housing; material damages and loss of earnings; moral or non-material damages; reimbursement of legal fees and other costs relating to the participation of the victim in the criminal justice process; reimbursement of costs incurred for legal, medical or other assistance.

<sup>20</sup> Rehabilitation includes medical and psychological care, legal and social services, shelter, counselling and linguistic support, independently of the capacity or willingness of the victims to co-operate in legal proceedings.

<sup>21</sup> Satisfaction includes effective measures aimed at the cessation of continuing violations; verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety, privacy and other interests of the victims of their families; an official declaration or a judicial decision restoring the dignity, reputation and rights of the victim; public apologies; judicial and administrative sanction against the perpetrators.

<sup>22</sup> Guarantees of non-repetition include ensuring the effective investigation, prosecution and sanctioning of traffickers; all measures necessary to protect victims from re-trafficking; providing or strengthening training of relevant officials; strengthening the independence of the judiciary; modifying practices that cause, sustain or promote tolerance to trafficking, including gender-based discrimination and situations of conflict and post-conflict; effectively addressing the root causes of trafficking; promoting codes of conduct and ethical norms for public and private actors; protecting legal, medical and other professionals and human rights defenders who assist victims.

<sup>23</sup> United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by General Assembly resolution 40/34 of 29 November 1985, available at: [https://www.unicef-irc.org/portfolios/documents/472\\_un-declaration-crime.htm](https://www.unicef-irc.org/portfolios/documents/472_un-declaration-crime.htm)

Recommendation CM/Rec(2023)2 on rights, services and support for victims of crime,<sup>24</sup> which outline the main steps to be taken to improve access to justice, and fair treatment, restitution, compensation and social assistance for victims of crime.

35. 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.

36. Children need special support to access remedies, the best interests of the child being the primary consideration in all actions concerning trafficked children. The appointment of legal guardians to represent unaccompanied or separated children plays a vital role in enabling child victims of trafficking to access justice and remedies. Further, facilitating family reunification can be an important element of restitution.<sup>25</sup>

37. 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.<sup>26</sup> In this context, reference should be made to the international projects COMP.ACT - European Action on Compensation for Trafficked Persons<sup>27</sup> and Justice at Last - European Action for Compensation of Victims of Crime,<sup>28</sup> which aim to enhance access to compensation for trafficked persons.

38. The private sector should also play a role in enabling access to, as well as providing, remedies to trafficked persons, in accordance with the UN 'Protect, Respect and Remedy' Framework and the United Nations Guiding Principles on Business and Human Rights.<sup>29</sup> The role of businesses includes steps to ensure that their supply chains are free of trafficked labour, as well as the adoption and implementation of measures to facilitate access to remedies for victims for any harm that occurs. Further, businesses have the potential to help trafficked persons regain economic autonomy.<sup>30</sup> States should therefore ensure that business enterprises implicated in human trafficking are held responsible and take steps to reduce barriers that could lead to a denial of access to remedies.

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

<sup>24</sup> Recommendation CM/Rec(2023)2 of the Committee of Ministers to member States on rights, services and support for victims of crime adopted on 15 March 2023 and its Explanatory Memorandum, available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680aa8263](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680aa8263)

<sup>25</sup> UNODC, ICAT Issue Paper, Providing Effective Remedies for Victims of Trafficking in Persons, 2016, pp. 7-8.

<sup>26</sup> OSCE Compensation for Trafficked and Exploited Persons in the OSCE Region, 2008, pp. 48-53.

<sup>27</sup> <http://www.compactproject.org/>

<sup>28</sup> <http://lastradainternational.org/about-lsi/projects/justice-at-last>

<sup>29</sup> United Nations Guiding Principles on Business and Human Rights, implementing the UN 'Protect, Respect and Remedy' Framework, Doc. A/HRC/17/31 (2011).

<sup>30</sup> UNODC, ICAT Issue Paper, Providing Effective Remedies for Victims of Trafficking in Persons, 2016, pp. 8-9.

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

40. 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.

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

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

43. Article 300(2) of Poland's Code of Criminal Procedure (CCP) provides that victims are to be informed of their rights prior to being interviewed for the first time, including of the right to compensation, the right to be assisted by a lawyer and to request the appointment of an *ex officio* lawyer, and the right to protection and assistance measures. Information must be given in writing and its receipt has to be acknowledged by the victim.

44. Victims of crime receive a document ("letter of rights"), approved by a 2016 Regulation of the Minister of Justice, which provides guidance on their rights and obligations in criminal proceedings. It is currently available in 21 languages (compared to eight during the previous reporting period) and the authorities indicated that ad hoc translation would be provided in case a language is missing.<sup>33</sup> The document explains that a victim shall be a party in the preparatory procedures preceding the filing of a case to court and may be a party in court proceedings, acting as subsidiary prosecutor, if this is requested prior to the commencement of the court proceedings. Reference is made to the following rights of victims: the right to have a legal representative, either a barrister or a legal counsel; the right to a free-of-charge interpreter; the right to state compensation; the right to protection; and the right to free-of-charge medical, psychological, legal and material support. The document also refers to the right to receive information about the termination of the suspect's pre-trial detention or escape from custody, as well as the right to file a motion to request information about the charges against the defendant, and the date and place of the court hearing or session during which proceedings might be terminated or discontinued. GRETA notes that the document is written in a formal and legalistic language, and does not explain how to exercise those rights in practice, for example how to apply for free legal aid or for state compensation. In their comments on the draft GRETA report, the Polish authorities have indicated that if a victim does not understand the document, oral explanations would be provided, and that there is no plan to change the content of the document.

<sup>31</sup> See Explanatory Report on the Convention, paragraphs 160-162.

<sup>32</sup> See 8th General report on GRETA's activities, paragraphs 168-169.

<sup>33</sup> Albanian, Arabic, Bengali, Chinese, English, Farsi, French, Hindi, Korean, Mongolian, Nepali, Portuguese, Polish, Russian, Romanian, Serbian, Spanish, Thai, Turkish, Ukrainian, and Vietnamese.

45. The document on victims' rights does not contain information on the specific rights of victims of THB. The authorities underlined that this information is contained in the "certificate of a presumed victim of trafficking" which is given to victims after their identification (see paragraph 253). However, the copy of this certificate provided to GRETA only refers to the right to legally stay in Poland during the period of the validity of the certificate and lists the circumstances under which it may be withdrawn.

46. According to NGOs, in practice, after their first contact with law enforcement authorities, victims are informed in more detail about their rights by KCIK and/or their lawyer. GRETA notes that the National Action Plan for 2022-2024 envisages the drafting, translation and publication of a catalogue of rights of victims of trafficking, which should be finalised in 2023.

47. In criminal proceedings, victims have the right to a free interpreter if they have no command of the Polish language, as well as to a free translator if there is a need to translate relevant documents (Article 204(1) and (2) CCP). These rights apply regardless of the victims' status in the proceedings (i.e. as a party to the proceedings or a witness) and their financial resources. In civil proceedings, pursuant to Article 265(1) of the CCP, victims have the right to a free-of-charge interpreter during the hearing. In administrative proceedings regarding the issuance of a residence permit to victims of trafficking, the latter are entitled to an interpreter during any interviews by the Office for Foreigners (Article 179 of the Law on Foreigners).

48. In addition, pursuant to the Law on Granting Protection to Foreigners in Poland, people seeking international protection are provided with free-of-charge interpretation during interviews and translation of documents submitted as evidence. However, GRETA was informed that there is a lack of interpreters in detention centres holding irregular migrants and asylum seekers.

49. Law enforcement and judicial authorities have recourse to a list of sworn interpreters and translators drawn up by the Ministry of Justice or can request other interpreters or translators on the basis of their specific knowledge. Interpreters must be physically present in the same room as victims and cannot interpret over the phone or online. Victims of trafficking met by GRETA confirmed that they were assisted by interpreters during their questioning by law enforcement authorities and that they were satisfied with the interpretation provided. However, according to specialised NGOs, when victims report crimes to the police, they have to bring their own interpreters; in addition, the translation of written statements made by victims to the police has reportedly been paid by NGOs. Further, GRETA was informed of difficulties in providing interpreters in some languages (e.g. languages spoken in Ghana and Indonesia), and it would appear that interpreters are not specifically sensitised on the issue of THB.

50. GRETA stresses that victims of trafficking should be provided with information on their rights in a manner which takes into account their cognitive skills and psychological state. For example, victims who are traumatized may have difficulties in adequately understanding and analysing the information before taking a decision. This is why it is important that information on rights be provided repeatedly by different professionals, including psychologists, social workers and lawyers, while ensuring that the provision of information is structured and consistent throughout the victims' pathway of engaging with different agencies and organisations.

51. **GRETA considers that the Polish authorities should take additional measures to ensure the systematic provision of oral and written information to presumed and formally identified victims of trafficking, in a language they can understand, regarding their rights, the services available and how to access them, as well as the implications of being identified as a victim of trafficking. This should include steps to:**

- **revise the document on victims' rights so that the information is easy to understand and contains explanations on how to access such rights;**

- **revise the “certificate of a presumed victim of trafficking” so that it provides information on all the rights of victims of trafficking and how to access them;**
- **train and instruct law enforcement officers, prosecutors, staff of reception centres for migrants and shelters accommodating victims of trafficking on how to properly explain to victims of THB their rights, taking into account the victim’s cognitive skills and psychological state;**
- **ensure that all victims of trafficking who are not fluent in Polish are assisted during interviews with law enforcement agencies and hearings in court by qualified interpreters, and sensitise the latter to the issue of human trafficking.**

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

52. 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-law<sup>34</sup> also recognises, in certain circumstances, the right to free legal assistance in a civil matter on the basis of Article 6(1) of the ECHR. Thus, even in the absence of legislation granting free legal assistance in civil matters, it is for the courts to assess whether, in the interest of justice, an applicant who is without financial means should be granted legal assistance if unable to afford a lawyer.

53. GRETA’s reports highlight the value of a lawyer being appointed as soon as there are reasonable grounds for believing that a person is a victim of trafficking, before the person makes an official statement and/or decides whether to co-operate with the authorities. Early access to legal assistance is also important to enable victims to take civil actions for compensation and redress.<sup>35</sup>

54. In Poland, pursuant to the Law on Free Legal Aid and Legal Education of 5 August 2015, victims of trafficking are entitled to legal counselling, support in drafting documents, the right to have a lawyer during proceedings, as well as the right to a waiver of procedural expenses, under conditions set forth in the law.<sup>36</sup> According to Article 87(1) of the CCP, a victim who has the status of a party to the criminal proceedings can avail him/herself of professional legal aid which is provided free of charge if the victim demonstrates inability to bear the costs of legal aid. No evidence of the financial situation is required for the request of free legal aid, but a written statement has to be submitted by victims and can be controlled *a posteriori*.

55. During the visit, the authorities noted that free legal aid was available regardless of the victim’s residence status. However, in its first report on Poland, GRETA noted that irregular migrants are not covered by the Law on Free Legal Aid and Legal Education.<sup>37</sup> The Polish authorities indicated that presumed victims of THB who applied for international protection and received a negative decision or a decision that their application is inadmissible or that they should be transferred to another EU country, have the right to free legal aid during the second instance (appeal) proceedings.

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<sup>34</sup> *Airey v. Ireland* judgment, 9 October 1979.

<sup>35</sup> 8<sup>th</sup> General report on GRETA’s activities.

<sup>36</sup> See paragraph 180 of GRETA’s first report on Poland; paragraph 149 of GRETA’s second report on Poland.

<sup>37</sup> See paragraph 180 of GRETA’s first report on Poland.

56. Free legal aid is also available for victims in civil and administrative proceedings, based on their financial situation. Thus, victims seeking compensation from the perpetrator or the state through civil proceedings can be assisted by *ex officio* lawyers, as well as also those engaging civil proceedings on family law matters or proceedings before administrative courts regarding their residence permit.

57. Presumed victims of trafficking identified by law enforcement officers are referred to KCIK, with the victim's consent. Legal consultations are provided by KCIK on-site or through mobile phone to all presumed victims, irrespective of their residence status. The NGOs La Strada and PoMOC, which run KCIK, employ lawyers who provide legal advice to victims, but cannot represent them in judicial proceedings. GRETA was informed that La Strada provided legal assistance to 58 victims of trafficking in 2017, 57 in 2018, 27 in 2019, 98 in 2020, 108 in 2021, and 94 in the first half of 2022.

58. Law enforcement authorities indicated that an *ex officio* lawyer is not necessarily present during the victim's first questioning, but the victim may be accompanied by a representative of KCIK. The appointment of *ex officio* lawyers is made by the court. There are no *ex officio* lawyers specialised on THB and no training on trafficking issues is organised by Bar Associations.

59. GRETA was not provided with statistics on the number of victims of trafficking having received free legal aid because such data is not collected by the authorities. Lawyers and representatives of NGOs met during the visit noted that, in practice, very few victims are represented by lawyers in criminal proceedings and, when this is the case, free legal aid is usually provided *pro bono* by lawyers working with KCIK or other NGOs. This contrasts with the fact that all suspects have legal representation. GRETA stresses the importance of legal representation for victims of THB for ensuring that their procedural rights are respected, assisting them to constitute themselves as injured parties and claim compensation. GRETA notes that more should be done by the criminal justice system to create the necessary conditions for the legitimate interests of victims to be taken into account in criminal proceedings.

60. The authorities have indicated that victims can also receive legal assistance through the Fund for Victim's Aid and Post-Penitentiary Assistance ("Justice Fund") operating since September 2015. As described in GRETA's second report, the Justice Fund aims at "assisting victims and witnesses, preventing crime and post-penitentiary assistance" and is administered by the Ministry of Justice pursuant to Article 43 of the Code on the Execution of Criminal Sentences.<sup>38</sup> A total of 47 entities, including NGOs, are funded by the Justice Fund to provide legal assistance to victims in 384 victim's aid offices across Poland. However, in practice, the relevance of the Justice Fund for victims of THB is very limited and only a few victims of THB are assisted through it. The Ministry of Justice indicated that 10,000 persons had been assisted through the Justice Fund since its creation, including six victims of trafficking in 2022 in Poznan.

61. In detention centres for foreigners, legal assistance is mainly provided by authorised NGOs, such as the Halina Nieć Legal Aid Centre. However, as already highlighted in GRETA's second report, the remoteness of detention centres might cause travel difficulties for the NGOs and lawyers.<sup>39</sup> The authorities indicated that the Office for Foreigners would cover their travel expenses if they are authorised to provide legal assistance in detention centres. In addition, representatives of NGOs and lawyers informed GRETA that they were unable to provide legal assistance and free legal aid to foreigners in detention centres in Podlaskie and Lubelskie regions due to the state of emergency applied from 2 September 2021 to 30 June 2022 (see paragraph 20). Pursuant to the Presidential Regulation on the state of emergency, it was prohibited staying in the area, and no exceptions were envisaged for the provision of humanitarian and legal assistance.<sup>40</sup>

<sup>38</sup> See paragraph 118 of GRETA's second report on Poland.

<sup>39</sup> See paragraph 108 of GRETA's second report on Poland.

<sup>40</sup> Article 4 of the [Regulation of the President](#) of the Republic of Poland of 2 September 2021 on declaration of a state of emergency in parts of the Podlaskie Voivodeship and in parts of the Lubelskie Voivodeship.

62. Despite the existing provisions for victims' access to legal assistance and free legal aid in Poland, GRETA is concerned that, in practice, many victims of THB are not assisted by lawyers during legal proceedings or depend on lawyers working *pro bono*. Little efforts appear to be made to facilitate the provision of free legal aid by specialised lawyers. Given the complexity of proceedings in THB cases, effective legal assistance and free legal aid are fundamental to enabling victims of trafficking to obtain justice and assert their rights.

63. **GRETA urges the Polish authorities to guarantee effective access to legal assistance and free legal aid for victims of trafficking, including by:**

- **facilitating the provision of legal assistance as soon as there are reasonable grounds for believing that a person is a victim of human trafficking, irrespective of his/her residence permit and before the person concerned has to decide whether or not he/she wants to co-operate with the authorities and/or make an official statement;**
- **ensuring that trafficking victims are systematically appointed a specialised lawyer to represent them in legal proceedings;**
- **ensuring adequate funding for the provision of legal assistance and free legal aid to victims of trafficking, including when they are provided by NGO lawyers or *ex officio* lawyers.**

64. **Further, GRETA considers that the Polish authorities should take steps to facilitate the training of lawyers assisting and representing victims of trafficking, including by providing sufficient fundings to that effect and by encouraging the Supreme Bar Council and the National Council of Legal Advisors to offer specialised training and to draw up a list of lawyers qualified to provide assistance to victims of THB.**

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

65. 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.<sup>41</sup>

66. Pursuant to the Law of 12 March 2004 on Social Assistance, victims of trafficking are entitled to all social assistance measures specified in the law, including crisis intervention and psychological support. Such assistance is funded by the State or regional budgets and can be delegated to NGOs.<sup>42</sup> However, pursuant to Articles 5 and 5a of this law, it is only available for persons who are legally residing in Poland, including victims of trafficking holding a temporary residence permit issued on the basis of their co-operation with law enforcement authorities or a "certificate of a presumed victim of trafficking". Information provided by the authorities suggests that after the expiration of the recovery and reflection period, victims who are not prepared to cooperate with the authorities are not entitled to psychological assistance under the Law on Social Assistance.

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

<sup>42</sup> See paragraph 111 of GRETA's second report on Poland.

67. In addition, pursuant to Article 10 of the Law of 28 November 2014 on Protection and Assistance to Victims and Witnesses, victims can be provided with medical and psychological care through the Justice Fund.<sup>43</sup> However, GRETA understands that given the scope of the Justice Fund, such care is limited to victims whose case is subject to judicial proceedings.

68. In practice, psychological assistance is mainly provided to victims of trafficking, regardless of their nationality or residence permit, by KCIK. As organisations responsible for KCIK, La Strada and PoMOC both employ in-house psychologists. Psychological assistance can also be provided externally, at the expense of KCIK or free-of-charge when victims have health insurance. However, access to public health insurance is not available for victims of trafficking without a permanent residence permit (see paragraph 268). In addition, the budget of KCIK is limited and cannot cover all assistance needs (see paragraphs 265-267). In practice, it is very difficult to provide psychological assistance to victims of trafficking who do not speak Polish due to the absence of interpreters. GRETA was informed that La Strada organised psychological assistance to 71 victims of trafficking in 2017, 63 in 2018, 12 in 2019, 45 in 2020 and 64 in the first half of 2022.

69. **GRETA considers that the Polish authorities should make further efforts to guarantee psychological assistance to victims of trafficking, including by:**

- **ensuring that psychological assistance can be effectively provided to all victims of trafficking, irrespective of their access to public health insurance;**
- **allocating sufficient funding to KCIK so that it can adequately provide psychological assistance to victims of trafficking, including by engaging interpreters where necessary.**

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

70. 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.<sup>44</sup> GRETA has stressed the need to develop public-private partnerships with a view to creating appropriate work opportunities for victims of trafficking.<sup>45</sup>

71. Foreign victims of trafficking who hold a temporary residence permit issued on the basis of their co-operation with the authorities are entitled to work in Poland and are exempted from the obligation to apply for a work permit. They have access to the services of public employment agencies. However, in practice, delays in obtaining a residence permit (up to one year in some regions) can undermine victims' access to work (see paragraph 282). Only those victims of trafficking who applied for temporary residence during their legal stay in Poland and who were authorised to work prior to submitting their application, can work while waiting for the issuance of a residence permit.<sup>46</sup> GRETA was informed that a draft law on the employment of foreigners is under preparation and granting victims of THB access to the labour market would be considered as part of the legislative process. **GRETA would like to be kept informed of the adoption of the draft law on the employment of foreigners and its provisions regarding victims of THB.**

<sup>43</sup> See paragraph 118 of GRETA's second report on Poland.

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

<sup>45</sup> 8<sup>th</sup> General report on GRETA's activities.

<sup>46</sup> Article 87(1)(12)(b) of the Law on the Promotion of Employment and Labour Market Institutions.

72. Foreign victims who hold a certificate of a presumed victim of trafficking do not have the right to work on the basis of such a certificate. Thus, during the three-month validity of the certificate (four months for children), foreign victims cannot work in Poland unless they find a job and apply for a work permit, which is in practice impossible in such a short period of time. Although the Convention does not oblige State parties to guarantee the right to work during the recovery and reflection period, GRETA stresses that allowing victims who wish to work during this period can be beneficial to regain personal, economic and social autonomy, especially if, as in Poland, they do not receive an allowance once identified as presumed victims.

73. Victims of THB who are asylum seekers may request labour market access six months from the date of their application for international protection. Some of the victims met by GRETA during the visit regretted the impossibility to work and supplement the modest asylum allowance they received. Further, those who did not have a passport could not open a bank account.

74. KCIK assists victims to follow vocational training and Polish language courses and supports them in applying for jobs. However, GRETA was informed that the assistance provided by KCIK is limited by the lack of sufficient resources. During the visit, GRETA met several victims of THB who were looking for jobs while studying Polish. Victims encounter difficulties to find a job or participate in training notably due to the language barrier and the lack of assistance provided by public employment agencies.

**75. GRETA considers that the Polish authorities should ensure effective access to the labour market for victims of THB and their economic and social inclusion through the provision of vocational training and job placement, raising awareness amongst different 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.**

**76. Further, GRETA invites the Polish authorities to extend the right to work to persons who hold a certificate of a presumed victim of trafficking.**

## **6. Compensation (Article 15)**

77. 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.

78. 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.

79. 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.

80. The legal framework regarding access to compensation for victims of THB in Poland has remained unchanged.<sup>47</sup> During criminal proceedings victims can file a motion requesting compensation from the perpetrators pursuant to Article 46 of the Criminal Code (CC). Victims can also engage in civil proceedings, either pursuant to Article 415(2) of the CCP if they consider that the criminal judgment did not award just satisfaction of the damage, or independently of any criminal proceedings. Further, victims can request state compensation in accordance with the 2005 Law on State Compensation for Victims of Certain Crimes.

81. Victims are informed of their right to file a motion for compensation, as well as the right to claim state compensation in the document on victims' rights. However, as mentioned in paragraph 44, the information contained in this document is written in a legalistic language without an explanation on how to access these rights.

82. During criminal proceedings, pursuant to Article 46(1) of the CC, public prosecutors can request compensation on behalf of the victim if the latter does not request it. GRETA was informed that the court can also award compensation *ex officio*. However, there are no examples of compensation requested by public prosecutors or granted *ex officio* by courts for victims of THB.

83. In theory, both material damages (*szkoda*) and non-material damages (*krzywda*) suffered by victims of trafficking can be compensated as part of criminal proceedings, if the criminal court deems it appropriate, pursuant to Article 46 of the CC.<sup>48</sup> The amount of compensation awarded to victims is determined on a case-by-case basis by the court, taking into account both actual losses and loss of profit. If the calculation of the actual damages proves difficult, the criminal court may award a form of punitive damages (*nawiązka*) not exceeding PLN 200,000 (about 45,000 euros).

84. Pursuant to Article 291 of the CCP, compensation can be guaranteed by seizing assets of the alleged perpetrator if there is a justified fear that without such seizure it will be impossible or significantly difficult to enforce the future judgment. GRETA was informed that in 2016-2019, the Police seized assets with a value of PLN 11,523,548 (around 240,000 euros) in THB cases.

85. The Polish authorities could not provide data on compensation claimed by, and awarded to, victims of THB. Lawyers and representatives of NGOs met by GRETA noted that compensation awards are very rare in criminal proceedings and the amount awarded by courts are usually small. According to them, the criminal justice system focuses on punishing the perpetrators, and victims of trafficking are generally treated as witnesses whose testimony is needed to prove the offence rather than as injured parties entitled to compensation. The fact that victims are rarely represented by lawyers (see paragraph 62) also contributes to the absence of compensation. Victims of trafficking would have to engage civil proceedings in order to seek compensation of the damage suffered. However, the long duration of such proceedings (see paragraph 110) discourages victims from following this path.

86. GRETA's examination of a sample of nine judgments issued in THB cases in the last five years demonstrates that compensation awards to victims in criminal proceedings are rare and, when granted, the amount of compensation is rather low.

<sup>47</sup> See paragraphs 147-154 of GRETA's second report on Poland; paragraphs 180-186 of GRETA's first report on Poland.

<sup>48</sup> Material damage covers any damage to the victim's assets which requires expenditure to restore them to their original state (for example, if a victim has to incur medical expenses, this falls within the scope of material damage). Non-material damage covers any negative effect on the victim's physical and mental state.

87. Reference can be made to a ruling by the Supreme Court of 21 December 2021 (IV KK 54/20) which concerned a group of 13 persons who had allegedly trafficked at least 93 women for the purpose of prostitution in Italy. No compensation was awarded to any of the victims either by the district court or by the court of appeal. In contrast, the companies participating in the proceedings because their software was illegally used by some of the defendants were granted compensation of around PLN 55,000 in total (about 11,300 euros). This case is still pending following the decision of the Supreme Court to return it to the court of appeal based on the failure of the latter to clarify if THB was committed by each accused.

88. Another ruling of the Supreme Court of 27 February 2019 (V KK 458/17) concerned three defendants convicted by a district court in 2016 for having committed human trafficking by recruiting and transporting to Germany persons in order to use their identities and commit credit fraud. The district court ordered each defendant to pay compensation amounting to PLN 3,000 (around 630 euros) to one of the victims for the psychological damage suffered.

89. In a judgment of 27 November 2020 of the District Court of *Płock* (II K 85/19), the defendants were convicted of attempted human trafficking with a view to exploiting a woman into prostitution, as well as other offences, including rape and illicit dissemination of sexual images. The victim was granted compensation of PLN 105,000 (around 15,000 euros) to be paid by seven defendants. It would appear that the compensation award was influenced by the other serious crimes committed against the victim, rather than by the attempted trafficking in human beings.

90. In two other cases of THB for sexual exploitation, the issue of compensation was not raised during the criminal proceedings and no compensation awards were made by the courts *ex officio*. The Regional Court of Wrocław, in a judgment of 25 July 2018 (III K 121/17), convicted three persons for having committed THB as part of an organised criminal group which recruited young men, including a child, to exploit them in prostitution by taking advantage of their difficult financial situation and addiction to drugs, using threats, violence and restriction of their movement, and keeping most of the sums earned by victims. In the second case, the Court of Appeal of Katowice, in a judgment of 26 October 2020 (II Aka 167/20), convicted three persons for having committed THB by recruiting women to exploit them as hostesses in a nightclub through misleading online job offers.

91. Victims of THB can also claim compensation pursuant to Law on State Compensation for Victims of Certain Crimes if they have suffered serious damage as a consequence of crimes committed in Poland or another EU Member State after 1 July 2005 and if the perpetrator does not pay the compensation decided by a court.<sup>49</sup> The decision granting state compensation is taken by a district court and is not subject to appeal. The maximum amount of state compensation is PLN 25,000 (around 2,500 euros), or PLN 60,000 (around 12,700 euros) in case of death of the victim.

92. Contrary to GRETA's previous recommendation,<sup>50</sup> third-country nationals without a permanent residence permit in Poland or another EU Member States continue to be excluded from access to state compensation. The Polish authorities affirm that the exclusion of third-country nationals without residence permit is not contrary to the Convention, nor to the EU Directive relating to the compensation to crime victims.<sup>51</sup> They consider that State Parties have a margin of appreciation in the implementation of obligations enshrined in Article 15 of the Convention and that obligations must be guaranteed in line with domestic law. According to them, extending state compensation to victims residing outside EU would make it impossible or significantly more difficult for them to seek compensation given that they are abroad. They also stated that third-country nationals without residence permit can always turn to the Justice Fund.<sup>52</sup> However, GRETA notes that victim compensation is not included in the scope of the Justice Fund.<sup>53</sup>

<sup>49</sup> See paragraphs 152-154 of GRETA's second report on Poland; 184-186 of GRETA's first report on Poland.

<sup>50</sup> See paragraph 156 of GRETA's second report on Poland.

<sup>51</sup> Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.

<sup>52</sup> See Report of Poland to the Committee of Parties, p. 12-13.

<sup>53</sup> See paragraph 36 of the Regulation of the Minister of Justice of 13 September 2017 on the Justice Fund.

93. No data was provided to GRETA on the number of requests for state compensation filed by victims of trafficking. According to representatives of the Ministry of Justice met, the total number of persons applying for state compensation is around 150 per year. As state compensation is conditional on the perpetrator's failure to comply with the court decision ordering to compensate the victim, and decisions on compensation by perpetrators of THB offences are rare, the number of state compensation awards is low. Lawyers and NGOs noted that, in general, even when state compensation is awarded to victims of crime, it is very difficult to obtain it in practice, which leads them to turn away from this path.

94. GRETA was informed that the issue of victim compensation was raised during a training of anti-trafficking coordinators of District and Regional Prosecutor's Offices on 7 December 2017 at which it was stressed that victims should be instructed about their right to compensation and that prosecutors should request it *ex officio*. Annual training is provided to prosecutors, judges and other court staff dealing with trafficking cases (see paragraph 150); however, GRETA understands that victim compensation is not specifically included in the training curriculum. The new handbook "Trafficking in Human beings. Practical Aspects of conducting proceedings" published on 31 August 2022 (see paragraph 120) contains information on the legislation related to victim compensation and the determination of the amount of compensation. The Polish authorities indicated that it is envisaged to cover the issue of compensation in training in 2023.

95. GRETA is concerned that the number and amount of compensation awards by criminal courts to victims of trafficking are very low. In practice, most trafficking victims are treated as witnesses and not as injured parties entitled to compensation. Moreover, the requirements to be met for a victim of trafficking to be eligible for state compensation are so high that no victims have apparently received state compensation.

96. **GRETA urges the Polish authorities to guarantee effective access to compensation for victims of trafficking, notably by:**

- **consistently and systematically informing victims of trafficking of their right to seek compensation in criminal and civil proceedings, as well as to seek state compensation, and the procedures to be followed;**
- **ensuring that victims are provided with legal assistance and free legal aid from the early stage of the proceedings in order to exercise their right to compensation;**
- **ensuring that the collection of evidence about the harm the victim has suffered, including the financial gain from the exploitation of the victim, is part of the criminal investigation, with a view to supporting compensation claims in court;**
- **ensuring that victims of trafficking can effectively receive compensation for the full damage suffered as part of the criminal proceedings, and within a reasonable time;**
- **providing regular training and guidelines for prosecutors and criminal judges on victim's right to compensation, the determination of the amount of compensation, and the possibility to respectively request and order compensation *ex officio*;**
- **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 eligibility for state compensation to all victims of THB, including third-country nationals who are victims of THB committed in Poland, regardless of their residence status in Poland.**

97. **Further, GRETA considers that the Polish authorities should monitor access to compensation for victims of trafficking by developing a system for recording claims for compensation and compensation awarded.**

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

98. 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.

99. 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.

100. 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.

101. The definition of human trafficking in Article 115, paragraph 22, of the Polish CC has remained unchanged.<sup>54</sup> The list of purposes of exploitation still does not include "servitude" which is not criminalised separately in Polish law. The authorities consider that servitude is covered by other offences such as slavery, violating human dignity or employing foreigners illegally under exploitative conditions. GRETA recalls that the absence of a specific criminal offence of servitude in domestic law may lead to difficulties in complying with States' positive obligations to prevent, investigate and prosecute servitude.<sup>55</sup> **Reiterating its previous recommendation, GRETA considers that the Criminal Code should include an express prohibition of servitude in order to contribute to the practical and effective protection against treatments contrary to the Convention.**

102. The penalties for committing THB set out in Article 189a of the CC are deprivation of liberty for a minimum term of three years and a maximum term of 15 years, and from three months to five years for preparing the crime. The court can impose additional measures on the convicted person, such as payment of compensation to the victim, forfeiture of proceeds or making the judgment publicly known. Pursuant to the 2022 Law on Assistance to Refugees from Ukraine (Article 72), prison sentences have been temporally increased for committing or preparing the crime of THB during the armed conflict on the territory of Ukraine (10 to 25 years for committing the crime, and a minimum of one year for preparing the crime). The authorities indicated that this provision is not intended only to situations where the victims or the perpetrator are Ukrainians, nor to crimes committed in Ukraine. Officials met during the

<sup>54</sup> See paragraph 49 of GRETA's first report on Poland.

<sup>55</sup> See paragraph 164 of GRETA's second report on Poland.

visit referred to plans to present a draft legislation which should make these increased penalties permanent and applicable to all THB offences.

103. Given the seriousness of the offence of human trafficking, investigations are conducted by the Prosecutor's Office, with support from the Police and/or the Border Guard. The Police and the Border Guard conduct preparatory proceedings as well as investigative and operational activities aimed at gathering evidence.<sup>56</sup> The Police operates a telephone helpline and an email address for reporting cases of trafficking, which receive around 50 calls and 100 emails per year, but few of them effectively relate to THB. GRETA was informed that, in practice, proceedings often start with a victim's complaint and the use of proactive investigation is limited.

104. As mentioned in previous GRETA reports, the investigative authorities can have recourse to special investigation techniques in THB cases, such as interception of communication and use of informants.<sup>57</sup>

105. Victims can join the indictment by the public prosecutor before the first day of trial, acting therefore as auxiliary prosecutor. If public prosecutors decide to discontinue the proceedings, victims can appeal the decision in court. Pursuant to Article 55(1) of the CCP, if the court overturns the discontinuation and the public prosecutor discontinues it for a second time, the victim is entitled to file an indictment directly in court (as a subsidiary prosecutor). Following Law of 19 July 2019 amending the CCP and certain other acts, such an indictment must be signed by a member of the Prosecutor's Office. Interlocutors raised concerns that these amendments have restricted the possibility for victims to act against the opinion of public prosecutors.

106. Plea bargaining is possible in THB cases, but only if the public prosecutor and the victims do not oppose it (Article 387(2) of the CCP). In addition, the court can refuse or amend the plea-bargaining agreement with a view to protecting the interests of the victims. GRETA understands that plea agreements may provide for prison terms below the statutory minimums for human trafficking mentioned in paragraph 101. Although no data is available on the use of plea bargaining in trafficking cases, GRETA was informed by the National Prosecutor's Office that it was occasionally applied, including for members of organised criminal groups.

107. The CC provides for extended confiscation of assets, which makes it possible for the court to confiscate elements of property if the perpetrator gained benefit even indirectly from an offence subject to imprisonment exceeding five years or committed in an organised criminal group, based on the presumption that any asset obtained in the five years before committing the offence was illicit (Article 45(2) and (3) CC). In this context, GRETA refers to MONEYVAL's report on Poland of December 2021 according to which the confiscation of proceeds and instrumentalities is not pursued as a policy objective of law enforcement authorities in Poland.<sup>58</sup>

108. Confiscated assets are transferred to the State Treasury and Polish law does not provide for the possibility of transferring confiscated assets directly to victims of crime. During GRETA's visit, the Police indicated that confiscated assets have been used to compensate victims of trafficking, however, it is not clear under what conditions and procedures.

109. According to data provided by the Polish authorities, 177 investigations in human trafficking cases were conducted in 2017, 117 in 2018, 89 in 2019, 46 in 2020, 57 in 2021 and 24 in 2022. During the same period, 17 indictments were filed by public prosecutors in 2017 (concerning 47 defendants), 23 in 2018 (concerning 51 defendants), 17 in 2019 (concerning 51 defendants), 10 in 2020, 25 in 2021, and 17 in 2022. The number of final convictions for human trafficking was 24 in 2017, 10 in 2018, 32 in 2019, 24 in

<sup>56</sup> See paragraphs 100-101, and 179 of GRETA's second report on Poland.

<sup>57</sup> See paragraph 185 of GRETA's second report on Poland; paragraph 214 of GRETA's first report on Poland.

<sup>58</sup> <https://rm.coe.int/moneyval-2021-25-mer-pl-en/1680a55b9a>

2020, and 31 in 2021.<sup>59</sup> This data is not broken down according to the form of exploitation of the victims. Further, only limited information is available on the length of imprisonment and other penalties imposed. According to data provided by the authorities, in 2020, there were five sentences of up to three years' imprisonment, four of which were suspended; there were no sentences over five years' imprisonment. In 2021, most of the sentences (19 out of 31) involved less than two years' imprisonment and eight of them were suspended; there were only nine sentences involving between five and eight years' imprisonment and none above eight years. GRETA notes that there has been an increase in the number of suspended prison sentences in THB cases over the years.<sup>60</sup> The Polish authorities noted that the suspension of the sentence can be made conditional on paying compensation to the victims.

110. No data was provided by the Polish authorities on the average length of criminal proceedings in THB cases, but GRETA understands that in general terms the length of judicial proceedings is very problematic. GRETA refers to the pilot judgment of the European Court of Human Rights of 7 July 2015 which ruled that there is a systemic problem in the length of both civil and criminal proceedings in Poland.<sup>61</sup> The Committee of Ministers examined the execution of that judgment at its 1377th meeting (June 2020) and considered that despite legislative measures adopted in recent years by the Polish authorities, practical consequences of these measures have not yet been shown.<sup>62</sup>

111. Among the nine judgments in THB cases examined by GRETA, reference can be made to the decision of the Regional Court of Wrocław of 25 July 2018 mentioned in paragraph 90 (III K 121/17) concerning a case of trafficking for the purpose of sexual exploitation committed by members of an organised criminal group. The first perpetrator was sentenced to a prison term of six years, a ban on contacting the victims and on approaching them within a distance of 100 meters, and the confiscation of PLN 17,833.64 (around 3,700 euros) representing the equivalent of the benefit obtained from facilitating prostitution. The second and third perpetrators benefited from attenuating circumstances considering their lesser degree of participation in the crime and health condition, and they were each sentenced to two years' imprisonment (suspended). The third perpetrator was also sentenced to the confiscation of the amount of PLN 1,760.35 (around 370 euros). The entire criminal proceedings lasted for more than 10 years.

112. In another case referred to in paragraph 86, the investigation started in 2008 and a final decision is still pending following the Supreme Court's decision to return the case to the Court of Appeal.<sup>63</sup> The total duration of the case will thus be more than 13 years. In its first judgment (20 February 2019), the Court of Appeal of Krakow considered that the perpetrators were not part of an organised criminal group and sentenced them to prison terms ranging from one to six years.

113. Lawyers and representatives of NGOs met by GRETA referred to cases of THB which were reclassified as other offences, in particular as violations of workers' rights (Articles 218 to 221 CC), employing foreigners residing illegally in Poland (Article 10.1 of the Law of 15 June 2012 on the consequences of delegating work to foreigners unlawfully residing on the territory of the Republic of Poland), facilitating prostitution (Articles 203 and 204 CC), or inducing children into begging (which is a offence under the Misdemeanour Code). The Prosecutor's Office noted that reclassification generally occurs due to the lack of evidence to prove the crime of trafficking. According to GRETA's interlocutors, reclassification regularly happens in cases of trafficking for the purpose of labour exploitation. None of the above-mentioned judgments examined by GRETA concerned such cases.

<sup>59</sup> To compare with the previous reporting period, the number of investigations into THB cases was 68 in 2012, 76 in 2013, 64 in 2014 and 34 in 2015. The number of indictments was 23 in 2012, 26 in 2013, 15 in 2014 and 7 in 2015. The number of final convictions was 16 in 2012, 12 in 2013 and nine in 2014.

<sup>60</sup> One prison sentence was suspended in 2017, three in 2018, five in 2019, four in 2020, and eight in 2021.

<sup>61</sup> European Court of Human Rights, *Rutkowski and others v. Poland*, No. 72287/10, 7 July 2015.

<sup>62</sup> [Link](#) to the webpage on the execution of the judgment *Rutkowski and others v. Poland* (in English).

<sup>63</sup> Supreme Court, judgment of 21 December 2021 (IV KK 54/20).

114. Furthermore, lawyers and NGO representatives met by GRETA noted that while the criminalisation of THB in Poland has existed since 2010, its application continues to pose difficulties as prosecutors and judges have a restrictive interpretation of the concept of THB.<sup>64</sup> In particular, they apply an unduly narrow definition of the concept of “forced labour” and there appears to be a blind spot in recognising as human trafficking cases of labour exploitation involving abuse of a position of vulnerability. Failure to collect supporting evidence during labour inspections, due to lack of proper engagement with victims of exploitation (see paragraphs 225 and 226), contributes to the lack of successful prosecutions. A research funded by the Council of Baltic Sea States published in 2020 noted that there was a low number of prosecutions in cases of trafficking for the purpose of labour exploitation in Poland, and the majority of cases concerned Polish citizens exploited abroad.<sup>65</sup> As noted in previous GRETA reports, “forced labour” is not defined nor criminalised in Polish law, although it is listed in the purposes of exploitation of the crime of THB.<sup>66</sup> As a result, THB cases are qualified as offences carrying lower penalties, such as those provided for in the 2012 Law on the Effects of Delegating Work to Foreigners Staying Contrary to Regulations on the Territory of the Republic of Poland.<sup>67</sup>

115. The National Action Plan for 2022-2024 foresees an analysis of the need to introduce amendments with a view to defining and/or criminalising forced labour. GRETA understands that a study was entrusted to the Justice Institute in 2018 which recommended to add a new paragraph criminalising forced labour in the provision criminalising human trafficking (Article 189a the CC).<sup>68</sup> Some officials met during the visit indicated that there was no clear decision on legislative changes in this respect, while representatives of the Ministry of Justice considered that there was no need to introduce a separate offence of “forced labour”.

116. GRETA was also informed of the case of nine truck drivers from the Philippines who were recruited and employed by a company registered in Poland to work mainly in the Netherlands. They worked excessive long hours, slept in their trucks and were paid salaries lower than what they had been promised. The drivers were initially identified by the Dutch Police as presumed victims of trafficking in 2019, but the case was dismissed in September 2021 by the Dutch courts.<sup>69</sup>

117. During the visit, representatives of the Border Guard referred to several recent investigations in cases of THB for the purpose of labour exploitation, including one in 2018-2020 concerning Ukrainian, Belarusian and Polish workers, in which 113 foreign victims were interviewed, and perpetrators’ property was frozen or seized for a total of PLN 1,055,899,98. Another case in 2020 concerned Moldovan and Romanian workers in fish processing factories; 100 witnesses were interviewed, 30 victims of THB were identified, and perpetrators’ property was frozen or seized for more than PLN 5 million. Other cases, in 2020, concerned five Yemeni nationals exploited in fast food restaurants, and a Russian national exploited in a farm for some 23 years (the material damage of the victim was estimated at PLN 1.5 million). All these cases are pending trial. GRETA was also informed of several ongoing investigations concerning THB for the purpose of labour exploitation, involving victims from Latin American countries (mainly Guatemala, Mexico, Colombia and Venezuela) recruited by temporary employment agencies (one in

<sup>64</sup> In this respect, see Supreme Court, 27 February 2019, V KK 458/17; Supreme Court, 17 October 2017, III KK 103/17. Some ordinary courts had considered that before the introduction of a definition in the criminal code in 2010 (article 189A CC), acts of trafficking in human beings consisted in the trade of an individual). The Polish Supreme Court set aside these judgments and ruled that trafficking should be defined by referring to international instruments ratified by Poland at that time.

<sup>65</sup> As mentioned in the study “New discussions on the complicated relationship between Poland and forced labour” by Dr Julia Muraszkiwicz (September 2020), another study of Dr. Łukasz Wiczorek was published in 2018 regarding judicial proceedings initiated in 2011-2015. Eight proceedings on THB for the purpose of forced labour were initiated by the Prosecutor’s Office in 2011, seven in 2012, six in 2013, eight in 2014 and 21 in 2015. During the period 1998-2012, only three of cases resulted in convictions.

<sup>66</sup> See paragraph 183 of GRETA’s second report on Poland.

<sup>67</sup> Ibid 65.

<sup>68</sup> This new paragraph would be worded as follows (unofficial translation): “Whoever forces a person, with his or her consent, to perform work degrading human dignity or to render a service degrading such dignity, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty up to two years.” <https://iws.gov.pl/wp-content/uploads/2018/10/IWS-Pohl-%C5%81.-Burdziak-K.-Banaszak-P.Stosunek-polskiego-prawa-karnego-do-zjawiska-pracy-przymusowej.pdf> (in Polish, p. 17-19)

<sup>69</sup> <https://pulitzercenter.org/stories/exploited-displaced-filipino-truck-drivers-eu-come-home-uncertainties>

Lublin concerning 63 victims, another one in Zielona Góra *concerning 24 victims*, and a third one in Łódź *concerning 35 victims*).

118. Furthermore, representatives of the Police HQ referred to several recent or ongoing investigations into THB cases. One of them concerned forced prostitution of Polish women in private flats; 18 accused were placed in pre-trial detention, property was seized for a total of PLN 4,700 (around 1,000 euros) and an indictment was filed by the Prosecutor's Office in December 2021.

119. Although legal entities can be liable for human trafficking in Poland,<sup>70</sup> according to the representative of the National Prosecutor's Office met by GRETA, no conviction nor prosecution of legal entities for human trafficking has ever occurred in Poland. The second National Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights plans to resume work on revising the Law on the Liability of Collective Entities for Punishable Offences, and at the time of the Polish authorities' comments to the draft report (February 2023) the revision was awaiting final approval by the government.

120. As envisaged in the NAP for 2022-2024, the Handbook "Trafficking in human beings. Practical aspects of conducting proceedings" was drafted by a working group of the Team for Counteracting THB and published on 31 August 2022.<sup>71</sup> It provides guidance to law enforcement officers, prosecutors and judges on human trafficking cases and addresses a broad range of issues, including the identification of victims, their rights, the investigation of cases, prosecution, adjudication and sanctions, and the use of international co-operation tools.

121. GRETA is concerned that the justice reforms adopted in Poland in recent years may have had a negative impact on the efficiency of the Polish judiciary. Notably, since amendments to the Law on the Organisation of the Ordinary Courts were passed in 2017, the content of judicial decisions adopted by ordinary judges can be classified as a disciplinary offence. As a result, many judges would be afraid to make mistakes or to take decisions that go against established practices, and judicial proceedings are longer. GRETA takes note of the judgment of the Court of Justice of the European Union of 15 July 2021 which considered that by allowing the content of judicial decisions to be classified as a disciplinary offence, Poland has failed to fulfil its obligations to provide remedies sufficient to ensure effective legal protection.<sup>72</sup> According to the Polish authorities, the justice reforms were justified by the need to restore public trust in the judiciary, to address the excessive length of proceedings, to hold accountable judges who were involved with the communist regime, as well as to reduce the "excessive powers" and "extensive immunity" of judges.<sup>73</sup> However, the justice reforms have been criticised by civil society and international organisations for undermining the independence of the judiciary and the exercise of fundamental rights.<sup>74</sup> The European Court of Human Rights and the Court of Justice of the European Union have issued several judgments regarding these reforms.<sup>75</sup> The Polish Government informed the Registry of the European Court of Human Rights that the interim measures indicated by the Court on 6

<sup>70</sup> See paragraph 170 of GRETA's second report on Poland.

<sup>71</sup> <https://www.gov.pl/web/prokuratura-krajowa/wydanie-specjalne-handel-ludzmi-praktyczne-aspekty-prowadzenia-postepowan>

<sup>72</sup> ECJ, judgment of the Court (Grand Chamber) of 15 July 2021, Case C-791/19, European Commission v. Republic of Poland, paragraph 235. [Link](#)

<sup>73</sup> [White Paper](#) on the Reform of the Polish Judiciary by the Chancellery of the Prime Minister, 7 March 2018.

<sup>74</sup> See, *inter alia*, United Nations Special Rapporteur on the Independence of judges and lawyers, [Report](#) following a country visit in October 2017; Commissioner for Human Rights of the Council of Europe, [Report](#) following a country visit in March 2019; [EU proceedings](#) under Article 7 of the Treaty of the European Union launched in December 2017.

<sup>75</sup> ECtHR, judgment (Grand Chamber) of 15 March 2022, GRZEŃDA v. POLAND, application no. 43572/18; ECtHR, judgment of 16 June 2022, ŻUREK v. POLAND, application no. 39650/18.

ECJ, Judgment of the Court (Grand Chamber) of 24 June 2019, European Commission v Republic of Poland, Case C-619/18; Judgment of the Court (Grand Chamber) of 15 July 2021, European Commission v Republic of Poland, Case C-791/19; Judgment of the Court (Grand Chamber) of 5 November 2019, European Commission v Republic of Poland, Case C-192/18.

December 2022 in three cases of alleged transfer of judges in reprisal for applying case-law of the European Court of Human Rights or the Court of Justice of the European Union will not be respected.<sup>76</sup>

122. GRETA positively notes the development of guidance for law enforcement officers, prosecutors and judges on human trafficking cases. However, while there is a limited availability of data enabling the analysis of the criminal justice response to THB, it would appear that the number of convictions for THB, in particular for the purpose of labour exploitation, is low, and the sentences are often suspended. Too much emphasis is put on the victim's testimony during criminal investigations. If proceedings are built solely upon the victim's testimony, this puts an exorbitant amount of pressure upon the victim, who is often vulnerable and possibly traumatised. GRETA is also concerned by the excessive length of judicial proceedings in THB cases. GRETA stresses that failure to convict traffickers and the absence of effective, proportionate and dissuasive sanctions engenders a culture of impunity and undermines efforts to combat THB. The concept of "abuse of a position of vulnerability", which is part of the international definition of THB, should be properly understood and applied in practice.

123. **GRETA once again urges the Polish authorities to take further measures to strengthen the criminal justice response to THB, including by:**

- **ensuring that human trafficking offences for different forms of exploitation are proactively and promptly investigated, regardless of whether a complaint about the reported crime has been submitted or not by a victim;**
- **making use of special investigation techniques in order to gather material, documentary, financial and digital evidence, and not having to rely exclusively on testimony by victims or witnesses;**
- **ensuring that human trafficking offences are prosecuted as such, rather than as offences carrying lower penalties, every time the circumstances of the case allow this, and lead to effective, proportionate and dissuasive sanctions for those convicted. The plea-bargaining procedure should be used only exceptionally in human trafficking cases, subject to appropriate safeguards, where the reduction of a sentence is clearly outweighed by the advantages offered by the plea agreement (these advantages being indicated in the judicial decision approving the agreement) and the agreement is not in any way detrimental to the rights of the victims, including their access to compensation;**
- **reviewing the existing legal provisions and court rulings on THB for the purpose of labour exploitation and strengthening efforts to investigate, prosecute and convict offenders of trafficking for the purpose of labour exploitation;**
- **ensuring that the length of court proceedings in cases of trafficking of human beings is reasonable, in line with the case-law of the European Court of Human Rights (Article 6, paragraph 1 of the ECHR) and the standards set by the European Commission for the Efficiency of Justice (CEPEJ);<sup>77</sup>**
- **improving the collection of statistics on investigations, prosecutions and convictions for THB offences (see also paragraph 197).**

124. **GRETA also considers that the Polish authorities should continue developing specialisation among investigators, prosecutors and judges dealing with THB cases, including on trafficking for the purpose of labour exploitation.**

<sup>76</sup> <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-7573075-10409301&filename=Non-compliance%20with%20interim%20measure%20in%20Polish%20judiciary%20cases.pdf>

<sup>77</sup> <https://rm.coe.int/cepej-2018-26-en-rapport-calvez-regis-en-length-of-court-proceedings-e/16808ffc7b>

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

125. Pursuant to Article 26 of the Convention, Parties must provide for the possibility of not imposing penalties upon victims of THB for their involvement in unlawful activities, to the extent that they have been compelled to do so. As previously stressed by GRETA, the criminalisation of victims of THB not only contravenes the state's obligation to provide services and assistance to victims, but also discourages victims from coming forward and co-operating with law enforcement agencies, thereby also interfering with the state's obligation to investigate and prosecute those responsible for THB.<sup>78</sup> Furthermore, GRETA has noted that the absence of a specific provision on the non-punishment of victims of trafficking entails a risk of differential treatment, depending on the prosecutor in charge of the case.

126. Polish law still does not contain a specific provision on the non-punishment of victims of THB compelled to commit unlawful acts, despite previous GRETA recommendations to this effect.<sup>79</sup> The authorities have reiterated their position that the existing legal provisions exempting persons from criminal liability are sufficient to comply with the non-punishment principle, namely Article 26 of the CC ("state of greater necessity") which enables prosecutors to not initiate criminal proceedings or to discontinue them pursuant to Article 17 of the CCP. In addition, the authorities have referred to Articles 59, 60 and 61 of the CC which provide for extraordinary mitigation of the penalty, conditional suspensions of its execution or withdrawal from the imposition of a penalty if the conditions set forth in these articles are met.

127. GRETA notes that the above-mentioned general criminal law provisions do not expressly relate to the situation where individuals are compelled to commit offences. Notably, Article 26 of the CC concerns situations where persons commit criminal offences to avoid immediate danger threatening any "well-being" protected by law. As the conditions set forth in Article 26 of the CC are broad, it might generate legal uncertainty and non-uniform application across the territory.

128. GRETA is not aware of any examples or case-law on the application of the above-mentioned provisions in cases of victims of trafficking compelled to commit unlawful activities. Officials met during the visit did not provide GRETA with any cases where the non-punishment principle was applied. It is mainly a matter for prosecutors given the inquisitorial nature of criminal proceedings in Poland.

129. Sex work is not criminalised in Poland, but the Code of Misdemeanour Offences contains specific offenses against public morals, such as an indecent act that violates public order (Article 142). Article 16 of the Code of Misdemeanour Offences provides exemption of liability in case of "state of emergency".

130. No information was provided to GRETA on the legal framework for the non-punishment of victims of trafficking for administrative offences (such as irregular work or tax offences).

131. The "Algorithm of Conduct of Law Enforcement Officers in Case of Revealing a Crime of THB", which provides standard operating procedures for the identification of victims of trafficking (see paragraph 250), instructs law enforcement officers as follows: "If it is established that the victim of THB has committed a prohibited act, determine whether the act was directly related to his exploitation and whether the perpetrators of this exploitation forced the victim to commit this act". In addition, the Methodological Guidelines for prosecutors carrying out or supervising criminal procedures dealing with human trafficking (2006) covers the issue of the non-prosecution of victims.<sup>80</sup> GRETA also notes that the recently published Handbook "Trafficking in human beings. Practical aspects of conducting proceedings" contains information for law enforcement officers, prosecutors and judges on the non-punishment principle (see paragraph 120). The authorities indicated that this matter is addressed in the training of Police and Border Guard officers, prosecutors and judges.

<sup>78</sup> See GRETA's 2nd General Report, paragraph 58.

<sup>79</sup> See paragraph 176 of GRETA's second report on Poland; paragraphs 204-206 of GRETA's first report on Poland.

<sup>80</sup> See paragraph 107 of the GRETA's first report on Poland.

132. Officials of the Ministry of Justice met by GRETA stated that they had not been informed of inconsistencies in the application of the non-punishment principle that can justify a reform of the legal framework. According to them, Article 26 of the Convention has direct effect in domestic law and can be applied by courts.

133. GRETA recalls that the fear of reprisals for activities carried out under compulsion can be a persisting factor which deters victims of THB from contacting the authorities and/or support organisations. The non-punishment principle is an essential cornerstone in the fight against human trafficking, preventing re-victimisation and ensuring that victims can access services.<sup>81</sup>

134. **GRETA considers that the Polish authorities should take additional measures to guarantee the respect of the non-punishment principle for victims of trafficking, including by:**

- **adopting a specific legal provision ensuring the non-punishment of victims of trafficking for their involvement in unlawful activities, including administrative offences, to the extent that they were compelled to do so, and regardless of their co-operation with law enforcement authorities;**
- **providing further guidance and training to law enforcement officers, prosecutors and judges on the application of the non-punishment provision enshrined in the Convention.**

135. **GRETA also invites the Polish authorities to collect data on and to monitor the application of non-punishment principle, with a view to identifying shortcomings in the application of this principle and to take measures in this respect.**

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

136. 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.

137. 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, audio-visual technology, recordings of testimony, and anonymous testimony.

<sup>81</sup> With regard to the non-punishment provision, see [V.C.L. and A.N. v. the United Kingdom](#) European Court of Human Rights final judgment of 5 July 2021.

138. As described in GRETA's second report, the Law of 28 November 2014 on the Protection and Assistance of Victims and Witnesses provides for protection measures that can be taken in the framework of criminal proceedings in case of threat to the life or health of victims, witnesses and their relatives.<sup>82</sup> Pursuant to Article 12 of this law, the protection measures are decided and implemented by the Police at the request of the person concerned or with the consent of the latter at the request of the competent court or prosecutor. Border Guard officers must refer the matter to the Police in the event they identify a victim of THB with specific assistance and protection needs. Protection measures provided for by the law depend on the level and nature of the threats to the person concerned. They include protection for the duration of the proceedings (Article 4), personal security (Article 5), assistance in changing the place of residence (Article 6), and financial assistance (Article 7). According to the authorities, measures can be taken even before the initiation of the proceedings and can last as long as the threat to the life or health remains.

139. Further protection measures apply on the basis on the CCP, including the obligation to maintain the secrecy on the place of residence and work of the victim (Article 191(1b)) or the circumstances enabling the disclosure of the identity of the victim ("anonymous witness", Article 184), the possibility to testify without the presence of the defendant (Article 390(2) and (3)) or online through technical devices (Article 177(1)a), and the possibility to conduct the trial in camera (Article 316(3)). It is also possible to grant a new identity to victims and conduct anonymous interviews in court hearings (Article 173(2)). Further, victims can request information about the date of release of their offenders (Article 253(3)), but that information is not provided by the authorities on their own initiative.

140. The Law of 19 July 2019 amending the CCP and certain other acts introduced the principle of a single hearing for victims of certain crimes, the mandatory participation of an expert psychologist and the absence of direct confrontation with the accused (new Article 185c of the CCP). In addition, the hearing of the victim has to be audio and video recorded. However, GRETA understands that victims of trafficking would only benefit from this provision if they are also victims of crimes against sexual freedom, e.g. rape (Articles 197-199 of the CC). Specific rules apply for children under 15 (see paragraph 176).

141. The "Algorithm of conduct of law enforcement officers in case of revealing a crime of THB" provides guidance to law enforcement officers on the procedure to be followed when deciding to apply protection measures. Further, the Handbook "Trafficking in human beings. Practical aspects of conducting proceedings" highlights the need to protect victims from secondary victimisation and provides guidance on the application of protection measures and the conduct of interviews with victims.

142. GRETA was informed that personal security measures pursuant to the Law on the Protection and Assistance of Victims and Witnesses were granted to one victim of THB and his/her relatives in a case identified by the Border Guard in 2018. In another case, it was considered that protection measures were not justified. No data is available on the application of protection measures pursuant to the CCP.

143. Lawyers and NGO representatives met by GRETA expressed concern that, in practice, the principle of avoiding secondary victimisation is not respected, and victims can be asked to testify on multiple occasions.

144. GRETA welcomes the measures provided for in law to protect victims and witnesses of human trafficking, and the existence of guidance on how to apply such measures. However, GRETA is concerned that, in practice, victims of trafficking are rarely being granted protection measures in the framework of criminal proceedings.

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<sup>82</sup> See paragraphs 190-191 of GRETA's second report on Poland.

145. **GRETA considers that the Polish authorities should make full use of measures provided for in the domestic law in order to protect victims and witnesses of trafficking in human beings and prevent secondary victimisation, including by:**

- **using video conferences and other suitable means to avoid face-to-face cross-examination (“direct confrontation”) of victims and defendants;**
- **continuing to develop guidance and training for law enforcement officers, prosecutors and judges on protection measures and the principle of a single hearing;**
- **ensuring that victims are systematically informed of their right to protection measures, in line with the recommendation of paragraph 51.**

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

146. 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.

147. The Unit for Combating Trafficking in Human Beings within the Police Headquarters is currently composed of 11 staff members.<sup>83</sup> The Unit monitors, co-ordinates and supports the work of the teams for combating THB in the regional police headquarters (57 staff) and co-ordinators for combatting THB in regional divisions of the central bureau of investigation (18 staff). The Border Guard also has a specialised unit dealing with preventing and combating human trafficking, and there is a Border Guard anti-THB co-ordinator in each region.<sup>84</sup> However, some interlocutors met by GRETA considered that Police and Border Guard co-ordinators do not have enough time and resources to perform their tasks which come in addition to their usual duties as law enforcement officers.

148. In the National Prosecutor’s Office, there is an anti-trafficking co-ordinator who is informed of all proceedings in THB cases in the country and advises public prosecutors dealing with these cases. In addition, there are anti-trafficking coordinators at the level of the appellate offices of the National Prosecutor’s Office and in some regional offices.<sup>85</sup>

149. New police officers receive basic training covering the crime of human trafficking. Following a 2018 decision of the Police Commander in Chief, a specific training on trafficking in human beings and child sexual abuse is provided to police officers dealing with trafficking cases. Each quarter, around 25-30 police officers, mainly from local police stations, attend this training. Additional training courses were provided to police coordinators on THB in 2021-2022 with a view to improving the identification of victims.<sup>86</sup> All Border Guard officers are provided with basic training on trafficking and additional specialised training is offered to officers working on trafficking cases. In addition, GRETA was informed that, in 2021, 22 representatives of the Border Guard and the Police benefited from a training on human trafficking funded by the Norway Grants.

<sup>83</sup> See paragraph 24 of GRETA’s second report on Poland.

<sup>84</sup> See paragraph 100 of GRETA’s second report on Poland.

<sup>85</sup> See paragraphs 34 and 35 of the GRETA’s first report on Poland.

<sup>86</sup> Project “Identification of victims of trafficking in human beings as the basis for obtaining support by the victim”, funded by the [Polish Homeland Security Fund](#).

150. The National School for the Judiciary and Public Prosecution offers a yearly training on human trafficking for prosecutors, judges and court staff. It covers national and international law and case-law, the legal situation of victims under Polish law, the methodology for interviewing victims, the methodology for conducting criminal proceedings on THB cases and addressing shortcomings in the prosecution, and international co-operation on trafficking cases. GRETA was informed that 65 persons attended the training in 2018, 61 in 2019, and 26 in 2020. According to the authorities, the training that will be provided in 2023 should cover the assistance to, and compensation of, victims, combating crimes linked to forced labour, the non-punishment principle, and conducting child-friendly hearings.

151. As mentioned in paragraph 23, since 15 February 2019 the national coordination of anti-trafficking policies has been entrusted to the Team for Counteracting THB, chaired by the Minister of the Interior and Administration, which replaced the former Inter-ministerial Committee against human trafficking. The secretariat of the Team is provided by a Unit of the Department for International Affairs and Migration of the Ministry of the Interior and Administration. The Unit's tasks include the management of the public procurement for the running of KCIK, coordination of anti-trafficking activities and actors in Poland, as well as participation in activities at the international level. At the time of the visit, the unit was composed of four staff members. GRETA is concerned that the human resources dedicated to the coordination of anti-trafficking efforts have decreased over the years and are insufficient to meet the broad range of tasks assigned to them. Members of civil society also expressed concern about the high turnover in the composition of the Unit, which has a negative impact on the retention of expertise.

152. Regional anti-trafficking teams have been set up in all 16 regions (voivodeships) of Poland.<sup>87</sup> They are composed of representatives of public institutions, law enforcement authorities (Police and Border Guard), Prosecutor's Offices, courts, labour inspectorates and NGOs. Their role is to coordinate prevention activities, assistance to victims of trafficking, training of professionals, as well as sharing information and experience on THB issues.

153. As mentioned in paragraph 8, GRETA met members of the regional anti-trafficking team of the Subcarpathian region, established by a regional decree of 5 March 2015. In December 2021, the biannual meeting of the regional team took the form of a seminar organised by the regional labour inspectorate to raise awareness, exchange information on threats and share experiences in relation to forced labour. In the first half of 2022, the meeting was dedicated to the safety of refugees from Ukraine. Other activities have included awareness raising, celebration of the EU Day against trafficking, as well as the organisation of exhibitions on THB.

154. **While welcoming the efforts made to develop specialisation of professionals to deal with THB, GRETA considers that the Polish authorities should ensure that the training on THB provided to them is systematic and periodically updated, and that law enforcement agencies, the prosecution and the judiciary are provided with adequate resources, with a view to enabling successful investigation, prosecution and adjudication of human trafficking cases.**

155. **GRETA also considers that the Polish authorities should:**

- **reinforce the national coordination of anti-trafficking action and ensure that the human resources of the Unit on THB of the Ministry of the Interior and Administration are sufficient and stable;**
- **further foster the coordination of anti-trafficking action at the regional level, and strengthen co-operation between national and regional institutions.**

<sup>87</sup> See paragraph 25 of GRETA's second report on Poland.

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

156. 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 instruments<sup>88</sup> on mutual legal assistance and extradition, reciprocal arrangements between Parties to such instruments and relevant provisions of domestic law concerning international co-operation.

157. The Polish national framework for international co-operation in criminal proceedings on THB has been described in previous GRETA reports.<sup>89</sup> At the EU level, police and judicial co-operation is facilitated by European instruments and agencies.<sup>90</sup> Poland is also party to several multilateral and bilateral agreements that allow for mutual legal assistance on trafficking cases with countries outside EU.<sup>91</sup> In the absence of bilateral agreements, co-operation takes place on the basis of reciprocity, applying rules of the CCP on international co-operation (Chapter 62). Exchange of information with foreign counterparts takes place through Polish liaison officers abroad, foreign liaison officers accredited in Poland, as well as Interpol, Europol or Eurojust.

158. In 2019-2020, Poland participated in five agreements on the establishment of Joint Investigation Teams (JIT) in THB cases through EUROJUST. At the end of 2021, a JIT was set up with the United Kingdom and Cyprus to investigate a case of smuggling of migrants and trafficking for the purpose of forced marriage.

159. GRETA was informed that the Polish authorities had addressed two European Investigations Orders to the Swedish authorities regarding an alleged case of forced labour.

160. The Ministry of Justice does not collect data on requests for mutual legal assistance addressed in trafficking cases and no examples of judicial co-operation in such cases was provided.

161. International co-operation also takes place through EUROPOL, in particular under the European Multidisciplinary Platform Against Criminal Threats (EMPACT), Joint Action Days and exchange of information within the Analysis Project (AP) Phoenix via the Secure Information Exchange Network Application (*SIENA*). Foreign liaison officers have been accredited to Poland, notably from the United Kingdom, the Netherlands, Romania, Germany, Norway, Ukraine, Lithuania and Bulgaria. As regards non-European countries, representatives of the Police indicated that international co-operation is taking place with the United States, Canada and Australia on cases of online exploitation of children.

162. The National Labour Inspectorate (NLI) has concluded 12 bilateral agreements with foreign counterparts in Belgium, Bulgaria, Denmark, Estonia, Lithuania, Luxembourg, Norway, Portugal, Spain, the Czech Republic, the Netherlands and the Slovak Republic. These agreements provide for the possibility to conduct joint inspections, exchange information, refer complaints lodged against employers registered in the other country, and participate in joint actions. Since February 2019, a draft agreement has been prepared with France. Co-operation also takes place with EU countries through the Internal

<sup>88</sup> For example, the European Convention on Extradition, the European Convention on Mutual Assistance in Criminal Matters and its protocols, Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member states, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, etc.

<sup>89</sup> See paragraphs 196-197 of GRETA's second report on Poland; paragraphs 98-102 GRETA's first report on Poland.

<sup>90</sup> Such as the Council Framework Decisions on Joint Investigations Teams (JITs), the European Arrest Warrant (EAW), the freezing of assets, or Directives on the European Protection Order, the European Investigation Order (EIO).

<sup>91</sup> GRETA's second report on Poland (paragraph 196) mentions Algeria, Algeria, Belarus, Bosnia and Herzegovina, Canada, China, Egypt, Iraq, Libya, Serbia, the USA, Thailand, Vietnam and North Macedonia.

Market Information System (IMI) which allows to request information on posted workers. GRETA was informed that the NLI started negotiations for a co-operation agreement with the State Labour Service of Ukraine in 2011.

163. As mentioned in the GRETA's second report, a co-operation is in place with the British authorities for the transfer of Polish victims of trafficking from the United Kingdom to Poland.<sup>92</sup> In this framework, representatives of the Ministry of the Interior and Administration, the Border Guard, the National Prosecutor's Office and NGOs participate in an Advisory Panel organised by the UK Embassy in Warsaw.

164. The Polish authorities also cooperate with the Office of the International Organisation for Migration (IOM) in Poland in the framework of the Programme on Assisted Voluntary Return and Reintegration. This programme allows for the safe return of around 20 victims of trafficking per year from Poland (e.g. in recent years to Guatemala and Colombia). GRETA understands that once victims have returned to their country of origin, international co-operation is rarely used to ensure participation of victims in judicial proceedings in Poland, notably with a view to obtaining compensation.

165. Poland participates in the work of the Task Force against Trafficking in Human Beings of the Council of the Baltic Sea States (CBSS). In 2018, Poland joined the CBSS project "Paving the Way for a Harmonised Operational Framework in the Baltic Sea Region", financed by the Swedish Ministry of Social Affairs and the Swedish Institute with the aim of developing a regional approach to assisting victims of trafficking. The final conference of the project took place in Warsaw on 26-27 November 2019 during which a Transnational Referral Mechanism of the Baltic Sea Region, a Human Trafficking Glossary and Guidelines for Journalists reporting on cases of human trafficking were presented.

166. GRETA welcomes the efforts made by the Polish authorities to strengthen international co-operation with a view to preventing and combating human trafficking, in particular through their law enforcement authorities. However, it is concerned that co-operation with labour inspectorates abroad is underdeveloped while Poland faces significant challenges with respect to trafficking for the purpose of labour exploitation.

**167. GRETA invites the Polish authorities to further develop international co-operation with labour inspectorates abroad, and to increase judicial co-operation with other countries, notably countries to which victims of THB are returned.**

**168. Referring to its report published in April 2022 on Online and technology-facilitated trafficking in human beings,<sup>93</sup> GRETA also invites the Polish authorities to enhance international co-operation on human trafficking cases facilitated by ICTs and encourages them to ratify the Second Additional Protocol to the Convention on Cybercrime on enhanced co-operation and disclosure of electronic evidence.**

## **12. Cross-cutting issues**

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

169. As noted in the Committee on the Elimination of Discrimination against Women (CEDAW) General recommendation No. 33 on women's access to justice, discrimination against women, based on gender stereotypes, stigma, harmful and patriarchal cultural norms and gender-based violence, which affects women in particular, has an adverse impact on the ability of women to gain access to justice on an equal basis with men.<sup>94</sup> The Council of Europe Gender Equality Strategy 2018-2023 notes that while accessing justice might be difficult for everyone, it is even more so for women, due to gender inequality in society and in the justice system, and therefore one of the objectives of the Strategy is to ensure the equal

<sup>92</sup> See paragraph 198 GRETA's second report on Poland.

<sup>93</sup> <https://rm.coe.int/online-and-technology-facilitated-trafficking-in-human-beings-full-rep/1680a73e49>

<sup>94</sup> CEDAW General recommendation No. 33 on women's access to justice, paragraph 8, CEDAW/C/GC/33 of 3 August 2015

access of women to justice.<sup>95</sup> GRETA notes that in the case of trafficking in human beings, gender stereotypes, prejudices, cultural barriers, fear and shame impact women's access to justice, and these barriers may persist during investigations and trials. This is particularly true for some groups of women, such as victims of gender-based violence, migrant, refugee and asylum-seeking women, ethnic minority women and women with disabilities. 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 childcare.<sup>96</sup> Such obstacles, and remedies to them, are listed in a Council of Europe training manual for judges and prosecutors on ensuring women's access to justice, as well as in the publication "Women's Access to Justice: Guide for Legal Professionals".<sup>97</sup>

170. Pursuant to the "Algorithm of Conduct of Law Enforcement Officers in Case of Revealing a Crime of THB", it is desirable that actions, including the first questioning of victims, are carried out by a person of the same sex as the presumed victim.

171. According to representatives of the Police, the Unit for Combating Trafficking in Human Beings within the Criminal Bureau of the Police HQs is composed of 11 staff, the majority of whom are women. At the regional level, there are four women among the 18 coordinators on THB appointed by the Police. GRETA was informed that the regional anti-trafficking teams (see paragraph 152) include a growing number of women.

172. There is no training or guidance on conducting gender-sensitive interviews in a manner that allow trafficked women and girls to disclose sensitive and traumatic experiences. GRETA takes note of the Report of the UN Working Group on the issue of discrimination against women in law and in practice, published in June 2019 following its visit to Poland, which recommended that the Polish authorities should review the content of training and education programmes with a view to ensuring a greater understanding by justice officials of women's barriers to access to justice, and making gender-based violence against women an explicit and integral part of the curriculum, occupying a dedicated space.<sup>98</sup>

173. Asylum interviews can be conducted by a same-sex interviewer at the request of the applicant, if it appears from the circumstances of the case that this will enable the application for international protection to be fully substantiated (Article 44, paragraph 4, of the Law on Granting Protection to Foreigners within the Territory of the Republic of Poland).

**174. GRETA invites the Polish authorities to provide specific training to law enforcement officers, prosecutors and judges on how to conduct gender-sensitive interviews.**

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

175. In its second report, GRETA considered that the Polish authorities should extend the application of the single hearing principle to cover all child victims of THB, regardless of the precise circumstances and type of THB exploitation in the case.<sup>99</sup>

176. The Law of 19 July 2019 amending the CCP and certain other acts has modified the legal framework regarding hearings of child victims or witnesses of crimes. Pursuant to the new Article 185a of the CCP, in cases of THB, children under the age of 15 must be questioned only if their testimony "may be of significant importance" for the case. The principle of a single hearing must be applied unless

<sup>95</sup> Council of Europe Gender Equality Strategy 2018-2023, pp.24-26, <https://rm.coe.int/prems-093618-gbr-gender-equality-strategy-2023-web-a5/16808b47e1>

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

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

<sup>98</sup> <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/41/33/Add.2&Lang=E>

<sup>99</sup> See paragraph 194 of GRETA's second report on Poland.

relevant circumstances come to light which require another hearing or when requested by the accused who was not represented by a lawyer at the time of the first hearing. Hearings must be conducted in the presence of a psychologist and in the absence of the accused. Legal representatives of children have the right to be present. The hearing is video and audio recorded so that it can be played at the trial. These rules do not apply to children aged 15 or older who are treated as adult victims of THB (see paragraph 140), unless there is a justified fear that it could have a negative impact on the child's mental condition (Article 185a (4) of the CCP). Guidance on interviewing children is provided in the "Algorithm of Identification of Child Victims of Trafficking in Human Beings and Conduct of Police and Border Guard Officers" and in the handbook "Trafficking in Human beings. Practical aspects of conducting proceedings".

177. GRETA was informed by lawyers that, in practice, many children are questioned on several occasions, not only when this is justified by new circumstances.

178. According to the authorities, there are around 100 child-friendly interview rooms ("blue rooms") in Poland, certified by the Ministry of Justice. They can be used for interviewing child victims of trafficking. Further, there are six Child Support Centres (in Białystok, Gdańsk, Głogów, Lublin, Starogard Gdański and Warsaw), operating according to the "Barnahus" model and coordinated by the NGO Empowering Children Foundation. They have child-friendly rooms for interviews and provide multi-disciplinary assistance to children, including psychological, medical and legal assistance.<sup>100</sup>

179. GRETA notes that the Polish legal framework still provides for a differentiated treatment between children below 15 and older children, and that the latter are generally treated as adults. GRETA refers to the Concluding observations on Poland adopted on 6 December 2021 by the United Nations Committee on the Rights of the Child, in which the Committee recommended to ensure that special protective conditions for the hearing of a child who is a witness or victim of crime are guaranteed for all such children, i.e. all persons under the age of 18.<sup>101</sup> GRETA is also concerned that the strict conditions for departing from the principle of a single hearing are not respected in practice.

**180. GRETA urges the Polish authorities to provide for the application of protection measures to all child victims of trafficking, including children aged 15 or older, in particular the principle of a single hearing, the obligation to record the interview and the absence of cross-examination (direct confrontation) with the accused.**

**181. Further, GRETA considers that the Polish authorities should make further efforts to ensure child-friendly proceedings in human trafficking cases, in particular by:**

- **developing practical guidelines and training for judges on the principle of a single hearing and raising awareness on a cautious application of any exceptions;**
- **providing further guidelines and training to law enforcement officials, prosecutors and judges on how to conduct child-friendly interviews.**

c. role of businesses

182. The policy framework in the field of responsible business conduct is provided by the second National Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights 2021-2024.<sup>102</sup> Several measures of relevance for the fight against THB are envisaged, including tools for entrepreneurs for minimising forced labour in legal entities, amendments on the provision of hotel services regarding the prevention of sexual exploitation of children in hotels, as well as developing the co-operation with the Unit for Combatting THB of the MIA.

<sup>100</sup> See for example : <https://www.barnahus.eu/en/poland-launches-barnahus-in-warsaw/>

<sup>101</sup> Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Poland, 6 December 2021, CRC/C/POL/CO/5-6.

<sup>102</sup> [https://www.ohchr.org/sites/default/files/2022-01/Poland\\_NAP.pdf](https://www.ohchr.org/sites/default/files/2022-01/Poland_NAP.pdf)

183. A Public Procurement Strategy 2022-2024, adopted in January 2022, refers to the need to incorporate social aspects into the public procurement, but does not specifically address risks of THB.<sup>103</sup>

184. A Handbook on "Forced Labour: How to Recognise and Counteract It" was published in October 2020. It was prepared by the Team for Sustainable Development and Corporate Social Responsibility, which was set up by Ministry of Funds and Regional Policy and include representatives of relevant public administrations, employers' organisations, trade unions and NGOs such as La Strada.<sup>104</sup> The handbook is addressed to companies, institutions and organisations employing individuals directly or indirectly (subcontractors). It provides guidance to help employers reduce risks and counter consequences of forced labour in their operations, and includes practical tools (such as indicators, internal policy proposals, preliminary risk assessment questionnaires, checklists, and templates of contractual clauses).

185. In addition, the National Action Plan on action against THB for 2022-2024 envisages the dissemination to companies of the ECPAT Code of Conduct to protect children against commercial sexual exploitation in tourism, in co-operation with the NGO "Empowering Children Foundation".

186. GRETA positively notes the efforts made by the Polish authorities to raise awareness of THB in the private sector. However, given the increased trend in trafficking for the purpose of labour exploitation, efforts should not only aim at the prevention of human trafficking by businesses, but also at the suppression and redress of these violations when they occur so that those affected have access to effective remedies.

**187. GRETA considers that the Polish authorities should continue their engagement with the private sector, in line with the UN Guiding Principles on Business and Human Rights<sup>105</sup> as well as Council of Europe Committee of Ministers Recommendations CM/Rec(2016)3 on human rights and business and CM/Rec(2022)21 on preventing and combating trafficking in human beings for the purpose of labour exploitation,<sup>106</sup> with a view to raising awareness of the important role and responsibility of businesses in supporting the rehabilitation and recovery of victims of trafficking, and to provide access to effective remedies.**

d. measures to prevent and detect corruption

188. Trafficking in human beings can occur in various contexts. Human traffickers may form part of organised criminal groups, which frequently use corruption to circumvent the law, and money laundering to conceal their profits.

189. The policy framework on action against corruption was provided for by the National Anti-corruption Programme for 2018-2020 which has expired. According to the 2022 Rule of Law Report of the European Commission, not all actions envisaged in the Programme have been completed, and no subsequent programme has been prepared.<sup>107</sup>

190. The Polish authorities did not provide information on cases of corruption relating to trafficking offences. During the visit, GRETA was informed by NGOs of an ongoing investigation into alleged acts of human trafficking committed by a temporary recruitment agency in Zielona Góra, whose owner is related

<sup>103</sup> [https://www.uzp.gov.pl/\\_data/assets/pdf\\_file/0019/53731/M2022000012501.pdf](https://www.uzp.gov.pl/_data/assets/pdf_file/0019/53731/M2022000012501.pdf)

<sup>104</sup> [https://odpowiedzialnybiznes.pl/wp-content/uploads/2020/10/Praca\\_przymusowa\\_Poradnik\\_jak\\_ja\\_rozpoznać\\_i\\_jej\\_przeciwdziałac.pdf](https://odpowiedzialnybiznes.pl/wp-content/uploads/2020/10/Praca_przymusowa_Poradnik_jak_ja_rozpoznać_i_jej_przeciwdziałac.pdf) (in Polish)

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

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

[Recommendation CM/Rec\(2022\)3](#) of the Committee of Ministers to member States on preventing and combating trafficking in human beings for the purpose of labour exploitation and [Explanatory Memorandum](#), adopted on 27 September 2022.

<sup>107</sup> [https://ec.europa.eu/info/sites/default/files/48\\_1\\_194008\\_coun\\_chap\\_poland\\_en.pdf](https://ec.europa.eu/info/sites/default/files/48_1_194008_coun_chap_poland_en.pdf)

to a high-ranking local government official. According to information provided by the authorities, no charges have been pressed yet (see paragraph 117).

191. The Council of Europe body with the main role to play in the fight against corruption is the Group of States against Corruption (GRECO), whose country reports are relevant in addressing structural shortcomings in preventing corruption, including potentially in a THB context. In its compliance report on the fifth evaluation round of Poland (25 March 2021), GRECO considered that positive steps have been taken to improve the identification of risks of corruption in the Police and Border Guard, but that further efforts are needed, notably on asset declarations and the protection of whistle-blowers.<sup>108</sup> In its interim compliance report on the fourth evaluation round (22 September 2021), GRECO reiterated its concerns regarding the justice reforms in Poland which have “critically affected the independence of the judiciary”, and considered that most of its recommendations were not implemented, notably regarding conflict of interests and asset declarations of judges and prosecutors, the National Council of the Judiciary, the disciplinary regime for judges, as well as appointments and dismissals of court presidents and vice-presidents.<sup>109</sup>

**192. GRETA considers that the Polish authorities should include measures against corruption in a THB context in the next national anti-corruption strategy.**

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<sup>108</sup> <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680a3eeef>

<sup>109</sup> <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a3efa8>

## V. Follow-up topics specific to Poland

### 1. Data collection

193. In its second report, GRETA urged the Polish authorities to develop and maintain a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable and disaggregated data from all main actors, ensuring compliance with rules on the protection of personal data.<sup>110</sup>

194. Data on THB continues to be collected separately by the Police, the Border Guard, the National Prosecutor's Office and KCIK, and no steps have been taken to compile them in a consolidated database. Data is not always disaggregated by age, gender, type of exploitation as well as country of origin/destination. Further, as regards data concerning convictions, it is not available according to the form of exploitation.

195. The NAP for 2022-2024 envisages data analysis and the creation of a unified system for data collection on ongoing proceedings on trafficking in human beings and court sentences. GRETA notes that the previous NAP for 2020-2021 included a similar activity which was not implemented. The Polish authorities noted during the visit that improvements to data collection would require changing the legislation and expressed doubts as to whether it would be possible to exchange data between different entities due to the limitations of the European General Data Protection Regulation (GDPR). In their comments on the draft GRETA report, the authorities additionally pointed out that the multi-stage nature of the THB proceedings, as well as the involvement of several entities at different stages of these proceedings, are important obstacles.

196. GRETA remains concerned that the lack of comprehensive and coherent statistical system on THB, which is linked to the absence of a National Referral Mechanism, undermines the analysis of trends and the design of relevant policies and measures. GRETA recalls that collecting data on various aspects of human trafficking is important because it represents a tool to inform, adjust and assess anti-trafficking policies, as well as to carry out risk assessment.<sup>111</sup> It is crucial that States Parties ensure inter-institutional co-operation in order to collect data, in line with the rules on the protection of personal data. In this connection, GRETA underlines that the GDPR (e.g. Article 89) provides for the processing of data for statistical purposes.

**197. GRETA once again urges the Polish authorities to develop a centralised, comprehensive system for the collection and analysis of data on measures to protect and promote the rights of trafficking victims (including protection measures taken during criminal proceedings), as well as data on investigations, prosecutions and adjudications of THB cases. Statistics regarding victims should be collected from all main actors (including Police, Border Guard, National Prosecutor's Office, regional and local authorities, KCIK and NGOs) and should allow disaggregation by sex, age, type of exploitation, country of origin and/or destination. This should be accompanied by all the necessary measures to ensure the right of data subjects to personal data protection, including when NGOs working with victims of trafficking are asked to provide information for the national database.**

### 2. Social, economic and other initiatives for groups vulnerable to trafficking

198. Since the outset of the Russian invasion of Ukraine, Poland has been the main country of arrival for refugees fleeing the war in Ukraine. According to official data, 9,900,327 border crossings from Ukraine to Poland have been registered since 24 February 2022; 1,563,386 persons have received international protection in Poland, and many others have transited through the country to reach other

<sup>110</sup> See paragraph 48 of GRETA's second report on Poland.

<sup>111</sup> See paragraph 97 of the 9th General Report on GRETA's activities.

EU destination.<sup>112</sup> At the time of GRETA's visit in June 2022, daily arrivals had levelled to about 21,000 from a peak of 142,000 in early March, and a significant number of persons had already returned to Ukraine. Women and children represent over 90% of those forced to flee.

199. Following the decision of the Council of the European Union to activate the EU Temporary Protection Directive,<sup>113</sup> the Polish Parliament adopted on 12 March 2022 the Law on Assistance to Citizens of Ukraine in Connection with the Armed Conflict on the Territory of Ukraine.<sup>114</sup> According to this law, Ukrainian citizens and members of their families have the right to remain legally in Poland for 18 months, to access the Polish labour market and health care system, to attend Polish schools and universities, as well as to receive a one-off cash allowance of PLN 300 (about 63 euros). These benefits are provided on the conditions that they register to the PESEL system (Universal Electronic Population Register System). With a view to encouraging the provision of private support to refugees, the law granted individuals accommodating registered Ukrainian refugees a financial compensation until 1 July 2022 (PLN 40 (about 8.5 euros) per day and per person hosted).

200. UNHCR also set up a cash assistance programme for persons who fled Ukraine with a view to supporting their transition and integration into Polish systems.<sup>115</sup> Conditions to access the cash programme were redefined to focus on the most vulnerable refugees. Eligible refugees received PLN 700 (around 150 euros) per month for three months, with an additional PLN 600 (around 130 euros) for each household member, to a maximum amount per household of PLN 2,500 (around 530 euros per month) per month. At the time of GRETA's visit, there were more than 1,000 persons included in this programme.

201. In the first days following the outbreak of the war, due to the unprecedented movement of people, the Polish authorities did not have the capacity to register all persons arriving from Ukraine, nor to undertake systematic assessment of vulnerabilities. A report of Human Rights Watch of April 2022 underlined the Government's lack of coordination, excessive reliance on volunteers and NGOs to support refugees, the lack of systematic measures to vet private transport or housing, as well as inaction over suspected persons reported by NGOs.<sup>116</sup> GRETA also refers to the Report on Poland of the Special Representative of the Secretary General of the Council of Europe on migration and refugees, published on 27 September 2022, which mentions the "lack of proper co-ordination at state level in applying protection measures in a consistent way and therefore increasing the risks of trafficking".<sup>117</sup>

202. The situation at the time of GRETA's visit had largely improved. Systematic registration of all individuals and organisations providing assistance to persons fleeing the war was being carried out. The Polish authorities had taken security measures at border crossing points, receptions centres and other locations with high presence of persons fleeing the war in Ukraine. Such measures have included reinforced border controls, presence or patrols of law enforcement officers in high-risk locations, as well as undercover police operations. According to the authorities, co-operation with other countries has also allowed to detect suspicious conduct of individuals offering assistance. Many volunteers have received training, in particular from UNHCR and IOM, on risks of human trafficking targeting persons in need or seeking international protection.

203. Measures have also been taken to alert persons fleeing the war in Ukraine, as well as the general public, on how to avoid human trafficking through posters and leaflets at border crossing points, reception centres, train stations, and city halls, and also through online information. The Police HQ prepared a leaflet in Ukrainian on human trafficking with information on suspicious conducts as well as contact details of the police hotline and email address.<sup>118</sup> The Border Guard HQ cooperated with NGOs, such as the

<sup>112</sup> Source UNHCR. Data as of 26 February 2023.

<sup>113</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022D0382&from=EN>

<sup>114</sup> <https://www.gov.pl/web/udsc-en/the-law-on-assistance-to-ukrainian-citizens-in-connection-with-the-armed-conflict-on-the-territory-of-the-country-has-entered-into-force>

<sup>115</sup> [https://help.unhcr.org/poland/information-for-new-arrivals-from-ukraine/#Cash\\_Assistance](https://help.unhcr.org/poland/information-for-new-arrivals-from-ukraine/#Cash_Assistance)

<sup>116</sup> Human Rights Watch, "Poland: Trafficking, Exploitation Risks for Refugees", 29 April 2022.

<sup>117</sup> <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680a7acc9>

<sup>118</sup> <https://www.wroclaw.pl/dla-mieszkanca/ulotki-dla-uchodzcow-z-ukrainy-handel-ludzmi-zaginiecia-policja>

Lighthouse Foundation, to produce awareness-raising leaflets on human trafficking. The Ministry of the Interior and Administration distributed similar leaflets in Ukrainian, English and Polish (half a million copies).<sup>119</sup> Numerous civil society organisations also developed and disseminated awareness-raising materials on human trafficking amongst Ukrainian refugees, such as La Strada Poland,<sup>120</sup> A21 and the University of Warsaw, as well as international organisations (e.g. the European Union and UNHCR).<sup>121</sup> Information alerts via SMS were also sent to all people crossing the border from Ukraine to Poland with information on potential threat of THB and possibilities of assistance.

204. During the visit, GRETA went to the Medyka border crossing which has been the busiest border crossing between Poland and Ukraine since the beginning of the war. Identity check and registration of all people crossing the border were being carried out. Staff of FRONTEX has also been deployed to provide support in the registration. According to officials, all staff at the border crossing have been trained on human trafficking. Posters in several languages were visible in the border crossing to alert of the risks of abuses and trafficking in human beings.

205. Further, GRETA visited the reception centre for persons fleeing the war in Ukraine in Medyka, a converted sports hall with a capacity to accommodate 700 persons.<sup>122</sup> People usually stay a few days before moving on to other locations. Posters and brochures in several languages were visible with information on how to avoid and report trafficking in human beings.

206. According to the authorities, as of 31 May 2022, over 13,000 judicial decisions granting a temporary guardian to unaccompanied children from Ukraine had been issued. The above-mentioned Law on Assistance to Citizens of Ukraine provides for the appointment of a temporary guardian within three days, which usually happens in practice. UNICEF and UNHCR, in co-operation with the Polish Government and NGOs, have created 34 "Blue Dots" which are child and family support points where information and assistance are provided to separated families and unaccompanied children. The authorities informed GRETA that a helpline for children and young persons from Ukraine, operated by psychologists, was opened in June 2022 in co-operation with the NGO Empowering Children Foundation. In addition, amendments to the Law on Assistance to Citizens of Ukraine in Connection with the Armed Conflict on the Territory of Ukraine have allowed for the creation of a register of unaccompanied or separated children from Ukraine,<sup>123</sup> and a "Procedure for dealing with child foreigners when crossing the border" was also developed. However, no data was available on the number of unaccompanied children who had entered Poland from Ukraine. This raises questions as to the capacities of the Polish authorities to effectively address risks of disappearances of unaccompanied children from Ukraine.

207. Except for spouses or children of Ukrainians, the Law on Assistance to Citizens of Ukraine does not apply to third-country nationals. They can apply for temporary protection under the EU Directive and can be granted a one-year temporary residence permit. However, pursuant to the Directive, those residing illegally in Ukraine before the war cannot be granted temporary protection, as well as those legally residing in Ukraine if they are able to return to their country of origin in safe and durable conditions. GRETA is concerned that many of them would prefer to stay in Poland illegally, which makes them more vulnerable to exploitative situation and even trafficking in human beings.

208. There are also reports that people from Roma communities fleeing Ukraine face difficulties in accessing accommodation, transport and other forms of support.<sup>124</sup> Considering that people of Roma communities are already vulnerable to trafficking in human beings, GRETA is concerned that the lack of protection offered to them will increase these risks even more. GRETA was informed that IOM signed a

<sup>119</sup> <https://www.gov.pl/web/handel-ludzmi/komunikat-zwiazany-z-sytuacja-na-ukrainie>

<sup>120</sup> [https://documentation.lastradainternational.org/Isidocs/3438-ULOTKA\\_INFO\\_UA%20-%20leaflet%20LS%20Poland.pdf](https://documentation.lastradainternational.org/Isidocs/3438-ULOTKA_INFO_UA%20-%20leaflet%20LS%20Poland.pdf)

<sup>121</sup> [https://help.unhcr.org/poland/wp-content/uploads/sites/92/2022/03/POL\\_CwC\\_Anti-Fraud-Exploitation\\_En.jpg](https://help.unhcr.org/poland/wp-content/uploads/sites/92/2022/03/POL_CwC_Anti-Fraud-Exploitation_En.jpg)

<sup>122</sup> <https://www.unhcr.org/news/stories/2022/3/6230b3094/polish-border-town-welcomes-refugees-ukraine-itself-need-help.html>

<sup>123</sup> [https://www.gov-pl.translate.goog/web/handel-ludzmi/rejestr-ukrainskich-dzieci-bez-opieki?\\_x\\_tr\\_sl=pl&\\_x\\_tr\\_tl=en&\\_x\\_tr\\_hl=fr&\\_x\\_tr\\_pto=wapp](https://www.gov-pl.translate.goog/web/handel-ludzmi/rejestr-ukrainskich-dzieci-bez-opieki?_x_tr_sl=pl&_x_tr_tl=en&_x_tr_hl=fr&_x_tr_pto=wapp)

<sup>124</sup> <https://www.theguardian.com/global-development/2022/may/10/ukraine-roma-refugees-poland>

project implementation agreement with the Central Roma Council in Poland focusing on the provision of direct assistance and cultural mediation to Roma refugees from Ukraine.

209. Limited information is available on preventive measures taken for groups vulnerable to THB outside of the context of the war in Ukraine. Leaflet on social assistance for foreigners have been distributed in several languages by the Office for Foreigners. Further, the Polish authorities have maintained awareness-raising with a view to prevent child trafficking through the dissemination of the Council of Europe comic book "You are not for Sale" to children and young people. Representatives of law enforcement authorities mentioned that they also participated in sensitisation actions in primary and secondary schools.

**210. GRETA welcomes the mobilisation and solidarity in the face of the unprecedented displacement of people following the outbreak of the war in Ukraine and considers that the Polish authorities should continue their efforts to address the vulnerabilities to trafficking of all persons fleeing the war in Ukraine, without discrimination and irrespective of their nationality or statelessness, taking into account GRETA's Guidance Note on addressing the risks of trafficking in human beings related to the war in Ukraine and the ensuing humanitarian crisis,<sup>125</sup> as well as the Report and recommendations of the Special Representative of the Secretary General on Migration and Refugees.<sup>126</sup>**

### **3. Measures to prevent and combat trafficking for the purpose of labour exploitation**

211. In its second report, GRETA considered that the Polish authorities should take further measures to prevent and combat human trafficking for the purpose of labour exploitation, and in particular to review and assess the system of "statements of intention to employ", to provide the National Labour Inspectorate with necessary resources and further training, and to strengthen inspections in sectors considered at risk of THB. Further, GRETA invited the authorities to keep under review the "civil law contracts" and to monitor the conclusion of "specific task contracts" in order to ensure that they do not provide a gateway to trafficking.<sup>127</sup>

212. Poland is currently among the EU countries with one of the lowest unemployment rates (2.9% in December 2021).<sup>128</sup> Efforts have been made to facilitate access to the labour market to both Polish and migrant workers, in particular for temporary forms of employment. In July 2022, there were more than one million migrant workers registered in Poland, in particular Ukrainians, Belarusians and Georgians.<sup>129</sup>

213. Since the entry into force of amendments to the Law on the Promotion of Employment and Labour Market Institutions and certain other acts on 1 January 2018 and 29 January 2022, the Polish employers' "statement of intention to employ," which enabled nationals of several countries<sup>130</sup> to get work visas for Poland has been replaced by a "declaration on entrusting work to a foreigner", and the work visa is now valid for 24 months instead of six months. Nationals of Armenia, Belarus, Georgia, Moldova, and Ukraine have the possibility to obtain a temporary work visa of 24 months following a declaration submitted by their employer to the county labour office. Pursuant to the amended law, rules have been introduced to limit abuses. In particular, the declaration cannot concern seasonal work, which is now subject to a work permit. It is mandatory to conclude a written agreement and to translate it into a language understood by the worker, to respect the minimum wage, as well as to inform the county labour office of the commencement and termination of the work. The respect of these obligations can be controlled by the labour offices which can issue fines.

<sup>125</sup> <https://rm.coe.int/guidance-note-on-addressing-the-risks-of-trafficking-in-human-beings-r/1680a663e2>

<sup>126</sup> <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680a7acc9>

<sup>127</sup> See paragraphs 78-79 and 109 of GRETA's second report on Poland.

<sup>128</sup> <https://www.gov.pl/web/family/eurostat-poland-in-second-place-with-the-lowest-unemployment-in-the-european-union>

<sup>129</sup> [https://ec.europa.eu/migrant-integration/news/poland-record-number-migrants-working-legally\\_en](https://ec.europa.eu/migrant-integration/news/poland-record-number-migrants-working-legally_en)

<sup>130</sup> There were six countries (Armenia, Belarus, Georgia, Moldova, Russia and Ukraine), but since 27 October 2022, Russia is no longer part of the scheme.

214. According to a 2019 study on labour exploitation in Poland, the possibility to work on the basis of a “declaration of employment” creates a situation of dependency between migrant workers and their employer which makes them vulnerable to abuses and exploitation. It often happens that migrant workers arrive in Poland under one declaration but work for other employers irregularly. There are reports that employers sell declarations to migrant workers, do not pay the full salary or illegally charge expenditures to migrant workers (e.g. accommodation, transportation, food).<sup>131</sup> In addition, according to another study on forced labour in Poland funded by the Council for the Baltic Sea States (CBSS), there is a lack of control over the respect of the legislation by the authorities which predominantly check if migrants are legally working and staying in Poland.<sup>132</sup> GRETA was informed of migrant workers employed on the basis of a “declaration of employment” who were paid 3.5 euros/hour, which is below the minimum wage in Poland (19.7 PLN/ hour as of January 2022, i.e. approximately 4.20 euros), had various deductions from their salaries and were not paid in case of sickness absence. GRETA refers to Committee of Ministers Recommendation CM/Rec(2022)21 on preventing and combating trafficking in human beings for the purpose of labour exploitation and its explanatory memorandum which insist on preventing of THB through labour market regulation and consider that Member States should ensure that all workers enjoy the right to fair remuneration.<sup>133</sup>

215. The possibility to employ workers under the so-called “civil law contracts”, such as “specific task contracts,” has mostly remained unchanged.<sup>134</sup> The use of civil law contracts is widespread in Poland, both to hire Polish and foreign nationals, as they are not subject to the Labour Code nor social security contributions.<sup>135</sup> They are often used in combination with the “declaration of intention to employ a foreigner”. Since 1 January 2018, employers are obliged to inform the Social Insurance Institution (ZUS) about each specific-task contract concluded. Civil law contracts fall outside the jurisdiction of the National Labour Inspectorate (NLI), except concerning health and safety conditions at work, as well as the minimum hourly wage if applicable. According to the NLI, 10% of civil law contracts would actually involve an employment relationship.<sup>136</sup> In such cases, the NLI can order an employer to conclude an employment contract and if this is not done, it can apply to courts for the civil law contract’s reclassification.

216. Both Polish authorities and NGOs have identified a growing trend in the recruitment of foreigners by temporary employment or intermediary agencies.<sup>137</sup> As a rule, temporary employment agencies must be registered in the Registry of Employment Agencies (KRAZ) in order to operate in Poland, but there is no licensing or certification of these agencies by the state. In addition, migrant workers can also be recruited by agencies presenting themselves as “travel agencies”, operating either abroad or in Poland, which are not registered as employment agencies.<sup>138</sup> During the visit, GRETA was informed of several ongoing investigations involving temporary employment agencies or similar entities which had recruited workers identified as victims of trafficking in Poland (see paragraph 117). According to NGOs and victims met by GRETA, the agencies had resorted to fraud in order to recruit workers, including false contracts; the victims had paid for their travel to Poland and upon arrival, had been given new contracts to sign, and their passports had been taken away.

<sup>131</sup> Suzanne Hoff, Tackling labour exploitation in Poland, Bulgaria and Romania, March 2019, pp 33-34.

<sup>132</sup> Julia Muraszkiwicz, “New discussions on the complicated relationship between Poland and forced labour”, September 2020, p. 41.

<sup>133</sup> [https://search.coe.int/cm/pages/result\\_details.aspx?objectid=0900001680a83df4](https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a83df4)

<sup>134</sup> See paragraph 68 of GRETA’s second report on Poland. There are several types of civil law contracts in Poland, notably the contract for services under a mandate (Article 750 of the Civil Code) and the contract for a specific task (Articles 627-646 Civil Code). Contrary to other civil law contracts, contracts for a specific task do not oblige employers to respect the minimum hourly wage.

<sup>135</sup> In 2021, companies reported more than 1.7 million specific task contracts. <https://ca-staff.eu/en/publications/zus-more-than-1-7-million-specific-task-contracts-reported-in-2021/>

<sup>136</sup> <https://www.pip.gov.pl/pl/wiadomosci/129936,projekt-nowelizacji-ustawy-o-pip-na-ukonczeniu.html> (in Polish)

<sup>137</sup> According to official data, 8,818 employment agencies were registered in Poland in 2020 and they provided work to 348,375 persons. <https://www.gov.pl/web/rozwoj-technologie/informacja-o-dzialalnosci-agencji-zatrudnienia-w-2020-r>

<sup>138</sup> Foundation “Our Choice”, [Working in Poland: violations of the labour rights of Ukrainian migrants in the construction and services sectors](#), 2018.

217. In their comments to the draft report, the Polish authorities stated that new regulations on the employment of foreigners were being prepared by the Ministry of Family and Social Policy with a view to limiting abuses, strengthening foreign workers' rights and increasing sanctions in cases of violations. **GRETA would like to be kept informed of the adoption of these new regulations.**

218. As mentioned in paragraph 184, a Handbook on "Forced Labour: How to Recognise and Counteract It" was published in October 2020 with a view to helping employers reduce risks and counter consequences of forced labour in their operations. However, GRETA understands that temporary employment agencies were not among the recipients of the handbook. The authorities also indicated that the NLI operates a nationwide helpline which provides legal information to employees and employers on their rights and obligations and that training activities were organised in 2020-2021 in co-operation with the Association of Employment Agencies.

219. Collective bargaining agreements are very rare in Poland,<sup>139</sup> and a limited number of social actors defend the interests of migrant workers. Even though any worker could turn to a trade union for assistance, in general trade unions intervene with regard to their members, few of whom are migrant workers. Few Polish trade unions are active regarding migrant workers and their activities are relatively recent.<sup>140</sup> The All-Poland Alliance of Trade Unions (OPZZ), supported the creation in 2016 of an organisation defending the interests of Ukrainian workers, and provide it with legal and logistical support. However, there are no organisations or trade unions specifically dedicated to workers of other nationalities.

220. According to the authorities, awareness-raising on workers' rights has continued during the reporting period. Leaflets on work in Poland were drawn up by the Ministry of Family and Social Policy and have been distributed to migrant workers, including in Polish consular and embassies abroad. While diplomatic and consular staff receive training on THB (see paragraph 257), there remain concerns that risks of trafficking for the purpose of labour exploitation are not sufficiently screened in the framework of visa applications. In their comments to the draft GRETA report, the Polish authorities indicated that work is ongoing to reinforce and make mandatory the training of consular staff in this regard.

221. Within the framework of its mandate, the NLI carries out inspections to ensure compliance with labour law, health and safety conditions at work, and legality of employment, paying attention to potential cases of human trafficking. Labour inspectors can monitor the work of temporary employment agencies (regardless of whether they are registered or not), but not intermediaries, and control activities can be carried out in parallel in entities where workers are effectively working (so-called user companies). They can also monitor temporary job offers to ensure that they comply with the legislation.

222. According to the Law on Freedom of Economic Activity, labour inspectors are obliged to notify employers about the planned inspection between 7 and 30 days in advance, except if an offence is suspected, in which case an unannounced inspection can be carried out (Article 79). GRETA understands that labour inspectors do not have the mandate to conduct operational activities (i.e. to collect evidence prior to the inspections) and therefore, suspicions of offences would derive mostly if complaints are filed by workers. According to the Polish authorities, although there were different interpretations of the mandate of labour inspectors which led the NLI to propose draft amendments,<sup>141</sup> the Polish Government has expressed the view that unannounced inspections can be conducted in all circumstances on the basis of ILO Convention No 81, and that this is the case in practice. A proposal of the NLI to carry out operational activities is still under discussion. **GRETA would like to be kept informed of future developments in this regard.**

<sup>139</sup> <https://www.eurofound.europa.eu/country/poland#collective-bargaining>

<sup>140</sup> Ibid 139.

<sup>141</sup> [News item](#) of the National Labour Inspectorate's website, October 2021 (in Polish).

<https://www.sejm.gov.pl/sejm9.nsf/PrzebiegProc.xsp?id=E811A0AF4AAFA746C12586CB00589271> (in Polish).

223. The NLI Action Plan for 2022-2024 includes inspections in sectors where illegal employment of foreigners has been detected in recent years (including in construction, transportation and warehousing, industrial processing).<sup>142</sup> Inspections of employment agencies that provide both placement and temporary work services are among the priorities. According to data provided by the authorities, in 2021, the NLI carried out a total of 6,418 inspections on the legality of employment and performance of work by foreigners concerning 29,800 persons.<sup>143</sup> Illegal employment of foreigners was detected in 22,8% of the inspections and concerned 4,958 workers (including 17,6% employed under the declaration on entrusting work to a foreigner). As regards temporary employment agencies, 267 inspections were carried in 258 agencies in 2021 (compared to 233 in 2020) and 253 in user companies (compared to 184 in 2020). It appears that most temporary workers were employed under civil law contract and the proportion of labour law contracts is decreasing. In general terms, there has been an increase in the irregularities found in the agencies inspected.<sup>144</sup> They mostly concern the lack of written agreement with user companies on the terms and conditions of employment of temporary workers or exceeding the maximum duration of temporary work. In addition, it was found that 34 agencies were not registered in 2021 (compared to 26 in 2020). GRETA welcomes the development of inspections in temporary employment agencies but is concerned that efforts are not sufficient as they concern a small number of entities (2%).

224. An Agreement between the NLI and the National Prosecutor's Office was concluded on 6 November 2017, and a revised Agreement on Principles of Co-operation between the NLI and the Border Guard was signed on 10 November 2018. There is no plan to revise the Agreement between the NLI and the Police, in force since 1 December 2000. These co-operation agreements provide a framework for the exchange of information and documents, joint inspections and training activities. No statistics are available on joint inspections involving the NLI and law enforcement authorities carried out with regard to human trafficking. GRETA was informed that in 2021, the NLI participated in the nationwide Labour Exploitation EMPACT Action Days which involved dozens of joint inspections with the Police and the Border Guard, but no potential cases of THB were detected during them.

225. Labour inspectors refer detected cases of illegal employment of foreign workers to the Border Guard. As a result, irregular migrants fear reporting their case to labour inspectorates and situations of severe labour exploitation or human trafficking in the employment sphere are under-reported.<sup>145</sup> The Polish authorities argued that labour inspectors are obliged to report violations of the law to the competent law enforcement authorities, but if any victims of trafficking are detected among irregular workers, they would benefit from the recovery and reflection period. The authorities added that, in the framework of inspections, labour inspectors can decide to keep confidential the circumstances that would allow the disclosure of the employee's identity, if there is a reasonable fear that this information could expose the employee to any harm. GRETA underlines that most victims are not aware that they are trafficked, nor of their rights as victims of trafficking, that is why safe reporting mechanisms must be in place to ensure that migrant workers can report their case without fear of repercussion, both from their employers and the authorities.

226. "Guidelines for labour inspectors on the methodology of carrying out inspection activities in cases of suspected trafficking in human beings, in particular forced labour" were issued at the end of 2021 by a working group of the Team for Counteracting THB. In addition, labour inspectors have continued to participate in a two-day training on human trafficking organised annually by the Labour Inspectorate Training Centre, in co-operation with the Police, the Border Guard, the National Prosecutor's Office, the Ministry of the Interior and Administration, and the NGO La Strada Poland. In 2017 and 2018, 59 labour inspectors and other staff of the NLI benefited from this training, 23 in 2019, 20 in 2020, 19 in 2021 and 17 in 2022. According to the authorities, during the COVID-19 pandemic, training was provided online.

<sup>142</sup> [NLI Action Plan](#) for 2022-2024 (in Polish)

<sup>143</sup> Inspections mainly covered the following sectors: construction (25%), manufacturing (21%), administration and support services (19%), as well as transport and storage (10%).

<sup>144</sup> Irregularities were found in 82% entities inspected in 2019, 89% in 2020 and 94% in 2021.

<sup>145</sup> Foundation "Our Choice", [Working in Poland: violations of the labour rights of Ukrainian migrants in the construction and services sectors](#), 2018, p. 52.

227. Despite the training, some interlocutors expressed concerns that most labour inspectors lack knowledge and competencies on human trafficking. During the reporting period, only one alleged case of labour trafficking was detected by the NLI. In January 2020, following a complaint lodged by workers and an inspection carried out in a temporary employment agency, the District Labour Inspectorate in Gdańsk informed the District Prosecutor's Office of a suspected case of trafficking. The NLI considered that several Ukrainian nationals, hired under civil law contracts, were victims of trafficking due to the underestimation of the number of working hours and unlawful deductions to their salaries, by taking advantage of their lack of knowledge of Polish law. However, in October 2020 the criminal proceedings were discontinued by the Prosecutor's Office because of the lack of sufficient evidence. The District Labour Inspectorate appealed this decision, but the competent court confirmed the discontinuation of the proceedings.

228. While welcoming the legislative amendments on the employment of foreigners in Poland, GRETA is concerned that effective prevention and detection of cases of labour trafficking is lacking. As mentioned in paragraph 14, trafficking for the purpose of labour exploitation has become the predominant form of exploitation in Poland. Members of civil society met by GRETA lamented the insufficient political will to address this situation given the importance of migrant workers for the Polish economy.

229. **GRETA urges the Polish authorities to take additional measures to effectively prevent, detect and combat trafficking for the purpose of labour exploitation, taking into account Recommendation CM/Rec(2022)21 of the Committee of Ministers<sup>146</sup> and GRETA's Guidance Note on combating trafficking for labour exploitation.<sup>147</sup> This should include:**

- **reviewing the mandate of labour inspectors and reinforcing their human resources so that they can conduct operational activities and unannounced inspections in all economic sectors without prior complaints from workers or other evidence of suspected offences;**
- **establishing safe reporting and effective complaint mechanisms for workers, to ensure that victims of abuses or exploitative situations can refer their case without fear of repercussions.**
- **ensuring that when joint inspections are conducted, the objectives of labour inspectorates and the role of the immigration authorities are clearly defined;**
- **putting in place practical co-operation and data sharing agreements between labour inspectors and law enforcement in order to ensure that personal information of workers, whether collected in the course of labour inspections, joint inspections, reporting or complaints mechanisms, is not used for immigration enforcement purposes, but to tackle the perpetrators of trafficking offences;**
- **further strengthening the monitoring temporary employment agencies and recruitment intermediaries, including their respect of the national legislation and international standards (such as ILO General principles and operational guidelines for fair recruitment and definition of recruitment fees).<sup>148</sup>**

<sup>146</sup> [https://search.coe.int/cm/pages/result\\_details.aspx?objectid=0900001680a83df4](https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a83df4)

<sup>147</sup> <https://rm.coe.int/guidance-note-on-preventing-and-combating-trafficking-in-human-beings-/1680a1060c>

<sup>148</sup> [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_536755.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_536755.pdf)

230. **GRETA also considers that the Polish authorities should:**

- **strengthen labour inspections in sectors and businesses considered at high risks of trafficking, and increase the capacities of labour inspectors so that they can be actively engaged in the prevention of trafficking and the detection of victims;**
- **strengthen the provision of regular training to labour inspectors to enable them to contribute to the prevention and detection of THB for labour exploitation; labour inspectors should have sectoral expertise, language skills and cultural competences to effectively perform their tasks;**
- **further train law enforcement officers, prosecutors and judges, on combating THB for the purpose of labour exploitation and the rights of victims;**
- **further train consular and embassy staff on THB, and ensure screening of risks of trafficking in the framework of visa applications;**
- **continue raising awareness among the general public as well as, in a targeted manner, among migrant workers, about the risks of THB for the purpose of labour exploitation;**
- **monitor the use of “declarations on entrusting work to a foreigner” and “civil law contracts”, in particular “specific task contracts”, to ensure that they do not provide a gateway to trafficking, and address any gaps identified, including through legislative changes.**

#### 4. Border measures

231. Throughout the summer and fall of 2021, tens of thousands of migrants, mainly from Iraq and Syria, but also from African and Asian countries, attempted to cross the Polish border from Belarus. Many of them remained stuck for prolonged periods of time on or near the borders with Poland, and there were a number of deaths.<sup>149</sup> The Polish authorities reported almost 40,000 attempts to cross its border from Belarus in 2021, compared to just 122 in 2020.<sup>150</sup> This unprecedented movement of migrants at the border with Belarus created heightened risk of abuses, including human trafficking. During the 29th meeting of the Committee of Parties to the Convention on 17 December 2021, the representative of Poland stated that there was evidence of the Belarusian authorities transporting and escorting migrants towards the EU border and preventing their return to Belarus. Only three presumed victims of trafficking were identified by the Polish Border Guard (two Congolese girls and one Guinean boy) amongst these migrants. At the time of GRETA’s visit in June 2022, proceedings regarding these victims were still ongoing.

232. In late November 2021, a UN Human Rights Team interviewed more than 30 migrants who had managed to cross the border. Subsequently, a spokesperson for the UN High Commissioner for Human Rights stated that “[t]he majority [of interviewees] said that, while in Belarus, they had been beaten or threatened by security forces, and also alleged that the Belarusian security forces forced them to cross the border, instructing them when and where to cross, and prevented people from leaving the border area to return to Minsk.”<sup>151</sup> On 23 November 2021, the European Commission presented a set of measures to prevent and restrict the activities of transport operators, considering that several of them contributed to smuggling and trafficking of people through Belarus and the EU’s external border, and

<sup>149</sup> <https://www.infomigrants.net/en/post/38698/another-migrant-body-found-near-polandbelarus-border#:~:text=At%20least%2019%20people%20have,them%20likely%20froze%20to%20death>.

<sup>150</sup> Der Spiegel, “[Polen meldet fast 40.000 versuchte Grenzübertritte für 2021](#)”, 3 January 2022 (in German).

<sup>151</sup> [OHCHR | Press briefing notes on Poland/Belarus border](#)

that the EU needed tools to combat the instrumentalisation of migrants for political purposes.<sup>152</sup>

233. On 20 August 2021, the Polish Minister of the Interior and Administration amended the 2020 Regulation on temporary suspension or restriction of border traffic at certain border crossing points. It introduced a list of persons permitted to cross the border which does not include foreigners seeking international protection.<sup>153</sup> According to the amendments, a person who is not included in the list should immediately leave the Polish territory. Further, since 26 October 2021, amendments to the Law on Foreigners and the Law on Granting Protection to Foreigners have allowed Border Guard officers to immediately return foreigners entering Poland through unofficial border crossings without the possibility for them to apply for asylum.<sup>154</sup> The order to leave Poland is accompanied by a re-entry ban covering the Schengen area which can be appealed, but the appeal does not have a suspensive effect. According to official data, in 2021 the Polish authorities refused entry at the Belarussian border to 33,147 migrants, among whom 52 persons submitted an appeal.<sup>155</sup> In addition, in July 2022 the Polish authorities finished the construction of a 186 km wall along the border with Belarus with a view to preventing crossing outside official border posts.

234. In accordance with this new legislative framework, numerous pushbacks have been carried out by the Polish authorities at the border with Belarus. According to a report from a group of NGOs, Border Guard officers stopped migrants within the border area, and forced them to return to Belarus.<sup>156</sup> Several applications have been lodged against Poland before the European Court of Human Rights on behalf of migrants stuck at or near the border.<sup>157</sup> In a third-party intervention to the Court, the Commissioner for Human Rights considered that a repeated and systematic practice of pushing migrants and asylum seekers back to Belarus exists in Poland, and that such pushbacks happen without regard for those persons' individual situations.<sup>158</sup> Furthermore, the Commissioner stressed that the legislative amendments of October 2021 have made it largely illusory to access individual procedures and to apply for protection in Poland. Similarly, the UNHCR considered that Poland's current legal framework and practice of non-admission and removal is at variance with international and European law and recalled that the principle of *non-refoulement* cannot be derogated from, even in times of emergency.<sup>159</sup> Such concerns were also raised by the Polish Commissioner for Human Rights.<sup>160</sup>

235. In June 2022, a court in Warsaw considered that an expulsion order obliging a Syrian national to return to Belarus was unlawful and had denied the applicant's express wish to apply for asylum.<sup>161</sup> A similar ruling was adopted by a court in Bialystok. However, the legislative framework has remained unchanged. According to NGOs, pushbacks have continued and "there is a very high risk of human trafficking and abuse of persons who, according to the law, should automatically receive special protection in Poland – such as unaccompanied minors, disabled persons or victims of human trafficking."<sup>162</sup>

<sup>152</sup> European Commission, Press release, "EU proposes blacklisting of transport operators involved in facilitating the smuggling or trafficking of people", 23 November 2021.

<sup>153</sup> Draft law: <https://orka.sejm.gov.pl/Druki9ka.nsf/0/66CB4F4C2F85334EC12587420031E720/%24File/1507.pdf>

<sup>154</sup> Law of 14 October 2021 on amending the Law on foreigners and certain other acts.

<sup>155</sup> Border Guard Headquarter, letter no KG-OI-VIII.0180.7.2022.JL, 4 March 2022

<sup>156</sup> Grupa Granica, "Humanitarian crisis at the Polish-Belarusian border", 10 December 2021

<sup>157</sup> See, for instance, *D.A. and Others v. Poland*, application No. [51246/17](https://www.echr.coe.int/ViewDoc.aspx?id=5124617).

<sup>158</sup> Third party intervention by the Council of Europe Commissioner for Human Rights, R.A. and others v. Poland (no. 42120/21), 27 January 2022, CommDH(2022)3, <https://rm.coe.int/third-party-intervention-before-the-european-court-of-human-rights-in-/1680a5527a>

<sup>159</sup> UN High Commissioner for Refugees (UNHCR), *Submission by the Office of the United Nations High Commissioner for Refugees in the case of R.A. and Others v. Poland (Appl. No. 42120/21) before the European Court of Human Rights*, February 2022. <https://www.refworld.org/docid/621ccfde4.html>

<sup>160</sup> Letter by the Polish Ombudsman to the Polish Minister of Interior, 25 August 2021 <https://bjp.brpo.gov.pl/sites/default/files/Wyst%C4%85pienie%20RPO%20do%20MSWiA%2025.08.2021.pdf> (in Polish)

<sup>161</sup> Human Rights Watch, [Polish Court Rules Pushback of Asylum Seekers Unlawful | Human Rights Watch](https://www.hrw.org/news/2022/06/27/polish-court-rules-pushback-of-asylum-seekers-unlawful), 27 June 2022.

<sup>162</sup> Grupa Granica, "Situation on the Polish-Belarusian border July - October 2022", 10 October 2022.

236. GRETA stresses that pushbacks impede the detection of victims of THB amongst irregular migrants and asylum seekers and raise grave concerns as regards Poland's compliance with certain obligations of the Convention, including the positive obligations to identify victims of trafficking and to refer them to assistance, and to conduct a pre-removal risk assessment to ensure compliance with the obligation of non-refoulement.

**237. While recognising the serious challenges faced in relation to the situation at the border with Belarus, GRETA urges the Polish authorities to review the legislation in order to ensure that pre-removal risk assessments prior to all forced removals from Poland fully assess the risks of trafficking or re-trafficking on return, in compliance with the obligation of non-refoulement. The Polish authorities should take full account of the UNHCR guidelines on the application of the Convention relating to refugee status to victims of trafficking, and their right to seek asylum, and to GRETA's Guidance Note on the entitlement of victims of human trafficking, and persons at risk of being trafficked, to international protection.<sup>163</sup>**

### **5. Measures to prevent trafficking of children, identify children who are victims of trafficking and assist these children**

238. In its second report on Poland, GRETA considered that the authorities should strengthen their efforts in the area of prevention of child trafficking, in particular by sensitising and training child protection professionals across the country, and paying increased attention to children from Roma communities, unaccompanied children and migrant children. Further, GRETA urged the Polish authorities to improve the identification and assistance of child victims of trafficking, in particular by increasing the capacity to detect child victims by training a larger range of professionals, by providing safe accommodation for child victims of trafficking, and by making available reintegration programmes for child victims of trafficking.<sup>164</sup>

239. The number of child victims of trafficking identified during the reporting period was low. The Police identified one child victim of THB in 2017, nine in 2018, one in 2019, one in 2020, one in 2021 and three in 2022 (including two Ukrainian girls in relation to the war in Ukraine, see paragraph 259). The Border Guard identified one child victim of THB in 2017, one in 2018, none in 2020, two in 2021, and two in 2022. The National Prosecutor's Office identified 30 child victims of THB in 2017, 25 in 2018, 21 in 2019, eight in 2020 and 30 in 2021. KCIK identified and assisted 10 child victims of THB in 2017, 13 in 2018, 15 in 2019, 9 in 2020, 12 in 2021, and 8 in 2022.

240. As mentioned in the GRETA's second report, the "Algorithm of Identification of Child Victims of Trafficking in Human Beings and Conduct of Police and Border Guard Officers", developed in 2015, provides guidance to law enforcement officers on the identification of child victims and the steps to be taken after their identification.<sup>165</sup> The Algorithm was revised in 2021, notably to include the new rules on the hearing of children following amendments to the CCP (see paragraph 176). The annual training provided to police and border guard officers dealing with THB cases (see paragraph 149) covers the use of the algorithm.

241. There is still no specialised shelter for child victims of trafficking in Poland. According to the Polish authorities, girls aged 16-18 can be placed in KCIK's shelters. Younger girls, as well as boys, are usually placed in general childcare (foster families or homes) and educational institutions, as well as crisis intervention centres. According to representatives of the Ministry of Family and Social Policy met during the visit, the number of child victims of THB who resided in crisis intervention centres run by the voivodships was as follows: 17 in 2017, 17 in 2018, 12 in 2019, 4 in 2020, and none in 2021. GRETA notes that the National Action Plan for 2022-2024 envisages the development of a programme for support and protection of child victims of trafficking in human beings.

<sup>163</sup> <https://rm.coe.int/guidance-note-on-the-entitlement-of-victims-of-trafficking-and-persons/16809ebf44>

<sup>164</sup> See paragraph 131 of GRETA's second report on Poland.

<sup>165</sup> See paragraph 123 of GRETA's second report on Poland.

242. Social workers and staff in crisis centres receive training on human trafficking issues and assistance to victims, including children. Although foster families receive training and persons running foster homes have the obligation to improve their qualifications, it appears that those accommodating child victims of trafficking are not specifically and systematically trained on human trafficking issues. Limited training is provided to child protection personnel on the issue of human trafficking. According to the Ministry of Family and Social Affairs, a training of trainers of child protection personnel was organised in 2021 in co-operation with La Strada Poland. The National Action Plan for 2022-2024 foresees training and distribution of materials for teachers on the phenomenon of human trafficking, including child trafficking.

243. If the child victim is an unaccompanied minor (or if his/her parents have been deprived from parental rights, for instance due to their involvement in the presumed act of trafficking), the competent family court decides on the appointment of a guardian, or a temporary guardian until a permanent guardian is found. There is a pool of professionals who may act as guardians, and staff members of KCIK are frequently appointed as temporary guardians due to their experience with victims of trafficking. In 2022, in the context of the war in Ukraine, the working group on the support of victims of THB elaborated recommendations on the rights and duties of persons appointed as temporary guardian.

244. The legal framework for age assessment when there are doubts regarding the age of a presumed victim of trafficking has remained unchanged. Age assessment is carried out by means of an x-ray of the wrist and/or teeth, without any psychological, cognitive and behavioural evaluation. If a foreigner who claims to be a child refuses the medical examination, he/she can be treated as an adult.<sup>166</sup>

245. GRETA refers to the latest UN Committee on the Rights of the Child's Concluding observations on Poland, which recommended to increase the identification of child victims of trafficking, to strengthen the training of professionals in charge of identifying child victims of trafficking and referring them to assistance, to provide child victims of trafficking with services specific to their needs, as well as to allocate adequate resources to relevant institutions and financial support to civil society organisations.<sup>167</sup>

246. GRETA is concerned that the capacity of law enforcement authorities is not sufficient to identify child victims of trafficking, including when they are recruited and/or exploited online. It is also concerned about the lack of adequate accommodation for child victims. GRETA recalls that the type of accommodation provided to child victims of trafficking depends on the child's personal circumstances, taking into account the principle of the best interests of the child. Given the specific trauma, vulnerabilities and security needs of child victims of trafficking, GRETA considers that specialised accommodation is more appropriate than general childcare arrangements.<sup>168</sup>

**247. Reiterating its previous recommendations, GRETA urges the Polish authorities to improve the identification of, and assistance to, child victims of trafficking, in particular by:**

- **increasing the capacity to detect child victims of trafficking by training a larger range of professionals who may come into contact with children in the use of trafficking indicators and involving child specialists in the identification of child victims of trafficking to ensure that the best interests of the child is the primary consideration;**
- **further developing the training and resources of law enforcement officers and public prosecutors on the identification of child victims of trafficking, including child victims of trafficking recruited and/or exploited online;**

<sup>166</sup> See paragraph 130 of GRETA's second report on Poland.

<sup>167</sup> Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Poland, 6 December 2021, CRC/C/POL/CO/5-6. <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=CRC/C/POL/CO/5-6&Lang=E>

<sup>168</sup> GRETA, 8<sup>th</sup> General Report, Thematic chapter on assistance to victims of trafficking, October 2019.

- **providing safe and specialised accommodations for child victims of trafficking, with professionals adequately trained in supporting child victims of trafficking.**

248. **Further, GRETA once again considers that the Polish authorities should review the age assessment procedures applying to victims of trafficking, ensuring that the best interests of the child is effectively protected. In particular, the age assessment must not rely only on medical examination, but on a comprehensive assessment of the child's physical and psychological development, and the refusal of the child to participate in the age assessment procedure should not entail any automatic decision that he/she is an adult. Reference is made to the Committee on the Rights of the Child's Joint General Comment No. 4 and No. 23,<sup>169</sup> as well as to the Council of Europe Guide for policy makers on age assessment for children in migration.<sup>170</sup>**

## 6. Identification of victims of trafficking

249. There is still no National Referral Mechanism (NRM) in Poland, contrary to what was envisaged in the National Action Plan for 2016-2018. According to the authorities, the delay was due to the COVID-19 pandemic and the management of the humanitarian crisis following the war in Ukraine. The National Action Plan for 2022-2024 also foresees the development of an NRM. GRETA was informed that a draft NRM has been prepared by the working group on the support for victims of the Team for counteracting THB of the MIA, and it is expected to be adopted in 2023 following a legislative process. La Strada Poland has made proposals on the draft NRM, which include the duty to notify in case of reasonable grounds to consider that a person has been trafficked.

250. The formal identification of victims of THB remains the competence of the Police, the Border Guard and the National Prosecutor's Office. Law enforcement authorities conduct the identification of adult victims pursuant to the "Algorithm of Conduct of Law Enforcement Officers in Case of Revealing a Crime of THB" which provides detailed instructions on how to identify victims of trafficking.<sup>171</sup> The document was reportedly revised in 2021, notably on the procedure to be followed for the identification and the interviewing of victims. A specific reference was added to Article 26 of the Convention on the non-punishment principle.

251. The National Consulting and Intervention Centre for Victims of Trafficking (KCIK) can identify victims of trafficking who are legally present in Poland and do not wish to contact a law enforcement agency or have not been identified as victims of trafficking by such an agency.<sup>172</sup>

252. According to the Algorithm (Rules II-2 and 3), if a victim of trafficking is identified among foreign nationals, the identification should be confirmed by the competent Police or Border Guard coordinator on THB, as well as the Ministry of the Interior and Administration. It is not clear why such confirmation must be obtained for foreigners while it is not the case for Polish nationals.

253. Once a presumption has been established that the person is a victim of THB, he/she receives a certificate of a presumed victim of trafficking which enables him/her to benefit from the recovery and reflection period and assistance measures (see paragraphs 275 and 265). It is not possible to appeal a negative decision.

254. As mentioned in paragraph 12, data suggests that the number of formally identified victims of trafficking has increased during the reporting period, in particular victims identified by the National Prosecutor's Office.

<sup>169</sup> Committee on the Rights of the Child, Joint general comment No. 4 and No. 23, para. 4.

<sup>170</sup> <https://rm.coe.int/ageassessmentchildrenmigration/168099529f>

<sup>171</sup> See paragraph 104-105 of GRETA's second report on Poland.

<sup>172</sup> See paragraph 105 of GRETA's second report on Poland.

255. During the COVID-19 pandemic, according to a 2022 Study of the European Migration Network (EMN), there was limited possibilities to conduct inspections in places where persons at risk of trafficking could be present. As Border Guard officers were directed to perform additional duties in relation to the sanitary crisis, the tasks related to identifying victims of THB were carried out to a lesser extent.<sup>173</sup>

256. Labour inspectors, staff of the Office for Foreigners, social workers, child protection staff, health care staff, and diplomats can detect potential victims and refer them to the competent authorities for identification purposes. GRETA understands that they do not have the obligation, but the possibility to refer the case. Labour inspectors and social workers, as well as staff of the Office for Foreigners, receive periodic training on human trafficking (see paragraphs 226 and 242). According to the authorities, before taking upon their duties abroad, consular staff receive training which include the issue of trafficking, however this training is not provided to local staff. There has been no training on THB organised for health-care professionals.

257. Staff of the Office of Foreigners, which are responsible for determining asylum applications, follow the "Algorithm for dealing with a person who has applied for refugee status and is potentially a THB victim". If they suspect that a person is a victim of trafficking, they refer the case to the Border Guard for identification. The Office for Foreigners has appointed a THB co-ordinator. GRETA was informed that whenever Border Guard officers formally identify a presumed victim of trafficking among persons placed in administrative detention, he/she is released and offered the assistance of KCIK. However, no data is available on the number of victims identified in administrative detention centres.<sup>174</sup> GRETA takes note of a 2021 report of the Office of the Commissioner for Human Rights which indicates that, in the administrative detention centres visited, many people are unable to obtain assistance from a psychologist, there is a significant shortage of psychologists, and the language barrier is a frequent problem.<sup>175</sup> The lack of psychologists and doctors in these centres raises concerns given that these professionals can play a critical role in the identification of victims.

258. The number of victims of THB identified among persons seeking international protection remains low: two in 2017 (a woman from Cameroon and a woman from Mongolia, both victims of sexual exploitation; one in 2018 (a man from Vietnam), and two in 2020 (from Ukraine and Moldova). Nine persons were granted subsidiary protection in 2019 after being identified as presumed victims of THB (six unaccompanied girls and three women). In 2021, three presumed victims of THB were identified, two of whom absconded; the third one, a woman from Cameroon, was released from the immigration detention centre after identification as a victim of THB.

259. At the time of GRETA's visit, no victims of THB had been identified among persons fleeing the war in Ukraine. In their comments to the draft report, the Polish authorities indicated that that five investigations had been initiated by the Police into alleged cases of human trafficking targeting Ukrainian refugees, but only one case was confirmed after investigation. It concerns two 17-year-old girls who were forced to provide sexual services. The proceedings are ongoing. No cases were reported by the Border Guard.

**260. GRETA considers that the Polish authorities should take additional steps to ensure that all victims of trafficking are identified as such and can benefit from the assistance and protection measures provided for in the Convention, in particular by:**

- **finalising the preparation of and putting into place a National Referral Mechanism defining the role to be played and the procedure to be followed by all stakeholders that may come into direct contact with victims of trafficking;**

<sup>173</sup> European Migration Network, "[Third country national victims of trafficking in human beings: detection, identification and protection](#)", 31 March 2022; National contribution to the EMN Study, by Poland's EMN National Contact Point (Office for Foreigners).

<sup>174</sup> In the Supcarpathian region, in 2017 a Romanian national was identified as presumed victim of trafficking for the purpose of sexual exploitation while in the detention centre of Przemyśl.

<sup>175</sup> [Report](#) of the Commissioner on the activities of the National Prevention Mechanism, 2021, p. 47-48 (in Polish).

- **further strengthening the provision of systematic training to Border Guard officers, police officers and public prosecutors, as well as staff of the Office for Foreigners, social workers, medical staff and other staff working in detention centres, on the identification of victims of trafficking and the procedures to be followed, in particular in light of the forthcoming National Referral Mechanism;**
- **ensuring that coordinators on THB in the Police, Border Guard and National's Prosecutor's Office have enough resources to effectively perform their role in the victim identification process;**
- **enabling specialised NGOs with experience in identifying and assisting victims of trafficking to have regular access to facilities for asylum seekers and administrative detention centres for migrants.**

## **7. Assistance to victims of trafficking**

261. In its second report, GRETA urged the Polish authorities to guarantee effective access to public health care for all victims of trafficking, regardless of their residence status, in line with Article 12 of the Convention. GRETA also considered that additional steps should be taken to provide assistance to victims, and to ensure that sufficient funding is made available when the assistance is delegated to NGOs or local authorities.<sup>176</sup>

262. The legal framework for providing assistance to victims of trafficking has been described in the two previous GRETA reports.<sup>177</sup> In practice, assistance is mainly provided by the National Consulting and Intervention Centre for Victims of Trafficking (KCIK), which for a number of years has been run by the NGOs La Strada Foundation and PoMOC, with funding from the Government.

263. NGOs have to apply for an annual call for tenders for the procurement of the running of KCIK, which is managed by the Ministry of the Interior and Administration. This procedure creates an important administrative burden for both KCIK and the Unit for combatting THB of the Ministry, and the annual procurement procedure does not allow La Strada Foundation and PoMOC to employ staff under long-term contracts, which generates a high turnover of personnel. According to the Polish authorities, the one-year duration of the procurement contract is linked to the annual budget law and it allows for a better control over the expenses of the state budget and more effective monitoring of KCIK's activities.

264. The number of victims assisted by KCIK has increased during the reporting period and compared to the previous one: 187 victims in 2017, 181 in 2018, 226 in 2019, 166 in 2020, 210 in 2021 and 254 in 2022.

265. Despite this increase in the number of assisted victims, the annual allocation to KCIK by the State remained at PLN 1,100,000 (about 230,000 euros) until 2022. In 2023 the budget was increased by almost 40% to PLN 1,500,000 (about 320,000 euros). The budget of KCIK is supposed to cover staff expenses, the 24-hour telephone helpline for victims and witnesses of trafficking, as well as the needs of assisted victims, including accommodation, medical care, psychological support, legal counselling, assistance in obtaining documents, assistance in contacting law enforcement authorities, interpretation, food and other material support. As victims of trafficking do not receive a cash allowance, they are extremely dependent on the budget of KCIK, especially during the recovery and reflection period when they cannot work (see paragraph 71).

266. There are still only two specialised shelters for victims of trafficking, one for women, in Warsaw, run by La Strada Foundation, and one in Katowice, for women and their children, run by PoMOC. The number of accommodation places has increased slightly. The city of Warsaw has provided La Strada

<sup>176</sup> See paragraphs 120-121 of GRETA's second report on Poland.

<sup>177</sup> See paragraphs 150-151 of GRETA's first report on Poland; paragraph 111 of GRETA's second report on Poland.

Foundation with a flat with the capacity of six places. At the time of the visit, this flat was accommodating five men and one woman. As a result of the lack of places for male victims, many male victims of trafficking identified in Poland are placed in hostels.

267. Further, GRETA was informed that 16 crisis intervention centres across Poland, out of the total of 167 such centres in the country, can accommodate victims of trafficking (compared to 18 during the previous reporting period).<sup>178</sup> According to data provided by the authorities, 44 victims of trafficking were accommodated in crisis intervention centres in 2017, 72 in 2018, 55 in 2019, 29 in 2020 and 32 in 2021. Although these centres are not specialised in assisting victims of trafficking, according to the authorities, social workers working there can benefit from a training organised four times a year by the Ministry of Family and Social Affairs, in co-operation with other authorities and NGOs. In 2016-2018, staff of crisis intervention centres received specialised training courses devoted to identification of victims and co-operation with other institutions.

268. Access to health care beyond emergency cases remains problematic, in particular for victims of trafficking who are non-EU nationals, which is the case of a number of victims. The residence permits for victims of trafficking do not entitle them to public health services free of charge, unless victims are employed, registered as unemployed or make contributions to the public health care insurance. As regard victims of trafficking irregularly residing in Poland, they can only have access to free emergency care; non-urgent treatment can be provided at their own expense or at the expense of KCIK. The Polish authorities reiterated that the list of beneficiaries under the 2004 Law on Health Care Services Financed from Public Funds is broad, and for those not covered by public health care insurance, medical assistance can be accessible via KCIK.

269. GRETA was informed that La Strada Foundation organised medical assistance to 34 victims of trafficking in 2017, 39 in 2018, 8 in 2019, 31 in 2020, 46 in 2021 and 36 in the first semester of 2022. According to representatives of NGOs, in practice, access to public health care free of charge is difficult, except during the three-month validity of the certificate of presumed victim of trafficking or if the victims are employed, and that covering the medical expenses of victims has a significant impact on KCIK's budget, which is limited. In addition, there are significant delays in obtaining non-urgent appointments in the public health system and many victims have to resort to private doctors, which generates increased expenses.

270. The National Action Plan for 2019-2021 envisaged amending the legislation with a view to covering the health insurance for Polish and foreign victims of trafficking.<sup>179</sup> GRETA understands that such amendments have not been adopted. It notes with concerns that no specific measures have been included in the National Action Plan for 2022-2024 to improve victims' access to medical care.

271. GRETA welcomes the increase in the budget allocated to KCIK in 2023 for the assistance to victims of THB. However, it is concerned that the annual periodicity of the public procurement of the running of KCIK undermines the sustainability of the assistance provided. Places in safe and specialised accommodation for victims of trafficking remain insufficient, in particular for male victims, despite the fact that most victims identified in recent years have been men. Further, GRETA remains concerned that victims lack effective access to medical assistance, in particular non-EU nationals.

**272. GRETA urges the Polish authorities to take additional steps to guarantee effective assistance to victims of trafficking, according to their needs, including by:**

- **ensuring continuous access to public health care for all victims of trafficking on the basis of the temporary residence permit of victim of trafficking, in particular when not employed, in accordance with Article 12 of the Convention.**

<sup>178</sup> See paragraph 114 of GRETA's second report on Poland.

<sup>179</sup> See Report to the Committee of the Parties, p. 3-4.

- **increasing the number of places in specialised accommodation for victims of trafficking, including male victims.**

273. **GRETA also considers that the Polish authorities should ensure the sustainability of state funding and extend the duration of the public funding allocated to the National Consulting and Intervention Centre for Victims of Trafficking (KCIK).**

274. **Further, GRETA invites the Polish authorities to grant presumed victims of trafficking a cash allowance with a view to ensuring their financial autonomy.**

## **8. Recovery and reflection period and residence permits**

275. In its second report, GRETA urged the Polish authorities to ensure that all foreign victims of trafficking, including EU/EEA nationals, are consistently offered a recovery and reflection period, regardless of where in Poland they are identified.<sup>180</sup>

276. As mentioned in paragraph 45, presumed victims of trafficking receive a certificate confirming the existence of that presumption. It allows them to benefit from the rights attached to the recovery and reflection period, but it is not a travel document allowing the crossing of Polish borders. Since the Law of 20 December 2020 amending the Law of 14 July 2005 on entering the territory of the Republic of Poland, citizens of the European Economic Area and Switzerland can receive certificate of presumed victim or witness of trafficking. According to the authorities, four EU nationals (from Bulgaria) were granted the certificate in 2021.

277. The stay of a foreign victim of THB in Poland shall be considered legal during the period of validity of the certificate (three months for adults and four months for children), unless the victim actively, voluntarily and on his/her own initiative has renewed contacts with the traffickers.<sup>181</sup> The Law of 24 November 2017 amending the Law on Foreigners introduced an additional ground for the withdrawing of the certificate, namely in case of (attempted) illegal crossing of borders.<sup>182</sup> It is not clear whether this applies to illegal border crossing prior or after being granted the certificate of presumed victim. The Polish authorities informed GRETA that the new ground for withdrawing the certificate had not yet been applied in practice.

278. According to information provided by the authorities, 15 victims of trafficking were granted a certificate of a presumed victim in 2017, 4 in 2018, 120 in 2019 (including 95 persons from the Philippines), 11 in 2020, 71 in 2021, and 109 in 2022. The majority of them were men.

279. As mentioned in the previous GRETA reports, victims of THB who co-operate with the law enforcement authorities can be granted a temporary residence permit of a minimum duration of six months and for a maximum three years.<sup>183</sup> Since the entry into force of the Law of 24 November 2017 amending the Law on Foreigners, a residence permit can be granted to child victims of THB regardless of their co-operation with the authorities. Victims of THB can also apply for a temporary residence permit if their stay on the Polish territory is justified by their personal situation, with a maximum duration of six months.

280. In addition, victims can apply for a permanent residence permit if they: 1) have resided at least one year on the territory of Poland on the basis of a temporary residence permit for victims of THB; 2) have co-operated with law enforcement authorities in criminal proceedings; and 3) have a well-founded

<sup>180</sup> See paragraphs 140 of GRETA's second report on Poland.

<sup>181</sup> See paragraphs 135- 136 of GRETA's second report on Poland.

<sup>182</sup> According to the new Article 171.2 of the Law on foreigners (unofficial translation): "the stay of a foreigner referred to in Article 170 [foreigner granted a certificate of presumed victim of trafficking], ceases to be considered as legal as soon as the Minister responsible for internal affairs record in the register referred to in Article 428 para. 1 point 7 [register of persons being granted the certificate] (...) crossed or attempted to cross the border illegally".

<sup>183</sup> See paragraphs 142-144 GRETA's second report on Poland.

fear of return to their country of origin, attested to by the prosecutor in charge of the criminal proceedings. Since the Law of 24 November 2017 amending the Law on Foreigners, the existence of a well-founded fear of return is not confirmed by public prosecutors, but is assessed by the Ministry of the Interior and Administration.

281. According to the information provided by the Office for Foreigners, 16 victims of trafficking received a residence permit in 2017, 6 in 2018, 14 in 2019, 30 in 2020, 12 in 2021, and 21 in 2022.

282. GRETA was informed that the duration of the procedure for obtaining a residence permit can be long, up to a year in some regions of Poland, and that the length of the residence permits granted may differ between regions. Further, according to NGOs, in order to receive a residence permit, it is not sufficient to hold a certificate of presumed victim of THB, and an additional document from the Prosecutor's Office confirming that the person is co-operating in the investigation and has severed links with the perpetrators is required. Challenges in relation to the issuance of residence permits for victims were discussed in 2022 by the working group on the support of victims of THB of the Anti-Trafficking Team, but GRETA was not informed of the outcomes of the discussion.

283. While welcoming the fact that EU/EEA nationals have the possibility to receive a certificate of presumed victims of trafficking, GRETA is concerned that this possibility does not appear to be applied in practice. GRETA is also concerned that victim's right to a residence permit is undermined by long delays in issuing of residence permits, and that the number of residence permits granted to victims of trafficking is decreasing.

284. As regards access to international protection (refugee status and subsidiary protection), GRETA was informed that victims of THB are not treated as members of a particular social group and there is no case law in this respect.

285. **GRETA considers that the Polish authorities should:**

- **ensure that all presumed foreign victims of trafficking, including EU/EEA nationals, are effectively offered a recovery and reflection period, including by further raising awareness among professionals in charge of identifying victims;**
- **ensure that victims of THB can effectively and in a timely manner benefit from the right to be issued residence permits, including by consistently informing victims, in a language they can understand, about the application procedure.**

## **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***

- GRETA considers that the Polish authorities should take additional measures to ensure the systematic provision of oral and written information to presumed and formally identified victims of trafficking, in a language they can understand, regarding their rights, the services available and how to access them, as well as the implications of being identified as a victim of trafficking. This should include steps to:
  - revise the document on victims' rights so that the information is easy to understand and contains explanations on how to access such rights;
  - revise the "certificate of a presumed victim of trafficking" so that it provides information on all the rights of victims of trafficking and how to access them;
  - train and instruct law enforcement officers, prosecutors, staff of reception centres for migrants and shelters accommodating victims of trafficking on how to properly explain to victims of THB their rights, taking into account the victim's cognitive skills and psychological state;
  - ensure that all victims of trafficking who are not fluent in Polish are assisted during interviews with law enforcement agencies and hearings in court by qualified interpreters, and sensitise the latter to the issue of human trafficking (paragraph 51).

#### ***Legal assistance and free legal aid***

- GRETA urges the Polish authorities to guarantee effective access to legal assistance and free legal aid for victims of trafficking, including by:
  - facilitating the provision of legal assistance as soon as there are reasonable grounds for believing that a person is a victim of human trafficking, irrespective of his/her residence permit and before the person concerned has to decide whether or not he/she wants to co-operate with the authorities and/or make an official statement;
  - ensuring that trafficking victims are systematically appointed a specialised lawyer to represent them in legal proceedings;
  - ensuring adequate funding for the provision of legal assistance and free legal aid to victims of trafficking, including when they are provided by NGO lawyers or *ex officio* lawyers (paragraph 63);
- GRETA considers that the Polish authorities should take steps to facilitate the training of lawyers assisting and representing victims of trafficking, including by providing sufficient fundings to that effect and by encouraging the Supreme Bar Council and the National Council of Legal Advisors to offer specialised training and to draw up a list of lawyers qualified to provide assistance to victims of THB (paragraph 64).

### ***Psychological assistance***

- GRETA considers that the Polish authorities should make further efforts to guarantee psychological assistance to victims of trafficking, including by:
  - ensuring that psychological assistance can be effectively provided to all victims of trafficking, irrespective of their access to public health insurance;
  - allocating sufficient funding to KCIK so that it can adequately provide psychological assistance to victims of trafficking, including by engaging interpreters where necessary (paragraph 69).

### ***Access to work, vocational training and education***

- GRETA considers that the Polish authorities should ensure effective access to the labour market for victims of THB and their economic and social inclusion through the provision of vocational training and job placement, raising awareness amongst different 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 75);
- GRETA invites the Polish authorities to extend the right to work to persons who hold a certificate of a presumed victim of trafficking (paragraph 76).

### ***Compensation***

- GRETA urges the Polish authorities to guarantee effective access to compensation for victims of trafficking, notably by:
  - consistently and systematically informing victims of trafficking of their right to seek compensation in criminal and civil proceedings, as well as to seek state compensation, and the procedures to be followed;
  - ensuring that victims are provided with legal assistance and free legal aid from the early stage of the proceedings in order to exercise their right to compensation;
  - ensuring that the collection of evidence about the harm the victim has suffered, including the financial gain from the exploitation of the victim, is part of the criminal investigation, with a view to supporting compensation claims in court;
  - ensuring that victims of trafficking can effectively receive compensation for the full damage suffered as part of the criminal proceedings, and within a reasonable time;
  - providing regular training and guidelines for prosecutors and criminal judges on victim's right to compensation, the determination of the amount of compensation, and the possibility to respectively request and order compensation *ex officio*;
  - 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 eligibility for state compensation to all victims of THB, including third-country nationals who are victims of THB committed in Poland, regardless of their residence status in Poland (paragraph 96);
- GRETA considers that the Polish authorities should monitor access to compensation for victims of trafficking by developing a system for recording claims for compensation and compensation awarded (paragraph 97).

### ***Investigations, prosecutions, sanctions and measures***

- GRETA considers that the Criminal Code should include an express prohibition of servitude in order to contribute to the practical and effective protection against treatments contrary to the Convention (paragraph 101);
- GRETA urges the Polish authorities to take further measures to strengthen the criminal justice response to THB, including by:
  - ensuring that human trafficking offences for different forms of exploitation are proactively and promptly investigated, regardless of whether a complaint about the reported crime has been submitted or not by a victim;
  - making use of special investigation techniques in order to gather material, documentary, financial and digital evidence, and not having to rely exclusively on testimony by victims or witnesses;
  - ensuring that human trafficking offences are prosecuted as such, rather than as offences carrying lower penalties, every time the circumstances of the case allow this, and lead to effective, proportionate and dissuasive sanctions for those convicted. The plea-bargaining procedure should be used only exceptionally in human trafficking cases, subject to appropriate safeguards, where the reduction of a sentence is clearly outweighed by the advantages offered by the plea agreement (these advantages being indicated in the judicial decision approving the agreement) and the agreement is not in any way detrimental to the rights of the victims, including their access to compensation;
  - reviewing the existing legal provisions and court rulings on THB for the purpose of labour exploitation and strengthening efforts to investigate, prosecute and convict offenders of trafficking for the purpose of labour exploitation;
  - ensuring that the length of court proceedings in cases of trafficking of human beings is reasonable, in line with the case-law of the European Court of Human Rights (Article 6, paragraph 1 of the ECHR) and the standards set by the European Commission for the Efficiency of Justice (CEPEJ);
  - improving the collection of statistics on investigations, prosecutions and convictions for THB offences (see also paragraph 197) (paragraph 123);
- GRETA considers that the Polish authorities should continue developing specialisation among investigators, prosecutors and judges dealing with THB cases, including on trafficking for the purpose of labour exploitation (paragraph 124).

### ***Non-punishment provision***

- GRETA considers that the Polish authorities should take additional measures to guarantee the respect of the non-punishment principle for victims of trafficking, including by:
  - adopting a specific legal provision ensuring the non-punishment of victims of trafficking for their involvement in unlawful activities, including administrative offences, to the extent that they were compelled to do so, and regardless of their co-operation with law enforcement authorities;

- providing further guidance and training to law enforcement officers, prosecutors and judges on the application of the non-punishment provision enshrined in the Convention (paragraph 134);
- GRETA invites the Polish authorities to collect data on and to monitor the application of non-punishment principle, with a view to identifying shortcomings in the application of this principle and to take measures in this respect (paragraph 135).

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

- GRETA considers that the Polish authorities should make full use of measures provided for in the domestic law in order to protect victims and witnesses of trafficking in human beings and prevent secondary victimisation, including by:
  - using video conferences and other suitable means to avoid face-to-face cross-examination ("direct confrontation") of victims and defendants;
  - continuing to develop guidance and training for law enforcement officers, prosecutors and judges on protection measures and the principle of a single hearing;
  - ensuring that victims are systematically informed of their right to protection measures, in line with the recommendation of paragraph 51 (paragraph 145).

### ***Specialised authorities and co-ordinating bodies***

- While welcoming the efforts made to develop specialisation of professionals to deal with THB, GRETA considers that the Polish authorities should ensure that the training on THB provided to them is systematic and periodically updated, and that law enforcement agencies, the prosecution and the judiciary are provided with adequate resources, with a view to enabling successful investigation, prosecution and adjudication of human trafficking cases (paragraph 154);
- GRETA considers that the Polish authorities should:
  - reinforce the national coordination of anti-trafficking action and ensure that the human resources of the Unit on THB of the Ministry of the Interior and Administration are sufficient and stable;
  - further foster the coordination of anti-trafficking action at the regional level, and strengthen co-operation between national and regional institutions (paragraph 155).

### ***International co-operation***

- GRETA invites the Polish authorities to further develop international co-operation with labour inspectorates abroad, and to increase judicial co-operation with other countries, notably countries to which victims of THB are returned (paragraph 167);
- GRETA invites the Polish authorities to enhance international co-operation on human trafficking cases facilitated by ICTs and encourages them to ratify the Second Additional Protocol to the Convention on Cybercrime on enhanced co-operation and disclosure of electronic evidence (paragraph 168).

### ***Gender-sensitive criminal, civil, administrative and employment proceedings***

- GRETA invites the Polish authorities to provide specific training to law enforcement officers, prosecutors and judges on how to conduct gender-sensitive interviews (paragraph 174).

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

- GRETA urges the Polish authorities to provide for the application of protection measures to all child victims of trafficking, including children aged 15 or older, in particular the principle of a single hearing, the obligation to record the interview and the absence of cross-examination (direct confrontation) with the accused (paragraph 180);
- GRETA considers that the Polish authorities should make further efforts to ensure child-friendly proceedings in human trafficking cases, in particular by:
  - developing practical guidelines and training for judges on the principle of a single hearing and raising awareness on a cautious application of any exceptions;
  - providing further guidelines and training to law enforcement officials, prosecutors and judges on how to conduct child-friendly interviews (paragraph 181).

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

- GRETA considers that the Polish authorities should continue their engagement with the private sector, in line with the UN Guiding Principles on Business and Human Rights as well as Council of Europe Committee of Ministers Recommendations CM/Rec(2016)3 on human rights and business and CM/Rec(2022)21 on preventing and combating trafficking in human beings for the purpose of labour exploitation, with a view to raising awareness of the important role and responsibility of businesses in supporting the rehabilitation and recovery of victims of trafficking, and to provide access to effective remedies (paragraph 187).

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

- GRETA considers that the Polish authorities should include measures against corruption in a THB context in the next national anti-corruption strategy (paragraph 192).

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

### ***Developments in the legal, institutional and strategic framework for action against trafficking in human beings***

- GRETA considers that the Polish authorities should examine the possibility of designating as a National Rapporteur a separate organisational entity or another independent mechanism for monitoring the anti-trafficking activities of State institutions (paragraph 24);
- GRETA considers that the Polish authorities should formalise the participation of specialised NGOs in the Team for Counteracting Trafficking in Human Beings and continue ensuring that they are involved in the planning, implementation and evaluation of anti-trafficking action (paragraph 26);
- GRETA considers that the Polish authorities should introduce an independent evaluation of the implementation of National Action Plans against THB and other anti-THB projects, as a tool for assessing the impact of the activities and planning future policies and measures to combat THB (paragraph 31).

### ***Data collection***

- GRETA urges the Polish authorities to develop a centralised, comprehensive system for the collection and analysis of data on measures to protect and promote the rights of trafficking victims (including protection measures taken during criminal proceedings), as well as data on investigations, prosecutions and adjudications of THB cases. Statistics regarding victims should be collected from all main actors (including Police, Border Guard, National Prosecutor's Office, regional and local authorities, KCIK and NGOs) and should allow disaggregation by sex, age, type of exploitation, country of origin and/or destination. This should be accompanied by all the necessary measures to ensure the right of data subjects to personal data protection, including when NGOs working with victims of trafficking are asked to provide information for the national database (paragraph 197).

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

- GRETA welcomes the mobilisation and solidarity in the face of the unprecedented displacement of people following the outbreak of the war in Ukraine and considers that the Polish authorities should continue their efforts to address the vulnerabilities to trafficking of all persons fleeing the war in Ukraine, without discrimination and irrespective of their nationality or statelessness, taking into account GRETA's Guidance Note on addressing the risks of trafficking in human beings related to the war in Ukraine and the ensuing humanitarian crisis, as well as the Report and recommendations of the Special Representative of the Secretary General on Migration and Refugees (paragraph 210).

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

- GRETA urges the Polish authorities to take additional measures to effectively prevent, detect and combat trafficking for the purpose of labour exploitation, taking into account Recommendation CM/Rec(2022)21 of the Committee of Ministers and GRETA's Guidance Note on combating trafficking for labour exploitation. This should include:
  - reviewing the mandate of labour inspectors and reinforcing their human resources so that they can conduct operational activities and unannounced inspections in all economic sectors without prior complaints from workers or other evidence of suspected offences;
  - establishing safe reporting and effective complaint mechanisms for workers, to ensure that victims of abuses or exploitative situations can refer their case without fear of repercussions.
  - ensuring that when joint inspections are conducted, the objectives of labour inspectorates and the role of the immigration authorities are clearly defined;
  - putting in place practical co-operation and data sharing agreements between labour inspectors and law enforcement in order to ensure that personal information of workers, whether collected in the course of labour inspections, joint inspections, reporting or complaints mechanisms, is not used for immigration enforcement purposes, but to tackle the perpetrators of trafficking offences;
  - further strengthening the monitoring temporary employment agencies and recruitment intermediaries, including their respect of the national legislation and international standards (such as ILO General principles and operational guidelines for fair recruitment and definition of recruitment fees) (paragraph 229);

- GRETA considers that the Polish authorities should:
  - strengthen labour inspections in sectors and businesses considered at high risks of trafficking, and increase the capacities of labour inspectors so that they can be actively engaged in the prevention of trafficking and the detection of victims;
  - strengthen the provision of regular training to labour inspectors to enable them to contribute to the prevention and detection of THB for labour exploitation; labour inspectors should have sectoral expertise, language skills and cultural competences to effectively perform their tasks;
  - further train law enforcement officers, prosecutors and judges, on combating THB for the purpose of labour exploitation and the rights of victims;
  - further train consular and embassy staff on THB, and ensure screening of risks of trafficking in the framework of visa applications;
  - continue raising awareness among the general public as well as, in a targeted manner, among migrant workers, about the risks of THB for the purpose of labour exploitation;
  - monitor the use of “declarations on entrusting work to a foreigner” and “civil law contracts”, in particular “specific task contracts”, to ensure that they do not provide a gateway to trafficking, and address any gaps identified, including through legislative changes (paragraph 230).

### ***Border measures***

- While recognising the serious challenges faced in relation to the situation at the border with Belarus, GRETA urges the Polish authorities to review the legislation in order to ensure that pre-removal risk assessments prior to all forced removals from Poland fully assess the risks of trafficking or re-trafficking on return, in compliance with the obligation of *non-refoulement*. The Polish authorities should take full account of the UNHCR guidelines on the application of the Convention relating to refugee status to victims of trafficking, and their right to seek asylum, and to GRETA’s Guidance Note on the entitlement of victims of human trafficking, and persons at risk of being trafficked, to international protection (paragraph 237).

### ***Measures to prevent trafficking of children, identify children who are victims of trafficking and assist these children***

- GRETA urges the Polish authorities to improve the identification of, and assistance to, child victims of trafficking, in particular by:
  - increasing the capacity to detect child victims of trafficking by training a larger range of professionals who may come into contact with children in the use of trafficking indicators and involving child specialists in the identification of child victims of trafficking to ensure that the best interests of the child is the primary consideration;
  - further developing the training and resources of law enforcement officers and public prosecutors on the identification of child victims of trafficking, including child victims of trafficking recruited and/or exploited online;
  - providing safe and specialised accommodations for child victims of trafficking, with professionals adequately trained in supporting child victims of trafficking (paragraph 247);

- GRETA considers that the Polish authorities should review the age assessment procedures applying to victims of trafficking, ensuring that the best interests of the child is effectively protected. In particular, the age assessment must not rely only on medical examination, but on a comprehensive assessment of the child's physical and psychological development, and the refusal of the child to participate in the age assessment procedure should not entail any automatic decision that he/she is an adult. Reference is made to the Committee on the Rights of the Child's Joint General Comment No. 4 and No. 23, as well as to the Council of Europe Guide for policy makers on age assessment for children in migration (paragraph 248).

### ***Identification of victims of trafficking***

- GRETA considers that the Polish authorities should take additional steps to ensure that all victims of trafficking are identified as such and can benefit from the assistance and protection measures provided for in the Convention, in particular by:
  - finalising the preparation of and putting into place a National Referral Mechanism defining the role to be played and the procedure to be followed by all stakeholders that may come into direct contact with victims of trafficking;
  - further strengthening the provision of systematic training to Border Guard officers, police officers and public prosecutors, as well as staff of the Office for Foreigners, social workers, medical staff and other staff working in detention centres, on the identification of victims of trafficking and the procedures to be followed, in particular in light of the forthcoming National Referral Mechanism;
  - ensuring that coordinators on THB in the Police, Border Guard and National's Prosecutor's Office have enough resources to effectively perform their role in the victim identification process;
  - enabling specialised NGOs with experience in identifying and assisting victims of trafficking to have regular access to facilities for asylum seekers and administrative detention centres for migrants (paragraph 260).

### ***Assistance to victims of trafficking***

- GRETA urges the Polish authorities to take additional steps to guarantee effective assistance to victims of trafficking, according to their needs, including by:
  - ensuring continuous access to public health care for all victims of trafficking on the basis of the temporary residence permit of victim of trafficking, in particular when not employed, in accordance with Article 12 of the Convention.
  - increasing the number of places in specialised accommodation for victims of trafficking, including male victims (paragraph 272);
- GRETA considers that the Polish authorities should ensure the sustainability of state funding and extend the duration of the public funding allocated to the National Consulting and Intervention Centre for Victims of Trafficking (KCIK) (paragraph 273);
- GRETA invites the Polish authorities to grant presumed victims of trafficking a cash allowance with a view to ensuring their financial autonomy (paragraph 274).

***Recovery and reflection period and residence permits***

- GRETA considers that the Polish authorities should:
  - ensure that all presumed foreign victims of trafficking, including EU/EEA nationals, are effectively offered a recovery and reflection period, including by further raising awareness among professionals in charge of identifying victims;
  - ensure that victims of THB can effectively and in a timely manner benefit from the right to be issued residence permits, including by consistently informing victims, in a language they can understand, about the application procedure (paragraph 285).

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

### **Public bodies**

- Ministry of the Interior and Administration
  - o Department of International Affairs and Migration
  - o Police Headquarters
  - o Border Guard Headquarters
  - o Office for Foreigners
- Ministry of Justice
  - o Department for International Co-operation and Human Rights
  - o Legislative Department for Criminal Law
  - o Department of the Justice Fund
  - o National Criminal Register
  - o National School of Judiciary and Public Prosecution
- Ministry of Family and Social Policy
- Ministry of Funds and Regional Policy
- Ministry of Foreign Affairs
- Ministry of Health
- Commissioner for Human rights (Ombudsperson)
- National Prosecutor's Office
- National Labour Inspectorate
- Podkarpackie Voivodeship
- Medyka City Hall

### **Intergovernmental organisations**

- International Organization for Migration (IOM)
- United Nations High Commissioner for Refugees (UNHCR)
- European Border and Coast Guard Agency (FRONTEX)

### **NGOs and other civil society actors**

- A21
- All-Poland Alliance of Trade Unions (OPZZ)
- Employers' Confederation Lewiatan
- Helsinki Foundation for Human Rights
- Itaka Foundation
- La Strada Poland
- Light House Foundation
- PoMOC
- Centre of Human Trafficking Studies of the University of Warsaw
- Warsaw Bar Association

## **Government's comments**

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

GRETA engaged in a dialogue with the Polish 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 Polish authorities on 13 April 2023 and invited them to submit any final comments. The comments of the authorities, submitted on 12 May 2023, are reproduced hereafter.

**Please find below the final comments on the report, developed by the Ministry of the Interior and Administration in cooperation with the Ministry of Justice and the Ministry of Health**

**Re: paragraph 24**

Deputy Director in the Department of International Affairs and Migration appointed in December 2022 as a Polish National Coordinator and Rapporteur in the EU Network of National Rapporteurs and Equivalent Mechanism has more a representative function. The assessment body who monitors the situation of anti-trafficking activities of State institutions and initiates the practical discussion on the subject is the Committee for Counteracting Trafficking in Human Beings composed i.a. of NGOs and academic bodies who have the full right to vote and who adopt the reports on implementation of tasks.

**Re: paragraph 26**

Update: Polish Prime Minister has already approved a proposal to restore the Anti-Trafficking Team as a consultative body of the Prime Minister. The legislative process is under way and it's expected to be completed not later than in the middle of the year.

**Re: paragraph 27**

Once again the Ministry would like to stress that the participation of specialized NGOs in the Committee for Counteracting Trafficking in Human Beings has been already formalized in the highest possible way. Mentioned Regulation No 6 of the Minister of the Interior and Administration officially allows particular NGOs to participate as a fully-fledged member in all work and working groups of the Team.

The process of joining the Committee is very simple, uncomplicated and consists only of submission of a written request and signing the GDPR statement.

Please be aware that, due to e.g. the possibility of new NGOs joining or old ones leaving the Committee, it is not possible to include a permanent list of NGOs in the regulation. In the event of a change, the entire ordinance would have to be changed, which involves a certain legislative process what in turn would lead to extension or suspension of the Committee's work.

**Re: paragraph 31**

As the Ministry of the Interior and Administration already informed, based on the Regulation No. 6 of the Minister of the Interior and Administration of February 15, 2019 on the establishment of the Team for Coordination of the Counteracting Trafficking in Human Beings, the evaluation tools currently in use to assess the implementation of National Action Plans against THB are:

- an annual report on the implementation of the NAP approved by the Team;
- an annual report on the work of in the Committee for Counteracting Trafficking in Human Beings submitted to the Minister of the Interior and Administration by the end of March each year.

Above-mentioned reports are being developed as a part of the work of in the Committee for Counteracting Trafficking in Human Beings based on the contributions sent by all actors involved in the fight against THB. To ensure the proper content of reports, the final drafts are sent to all Committee members for any comments or feedback. After consultations, the reports are submitted to the Minister for approval.

- meetings of the Working Group for monitoring the implementation of the NAP

Working Group for monitoring the implementation of the NAP gathers experts representing institutions participating in the Committee's work including representatives of NGOs (La Strada Foundation, PoMOC Maria Immaculate Association for Women and Children, Lighthouse Foundation, Empowering Children Foundation). All members take an active part in the Committee's meetings and monitor the implementation of the NAP on an ongoing basis.

In conclusion, all actors (internal and external) involved in the fight against THB are already playing an active role in the process of evaluating the implementation of the NAP. Therefore, the Polish authorities have not

seen the needs by now to introduce any other independent evaluation of the implementation of National Action Plans.

**Re: paragraph 45**

The National Action Plan for 2022-2024 provides for the development of a catalog of rights for victims of trafficking in human beings and its translation into the languages of the victims. The work on this project has been recently resumed and will be continued within the work of the Group on the support of victims of human trafficking.

**Re: paragraphs 45 and 61**

The rights of all victims in criminal proceedings are basically the same irrespective of the type of crime of which they are victims. Therefore, there is no separate instruction for victims of THB on issues strictly related to criminal proceedings. As noted in the draft report, these persons receive a separate instruction on administrative issues concerning their stay in Poland.

A potential victims is informed about his/her rights on every stage of the procedure by the officer, KCIK representatives or social assistant. All information regarded victim's rights are available on KCIK website.

Poland would consider the broaden of the content of the information contained in the certificate.

**Re: paragraph 51**

As the Ministry of the Interior and Administration mentioned in the previous contribution, foreigners at every stage of the procedure are being informed about their rights and obligations. They receive written instructions in a language they understand. In case of lack of a written translation, explanations are provided to a foreigner orally with the help of an interpreter. Any doubts are being resolved on an ongoing basis. The instructions actually being in use are up-to-date and contain the correct content.

Morover, in accordance with art. 300§2 of the Code of Criminal Procedure all victims, including those of crimes related to THB, shall be provided at the first interrogation detailed instructions on the rights of victims in criminal proceedings. These instructions are available in the languages spoken by the most numerous groups of immigrants residing in Poland. In the absence of standard information available in the language of the particular victim, an *ad hoc* translation is prepared. No legislative work is currently underway towards changing the content of the instructions for the victims. In case of any doubts, law enforcement officers provide oral explanations. In accordance with art. 204 §2, the interview of people who do not speak Polish is carried out each time with the participation of an interpreter of the language spoken by the interviewed person. The authorities conducting proceedings inform the interpreter with the specifics of the case.

Border Guard officers during their investigative duties with the participation of a foreigner who does not speak Polish are obliged to ensure the participation of a qualified interpreter (this results directly from the provision of art. 204 § 1 of the Code of Criminal Procedure). The participation of an interpreter is ensured both at the stage of interviews/inquiries and in the course of formally initiated criminal proceedings.

To a foreigner who has been issued a Certificate of being a presumed victim of human trafficking an officer responsible for the issuing of the above-mentioned certificate provides with notifications on paper in a language the foreigner understands. The notification issued with the certificate contains among others: the grounds for legal stay and in which cases the granted residence permit may be revoked. For this purpose, a model instruction, developed by the Ministry of the Interior and Administration is being in use. At present, the instruction is available in 21 languages. If the foreigner does not speak any languages into which the model document has been translated, it is necessary to provide an interpreter.

In a case of pre-trial proceedings in THB, a person identified as a victim is provided with a *Notice on the rights and obligations of the person in criminal procedure*. Model instructions to the victim are available in 26 languages. However, if a foreign national does not speak any of the languages into which the model instructions have been translated, an interpreter must be provided.

In accordance with art. 179 of the Act on Foreigners, the authority conducting the proceedings on granting a temporary residence permit for victims of THB provides a foreigner who does not speak Polish, with the possibility of using the assistance of an interpreter. The possibility may be used if necessary e.g. to interview the applicant. However, supporting documents issued by the authority competent to conduct proceedings in a human trafficking

criminal case as well as by relevant NGO assisting the victim may be considered as sufficient for granting the temporary residence permit for victims of THB without a need of interviewing the applicant.

Office for Foreigners, during the proceedings for granting international protection, ensures the translation into Polish of documents submitted by the applicant, which may be evidence in the case.

During the interview on granting international protection, Office for Foreigners provides, if necessary, free assistance of an interpreter (at the request of the applicant, assistance of an interpreter of the same sex, if the circumstances of the case show that it will enable exhaustive justification application for international protection).

In the case of the applicant who is a person with special needs (such as victim of human trafficking), activities in the procedure for granting international protection are performed, if necessary, with the participation of a psychologist, doctor or interpreter. Office for Foreigners provides a written translation into a language understandable to the applicant of the legal basis of the decision, settlement and instruction.

The interpreter is considered to be an assistant to the procedural authority. The regulations on interpreters who, among others, take part in THB procedures, are set up in the Act of 25 November 2004 on the profession of sworn translator. It specifies, among others, performing the tasks entrusted to him/her with particular diligence and impartiality and in accordance with the rules of law.

In practical terms, the authorities conducting proceedings usually inform the interpreter with the specifics of the case.

**Re: paragraph 63**

Access to an interpreter and information about the possibility of using the legal assistance offered by KCIK is provided immediately after disclosure and initial identification of the presumed victim. KCIK provides assistance in legalization of stay, however it should be noted that during the reflection period, a Certificate of being a presumed victim of human trafficking is issued to the presumed victim of THB, which legalizes the stay for a period of 3 months (and 4 months in the case of minors).

**Re: paragraph 64**

The Ministry of Justice maintains the comments submitted in its letter of 25 January 2023, namely: The Minister of Justice supervises the self-governments of advocates and legal advisers, having, however, strictly defined competences, enumerated in the Act of 26 May 1982 - Law on Advocates' Profession (Journal of Laws of 2022, item 1184) and the Act of 6 July 1982 on Legal Advisers (Journal of Laws of 2022, item 1166). These professional self-governments are independent in the performance of their tasks, which include the supervision of the observance of the provisions on the performance of the profession of an advocate, development and promotion of rules of professional ethics and ensuring their observance. It should be emphasised that both the Supreme Bar Council and the National Council of Legal Advisers have the statutory power to organise independently in-service training for advocates and legal advisers respectively. With regard to advocates, these powers are based on the Act - the Law on Advocates' Profession. Pursuant to Article 3(1)(4) of the aforementioned Act, the task of the professional self-government of the Bar is the professional development of advocates and the training of trainee advocates. On the other hand, Article 58(12)(m) of the mentioned Act provides that the scope of action of the Supreme Bar Council includes the adoption of regulations concerning the compliance with the professional obligation of advocates in the field of professional development and the powers of the self-governing bodies to ensure compliance with this obligation by advocates. It should be noted that the self-governing bodies of advocates and legal advisers are provided, on an ongoing basis, with information among others on the potential needs of trainings for advocates and legal advisers, submitted directly to the Minister of Justice by individuals or non-governmental organisations. It should be also noted that there are no obstacles for the Ministry of Justice to make relevant suggestions to the Supreme Bar Council and the National Council of Legal Advisers in the future, after analysing the issue and perceiving the need for training of professional attorneys on providing legal advice to or representing victims of THB.

**Re: paragraph 69**

As mentioned in the previous contribution every third-country national who has been positively identified as an alleged victim of THB in accordance with the Algorithm is informed (in a language he/she understands) about

his/her rights, among others about the possible access to National Consulting and Intervention Center (KCIK) which provides psychological assistance.

Each person identified as an alleged victim of THB is being handed a Certificate pursuant to Article 170 of the Act of 12 December 2013 on foreigners. Based on this certificate the presumed victims who are third-country nationals irregularly residing in Poland and who are not prepared to cooperate with the authorities are entitled to benefit from so-called "reflection period". During the indicated period the foreigner is entitled to specialist counselling and psychological assistance. The above results from the Act of 12 March 2004 on social assistance and is rendered as a part of KCIK activities.

In accordance with the Act on granting protection to foreigners in Poland if an application for international protection concerns persons who may be vulnerable (such as victim of human trafficking), **activities in the procedure are performed, if necessary, with the participation of a psychologist. The issue of the legality of the foreigner's stay in Poland is in this case irrelevant.**

**Psychological assistance to victims of THB as well as any other required help is provided by the National Consulting and Intervention Centre for the Victims of Trafficking in Human Beings (KCIK).**

**Each person** who remains under the supervision of KCIK is subjected to an analysis of needs and, if the situation requires it, **is given assistance of an experienced psychologist.** The situation of each person is assessed individually. A person under the care of KCIK, regardless of his/her legal status (having or not reflection period, possessing or not a certificate of being a presumed victim of human trafficking or temporary residence permit), has full access not only to psychological assistance but to medical health care in general.

Among many tasks carried out by the KCIK, one is providing psychological assistance and access to interpreters to victims of trafficking. In order to ensure the adequate implementation of the above-mentioned tasks at the highest level the Minister of the Interior and Administration **has increased funds allocated to KCIK by 40 percent compared to the year of 2022. This means that in 2023 KCIK will receive the amount of PLN 1,500,000 PLN for the implementation of the assigned tasks.**

**Re: paragraph 76**

Analytical research is planned for this year with a view to introducing legislative changes. The Polish authorities considers the possibility to extend the right to work to persons who hold the certificate of a presumed victim of trafficking.

**Re: paragraphs 85-96**

The decision to award compensation for material and non-material damage to a victim of a crime, including a victim of THB, as well as a decision on the amount of such compensation, is taken by an independent court. The Ministry of Justice has no influence on these decisions. The issues of compensation for victims of THB are discussed during training courses for judges and prosecutors, as mentioned in the previous contribution.

**Re: paragraph 121**

The justice reforms mentioned in this paragraph introduce solutions similar to those in force in many other Council of Europe and European Union states. They do not relate to the substantive legal and procedural provisions on THB. Assessment of these reforms is outside GRETA's sphere of competence. These issues do not relate to THB.

**Re: paragraph 123**

The Ministry of Justice maintains its comments submitted previously, which – as it seems – have not been taken into account in the report, namely: Pursuant to Article 11§2 of the Criminal Code, if an act has features specified in two or more provisions of Criminal law, the court shall sentence the perpetrator for one offence on the basis of all concurrent provisions. According to §3 of the same Article, in such a situation, the court shall impose the penalty on the basis of the provision providing for the most severe penalty. Thus, if the THB offence at the same time meets the criteria of other offences, punishable by lower penalties, the penalty is imposed on the basis of the provisions on THB.

**Re: paragraphs 126,127,134**

Ministry of Justice repeats comments previously provided, which, have not been fully taken into account in the report, namely: As regards - in particular, with reference to Article 9 of the Criminal Code – the comments concerning the issue of non-punishment of victims of THB, it should be stressed that there is no general non-punishment clause in Poland. Such acts are assessed on a case-by-case basis by an independent court in terms of the possibility of lawful behaviour, under the circumstance of ‘state of greater necessity’ (Article 26 of the Criminal Code) and the social harm of the act. In the case of persons residing or working in Poland against their will, under the physical or mental coercion, there may also be a lack of the subjective side of the prohibited act in the form of direct or possible intent (Article 9 of the Criminal Code), which may consequently lead to the conclusion that these persons have not committed a crime or a petty offence. Persons who are staying or working in Poland against their will as a result of a trafficking crime being committed against them will therefore not be subject to criminal liability. The legal and administrative consequences of the stay and work of these persons in Poland are outside the sphere of competence of the Ministry of Justice.

Furthermore, in relation to the use of the term ‘gender’ in several paragraphs of the report, I would like to point out that according to Polish law and the repeatedly expressed position of the Polish authorities, this term is understood by these authorities only as ‘biological sex’.

**Re: paragraph 145**

The legal regulations applied in the Code of Criminal Procedure transparently define the manner of interrogation of the victim, including the recording of the interrogation (Article 147 of the Code of Criminal Procedure), as well as allowing the interrogation to be conducted by videoconference (Article 177 of the Code of Criminal Procedure). The applicable forms of interrogation are as follows:

Code of Criminal Procedure Art. 147 § 2a:

The hearing of a victim referred to in Article 185a hearing of a minor victim and Article 185c hearing of a victim in cases of sexual offences and the hearing of a witness referred to in Article 185b hearing of a minor witness shall be recorded by means of an audio and video recording device.

Code of Criminal Procedure Article 177 § 1a.

The examination of a witness may be carried out by means of technical devices enabling this activity to be conducted at a distance with simultaneous direct transmission of images and sound. In the proceedings before the court, a court registrar, an assistant judge or a clerk employed by the court in whose district the witness is staying shall take part in the action at the place where the witness is staying.

The Polish Code of Criminal Procedure, in Article 185a, obliges law enforcement authorities to question a victim of a minor who is under 15 years of age at the time of questioning as a witness only if his or her testimony may be material to the outcome of the case, and only once, unless significant circumstances come to light, the clarification of which requires repeated questioning.

Personal security measures shall apply when legal requirements of the Act of 28 November 2014 on Protection and Assistance to the Victim and Witness are met. The Act clearly sets out the principles, conditions and scope of protection and assistance provided for the victim, witness and persons closest, if there is a threat to the life or health of these persons as a result of ongoing or completed criminal proceedings. On top of that also classified internal police regulations apply. The decision to grant personal security measures is taken individually in justified cases, depending on the circumstances and nature of the case.

It should be emphasised that, as a result of the amendment changes since the introduction of the new Code in 1997, more and more protection has been granted to participants in the proceedings. It is obviously not within the scope of the pre-trial proceedings to discuss individual evidentiary institutions, but the following elements should be pointed out. In particular, there are institutions in criminal proceedings such as the anonymous witness, the questioning by the court of victims and minor witnesses under conditions that allow the risk of secondary victimisation to be minimised, or safeguards on the very details of the witness's residence or employment.

When carrying out procedural actions in cases of trafficking in human beings, Border Guard and Police officers are guided by provisions contained in specific acts and applies non-code guidelines dedicated to cases of trafficking in

human beings. These guidelines are contained in *the Algorithm of conduct of law enforcement officers in the case of disclosing a crime of trafficking in human beings and the Algorithm of identification and conduct towards a minor victim of trafficking in human beings for Police and Border Guard officers*.

Each person identified as an alleged victim of THB, in addition to being handed a Certificate pursuant to Article 170 of the Act of 12 December 2013 on foreigners, is obligatorily instructed about his/her rights. In the case of the establishment of a screening procedure and recognition of a person as a victim before the first interrogation, the victim is instructed about his/her rights and obligations under Polish legal regulations. In both cases, there is a specific template of documents that is used by officers.

#### **Re: paragraph 180**

As mentioned in the previous contribution, the Polish Code of Criminal Procedure, in Article 185a, obliges law enforcement authorities to question a victim who is a minor under 15 years of age at the time of questioning as a witness only if his/her testimony may be of significant importance for the settlement of the case, and only once, unless significant circumstances come to light, the clarification of which requires repeated questioning. This provision can be applied in the case of a minor victim of trafficking. In addition, detailed guidelines and guidance on interviewing minors are contained in *the Algorithm for the Identification and Treatment of a Minor Victim of Trafficking*.

Another provisions of providing protection measures to all child victims are as follows:

- obligatory presence of psychologist (art. 185a and b of the Polish Code of Criminal Procedure)
- the possibility of participating in the interrogation of a minor under 15 years of age his/her legal representative or guardian (art. 171 § 3 of the Polish Code of Criminal Procedure)
- the possibility of providing protection to a minor who is not a victim, in a situation when the victim is his/her closest person (Article 1(3) of the Act on protection and assistance for the victim and witness)

#### **Re: paragraph 197**

As GRETA was informed, the importance of developing a centralized comprehensive system for the collection and analysis of data of THB victims, investigations and prosecutions on this area was discussed multiple times among the main actors involved in gathering THB data. The main obstacle hindering the creation of a single common system is the multi-stage nature of THB proceedings, as well as the involvement of several entities at different stages of these proceedings.

#### **Re. Paragraph 206**

The Act of March 12, 2022 on assistance to Ukrainian citizens in connection with the armed conflict on the territory of this state, enabled the development of a register of minor citizens of Ukraine who arrived on the territory of the Republic of Poland without the care of a person exercising actual custody over them, as well as of minor citizens of Ukraine who arrived on the territory of the Republic of Poland and before arrival were placed in a foster care on the territory of Ukraine. The above data are contained in the ICT system "registers of minors", run by the minister responsible for family matters and poviats family support centers. Registers are made available on the basis of the provisions of the Act.

#### **Re: paragraph 229**

Please take into account the previously sent contribution which states that pursuant to Article 24 of the NLI Act, **labour inspectors are entitled to carry out, without notice and at any time of the day or night, inspections of compliance with labour laws, in particular the state of occupational safety and health, inspections of compliance with the provisions on the legality of employment and other gainful employment of Polish and foreign nationals, inspections of the payment of remuneration resulting from the minimum hourly rate, in accordance with the provisions on the minimum wage, and inspections of compliance with the provisions on the restriction of trade on Sundays and holidays and on certain other days.** The inspection shall be carried out upon presentation of a service card confirming the identity and authority of the labour inspector or other authorised employee of the State Labour Inspectorate and the authorisation to carry out the inspection. In addition, if the factual circumstances justify the immediate undertaking of an inspection at the trader's premises, it may be undertaken upon

presentation of an official ID card (the inspected person should be immediately, but no later than within 7 days of the date on which the inspection is undertaken, served with an authorisation to carry out the inspection).

**In view of its broadly defined scope of tasks, the State Labour Inspectorate thus has the statutory authority to carry out unannounced inspections in all sectors of the economy without complaints from employees or other evidence of suspected offences.**

Moreover, **the State Labour Inspectorate has established an effective mechanism for workers' complaints by introducing arrangements for the receipt, consideration and settlement at the State Labour Inspectorate's organisational units of complaints against the actions of employers, entrepreneurs and other entities.** Detailed provisions on the handling of employee complaints are set out in the Order of the Chief Labour Inspector of 29 December 2022 on the receipt, consideration and handling of complaints and requests and the provision of advice in the organisational units of the State Labour Inspectorate, which replaced the previously applicable Order No. 85/18 of the Chief Labour Inspector of 19 December 2018.

**Re: paragraph 247**

Group on the support of victims of human trafficking on its meeting held on 28<sup>th</sup> April officially resumed work on developing program of support and protection of minor victims of human trafficking. The main goal is to develop a care system based on the Barnahus model.

**Re: Paragraph 248**

Officers operate on the basis of national regulations that maintains EU standards. Should be noted that when the foreigner's age assessment test result is inconclusive, decision determining the age is made in favor of the foreigner.

**Re: chapter 7 – access to the public health care**

- in accordance with the Act of 8 September 2006 on the State Rescue Service Medical (Journal of Laws of 2022, item 1720, as amended) Poland ensures assistance to any person who is in a state of immediate health risk. Assistance is provided under the State Medical Rescue system, which includes emergency medical teams and hospital emergency departments;

- persons who have been granted refugee status or subsidiary protection in Poland may, on an equal basis with the citizens of the Republic of Poland, benefit from the right to health care financed from the state budget, on the terms set out in Art. 2 of the Act of August 27, 2004, Statements for Funded Healthcare (Journal of Laws of 2022, item 2561, as amended). Therefore if the victim of human trafficking obtain such a status in Poland, s/he is entitled to full access of health care services, if s/he resides in Poland and is person under 18 years of age, pregnant women (or in the postpartum period/ childbirth) or person meeting the income criterion specified in the regulations social assistance;

- persons with refugee status or subsidiary protection or benefiting from temporary protection on the territory of the Republic of Poland are covered by health insurance under general rules, if they have one of the titles of such insurance, referred to in Art. 66 sec. 1 of the above-mentioned act;

- in accordance with art. 15 of the Act of 15 April 2011 on medical activity (Journal of Laws 2022 item 633 with later as amended), the medical entity cannot refuse to grant health services to a person who needs immediate help due to a threat to life or health (which does not exclude the right of the medical entity to claim reimbursement of treatment costs from uninsured or unauthorized patient on the basis of the above-mentioned article 2 of the act healthcare claims).

**Re: Chapter 7**

It should be emphasized that so far there has been isolated cases of people who were illegal in Poland and had no insurance. However, in such cases all necessary medical services were always provided and paid or by KCIK or from the state budget. Victims were not charged to cover any costs. Polish authorities are monitoring the problem, which currently occurs on a very small scale. Settlement of subsidies allocated for KCIK and constant contact with NGOs are carried out on regular basis.

**Re: Paragraph 273**

Once again, the Ministry of the Interior and Administration informs that in terms of GRETA's call to increase periodic duration of public fundings allocated to KCIK it must be emphasized that the amount of funds allocated to KCIK is determined in the annual budget act. **Annual reporting allows for better control of expenses of state budget and verify the eligibility of expenses incurred by KCIK. In the Polish authorities opinion this solution provides better transparency and more effective monitoring of KCIK's work.**

**Re: Paragraph 285**

As it has been previously explained, if there is a suspicion that a foreigner, including EU/EEA may be a victim of human trafficking, the authority competent to prosecute the crime (Police, Border Guard, Prosecutor) issues a special certificate of being a presumed victim of human trafficking. The certificate is issued for a period of 3 months, or 4 months in the case of minors. For this time, the foreigner's stay is considered legal. The issuance of the certificate does not depend on the foreigner's will to testify or his/her declaration to cooperate with law enforcement authorities.

In practice, it is this period of stay on the basis of above mentioned certificate that is considered as a recovery and reflection period.

To ensure the highest quality of ongoing procedures, a special algorithm has been developed for the conduct of law enforcement officers in case of detection of the crime of human trafficking. This document is based on international standards and aims to standardize proceedings and systematize actions being taken by law enforcement authorities.