



## **G R E T A**

Group of Experts on Action  
against Trafficking in Human Beings

GRETA(2018)26\_POL

# **Reply from Poland to the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties**

## **Third evaluation round**

**Thematic focus: Access to justice and effective remedies for  
victims of trafficking in human beings**

**(Reply submitted on 15 February 2021)**

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December 2018

## Introduction

In accordance with Article 38, paragraph 1, of the Convention on Action against Trafficking in Human Beings ("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 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 (THB), 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. Moreover, victims of trafficking, by virtue of their status as victims of human rights violations, are entitled to effective remedies under the European Convention on Human Rights. Access to justice and effective remedies must be guaranteed, in a gender- and age-sensitive manner, to all victims of trafficking subject to the jurisdiction of State Parties, irrespective of their immigration status or presence on the national territory and notwithstanding their capacity or willingness to co-operate in any criminal investigation.

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, regularisation of the victim's stay, the right to seek and enjoy asylum, and the application of the principle of *non-refoulement*. These preconditions, corresponding to different 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, rather than including once again questions related to the same provisions in the general questionnaire for the third evaluation round.

States Parties are requested to transmit to GRETA a reply to this questionnaire **within four months** from the date it was sent. The reply to the questionnaire should be submitted in one of the official languages of the Council of Europe (English and French), and preferably also in the original language. Where appropriate, in order to avoid unnecessary repetition, the reply may refer to information contained in the report submitted by the national authorities on measures taken to comply with the Committee of the Parties' recommendation concerning the implementation of the proposals made in GRETA's second evaluation report. States Parties should provide links, copies or extracts of relevant legislation, regulations, national action plans and case law mentioned in the reply to the questionnaire, in the original language and, wherever possible, also in one of the official languages of the Council of Europe.

A variety of stakeholders and civil society representatives should be effectively consulted in the preparation of the reply to the questionnaire, to ensure that the information provided is as comprehensive as possible.

## Part I - Access to justice and effective remedies

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

1.1 How, at what stage and by whom are presumed victims and victims of THB informed of their rights, the relevant judicial and administrative proceedings, and the legal possibilities for obtaining compensation and other remedies, in a language that they can understand? Please provide copies of any information materials developed to inform victims of THB, including any materials specifically developed for child victims, in the languages in which they exist.

A person who is presumed to be a victim of THB is informed about his or her rights as soon as a law enforcement officer confirms this presumption. The above occurs at the time of the so-called "identification", that is the process of determining whether a person may be a victim of THB. A law enforcement officer who performs the official identification activity provides information on their rights orally. If the victim is a foreigner who does not speak Polish, the activities are performed in the presence of an interpreter. In the case of issuing a certificate to a foreigner on the presumption of being a victim (pursuant to Article 170 of the Act on Foreigners), according to which the foreigner's stay is legal in Poland for a period of 3 months (4 months for a minor), the foreigner receives (against receipt) an appropriate instruction in writing in a language he/she uses (he/she understands). At the stage of procedural steps of the preparatory proceedings, the victim of THB is informed about his / her rights also by the person conducting the interview, both orally and by handing over the letter of instruction on the rights of the victim. It is a good practice that the instruction on non-code rights (e.g. on the help of the National Intervention and Consultation Centre, the right to receive social assistance, legalization of stay, etc.) is included in writing in the content of the interview report. The activity of interviewing a person who does not speak Polish takes place with the participation of an interpreter. The report of the interview before being signed by the foreigner is subject to interpretation by the interpreter participating in the procedure. After interpretation, the report is signed by the interviewee (the victim who obtains the procedural status of a victim).

The translation of the instructions (in many languages) was prepared by the Ministry of the Interior and Administration and sent to law enforcement agencies (instructions for certificate pursuant to Art.170 of the Act on Foreigners) and the National Public Prosecutor's Office and the Ministry of Justice (victim's rights).

In addition, as part of the work of the Interministerial Team for Combating and Preventing THB, the document "Rights of victims of THB and the rights and obligations of the persons aggrieved by the criminal offence of THB" was created, which is a collection of all provisions, both domestic and foreign, concerning the rights of victims of THB.

It should be pointed out that victims of THB who will be identified as the aggrieved persons become parties to the preparatory proceedings by virtue of law (Art. 49 of the Code of Criminal Procedure). Due to their status, the aggrieved party receives instructions on the rights and obligations pursuant to Art. 300 § 2 of the CCP. The template of the instruction is specified in the regulation of the Minister of Justice issued on the basis of the statutory delegation contained in the disposition of art. 300 § 4 of the CCP.

According to the indicated standard, **before the first interview or immediately after determining the aggrieved party, if he / she shall not be interrogated**, the injured party is instructed about having the status of a party to the preparatory proceedings and about the resulting rights, in particular: to submit a request to conduct an investigation and the conditions for participation in the investigation, as specified in art. 51, art. 52 and art. 315-318, to use the assistance of an attorney, including submission

of a request to appoint an attorney ex officio in the circumstances specified in art. 78, as well as about the rights specified in art. 23a § 1, art. 156, art. 204, art. 306 and art. 315a and about the obligations and consequences indicated in art. 138 and art. 139. The instruction also includes information on: the possibilities of redressing the damage by the accused or obtaining state compensation, access to legal aid, available protection and assistance measures, referred to in the Act of 28 November 2014 on the Protection and Assistance for the Victim and the Witness (Journal Of Laws of 2015, item 21), the aid provided for in art. 43 § 8 of the Executive Penal Code, the possibility of issuing a European protection order, victim support organizations, the content of art. 337a and the possibility of reimbursement of costs incurred in connection with the participation in the proceedings. The instruction should be delivered to the aggrieved party in writing; the aggrieved party confirms the receipt of the instruction with a signature. In the event of withdrawal from the interview of the aggrieved party, the instruction shall be served.

### **Art. 300 of the Code of Criminal Procedure [Instructions for the aggrieved party]**

§ 2. Before the first interview or immediately after determining the aggrieved party, if he or she shall not be interrogated, the injured person is informed about having the status of a party to the preparatory proceedings and about the resulting rights, in particular: to submit a request to conduct an investigation and the conditions for participation in the investigation activities specified in art. 51, art. 52 and art. 315-318, to use the assistance of an attorney, including submission of a request to appoint an attorney ex officio in the circumstances indicated in art. 78, as well as the rights referred to in article 23a § 1, art. 156, art. 204, art. 306 and art. 315a and about the obligations and consequences indicated in art. 138 and art. 139. The instruction also includes information on: possibilities of redressing the damage by the accused or obtaining state compensation, access to legal aid, available means of protection and assistance, referred to in the Act of 28 November 2014 on the Protection and Assistance for the Victim and the Witness (Journal U. of 2015, item 21), the aid provided for in art. 43 § 8 of the Executive Penal Code, the possibility of issuing a European protection order, victim support organizations, the content of art. 337a and the possibility of reimbursement of costs incurred in connection with the participation in the proceedings. The instruction should be delivered to the aggrieved party in writing; the aggrieved party confirms the receipt of the instruction with a signature. In the event of withdrawal from the interview of the aggrieved party, the instruction shall be served.

§ 3. Before the first interview, the witness is instructed about their rights and obligations referred to in article 177-192a and the available means of protection and assistance referred to in the Act of 28 November 2014 on the Protection and Assistance for the Victim and the Witness.

§ 4. The Minister of Justice shall define, by regulation, templates of written instructions referred to in § 1-3, bearing in mind the need to understand the instruction also by persons not using the help of a defence attorney or representative.

1.2 How is the obligation to provide translation and interpretation services, when appropriate, met at different stages of the legal and administrative proceedings by different agencies?

At each stage of the proceedings, be it administrative or criminal, a person who does not speak Polish is provided with interpretation/translation of the course of action. In the course of proceedings, as part of the preparatory proceedings, an expert translator/interpreter of the language used by the victim of THB is appointed by decision. The interpreter interprets the course of proceedings from Polish into the language spoken by the foreigner and vice versa, as well as they translate documents. The translator/interpreter may be a person entered into the register of sworn translators and interpreters, as well as a person selected for this activity (not on the list of sworn translators) due to their special knowledge (using a given foreign language).

During the identification proceedings, carried out prior to legal proceedings, the interpreter is provided by the body performing the proceedings or by a non-governmental organization, e.g. implementing the programme of the National Intervention and Consultation Centre.

As part of the administrative proceedings, the body performing the proceedings in question ensures the interpreter's participation.

As part of the procedure for granting international protection, the authority receiving the application (Border Guard), as well as the authority examining the application (the Head of the Office for Foreigners) provides free assistance of an interpreter during interviews and the translation into Polish of documents drawn up in a foreign language, admitted as evidence in the case (Article 11 (1), 30 (1) (6), Article 44 (4) (3) of the Act on Granting Protection to Foreigners within the Territory of the Republic of Poland).

The aggrieved party has the right to free assistance of an interpreter during interview or familiarizing with the evidence, if he or she does not speak Polish, and - if necessary - if he or she is deaf or mute (Article 204 § 1 and 2 of the Code of Criminal Procedure).

#### **Art. 204 of the CCP**

§ 1. An interpreter should be called if there is a need for questioning of:

- 1) a deaf or mute person, and it is not enough to communicate with them in writing;
- 2) a person who does not speak Polish.

§ 2. An interpreter/translator should also be called if there is a need to translate into Polish a letter drawn up in a foreign language or vice versa, or to familiarize the party with the content of the evidence.

§ 3. The provisions on experts shall apply accordingly to the interpreter/translator.

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

2.1 How, by whom and from what moment is legal assistance provided to victims of trafficking? How is legal assistance provided to children?

Legal assistance to victims of THB is started upon identification of the alleged victim of human trafficking. If a person obtains the assistance under the National Intervention and Consultation Centre, the provision of legal assistance is organized by a non-governmental organization that implements the programme of the National Intervention and Consultation Centre. In the course of the criminal trial, the victim may at any stage appoint an attorney and use their legal aid (advocate or legal adviser) ex officio, taking into account the application for the inability to bear the costs of representation.

A court-appointed guardian is appointed for children identified as victims of THB or for unaccompanied children. It is a good practice that for minor victims of THB the guardian is a representative of a non-governmental organization implementing the programme of the National Intervention and Consultation Centre.

The National Intervention and Consultation Centre for Victims of THB provides comprehensive assistance to victims of human trafficking. From Monday to Friday, a team of people trained and experienced in the field of preventing THB provides advice, consultations and organizes assistance for victims of THB. During the rest of the time, the mobile phone is operational and only urgent matters are taken up. The offer of counselling also applies to people considering going abroad for non-tourism purposes, in a situation where these people want to reduce the risk associated with this type of decision. The National Intervention and Consultation Centre provides **legal consultations** in the field of criminal procedure, residence law (in the

case of foreigners) and family law. These consultations allow the victim to understand the legal situation they are in, make informed decisions and exercise their rights.

Immediately after identifying the aggrieved party, law enforcement authorities are obliged to inform him/her of the rights and obligations pursuant to Art. 300 of the CCP.

The Victims Fund and the Post-release Assistance Fund - the Justice Fund, play an important role in the Polish system of access to justice and assistance to aggrieved persons. Immigrants, refugees or victims of THB are vulnerable populations. Non-governmental organizations provide the aggrieved person with assistance financed by the Fund immediately after reporting to the centre, without unnecessary bureaucratic obstacles. The assistance is comprehensive and guarantees access to free legal aid provided, as a rule, by attorneys and legal advisers, psychological assistance offered by psychologists and therapists. It is also possible to cover the costs of an interpreter/translator for a person who does not speak Polish. The aggrieved party may also benefit from financial assistance in the form of, inter alia, covering the costs of accommodation, necessary on-going living expenses. Currently, in the territory of the country, assistance is provided in 370 locations throughout the country. Support by the centre is provided to every crime victim who is actually staying on the territory of the Republic of Poland. Assistance is offered both in the pre-criminal proceedings and during them.

Thus, people who ask for help receive information about their rights, the course of the proceedings, and possible decisions of judicial bodies.

In addition, the Justice Fund financed the existence of an Internet platform providing access to aid via a hotline and Internet communication: e-mail, messenger. The platform is established at: <https://www.funduszsprawiedliwosci.gov.pl/> and it is available in English and Ukrainian.

2.2 Do all presumed victims of THB have access to legal assistance, irrespective of immigration status or type of exploitation?

All victims have access to legal assistance regardless of immigration status or type of abuse. Such assistance is carried out within the framework of the National Intervention and Consultation Centre.

2.3 What are the conditions for access to free legal aid for victims of THB, including children? For which types of proceedings is free legal aid available? Is free legal aid available to help victims claim compensation and execute compensation orders? Please provide the text of the relevant provisions.

Prior to the commencement of the preparatory proceedings, free legal aid is provided to the presumed victim of THB if they wish to use the offer of the National Intervention and Consultation Centre.

During the preparatory (and later court) proceedings, the victim of THB has the status of the aggrieved party. According to Art. 49 § 1 of the Code of Criminal Procedure: "An aggrieved party is a natural or legal person whose legal interest has been directly violated or threatened by a crime".

In turn, according to art. 49a the aggrieved party, as well as the prosecutor, may submit an application referred to in Art. 46 § 1 of the Penal Code, which states that "In the event of a conviction, the court may

decide, and upon a motion from the aggrieved person or from another entitled person the court shall decide, applying the provisions of civil law, upon the obligation to redress the damage caused by the crime, in whole or in part, or upon compensation to the aggrieved party for the harm suffered; provisions of civil law on the possibility of awarding a pension shall not apply”.

According to Art. 87 of the Code of Criminal Procedure “A party other than the accused (footnote: thus the victim) may appoint an attorney”. In turn, according to art. 88 § 1, the attorney may be a legal adviser or advocate. The provisions also apply here, including art. 77 and 78 of the Code of Criminal Procedure on defence counsels. And so, the aggrieved party may have no more than 3 attorneys, and the aggrieved party may request that an attorney be appointed ex officio, if they duly prove that they are unable to bear the costs of representation without prejudice to the necessary support for themselves and their family.

If the aggrieved person proves that he cannot afford an attorney, the court may, upon his request, appoint an attorney ex officio, also in order to perform a specific procedural act (Art. 78 and Art. 88). The request may also be submitted through the prosecutor, who will forward it to the court (Article 116 of the Code of Criminal Procedure and Article 118 § 3 of the Code of Criminal Procedure).

**Article 77 of the Code of Criminal Procedure [Number of defence counsels]** The accused may have no more than three defence counsels at the same time.

**Art. 78 of the Code of Criminal Procedure [Ex officio defence counsel]**

§ 1. An accused who has not appointed a defence counsel, may demand that a defence counsel be appointed to him if he duly proves that he is unable to bear the costs of defence without prejudice to his and his family's necessary support. The basis for refusal to appoint an ex officio defence counsel may not be the use by the accused of free legal aid or free civic counselling, referred to in the Act of 5 August 2015 on free legal aid, free civic counselling and legal education (Journal of Laws of 2016, No. 2019, item 294).

§ 1a. The provision of § 1 shall apply accordingly, if the accused requests the appointment of a defence counsel in order to perform a specific procedural act.

§ 2. The court may withdraw the appointment of a defence counsel, if it turns out that there are no circumstances on the basis of which they were appointed. The decision to withdraw the appointment of a defence counsel may be appealed against to another equivalent composition of this court.

**Art. 87 of the Code of Criminal Procedure [Attorney]**

§ 1. A party other than the accused may appoint an attorney.

§ 2. A person who is not a party may appoint an attorney if required by their interests in the pending proceedings.

§ 3 The court, and in the preparatory proceedings the public prosecutor, may refuse to admit the attorney referred to in § 2 to participate in the proceedings, if it considers that it is not required to defend the interests of a person who is not a party to them.

**Art. 88 of the Code of Criminal Procedure [Correct application of provisions on an attorney; persons authorized to practise as attorneys]**

§ 1. An advocate, legal adviser or counsellor of the General Prosecutor's Office of the Republic of Poland may be an attorney. The president or legal clerk of the court competent to hear the case shall appoint an ex officio attorney. The provisions of art. 77, art. 78, art. 81 § 1a-2, art. 81a § 1-3, art. 83, art. 84, art. 86 § 2 and regulations issued pursuant to art. 81a § 4 shall apply accordingly to the attorney.

§ 2. Legal representation is performed by the General Public Prosecutor's Office of the Republic of Poland in accordance with a separate act.

Pursuant to the **Act of August 5, 2015 on Free Legal Assistance, Free Civic Counselling and Legal Education** (Journal of Laws of 2019, item 294, i.e.), citizens are entitled to free legal assistance, free counselling and education.

According to Art. 4 sec. 1 and 2 of the above Act, free legal assistance and free civic counselling are available to an entitled person who is not able to bear the costs of paid legal assistance, including a natural



person running a sole proprietorship who did not employ other persons in the last year. Before obtaining free legal assistance or free civic counselling, an entitled person submits a written declaration that he / she is unable to bear the costs of paid legal assistance. A person using free legal assistance or free civic counselling in the field of business activity additionally submits a declaration of not employing other people during the last year. The declaration is submitted to a person providing free legal assistance or providing free civic counselling.

The objective scope of free assistance is defined in Art. 3 of the above act, according to which:

“1. Free legal assistance includes:

- 1) informing a natural person, hereinafter referred to as the “entitled person”, about the applicable legal status and his / her rights or obligations, including in connection with pending preparatory, administrative, court or court-administrative proceedings or
- 2) indicating to the entitled person how to solve their legal problem, or
- 3) preparation of a draft letter in the matters referred to in points 1 and 2, with the exception of pleadings in pending preparatory or court proceedings and letters in pending administrative court proceedings, or
- 3a) free mediation, or
- 4) drawing up a draft letter for exemption from court costs or appointing an ex officio attorney in court proceedings or appointing an advocate, legal adviser, tax adviser or patent attorney in administrative court proceedings and providing information on the costs of the proceedings and the financial risk related to bringing the case to court.”

On the other hand, free civic counselling, pursuant to Art. 3a of the above Act, includes activities tailored to the individual situation of the entitled person, aimed at raising the awareness of that person about their rights or obligations, and support in solving the problem on their own, including, if necessary, drawing up an action plan together with the entitled person and assistance in its implementation. Free civic counselling includes, in particular, advice for indebted persons and advice on housing and social security matters. Free civic counselling also includes free mediation.

Legal education, pursuant to Art. 3b of the above Act, covers educational activities aimed at increasing the legal awareness of the public, in particular regarding the dissemination of knowledge about:

- 1) civil rights and obligations;
- 2) activities of national and international legal protection bodies;
- 3) mediation and methods of amicable dispute resolution;
- 4) opportunities for citizens to participate in public consultations and the law-making process;
- 5) access to free legal aid and free civic counselling.

2. The tasks referred to in paragraph 1, may be implemented in forms that, in particular, consist in the development of guides and handbooks, conducting open lectures and workshops, and disseminating information via the mass media and other customarily accepted forms of communication, including social campaigns.

Notwithstanding the foregoing, in a civil case pending before a court (e.g. for compensation or redress), the party also has the right to obtain free legal aid ex officio.

According to Art. 117 of the Act of November 17, 1964, the Code of Civil Procedure (Journal of Laws of 2020, item 1575, i.e., hereinafter: the Code of Civil Procedure):

“§ 1. A party exempted by the court from court fees in whole or in part may request the appointment of an advocate or legal adviser.

§ 2. A natural person who is not exempted from court fees by the court may request the appointment of an advocate or legal adviser if he or she submits a statement which shows that he or she is unable to bear the costs of the advocate’s or legal adviser’s remuneration without prejudice to their and their family’s necessary support.

§ 3. A legal person or other organizational unit which is granted judicial capacity by statute, not exempted by the court from court fees, may request the appointment of an advocate or legal adviser, if they prove that they have insufficient funds to bear the costs of the advocate's or legal adviser's remuneration.

§ 4. The request for the appointment of an advocate or legal adviser shall be submitted by the party together with the application for exemption from court costs or separately, in writing or orally for the record, in the court where the case is to be brought or is already pending. A natural person who is not domiciled at the seat of this court may file a request for the appointment of an advocate or legal adviser at the district court competent for their place of residence, which immediately sends this request to the competent court.

§ 5. The court will grant the request if the participation of an advocate or legal adviser in the case is deemed necessary. The basis for rejection of the application may not be the use by a natural person of free legal assistance or free civic counselling, referred to in the Act of 5 August 2015 on Free Legal Assistance, Free Civic Counselling and Legal Education (Journal of Laws of 2019, item 294 and of 2020, items 875 and 1086).

§ 6. The court shall send the request for the appointment of an advocate or legal adviser submitted for the first time in cassation proceedings or proceedings on a complaint for a declaration of non-compliance with the law of a final judgment, to the court of first instance for examination, unless it considers the request to be clearly justified.

2.4 Are there lawyers specialised to provide legal aid and represent victims of THB in court? What regulations, if any, are applicable to the provision of such legal aid/representation?

There are no specific regulations regarding the specialization of attorneys or the provision of legal assistance and representation of victims of THB in court. Attorneys-at-law and legal advisers participate in training courses on such topics if they are organized. The issue of organizing and conducting trainings remains within the competence of self-government of advocates and legal advisors.

2.5 How is the provision of legal assistance and free legal aid for victims of THB funded? Do victims have to pay a fee to obtain legal assistance or start a procedure, or are there other financial barriers in place? If yes, please specify the amount(s).

Criminal proceedings in cases of THB are conducted ex officio.

The costs incurred in connection with the criminal proceedings may be reimbursed to the aggrieved party. An application may be submitted to the court for the reimbursement of expenses incurred by the aggrieved party in connection with criminal proceedings, including expenses related to the appointment of an attorney or court appearance (Article 618j of the Code of Criminal Procedure and Article 627 of the Code of Criminal Procedure).

### 3. Compensation from the perpetrators (Article 15)

3.1 What measures are in place to enable courts to award compensation to victims of THB, including children, from the perpetrators as part of criminal proceedings? What is the role of prosecutors in this respect?

In Poland, there are four ways in which victims of human trafficking can obtain compensation:

- (i) in the course of criminal proceedings, pursuant to Art. 46 of the Penal Code;
- (ii) in civil proceedings, if a criminal court decision has not provided fair compensation;
- (iii) in civil proceedings, irrespective of the criminal proceedings, in accordance with the general rules;
- (iv) based on the Act on State Compensation for Victims of Certain Crimes.

The aggrieved party and the prosecutor may submit a claim for compensation or redress for the harm suffered until the court proceedings are closed (Art. 49a of the CCP). The claim may be submitted in writing or orally for the record. Public prosecutors are obliged, in accordance with the internal regulations of the general organizational units of the prosecution service (Regulation of the Minister of Justice, Journal of Laws 2016.508), to determine the assets of suspects in order to secure, inter alia, obligation to redress the damage.

The court is entitled to award compensation or redress also ex officio, in the event of a conviction for any crime resulting in damage or harm.

#### **Art. 49a of the Code of Criminal Procedure [A claim for redress of the damage or compensation]**

The aggrieved party, as well as the prosecutor, may submit a claim referred to in Art. 46 § 1 of the Penal Code.

The existence of the damage upon adjudication must always be the material basis for the court order to redress the damage. The sizes of compensation in the civil law sense define the limits of the obligation to redress the damage, as everything that goes beyond them would be profit from the crime obtained by the aggrieved party. As part of the adjudicated obligation to redress the damage pursuant to Art. 46 § 1 of the Penal Code, justified expenses incurred after the offense are also subject to reimbursement if they have not been reimbursed to the entitled person in a different way. Damage as a premise of the criminal law obligation to redress it covers both losses (*damnum emergens*) and lost profits (*lucrum cessans*), if *in concreto* they are a normal consequence of a criminal act or omission. The obligation to redress the damage applies only to damage that has not been redressed, and the court, adjudicating pursuant to Art. 46 § 1 of the Penal Code, must take into account the extent of the already redressed damage.

The court order to redress the damage or compensation is optional ex officio, and obligatory upon request.

#### **Art. 46 of the Penal Code [Redress of the damage, compensation]**

§ 1. In the event of a conviction, the court may order, and at the request of the aggrieved party or another entitled person the court shall order, applying the provisions of civil law, to redress, in whole or in part, the damage caused by the crime or compensation for the harm suffered; the provisions of civil law on the possibility of awarding a pension are not applicable.

§ 2. If the order specified in § 1 is significantly impeded, the court may instead order compensatory damages of up to PLN 200,000 to the aggrieved party, and in the event of their death as a result of a

crime committed by the convicted person, compensatory damages to the benefit of the closest person, whose life situation as a result of the victim's death deteriorated significantly. If more than one such a person has been established, compensation damages are adjudicated to the benefit of each of them.

§ 3. The award of compensation or redress pursuant to § 1 or compensation damages pursuant to § 2 shall not prevent the pursuit of the unsatisfied part of the claim through civil proceedings.

The measure in question takes two forms: the obligation to redress the damage and compensation for the harm suffered. It is possible to concurrently adjudicate against the convicted person the obligation to redress the material damage (compensation) and compensation for non-pecuniary damage (harm) in the form of redress.

The award of compensation for the harm caused by the crime is possible only if the civil law allows for compensation for the given harm. The determination of the extent of the harm is based on the principles of civil law. The aim of compensation is to alleviate mental suffering.

It should also be noted that pursuant to Art. 415 § 2 of the Code of Criminal Procedure, if the awarded compensation in criminal proceedings does not cover the entire damage, the aggrieved party may pursue additional claims in civil proceedings.

3.2 How is the amount of compensation calculated and are there specific criteria or models for calculating it? What types of injury/damage and costs are covered? Are there any circumstances/conditions that would lead to a reduction of the amount of compensation?

The Polish legislator provided for two institutions, namely compensation and redress. The value of compensation for the damage suffered consists of the amount due to the so-called real loss (*damnum emergens*) and the amount of lost profits (*lucrum cessans*). The premise for reducing the compensation may be the victim's contribution to the occurrence or increase in the extent of the damage.

However, compensation may be awarded for the harm suffered and moral suffering.

While the value of the harm suffered should be demonstrated, the amount of compensation is an evaluative value, adequate to the size of the pain, suffering and moral loss suffered. These circumstances are assessed by the court *ad casu*.

It should be pointed out that the general directives of penalties and penal measures are specified in Art. 53 of the Penal Code.

#### **Art. 53 of the Penal Code [General directives]**

§ 1 The court shall impose a penalty at its discretion, within the limits provided for by law, ensuring that its ailment does not exceed the degree of guilt, taking into account the degree of social harmfulness of the act and taking into account the preventive and educational goals to be achieved in relation to the convicted person, as well as needs in the field of shaping the legal awareness of the society.

§ 2. When imposing a penalty, the court shall take into account, in particular, the motivation and behaviour of the perpetrator, especially in the event of committing a crime to the detriment of a helpless person due to age or health, committing a crime together with a minor, type and degree of violation of the perpetrator's obligations, type and the size of the negative consequences of the crime, the perpetrator's personal characteristics and conditions, the way of life before committing the crime and behaviour after its commission, in particular, trying to redress the damage or compensate in a different form to the social sense of justice, as well as the victim's behaviour.

§ 3. When imposing a penalty, the court also takes into account the positive results of the mediation carried out between the aggrieved party and the perpetrator or a settlement between them in the proceedings before the court or the prosecutor.

3.3 How are compensation orders/verdicts enforced? What measures are in place to guarantee and ensure effective payment of compensation?

If the obligated person does not voluntarily comply with the judgment awarding compensation or redress, the aggrieved party should apply to the court to issue the judgment with an enforcement clause. According to Art. 781<sup>1</sup> of the Code of Civil Procedure, an application for an enforcement clause is examined by the court immediately, but not later than within 3 days from the date of its submission.

The judgment, together with the enforcement clause, constitutes an enforcement order under which compulsory enforcement by a court bailiff is possible. Enforcement may be carried out from the benefits obtained by the debtor-perpetrator of the crime, from his movable property, real estate or other property he is entitled to.

Article 75 § 2 of the Penal Code specifies the grounds for optional revocation of the conditional suspension of the sentence. However, if in the course of the execution of this probation measure, the court professional probation officer issued a written warning to the convicted person, then pursuant to Art. 75 § 2a, execution of the sentence order from optional becomes obligatory.

#### **Art. 75 of the Penal Code [Execution of the sentence]**

§ 1. The court orders the execution of the sentence if the convicted person during the probation period has committed a similar intentional crime for which a final sentence of imprisonment has been issued without conditional suspension of its execution.

§ 1a. The court orders the execution of the sentence if the convicted person for an offense committed with the use of violence or an unlawful threat against the next of kin or another minor living together with the perpetrator during the probation period grossly violates the legal order, again using violence or an unlawful threat against the next of kin or another minor living together with the perpetrator.

§ 2 The court may order the execution of the sentence if the convicted person during the probation period grossly violates the legal order, in particular when he has committed an offense other than that specified in § 1, or if he evades payment of a fine, supervision, performance of imposed obligations or imposed penal measures, compensatory measures or forfeiture.

§ 2a. The court orders the execution of the sentence, if the circumstances referred to in § 2 arise after the sentenced person has been reminded in writing by the court professional probation officer, unless there are special reasons against this.

§ 3. The court may order the execution of the sentence, if the convicted person, after the judgment has been issued, but before it becomes final, grossly violates the legal order, in particular when he committed an offense at that time.

§ 3a. By ordering the execution of the sentence in the cases referred to in § 2 and 3, the court may, taking into account the current course of the probation, and in particular the performance of the imposed obligations, shorten the sentence, but not more than by half.

§ 4. The order to execute the sentence may not take place later than within 6 months from the end of the probation period.

3.4 When foreign victims of THB are removed from or choose to leave the country where the exploitation took place, what measures are in place to enable them to obtain compensation and other remedies?

A foreigner who is a third country national and who has been found to be a victim of THB cannot be removed. A stay in the territory of the Republic of Poland of a foreigner who is an alleged victim of THB and who is staying in Poland illegally is considered legal from the moment the body authorized to conduct cases concerning THB (Border Guard, Police, Prosecutor) issues a certificate pursuant to Art. 170 of the Act on Foreigners.

Despite the departure from the country of the foreigner aggrieved in Poland by the crime of THB, obtaining compensation and implementing other legal measures is still possible through actions taken by the attorney or prosecutor acting for the victim.

3.5 What procedures are in place to ensure effective access to compensation for victims of THB for the purpose of labour exploitation? Can such victims bring civil claims for compensation and/or recovery of unpaid wages and social contributions on the basis of tort, labour, employment or other laws? Please specify the relevant measures. Can victims of THB working in irregular employment or without a contract claim unpaid wages and other compensation and if yes, how is the amount of unpaid wages and other compensation established?

A victim of THB in the event of labour exploitation may seek compensation, inter alia on the basis of a civil action. The aggrieved person may also pursue claims in the case of performing activities under illegal employment or without a contract, provided that by means of evidence he can prove that he has performed a specific job for a specified period of time.

The amount of due compensation will be determined each time by the court hearing the case, taking into account the type of work performed, the time it was performed and the rates applicable on the labour market for specific types of activities.

It should be emphasized that the Act of October 10, 2002 on Minimum Wage (Journal of Laws of 2017, item 2177, i.e.) is in force in Poland, on the basis of which the Council of Ministers determines, by way of a regulation, by September 15 of each year, the minimum wage rate in the following year, as well as the minimum hourly wage rate in the following year with the date of changing these amounts.

In 2020, the rates specified in the Regulation of the Council of Ministers of 10 September 2019 on the Amount of the Minimum Wage for Work and the Amount of the Minimum Hourly Rate (Journal of Laws of 2019, item 1778) are as follows: the minimum wage for work: PLN 2600 per month; the minimum hourly rate: PLN 17 for 1 hour of work.

3.6 What training is provided to build the capacity of relevant professionals, such as lawyers, law enforcement officers, prosecutors and judges, to enable victims of THB to obtain compensation and other remedies?

Pursuant to **Decision No. 222 of the Police Commander in Chief of July 12, 2018 on the curriculum for a specialist course in the prevention and combating of crimes of THB**, a specialist course was created, the purpose of which is to prepare Police officers to perform official tasks related to preventing and combating crimes of THB, paedophilia and child pornography. The course is intended for Police officers who carry out tasks in the regular organizational units of the Police to combat THB and conduct classes in the field of combating crimes of THB and preventing such crimes. In addition, pursuant

to Ordinance No. 14 of the Police Headquarters of 22 September 2016, a **coordinator dealing with the prevention of THB** is appointed in each of the voivodeship, municipal and district Police headquarters. The Police also cyclically participate in **Joint Training Workshops for Coordinators of the Border Guard, Police and Public Prosecutor's Office**. The Police also participate in information campaigns and carry out preventive actions aimed at raising awareness of potential victims of THB. In addition, every year as part of the celebration of the World Day Against Trafficking in Persons at Police Schools training / lectures are conducted by experts on countering THB for officers of basic and specialized courses.

According to Art. 98 of the Act of 28 January 2016 Law on the Public Prosecutor's Office (Journal of Laws of 2019, item 740, as amended), the public prosecutor is obliged to constantly improve professional qualifications, including participation in training and other forms of professional development. This means that he or she can participate both in **trainings organized by the National School of Judiciary and Public Prosecution, and trainings organized by the National Public Prosecutor, prosecutor's office units or external entities**.

According to Art. 82a § 1 and 3 of the Act of 27 July 2001 - Law on the System of Common Courts (Journal of Laws of 2020, item 2072), a judge is obliged to constantly improve his/her professional qualifications. A judge is obliged to participate, if possible annually, in training and professional development organized by the National School of Judiciary and Public Prosecution or other forms of professional development, in order to supplement specialist knowledge and professional skills. This means that judges are obliged to improve their professional qualifications, but as a rule they are not subject to compulsory training. Participation in trainings organized by the National School of Judiciary and Public Prosecution is voluntary, and judges may declare their willingness to participate in these training courses according to their professional needs.

Judges may also participate in training courses organized directly by the presidents of competent courts or commercial entities, but the Ministry of Justice does not collect information about such trainings.

According to Art. 1 of the Act of 23 January 2009 on the National School of Judiciary and Public Prosecution (Journal of Laws of 2020, item 1366), the aim of the National School of Judiciary and Public Prosecution is to educate and improve the staff of common courts and public prosecutors. The National School has legal personality and the Minister of Justice supervises it in terms of its compliance with the statutory provisions and the statute. The tasks of the National School are primarily:

- 1) judicial and prosecutorial training, the aim of which is for trainees to obtain indispensable knowledge and practical skills necessary for their future work as judges, judge's assessors, prosecutors and prosecutor's assessors;
- 2) training and professional development of judges, judge's assessors, public prosecutors and public prosecutor's assessors in order to supplement their specialist knowledge and professional skills;
- 3) training and professional development of court referendaries, judge's assistants, prosecutor's assistants and probation officers, as well as other court and prosecution clerks in order to improve their professional knowledge; (Article 2 (1) (1-3) of the Act on the National School of Judiciary and Public Prosecution).

In 2018-2020, the National School of Judiciary and Public Prosecution organized the following training courses:

- in 2018, training entitled: "Problems of THB", ref. K10 / 18. Its detailed issues included, inter alia, analysis of THB in Poland, Europe and the world; substantive legal approach to the crime of THB in terms of national and international law; forms of exploitation of victims of human trafficking; the legal situation of victims of THB in Polish criminal law against the background of international standards; methodology of conducting preparatory proceedings in cases related to THB; international cooperation of an operational and procedural nature in pending criminal proceedings,

barriers preventing effective prosecution of THB; THB in the jurisprudence of national and international courts. The training was addressed to: judges, judge's assessors, public prosecutors and public prosecutor's assessors. 65 people participated in the training;

- 2019 training entitled: "The issue of THB", ref. K17 / 19, which concerned the substantive legal approach to the crime of THB in terms of national and international law; forms of exploitation of victims of THB, correct qualification of the facts; the aggrieved as a victim of THB, his situation in Polish criminal law against the background of international standards; methodology of interviewing the victim of THB; methodology of conducting preparatory proceedings in cases related to THB, efficient case management; international assistance in cases of THB. The training was addressed to: judges of regional courts, prosecutors of regional public prosecutor's offices - coordinators for THB. 61 people participated in the training;
- in 2020, training entitled: "The issue of THB - the victim as a personal source of evidence", ref. K17 / 20. During the training, the following topics were discussed: the methodology of interviewing a victim of THB; assessment of the credibility of the THB victim's testimony; the interviewer's competences and cultural background, equality attitude and the ability to take perspective as important interpersonal resources of the interviewer; consequences of cultural differences in verbal and non-verbal communication during an interview. The training was addressed to: judges of regional courts adjudicating in penal departments, prosecutors of regional public prosecutor's offices - coordinators for THB. 26 people participated in the training.

As part of international cooperation, since 2018 the National School of Judiciary and Public Prosecution has enabled Polish judges, assessors, prosecutors, and judge's assistants and prosecutor's assistants to participate in the following international training courses on THB:

- training entitled: "International Judicial Cooperation in Criminal Matters: Practical Case-Based Simulation on the Fight against THB and Sexual Exploitation", ref. M9 / A20 / 19, which took place on November 20-22, 2019 in Vilnius. 9 people participated in the training;
- training entitled: "Training on Financial Investigations and Asset Recovery for the THB Crimes", ref. M9 / A9 / 19, which took place on June 3-7, 2019 in Hoofddorp. 3 people participated in the training;
- training entitled: "Trafficking in human beings", ref. M9 / B2 / 18, which took place on May 17, 2018 in Prague. 2 people participated in the training;
- training entitled: "Trafficking in human beings", ref. M9 / B14 / 18, which took place on November 19-20, 2018 in Utrecht. 1 person participated in the training.

As part of the PL16 Programme, human rights training for court staff was also carried out. As part of the Fund for Bilateral Relations, study visits and seminars for Polish and Norwegian judges in the field of human rights were held at the seat of the Council of Europe and the European Court of Human Rights in Strasbourg. The aim of the study visits was to increase the awareness of the judges participating in the project on the standards resulting from the European Convention for the Protection of Human Rights and the judgments of the European Court of Human Rights, as to the issues most frequently appearing in the jurisprudence of domestic courts, in the field of the right to a fair trial, the right to freedom and personal security, the right to private and family life and freedom of expression.

The issue of THB is the subject of the initial training of the National School of Judiciary and Public Prosecution trainees in the form of judge apprenticeship and prosecutor apprenticeship:

1. according to the judge apprenticeship programme attached to the Resolution No. 49/2015 of the Programme Council of the National School of Judiciary and Public Prosecution of March 20, 2015, at the 3rd meeting of the 8th year of judge training on June 4-8, 2018, type G classes were conducted - case solving from the special part of the Penal Code concerning crimes against life and health, against public safety and security in communication, against sexual freedom and freedom, and F-type classes - recapitulatory seminar - discussion of the basic issues of material law covered by the congress (crimes



against life and health, against public safety and security in communication, against sexual freedom and freedom);

2. in accordance with the judge apprenticeship programme, the assumptions of which are included in the Annex to Resolution No. 10/2017 of the Programme Council of the National School of Judiciary and Public Prosecution of October 13, 2017, during:

- the 6th meeting of the 9th year of judicial training, on September 10-14, 2018, type G classes were conducted – case solving from the special part of the Penal Code concerning crimes against life and health, honour and physical integrity, against family and care;
- the 8th meeting of the 9th year of judicial training on November 5-9, 2018, G classes were conducted - case solving from the special part of the Penal Code regarding crimes against freedom, freedom of conscience and religion, sexual freedom and decency;

3. in accordance with the judge apprenticeship programme, the assumptions of which are included in the Annex to Resolution No. 10/2017 of the Programme Council of the National School of Judiciary and Public Prosecution of October 13, 2017, in 2019 during:

- the 6th meeting, type G classes were conducted – case solving from the special part of the Penal Code concerning crimes against life and health, honour and bodily inviolability, against the family and care;
- the 8th meeting, G classes were conducted - case solving from the special part of the Penal Code concerning crimes against freedom, freedom of conscience and religion, sexual freedom and decency;
- the 12th meeting, type C classes were conducted - a lecture on THB from the material and legal perspective.

As part of the prosecutor's apprenticeship, the issues of combating THB and the rights of victims of THB have been or will be discussed:

1. according to the programme of the 6th year of prosecutor's apprenticeship in 2017, as part of classes during:

- the 16th meeting - on September 25-29, 2017, on issues related to crimes against freedom, sexual freedom and decency, the A-method (case method) discussed, among others, judgment of the Court of Appeal in Lublin of May 7, 2013, ref. II AKa 42/13 (lex 1316231) related to the functional features of the crime of THB, as well as the G method (case solving), the above-mentioned issues are illustrated on the basis of exemplary case studies;
- the 19th meeting - on December 11-15, 2017, on issues related to international law, including the topic of joint investigative teams, the C-method (lecture) discussed the United Nations Convention of November 15, 2000 on counteracting international organized crime (Journal of Laws of 2005, No. 18, item 158, as amended) along with the supplementary Protocol on preventing, combating and punishing THB, in particular in women and children, adopted by the United Nations General Assembly on November 15, 2000 (Journal of Laws of 2005, No. 18, item 160);

2. in accordance with the programme of the 7th year of prosecutor's apprenticeship in 2018, as part of classes during:

- the 16th meeting on September 17-21, 2018, on issues related to crimes against freedom, sexual freedom and decency, during which the A-type method (case method) discussed, inter alia, judgment of the Court of Appeal in Lublin of May 7, 2013, ref. II AKa 42/13 related to the functional features of the crime of THB, and the G method (case solving) illustrates the above-mentioned issues, based on example cases;

- the 19th meeting, which took place on December 17-21, 2018. The subject of this meeting were issues related to international law, including the topic of joint investigative teams; the C (lecture) method discussed the United Nations Convention of 15 November 2000 on counteracting international organized crime (Journal of Laws of 2005, No. 18, item 158, as amended) along with the supplementary Protocol on preventing, combating and punishing THB, especially in women and children, adopted by the United Nations General Assembly on November 15, 2000 (Journal of Laws of 2005, No. 18, item 160);

3. The training was carried out on the basis of the above-mentioned principles in the 8th year of prosecutor's apprenticeship, which during the classes at the 16th and 19th meetings in 2019 discussed the issue of THB.

4. The 9th year of prosecutor apprenticeship undergoes training in accordance with the prosecutor apprenticeship programme adopted by the Resolution of the Programme Council of the National School of Judiciary and Public Prosecution No. 11/2017 of October 13, 2017, according to which:

- these issues were discussed during the 6th meeting on September 10-14, 2018, concerning, inter alia, jurisprudence of the European Court of Human Rights, taking into account Polish cases in the field of criminal issues and the principles of proportionality and real protection of human rights: the right to life, the prohibition of torture, the right to liberty and personal security, the right to a fair trial;

- during the 17th meeting on September 30 to October 4, 2019, issues related to crimes against freedom, freedom of conscience and religion, sexual freedom and decency were discussed;

- during the 19th meeting on November 25-29, 2019, issues related to proceedings in criminal cases in international relations, international legal assistance and service in criminal cases, the topics of joint investigation teams, the application of the ne bis in idem principle and the resolution of jurisdictional conflicts were discussed in EU Member States.

In a similar arrangement, these topics were discussed in 2020.

#### **4. State compensation (Article 15)**

4.1 Do the eligibility criteria for State compensation schemes for victims of crimes exclude some victims of THB (e.g. due to irregular residence status, nationality, nature of the offence)? Does access to State compensation depend on the outcome of the criminal case and on failure to obtain compensation from the offenders?

In the course of criminal proceedings, the aggrieved party may file a claim for compensation or redress for damage. In addition, the aggrieved party has the right to bring an action in accordance with the provisions of civil law.

4.2 How is the amount of State compensation calculated so as to address the gravity of the harm endured by the victim?

Art. 417 of the Civil Code [State Treasury Liability]

§ 1. The State Treasury or a local government unit or other legal person is liable for damage caused by an unlawful act or omission in exercise of its authority pursuant to law.

§ 2. If the performance of tasks in the field of public authority was commissioned, on the basis of an agreement, to a local government unit or other legal person, joint and several liability for the damage caused shall be borne by their contractor and the local government unit or the State Treasury commissioning them.

The Supreme Court, in its judgment of October 29, 2004, III CK 485/03, pointed out that the condition for the liability of the State Treasury is unlawful act of a public official (pursuant to Art. 417 of the Civil Code), but *the damage should remain in an adequate causal relationship with the event causing it and be the normal, typical aftermath of such unlawful act.*

The value of compensation for the damage suffered consists of the amount of the so-called real loss (*damnum emergens*) and the amount of lost profits (*lucrum cessans*). The premise for reducing the compensation may be the victim's contribution to the occurrence or increase in the extent of the loss. On the other hand, compensation may be awarded for the harm suffered and moral suffering. While the value of the harm suffered should be shown, the amount of compensation is an evaluative value, adequate to the size of the pain, suffering and moral loss suffered. These circumstances are subject to assessment by the court ad casu.

### **State compensation**

The aggrieved person may submit a claim for compensation to the court if he is a Polish citizen or a citizen of another European Union Member State.

The Polish legal system is governed by the *Act of July 7, 2005 on State Compensation for Victims of Certain Crimes* (consolidated text, Journal of Laws of 2016, item 325, as amended), which defines the rules and procedure for granting compensation and the terms of cooperation of Polish authorities with authorities of other European Union Member States competent in the proceedings for obtaining this benefit.

Pursuant to this Act, natural persons who, as a result of a prohibited act, have suffered serious damage to health, disturbance of the functioning of a bodily organ or a health disorder, lasting longer than 7 days, or their relatives (when the victim has died as a result of the crime) may apply for compensation, covering lost earnings or other means of subsistence, costs related to treatment and rehabilitation, funeral costs resulting from the commission of a crime. The compensation may not exceed PLN 25,000, and if the victim has died - PLN 60,000.

According to Art. 4 above of the Act, compensation is granted if the prohibited act was committed on the territory of the Republic of Poland to the detriment of a person resident in this territory or in the territory of another Member State of the European Union. Beneficiaries of the compensation may be both citizens of the Republic of Poland and citizens of EU Member States as well as citizens of third countries with the right of permanent residence in the territory of the EU. Therefore, it should be pointed out that the group of persons who can effectively claim for compensation under the provisions cited is limited and is only available to citizens of Poland or another EU Member State. The condition for granting compensation and its amount is the inability for the eligible person to obtain coverage of lost earnings, other means of subsistence or costs related to treatment or rehabilitation or funeral costs, from the perpetrator or perpetrators of the crime, under insurance, from social assistance, regardless of whether the perpetrator or perpetrators of the crime have been established (Article 5 of the above-mentioned Act).

Compensation cases are decided by the district court, applying the provisions of the Code of Civil Procedure, in a non-trial manner. Actions in cases for granting compensation may also be performed by court referendaries. The referendary's decision may be appealed against to the court. It should be noted that the provisions of the act apply to crimes committed from July 1, 2005.

4.3 Is it possible for foreign victims of trafficking to submit claims for State compensation in your country after being returned or repatriated to their countries of origin? Please provide examples of any such cases and indicate the measures stipulating such a possibility.

According to Art. 86 in connection with Art. 13 § 2 of the Code of Civil Procedure, the parties and their bodies or statutory representatives may act before the court in person or through attorneys. The attorney may be an advocate or legal adviser, co-participant in the dispute, spouse, siblings, descendants or ascendants of the parties and persons remaining with the party in an adoption-like relationship. Moreover, article 87 § 1 of the Code of Civil Procedure provides that the attorney may be a person managing the property or interests of a party and a person remaining in a permanent relationship with the party if the subject matter of the case falls within the scope of this order.

As regards state compensation, pursuant to Art. 8 sec. 4 of the Act of July 7, 2005 on State Compensation for Victims of Certain Forbidden Acts, compensation is granted at the request of an entitled person or a public prosecutor.

Data on such matters is not collected.

4.4 Are victims seeking State compensation liable for lawyers' costs and fees? Are State compensation awards subject to taxation? Does the receipt of compensation have consequences for access to social security or other benefits?

The issues of attorney's fees are regulated in the Act of May 26, 1982 Law on the Bar (Journal of Laws of 2020, item 1651) and the Act of July 6, 1982 on Legal Advisers (Journal of Laws of 2020, item 75) and in the ordinances of the Minister of Justice: of 3 October 2016 on the covering by the State Treasury costs of unpaid legal aid provided by the court-appointed advocate (Journal of Laws of 2019 item 18), of October 22, 2015 on fees for advocates' services (Journal of Laws of 2015 item 1800, as amended), of October 3, 2016 on the covering by the State Treasury costs of unpaid legal aid provided by the court-appointed legal adviser (Journal of Laws of 2019, item 68) and of October 22, 2015 on fees for legal adviser's services (Journal of Laws of 2018, item 265).

However, in accordance with the Act of November 17, 1964, the Code of Civil Procedure (Journal of Laws of 2020, item 1575), **a party may, upon request, be released by the court from court costs in whole or in part**, and then may demand the appointment of an advocate or legal adviser. Also, a person not exempted from court costs by the court may request the appointment of an advocate or legal adviser if he submits a declaration which shows that he or she is unable to bear the costs of the advocate's or legal adviser's fee without prejudice to the necessary support for him and his family. **If an ex officio advocate or legal adviser is appointed, the party does not bear the cost of their fee.**

## 5. Sanctions and measures (Article 23)

5.1 Please describe the legislative and other measures adopted by your country which allow to: i) confiscate or otherwise deprive perpetrators of the proceeds of criminal offences, or property of an equivalent value to those proceeds; and ii) identify, trace, freeze or seize rapidly property which is liable to confiscation, in order to facilitate the enforcement of a later confiscation. Do these measures allow the identification, tracing and seizure of property into which the proceeds of illicit activities have been converted?

The Border Guard, as part of official activities, determines the assets of the perpetrators. The above is carried out already at the stage of classified operational and reconnaissance activities, often before the formal initiation of preparatory proceedings.

On the other hand, in the course of criminal proceedings, pursuant to Art. 291 § 1 of the CCP:

"If a person is accused of committing a crime subject to:

- 1) a fine,
  - 2) pecuniary consideration,
  - 3) forfeiture,
  - 4) compensation measures,
  - 5) return to the aggrieved party or another entitled entity of the financial benefits that the perpetrator has obtained from the committed crime, or its equivalent
- the enforcement of this judgment may ex officio be secured on the property of the accused or on the property referred to in art. 45 § 2 of the Penal Code, if there is a justified fear that without such security it will be impossible or significantly difficult to enforce the judgement".

In the last few years, changes in the law have resulted in the possibility of faster obtaining and verification of data (changes to the Act of 6 April 1990 on the Police, the Banking Law Act) and the possibility of using extended confiscation, forfeiture of the enterprise and a number of legal presumptions, resulting in a reversed burden of proof, which translated into an increase in the potential of the prosecutor's office and courts in seizing the property of perpetrators of crimes.

1. The Act of March 23, 2017 amending the Act - the Penal Code and some other acts introduced the institution of the so-called the extended confiscation of property. The introduction of the above-mentioned institution meant that solutions provided for in the directive of the European Parliament and Council No. 2014/42 / EU of April 3, 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (Journal of Laws UE L 127 of April 29, 2014) were implemented to the national legal order.

On the day of the entry into force of the new law, an assumption was made in accordance with which in the event of conviction for a crime as a result of which, even indirectly, a property benefit has been achieved or could be obtained indirectly, subject to penalty of limitation of liberty exceeding 5 years or an offence committed in an organized criminal group, the property which is in the possession of the offender or to which he has obtained any legal title in the 5 years before committing the crime is considered to a benefit derived from proceeds of crime.

The owner of the property bears the burden of proving that the property or funds for its purchase is not the proceeds of crime. the metastatic waste remained on the property. The public prosecutor may also secure on the third person's property and will only have to prove that it was in the possession of the perpetrator in the last 5 years and he will not even have to prove that the property was acquired through a criminal offence or with illicit funds. Rebutting the assumption requires evidence to the contrary from the suspect or accused person or person who owns the property and proving that all the assets acquired in the 5-year period preceding the commission of the criminal offence came from legal sources.

Moreover, in accordance with the provisions of the amended act, also an enterprise used to commit a criminal offense or conceal the benefits obtained from it, owed by the perpetrator or its equivalent, as well as an enterprise owned by a natural person other than the perpetrator, provided that the person agreed or wanted the enterprise to be used to commit a criminal offence or conceal the benefits obtained from it, may be subject to forfeiture (Art. 44a of the Penal Code).

What is extremely important, the amendment also introduced the possibility of asset forfeiture order without judgement of conviction (Art.45a of the Penal Code) – among others in the event of the perpetrator's death, discontinuation of proceedings due to the failure to identify the perpetrator or suspension of proceedings.

In order to implement the above, in accordance with Art. 295 of the Code of Criminal Procedure, law enforcement agencies may temporarily seize the suspect's property.

2. Moreover, in the Act of April 6, 1990 on the Police, the regulation of Art. 20 (5a), allowing for hit / no hit verification, in order to establish in entities obliged to maintain professional secrecy under the Act the fact that the person to whom the application relates is their client. Such a method of verification allows for, in the scope of operational and reconnaissance work performed by the Police as part of their statutory activities, the possibility of making quick determinations and planning further, more targeted activities related, for example, to the procedure of exempting a given entity from the obligation to maintain professional secrecy described in the procedure of art. 20 paragraph 3 of the above law. The intention of the legislator was to improve the obtaining of basic information by law enforcement agencies in order to be able to undertake more dynamic and more directional actions aimed at establishing and securing assets. The procedure for obtaining information does not require court interference, but only the Police authority.

3. In 2016, in connection with the Act of October 9, 2015 amending the Act - Banking Law and certain other acts (Journal of Laws 15.1864), the institution of the Central Information on Bank Accounts was introduced, pursuant to the new Art. 92 ba, the information is collected on:

- 1) the holder's bank accounts, including joint accounts - without indicating the data of the joint holder;
- 2) bank account agreements of the holder terminated or expired for the reasons referred to in art. 59a paragraph. 1-3;
- 3) bank account holder's accounts kept in a cooperative savings and credit union, including joint accounts - without specifying the data of the co-holder;
- 4) bank account holder's account agreements kept in the cooperative credit union terminated or expired for the reasons referred to in art. 13a sec. 1-3 of the Act of 5 November 2009 on Cooperative Savings and Credit Unions (Journal of Laws of 2013, item 1450, as amended).

In connection with the above-mentioned base, at present the Police (and other authorities mentioned in the Act) may obtain in connection with the performance of statutory obligations, by requesting via any bank, information from the Central Information on bank accounts, about bank accounts of natural persons.

4. On March 1, 2018, a new Act on Counteracting Money Laundering and Financing of Terrorism was adopted, its new assumptions resulted in greater access for the Police and other cooperating units to information in the databases of the General Inspector of Financial Information, in connection with suspected money laundering or financing of terrorism, which may be a source of knowledge for searching for assets of the perpetrators.

The new act extended the group of obligated institutions, which also included entities such as:

- virtual currency exchange offices;

- entrepreneurs (Polish and foreign) engaged in the activity of providing safe deposit boxes;
- advocates, legal advisers, foreign lawyers, tax advisers

to the extent to which they provide the client with legal assistance or tax advisory activities regarding: purchase or sale of real estate, asset management, conclusion of an agreement for maintaining or performing activities related to maintaining an account, contributing to a capital company or increasing the share capital of a capital company, running the business or managing capital companies or trusts;

- loan institutions within the meaning of the Act of 12 May 2011 on Consumer Credit

Due to the amendment to the act, the Police now obtain information by directly addressing the General Inspector of Financial Information (GIFI) about suspicious and above-threshold transactions.

In the previous version of the legal act of 2000, access to the above-mentioned information was limited. The current provisions allow for wider verification and obtaining information from the GIFI.

Based on Article 291 § 2, the security may take place on the property of:

- a natural person, the owner of the enterprise, if the enterprise was used to commit this crime or to conceal the benefits obtained from it, and its owner wanted the enterprise to be used to commit this crime or conceal the benefits derived from it, or agreed to it, foreseeing such a possibility, and the perpetrator of the prohibited act has achieved, even indirectly, a material benefit of considerable value - Art. 44a of the Penal Code;

- a natural or legal person or an organizational unit without legal personality, to which the property constituting a significant benefit obtained from committing a crime or a crime, punishable by imprisonment, the upper limit of which is not lower than 5 years, or committed in an organized group or association aimed at committing a crime, has been transferred in fact or under any title whatsoever (Article 45 § 3 of the Penal Code);

- a natural or legal person or an organizational unit without legal personality that would be forfeited in a situation where: the social harm of the act is negligible, in the event of conditional discontinuation of the proceedings or finding that the perpetrator has committed a prohibited act in a state of insanity, as referred to in art. 31 § 1 of the Penal Code, or if there is a circumstance excluding the punishment of the perpetrator of the prohibited act, and also when the collected evidence shows that in the event of a conviction, forfeiture would be ordered, in the event of the perpetrator's death, discontinuation of proceedings due to the failure to identify the perpetrator or suspension of proceedings in the case in which the accused cannot be apprehended or the accused cannot participate in the proceedings due to mental illness or other serious illness (Article 45a § 1 and 2 of the Penal Code);

- a natural or legal person or an organizational unit without legal personality, to which the property, constituting a benefit obtained from committing a fiscal offence or which has achieved, even indirectly, a material benefit of high value or has or could have achieved, at least indirectly, a pecuniary benefit from a fiscal offence subject to imprisonment, the upper limit of which is higher than 3 years, or committed in an organized group or association aimed at committing a fiscal offence, has been transferred, in fact or under any title whatsoever, Art. 33 § 2 of the Penal and Fiscal Code;

- irrespective of the entity owning the property, in the event of anticipating a judgement of forfeiture, as a precautionary measure, Art. 43 § 1 and 2 of the Penal and Fiscal Code;

- irrespective of the entity owning the property, in the event of anticipating a judgement of forfeiture in the event of the death of the perpetrator, discontinuation of the proceedings due to failure to identify the perpetrator, suspension of the proceedings in a case where the accused cannot be apprehended or the accused cannot participate in the proceedings due to mental illness or other serious illness - Art. 43a of the Penal and Fiscal Code.

Additionally, in accordance with § 202 of the *Internal Regulations of the Operation of Common Organizational Units of the Prosecutor's Office* (Regulation of the Minister of Justice, Journal of Laws 2016.508), already at the initial stage of the preparatory proceedings, property constituting a financial benefit obtained from committing a crime or fiscal offense, subject to forfeiture or return to the injured party or other subject, should be established.

## **Chapter Va. Forfeiture and Compensation Measures. The Penal Code**

Article. 44 [forfeiture of items]

§ 1. The court shall order the forfeiture of items directly derived from the crime.

§ 2. The court may order, and in the cases specified in the Act, it shall order the forfeiture of items used or intended to be used to commit the crime.

§ 3. If the forfeiture referred to in § 2 would not be commensurate with the severity of the offence committed, the court may, instead of forfeiture, impose a supplementary payment to the State Treasury.

§ 4. If the forfeiture specified in § 1 or 2 is not possible, the court may order the forfeiture of the equivalent of items derived directly from the crime or items that were used or were intended to be used to commit the crime.

§ 5. The forfeiture of the items specified in § 1 or 2 is not adjudicated if they are returned to the injured party or other entitled entity.

§ 6. In the event of a conviction for an offense of violating the prohibition on manufacturing, possessing, trading, transferring, carrying or transporting certain items, the court may order, and in the cases provided for in the Act, it shall order their forfeiture.

§ 7. If the items listed in § 2 or 6 do not constitute the property of the perpetrator, their forfeiture may be ordered only in the cases provided for in the Act; in the case of joint ownership, the forfeiture of the share belonging to the perpetrator or the forfeiture of the equivalent of this share is ordered.

§ 8. (*repealed*)

Art. 44a [Forfeiture of the enterprise]

§ 1. In the event of a conviction for an offense in which the perpetrator has obtained, even indirectly, a material benefit of considerable value, the court may order the forfeiture of the enterprise owned by the perpetrator or its equivalent, if the enterprise was used to commit the crime or to conceal the benefit obtained from it.

§ 2. In the event of a conviction for a crime in which the perpetrator has obtained, even indirectly, a material benefit of considerable value, the court may order the forfeiture of not belonging to the perpetrator enterprise of a natural person or its equivalent, if the enterprise was used to commit the crime or to conceal the benefit obtained from it, and its owner wanted the enterprise to be used to commit this crime or to conceal the benefit derived from it, or, anticipating such a possibility, agreed to it.

§ 3. In the event of joint ownership, the forfeiture referred to in § 1 and 2, is ordered taking into account the will and awareness of each of the joint owners and within their limits.

§ 4. The forfeiture referred to in § 1 and 2 shall not be ordered if it would be disproportionate to the severity of the crime committed, the degree of guilt of the accused or the motivation and behaviour of the owner of the enterprise.

§ 5. The forfeiture referred to in § 1 and 2 shall not be ordered if the damage caused by the crime or the value of the concealed benefit is not significant in relation to the size of the company's activities.

§ 6. The court may withdraw from the forfeiture order referred to in § 2, also in other, particularly justified cases, when it would be disproportionately onerous for the owner of the enterprise.



#### Article 45 [Forfeiture of benefits]

§ 1. If the perpetrator has achieved, even indirectly, from committing the crime, a non-forfeit property benefit, items listed in Article 44 § 1 or 6, the court orders the forfeiture of such benefit or its equivalent. Forfeiture is not ordered in whole or in part if the benefit or its equivalent is returned to the aggrieved party or to another entity.

§ 1a. Also the use of things or rights constituting the benefit is considered to be the material benefit obtained from committing a crime is.

§ 2. In the event of a conviction for an offense in which the perpetrator has been obtained, even indirectly, a material benefit of considerable value, or a crime from which he has or could have obtained, even indirectly, a material benefit, subject to imprisonment, the upper limit of which is not less than 5 years, or committed in an organized group or association aimed at committing a crime, the material benefit obtained from the commission of the crime is the property that the perpetrator took possession of or to which he obtained any title in the period of 5 years before the offense was committed, until the issuance of even appealable judgment, unless the perpetrator or another interested person provides evidence to the contrary.

§ 3. If the property constituting a benefit obtained from committing the offense referred to in § 2 has been transferred to a natural or legal person or an organizational unit without legal personality, in fact or under any title whatsoever, it is considered that the things that are independently owned by this persons or units and their property rights belong to the perpetrator, unless, on the basis of the circumstances accompanying their purchase, it could not be assumed that the property, even indirectly, came from a prohibited act.

§ 4. (*repealed*)

§ 5. In the event of joint ownership, the court orders the forfeiture of the share belonging to the perpetrator or the forfeiture of the equivalent share.

§ 6. (*repealed*)

#### Art. 45a [Forfeiture]

§ 1. The court may order the forfeiture if the social harmfulness of the act is negligible, as well as in the event of conditional discontinuance of the proceedings or finding that the perpetrator has committed a prohibited act in a state of insanity, as referred to in Art. 31 § 1, or if there is a circumstance excluding the punishment of the perpetrator of the prohibited act.

§ 2. If the collected evidence shows that, in the event of a conviction, forfeiture would be ordered, the court may also order it in the event of the perpetrator's death, discontinuation of the proceedings due to failure to identify the perpetrator, suspension of the proceedings in a case where the accused cannot be apprehended or the accused cannot participate in the proceedings due to mental illness or other serious illness.

#### Article 46 [Redress for damage, compensation]

§ 1. In the event of a conviction, the court may order, and at the request of the aggrieved party or another entitled person the court shall order, applying the provisions of civil law, to redress, in whole or in part, the damage caused by the crime or compensation for the harm suffered; the provisions of civil law on the possibility of awarding a pension are not applicable.

§ 2. If the order specified in § 1 is significantly impeded, the court may instead order compensatory damages of up to PLN 200,000 to the benefit of the aggrieved party, and in the event of their death as a result of a crime committed by the convicted person, compensatory damages to the benefit of the closest person, whose life situation as a result of the victim's death deteriorated significantly. If more than one such a person has been established, compensation damages are adjudicated to the benefit of each of them.

§ 3. The award of compensation or redress pursuant to § 1 or compensation damages pursuant to § 2 shall not prevent the pursuit of the unsatisfied part of the claim through civil proceedings.

#### Art. 47 [Compensatory and exemplary damages]

§ 1. In the event of the perpetrator being convicted of an intentional offence against life or health or for another intentional offence resulting in human death, serious damage to health, disturbance of the functioning of a bodily organ or a health disorder, the court may order exemplary damages to the benefit of the Victim and Post-Penitentiary Assistance Fund.

§ 2. In the event of a conviction of the perpetrator for an offense against the environment, the court may order exemplary damages to the benefit of the National Fund for Environmental Protection and Water

Management, referred to in Art. 400 of the Act of 27 April 2001 - Environmental Protection Law (Journal of Laws of 2020, item 1219).

§ 2a. In the cases referred to in Art. 44a § 4-6, the court may order exemplary damages of up to PLN 1,000,000 to the benefit of the Victim and Post-Penitentiary Assistance Fund.

§ 3. If the perpetrator is convicted of an offense specified in Art. 173, art. 174, art. 177 or art. 355, if the perpetrator was intoxicated or under the influence of a narcotic drug or fled the scene, the court shall order compensatory damages to the benefit of the injured party, and in the event of his death as a result of a crime committed by the convicted person, compensatory damages to the benefit of the nearest person, whose life situation has been significantly affected by his death. If more than one such person has been established, compensatory damages are ordered to the benefit of each of them. If it is not possible to determine such a person, the court orders exemplary damages to the benefit of the Victim and Post-Penitentiary Assistance Fund. The court orders compensatory/exemplary damages in the amount of at least PLN 10,000.

§ 4. In particularly justified circumstances, when the ordered compensatory/exemplary damages would impair the perpetrator's necessary support of himself and the family, or when the aggrieved party has reconciled with the perpetrator, the court may order compensatory/exemplary damages in an amount lower than that indicated in § 3.

§ 5. The provision of § 3 shall not apply if the court has ordered the obligation to redress the damage caused by the crime or to compensate for the harm suffered in the amount exceeding PLN 10,000.

The provisions on property security are included in Chapter 32 of the Act of 6 June 1997 - Code of Criminal Procedure (Journal of Laws of 2020, item 1444) under the name "Property security".

Securing property is an important instrument of combating crime because it allows for temporary seizure of, inter alia, material benefits obtained by the perpetrator, even indirectly from the committed crime, in order to forfeit them, contributes to depriving the perpetrator of the benefits unlawfully obtained from the crime.

#### Article. 291 [Basis]

§ 1. If a person is accused of committing a crime subject to:

- 1) a fine,
- 2) pecuniary consideration,
- 3) forfeiture,
- 4) compensation measures,
- 5) return to the aggrieved party or another entitled entity of the financial benefits that the perpetrator has obtained from the committed crime, or its equivalent

- the enforcement of this judgment may ex officio be secured on the property of the accused or on the property referred to in art. 45 § 2 of the Penal Code, if there is a justified fear that without such security it will be impossible or significantly difficult to enforce the judgement.

§ 2. The enforcement of the judgment specified in § 1 point 3 or 5 may also be secured on the property of a natural person referred to in Art. 44a of the Penal Code, or a natural or legal person or organizational unit without legal personality, referred to in art. 45 § 3 of the Penal Code, or on property that would be forfeited pursuant to Art. 45A § 1 or 2 of the Penal Code and Art. 33 § 3, art. 43 § 1 or 2 or art. 43a of the Penal and Fiscal Code.

§ 2a. The enforcement of the order to return the material benefit or its equivalent or the forfeiture of the benefit or its equivalent to the obliged entity referred to in article 91a may be secured ex officio on the property of this entity.

§ 3. The enforcement of the award of costs may also be secured ex officio on the accused person's property if there is a reasonable fear that without such security, the enforcement of the court's decision in this regard will be impossible or significantly difficult.

§ 4. The security on property should be immediately revoked in whole or in part if the reasons for which it was established in a certain amount cease to exist, or there are reasons justifying its revoking, at least in part.

Article. 292 [Security method]

§ 1. The security takes place in the manner specified in the provisions of the Code of Civil Procedure, unless the law provides otherwise.

§ 2. Securing the impending penalty of forfeiture occurs through the seizure of movable property, liabilities and other property rights, and in the prohibition of selling and encumbering the real estate. This prohibition shall be published in the land and mortgage register or, in its absence, in the set of documents filed. If necessary, the court may provide for the administration of the real estate owned by the accused.

§ 3. The provision of Art. 232 shall apply accordingly.

Article. 292a. [Order on security by the establishment of compulsory administration]

§ 1. Securing the enforcement of the decision referred to in Art. 291 § 1, may also take place by the establishment of compulsory administration of the enterprise and the appointment of an administrator. The decision specifies the enterprise or its organized part and the administrator is indicated from among the persons holding the restructuring adviser license referred to in the Act of 15 June 2007 Licensing of Restructuring Advisers (Journal of Laws of 2016, item 883 and 2019, items 55, 730, 912, 1495 and 1802).

§ 2. In the preparatory proceedings, the order of securing by the establishment of compulsory administration is issued by the prosecutor. The decision is subject to court approval.

§ 3. After the decision referred to in § 2 is issued, the prosecutor applies to the court for its approval within 7 days at the latest. The court shall decide on the approval of the decision within 7 days from the date of submitting the decision to it.

§ 4. The security expires as soon as the court's decision to refuse to approve the decision referred to in § 2 becomes final.

§ 5. The decision to approve the prosecutor's decision to secure is made at the request of the public prosecutor in preparatory proceedings by the district court in whose district the proceedings are conducted, and after the indictment is brought, the approval is decided by the court before which the case is pending.

§ 6. After the indictment is brought, the court before which the case is pending issues an order for security by the establishment of compulsory administration.

§ 7. The parties, the aggrieved party and the owner or other person managing the enterprise on his behalf are entitled to appeal against the court's decision to approve the security order.

§ 8. The administrator ensures the continuity of the work of the secured enterprise and provides the court or the prosecutor with any information that is relevant to the pending proceedings, in particular about the manner and circumstances of using the enterprise to commit a crime or conceal the benefits obtained from it, and about items and documents that may constitute evidence in the case.

§ 9. The administrator draws up a list of the company's assets and property rights and submits it to the prosecutor or the court that issued the security order. The owner or other person managing the enterprise on his behalf may request the prosecutor or the court that issued the security order to exclude certain assets or property rights from security.

§ 10. The parties, the aggrieved party and the owner or other person managing the enterprise on his behalf, may appeal against the decision to exclude certain assets or property rights from security.

292b. [Security in relation to the enterprise of a collective entity] Security referred to in article 2. 292a § 1, may also occur in relation to the enterprise of a collective entity within the meaning of the Act of 28 October 2002 on the Liability of Collective Entities for Acts Prohibited under Penalty (Journal of Laws of 2019, items 628 and 1214), if the collected evidence indicates a high probability that this entity may be liable under this act.

Article. 293. [Order; complaint]

§ 1. The order securing claims shall be issued by the court or, in the course of preparatory proceedings, by the state prosecutor.

§ 2. The order shall determine the scope of security and the manner of securing, taking into account the size of the fine, pecuniary consideration, forfeiture or compensation measures that can be ordered in the case. The size of the security should only meet the needs of what it is to secure. The requirement to determine the amount of security does not apply to security on the seized item subject to forfeiture, as derived directly from the crime or serving or intended to commit it.

§ 3. The order on the security shall be subject to appeal. The provision of art. 254 § 2 shall apply accordingly.

§ 4. If the order was issued by the prosecutor, and the preparatory proceedings are conducted in a district other than the court of competent subject matter jurisdiction and court of competent jurisdiction, the complaint may be lodged with the court of competent subject matter jurisdiction in the first instance, in whose district the preparatory proceedings are conducted.

§ 5. The decision on the security shall constitute an enforcement order upon its release.

§ 6. If the security has taken place on items that the accused previously released to the procedural authority or which were detained as a result of the activities referred to in Chapter 25, enforcement activities shall not be taken to implement the security provisions.

§ 7. A natural or legal person or an organizational unit without legal personality referred to in Art. 45 § 3 of the Penal Code, may bring an action against the State Treasury to establish that the property or its part is not subject to forfeiture. Until the case is finally resolved, the enforcement proceedings are suspended.

#### Article. 294 [Cancellation of the security]

§ 1. The security shall be cancelled if no valid and final decision is issued imposing a fine, forfeiture of material objects, compensatory/exemplary damages to the injured or for a public purpose or obligation to redress damage, and an action for these claims will not be brought within 3 months from the date of the judgment becoming final.

§ 2. If an action is brought within the time limit specified in § 1, the security shall remain in force, unless the court decides otherwise in civil proceedings.

#### Article. 295 [Provisional seizure]

§ 1. In the event of a crime referred to in Art. 291, the police may effect a provisional seizure of the movables of the suspected person, if there are grounds to fear that he might conceal them.

§ 2. The provisions of Art. 217-235 shall apply accordingly.

§ 3. Provisional seizure cannot apply to items that are not subject to execution.

§ 4. Provisional seizure shall be cancelled if no decision on securing property is issued within 7 days from the date it was effected.

The forfeiture and compensation measures are laid down in Chapter Va of the Penal Code.

5.2 In what way do victims of THB benefit from seized and confiscated assets of perpetrators of THB? Do the confiscated assets go directly to victims, to a compensation fund or scheme for victims of trafficking or to other programmes for the assistance or support of victims of THB? Please provide information on seizures and confiscations of assets in THB cases and how they were used.

The amendment to the Act of June 7, 2005 on State Compensation for Victims of Certain Crimes (Journal of Laws of 2016, item 325) enables compensation to be paid to victims in the event that the prohibited act was committed in the territory of the Republic of Poland to the detriment of a natural person, regardless of their citizenship. The only condition is a place of permanent residence in the territory of the Republic of Poland or another EU Member State.

Polish law does not know the possibility of transferring confiscated assets directly to the needs of crime victims. They constitute the income of the State Treasury. In the course of an investigation of THB, the Police seize property, which, at the request of the prosecutor's office, may be allocated to future compensation for victims of THB, however, the court decides whether or not to grant any claims in a criminal trial. In 2016-2019, the Polish Police in proceedings for THB secured property with a total value of PLN 11,523,548.

On the other hand, the exemplary damages may be paid to the Victims Assistance Fund and Penitentiary Assistance Fund - the Justice Fund - which finances various projects aimed at helping victims.

5.3 Is it possible to use plea bargaining or some other form of settlement in cases of THB? If yes, please provide the relevant provisions. What protections are in place for victims of THB to ensure that their right of access to justice and effective remedies is not compromised by the plea bargaining or settlement in the legal process?

According to Art. 387 of the Code of Criminal Procedure, the accused person has the right to submit a to convict him. Such a request may be granted with the consent of the prosecutor and the aggrieved party. It should be mentioned that THB is a crime and although plea bargaining is possible, it is possible only in terms of the sentence in the range of 3 to 15 years of imprisonment. The aggrieved party has an influence on the proposed penalty and other measures, as his opposition makes it impossible to reach a settlement.

Article 387. [Voluntary submission to criminal liability]

§ 1 Until the end of the first questioning of all the accused at the main hearing, the accused who was charged with an offense subject to a penalty not exceeding 15 years of imprisonment may submit a to convict him and order a specific penalty or punitive measure, order forfeiture or compensatory measure without conducting evidentiary hearing. The motion may also concern the issuance of a specific decision on the costs of the process. If the accused person does not have a defence counsel of choice, the court may, upon his request, appoint a defence counsel.

§ 1a. Before considering the motion to convict the accused, the court instructs the accused person about the content of Art. 447 § 5.

§ 2. The court may grant a motion to convict the accused when the circumstances of the crime and guilt do not raise doubts, and the objectives of the proceedings will be achieved despite the fact that the trial is not held in full; the motion may only be accepted **if the prosecutor does not object to it, as well as the aggrieved party has been duly informed about the date of the hearing and has been instructed about the possibility of the accused submitting such a motion.**

§ 3. The court may make the application of the accused subject to the change indicated by it. The provision of art. 341 § 3 shall apply accordingly.

§ 4. (*repealed*)

§ 5. In granting the application, the court may consider the disclosed evidence mentioned in the indictment or the documents submitted by the party.

5.4 What is the average duration of court proceedings in THB cases? In which circumstances are such cases given priority? Do you have a system to fast-track human trafficking-related prosecutions in order to improve the trial process and reduce the burden on victims and witnesses, including children? What safeguards are in place to ensure that judges deal with cases of THB without undue delay?

The Ministry of Justice does not conduct analyses distinguishing the duration of proceedings in cases of THB.

It should be noted that the Ministry of Justice collects statistical data on the functioning of the judiciary through various systems and tools, based on the Act of June 29, 1995 on Official Statistics. Selected information in the form of statistical tables obtained in annual cycles from the electronic database of the ICT system of the National Criminal Register provide data on finally convicted adults for crimes stipulated in the Penal Code and specific acts. Information from the National Criminal Register enables the extraction of data from a very wide range, e.g. type of crime, detailed sentence, sex, age, citizenship of finally convicted persons, place of crime (voivodeship, city, village). The second main source of data are statistical reports filled in by employees of common courts on a semi-annual and annual basis incrementally and cumulatively through an IT system dedicated to the needs of statistical reporting. In this way, information is obtained on persons tried and sentenced in the first instance before common courts (this is information collected through the template MS-S6 in the case of persons tried and sentenced in the first instance).

Bearing in mind the above-described sources of obtaining data by the Ministry of Justice on the crime of THB, it should be noted that it is not possible to answer this question. This is due to the limitations imposed by both the construction of the statistical tables and statistical forms provided by the National Criminal Register, thus it is not possible to extract all information on cases pending in courts in a given reporting period in detail. Consequently, the tables of the National Criminal Register and MS-S6 reports, which are the source of information on crimes of THB, do not provide information that would allow the calculation of the duration of court proceedings in this regard.

The applicable provisions of criminal procedure provide for a number of solutions that lead to the acceleration of pending proceedings. The amendment to the Code of Criminal Procedure of September 4, 2019 (the Act of July 19, 2019 amending the Act - Code of Criminal Procedure and certain other acts (Journal of Laws, item 1694)) introduced mechanisms to prevent procedural obstruction, e.g. through the possibility of conducting the proceedings in the absence of the accused, it gave up unnecessary interviews and reading all protocols and documents constituting evidence at hearings, and introduced the preparation of justifications of judgments on a form, according to strictly defined rules, thanks to which they became transparent and understandable. However, it should be noted that the duration of court proceedings is the result of many factors. First of all, it is determined by the type, nature and complexity of a given case, the scope of the evidentiary proceedings, the length of the evidence to be assessed, difficulties related to the taking of individual evidence, including long waiting for an opinion by court experts, and the absence of witnesses. The efficient course of court proceedings is also influenced by organizational, technical, personnel and financial issues related to the functioning of the judiciary. This also applies to the full-time staffing of court secretariats, support by assistant judges, as well as the burdening of judges with cases.

At the same time, the binding provisions of the criminal procedure serve to protect the aggrieved victims of THB, providing for numerous procedural rights, including the right to participate as a party, the right to an attorney and translator/interpreter, and prevent their secondary victimization, e.g. questioning pursuant to art. 185a-c of the Code of Criminal Procedure or under Art. 316 § 3 of the CCP.

5.5 How do you ensure that sanctions for THB offences are effective, proportionate and dissuasive?

The court follows the sentencing directives set out in Art. 53 of the Penal Code.

#### **Article 53 [General directives]**

§ 1 The court shall impose a penalty at its discretion, within the limits provided for by law, ensuring that its ailment does not exceed the degree of guilt, taking into account the degree of social harmfulness of the act and taking into account the preventive and educational goals to be achieved in relation to the convicted person, as well as needs in the field of shaping the legal awareness of the society.

§ 2. When imposing a penalty, the court shall take into account, in particular, the motivation and behaviour of the perpetrator, especially in the event of committing a crime to the detriment of a helpless person due to age or health, committing a crime together with a minor, type and degree of violation of the perpetrator's obligations, type and the size of the negative consequences of the crime, the perpetrator's personal characteristics and conditions, the way of life before committing the crime and behaviour after its commission, in particular, trying to redress the damage or compensate in a different form to the social sense of justice, as well as the victim's behaviour.

§ 3. When imposing a penalty, the court also takes into account the positive results of the mediation carried out between the aggrieved party and the perpetrator or a settlement between them in the proceedings before the court or the prosecutor.

## 6. Ex parte and ex officio applications (Article 27)

6.1 What is the procedural position of a victim of THB in criminal proceedings? What steps are taken to assist victims of THB, including children, to enable their rights, interests and views to be presented and considered during the criminal proceedings against offenders? Who is entitled to assist victims of THB in court? Can victims of THB be represented by NGOs in criminal proceedings?

A potential victim of THB in criminal proceedings has the status of an aggrieved party and, as mentioned in point 1, before the first questioning, he/she is given an instruction on the rights of the aggrieved party (translated into the language he/she uses), and before each action he/she is reminded of the victim's rights. **It is a good practice that the instruction on non-code rights is included in the protocol.** In relation to children, a guardian is appointed who participates in procedural activities, represents them and secures their rights. It is a good practice that the guardian is a representative of a non-governmental organization specializing in issues in the area of THB (usually implementing the programme of the National Intervention and Consultation Centre). If the aggrieved party has indicated a third party to participate in the proceedings, e.g. a person from an NGO, that person may participate in a criminal trial and this is done pursuant to Art. 299a of the CCP - "during the activities with the participation of the aggrieved party in the preparatory proceedings, a person indicated by him may be present, if this does not prevent the activities or does not significantly hinder them". Representation in court follows the same principle. At each stage of the criminal process, as indicated above, the victim may use the assistance of an attorney (attorney-at-law or legal adviser).

6.2 If the authorities fail to discharge their obligation to effectively investigate and prosecute suspected cases of trafficking, what possibilities for redress exist for victims of THB and their families? To what extent have victims of trafficking, including children, access to complaint mechanisms, such as Ombudsman institutions and other national human rights institutions?

According to the principle of legality, authorities are obliged to prosecute crimes under public prosecution. Therefore, there is no legal possibility of non-compliance with the indicated obligation.

The competences of the Commissioner for Citizens' Rights and the Ombudsman for Children in criminal proceedings should be noted.

According to Art. 521 of the CCP:

Art 521§ 1 The Public Prosecutor General and the **Commissioner for Citizens' Rights** may bring a cassation appeal against any final court decision concluding the proceedings.

§ 2. The **Ombudsman for Children** may bring a cassation appeal against any final judgment of the court concluding the proceedings, if, by issuing the judgment there has been a violation of the rights of the child.

§ 3. The authorities referred to in § 1 and 2, have the right to request inspection of court and prosecutor's files as well as files of other law enforcement agencies after the end of the proceedings and issuing the decision.

6.3 What reporting and complaint mechanisms are in place for victims of trafficking who are in an irregular migration situation and/or in detention?

The above is subject to judicial review. According to Art. 246 of the Code of Criminal Procedure § 1. "The detained person shall be entitled to lodge a complaint with the court. In the complaint, the detained person may demand that the legitimacy, legality and regularity of his detention be examined". Persons with irregular migration status, in a situation where they were placed in a detention centre for illegal stay or illegal crossing of the state border of the Republic of Poland, in the case of a presumption of being a victim of THB, are immediately released from this centre. In such a situation, a certificate is issued pursuant to Art. 170 of the Act on Foreigners on the presumption of being a victim, and pursuant to art. 406 (1) (4) of the cited act, in the event of such a certificate being issued, a decision to release him or her from arrest or a guarded centre is issued immediately or at the request of the foreigner.

6.4 Can victims of THB bring claims against the State or its officials for: i) direct involvement in THB; ii) failure to prevent THB or protect them from THB? Have there been cases where State agents or persons acting on behalf, or at the direction, of the State were found responsible for engagement in THB and/or failure to prevent it or protect victims from THB by third parties? Please provide information on any prosecutions against diplomatic and consular staff for alleged involvement in THB.

According to Art. 77 sec. 1 of the Constitution of the Republic of Poland, everyone shall have the right to compensation for any harm done to him by any action of an organ of public authority contrary to law.

Every person who considers himself a victim of a tort caused by a state authority - including a public official acting on his behalf (also by failing to fulfil his legal official duties) - has the right to a civil claim for damages against the State Treasury represented by a competent *statio fisci*, after demonstrating all premises in favour of liability for damages (Art. 417 et seq. of the Civil Code).

There have been no reports of Polish diplomatic and consular employees participating in the practice of THB, against which appropriate notifications to law enforcement agencies would be made.

With regard to cases of THB within the diplomatic corps in the Republic of Poland, in order to counteract the slave labour of domestic workers of members of diplomatic missions, consular offices and international organizations, on April 1, 2014, the Ministry of Foreign Affairs introduced new procedures for the employment of this category of employees. Currently, the employment of domestic workers who are not Polish citizens or do not have permanent residence in Poland takes into account the recommendations developed within the OSCE.

Information about the employment procedure, among others in Poland, for domestic helpers, see the publication of the OSCE Special Representative for Combating THB: *Handbook, How to prevent human trafficking for domestic servitude in diplomatic households and protect private domestic workers* (<http://www.osce.org/handbook/domesticservitude?download=true>). In the opinion of the Ministry of Foreign Affairs, the current mechanisms of employing domestic workers significantly contribute to the protection of the aforementioned category of workers and the improvement of living and working conditions, and also allow for the early detection of possible irregularities and taking appropriate actions.

In recent years, the Ministry of Foreign Affairs has noted two cases that may have the features of phenomena that are of interest to GRETA. The first concerned two citizens of the Republic of the Philippines employed as domestic workers by diplomats from the State of Kuwait (2014), and the second concerned a citizen of the Syrian Arab Republic employed by a diplomat from the Kingdom of Saudi Arabia (2017). In both cases, the Ministry of Foreign Affairs exerted significant diplomatic pressure to force the



abovementioned embassies to discontinue this type of practice and undertake activities in cooperation with non-governmental organizations to provide care to the victims.

6.5 What steps have been taken to strengthen and maintain the capacity of prosecutors to effectively prosecute trafficking cases?

The National School of Judiciary and Public Prosecution in the period from 2018 to 2020 organized the following training courses to strengthen and maintain competences, among others, of prosecutors in the scope of effective prosecution in cases of THB:

- in 2018: Problems of THB, ref. K10/18  
Addressees: judges, judge's assessors, prosecutors and prosecutor's assessors  
65 people were trained.  
Detailed issues: analysis of the phenomenon of THB in Poland, Europe and the world; substantive approach to the crime of THB in terms of national and international law; forms of exploitation of victims of human trafficking; legal situation of a victim of THB in Polish criminal law compared to international standards; methodology of conducting preparatory proceedings in cases related to THB; international cooperation of an operational and procedural nature in pending criminal proceedings, barriers preventing effective prosecution of THB; THB in the jurisprudence of national and international courts.
- in 2019: Problems of THB, ref. K17/19  
Addressees: judges of regional courts, prosecutors of regional public prosecutor's offices - coordinators for THB  
61 people were trained.  
Detailed issues: substantive legal approach to the crime of THB in terms of national and international law; forms of exploitation of victims of THB, correct qualification of the facts; the aggrieved person as a victim of THB, his situation in Polish criminal law compared to international standards; methodology of interviewing the victim of THB; methodology of conducting preparatory proceedings in cases related to THB, efficient case management; international assistance in cases of THB.
- in 2020: Problems of THB – the victim as a personal source of evidence, ref. no. K17 / 20  
Addressees: regional court judges adjudicating in criminal divisions, prosecutors of regional public prosecutor's offices - coordinators for THB  
26 people were trained  
Detailed issues: methodology of interrogating a victim of THB; assessment of the credibility of the testimony of a victim of THB; the interviewer's competences and cultural background, equality approach and the ability to take perspective as important interpersonal resources of the interviewer; consequences of cultural differences in verbal and non-verbal communication during an interview.

As part of international cooperation, the National School of Judiciary and Public Prosecution has enabled Polish prosecutors to participate in the following international trainings on THB in the period from 2018 until now:

- training entitled: "International Judicial Cooperation in Criminal Matters: Practical Case-Based Simulation on the Fight against THB and Sexual Exploitation", ref. M9 / A20 / 19, which took place on November 20-22, 2019 in Vilnius; 9 people from Poland participated in the training, including 1 prosecutor.
- training entitled: "Training on Financial Investigations and Asset Recovery for the THB Crimes", ref. M9 / A9 / 19, which took place on June 3-7, 2019 in Hoofddorp; 3 people from Poland, including 2 prosecutors, participated in the training.

- training entitled: "Trafficking in human beings", ref. M9 / B2 / 18, which took place on May 17, 2018 in Prague; 2 people from Poland participated in the training, including 1 prosecutor.

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

7.1 Please indicate what measures are taken to ensure that victims of THB, including children, are not punished for their involvement in unlawful activities (criminal, civil, administrative offences), to the extent they were compelled to do so, providing any concrete examples of their implementation.

The issue of non-punishment of victims of THB is monitored in the pragmatics of the Border Guard's official activities. In particular, in 2015, a letter was sent to the Border Guard's organizational units on dealing with victims of THB who could have committed a prohibited act at the same time. For this reason, officers of the Border Guard, performing official and further procedural activities with the participation of a victim of THB, are obliged to determine all the circumstances of the event, and in a situation where a person has committed a prohibited act, to determine whether the act is directly related to his exploitation.

The issue of proceedings with a victim of THB was systematized in the document entitled "**Algorithm of Conduct of Law Enforcement Officers in Case of Revealing a Crime Consisting in Trafficking in Human Beings**", developed under the leadership of the Ministry of Interior and Administration (attached). In particular, there is a provision regarding the matter of non-punishment of victims:

*"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. Please note the following:*

*art. 26 of the Council of Europe Convention on Action against THB, drawn up in Warsaw on May 16, 2005 (Journal of Laws of February 9, 2009): " Each Party shall provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so."*

*art. 8 of Directive 2011/36 / EU of the European Parliament and of the Council of April 5, 2011. " Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2."*

There is no general non-punishment provision in Poland. Such acts are considered individually in terms of assessing the possibility of behaving in accordance with the law, as part of the countertype of the state of greater necessity and as part of the social harmfulness of the act.

7.2 Can persons who have breached national laws in the course, or as a consequence, of being trafficked have access to remedies for victims of trafficking, including State compensation?

Victims of THB who violated national law in the course, or as a consequence, of being trafficked under Art. 189a § 1 of the Penalty Code are not excluded from the possibility of claiming damages from the perpetrators of the crime, and are not deprived of the possibility of being deemed to be the aggrieved party.

As regards state compensation, the conditions for granting it and its refusal are regulated by the Act of July 7, 2005 on State Compensation for Victims of Certain Prohibited Acts. According to Art. 7a above of the act, compensation is not granted or is granted in a reduced amount, in proportion to the degree of the victim's contribution to the commission of the prohibited act referred to in Art. 2 point 1 of the above act. Compensation shall not be granted if the victim was an accomplice of the prohibited act which results in his right to compensation, or if he or she accepted the risk of suffering the consequences of the prohibited act referred to in Art. 2 point 1 of the above act.

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

8.1 How are victims of THB protected in practice against potential retaliation or intimidation before, during and after legal proceedings? How is the assessment of the needs for protection performed and who recommends the application of the protection measures? Who is responsible of the implementation of the protection measures?

A victim of human trafficking using the assistance offer of the National Intervention and Consultation Centre, in particular, is guaranteed a safe place of refuge. The location of the shelter is unknown to law enforcement and judicial authorities. Correspondence addressed to the victims is delivered through the non-governmental organization implementing the National Intervention and Consultation Centre programme.

In Poland, the Act of November 28, 2014 on the Protection and Assistance for the Victim and the Witness (Journal of Laws of 2015, item 21) is in force. **It is a comprehensive regulation devoted to the protection of victims and witnesses participating in criminal and penal fiscal proceedings.**

The Act defines the principles, conditions and scope of application of protection measures and assistance addressed to the victim and the witness and their relatives in the event of pending or completed criminal proceedings (fiscal penal proceedings), if there is a threat to their life or health. Statutory regulations also apply to victims of human trafficking.

The decision on granting protection is made at the request of the person concerned or, with the consent of the victim or the witness, at the request of the court or the prosecutor's office.

The Act introduced instruments for the protection and assistance of the victim and the witness in connection with criminal proceedings. They are:

- protection during the proceedings;
- personal security;
- assistance in changing the place of residence and related financial assistance to meet basic living needs, housing needs or to obtain healthcare services.

Means of protection and assistance are provided by the Provincial (Capital) Police Commander in whose district the victim, the witness or their relatives are staying, to whom the protection or assistance measure is to be applied. The Border Guard does not implement witness protection measures. In this regard, an appropriate application is submitted to the locally competent Provincial Police Headquarters.

The application of individual protection and assistance measures is possible according to the degree of threat to the life or health of the victim or the witness, after obtaining his consent.

The act facilitated access to psychological assistance for victims, provided by the Victim and Post-Penitentiary Assistance Fund. Coordinators of Police activities in the field of the protection of victims and witnesses were appointed at the provincial Police headquarters, ensuring cooperation of Police units in the issue of providing protection and providing psychological assistance.

As part of the changes to the Code of Criminal Procedure, the Act introduced additional procedural measures to protect victims and witnesses, including the anonymization of their address data. It consists in not including data on the place of residence and place of work of persons participating in the procedural acts. These data are included in the appendix to the sole information of the authority conducting the proceedings.

Moreover, the provisions of the act extended the possibility of being interviewed by videoconference in situations where there is a risk of an embarrassing effect of the presence of the accused on the witness.

Art. 4. 1. Protection for the duration of a procedural act may be granted in the event of a threat to the life or health of the protected person.

Protection for the duration of the procedural act may consist in the presence of Police officers in the vicinity of the protected person during the procedural act with his participation, on the way to the place of this act or on the way back.

Art. 5. 1. Personal protection may be granted in the event of a high degree of threat to the life or health of the protected person in connection with criminal or penal fiscal proceedings, if there is a need for long-term protection, in cases whose examination in the first instance falls within the competence of a district court, and in cases of offenses referred to in article 1. 197 § 1 and 2 and article 207 of the Act of 6 June 1997 - Penal Code, and in duly justified cases also in other cases.

2. Personal protection may consist of:

- 1) permanent presence of Police officers in the vicinity of the protected person;
- 2) temporary presence of Police officers in the vicinity of the protected person;
- 3) temporary observation of the protected person and the environment in which he is;
- 4) indicating to the protected person safe places to stay and the time and safe manner of movement;
- 5) specification of the scope, conditions and manner of contact of the protected person with other persons.

Art. 6.1. Assistance in the scope of changing the place of stay may be provided in the event of a high degree of threat to the life or health of the protected person in connection with criminal or penal fiscal proceedings, if there is a need for long-term protection and other protection and assistance measures may be insufficient in cases which are considered in the first instance within the jurisdiction of a regional court, and in duly justified cases also in other cases.

2. Assistance in the field of changing the place of stay consists in undertaking organizational activities enabling the protected person to stay in a place other than the current one by:

- 1) providing a temporary housing unit that ensures the satisfaction of basic living needs;
- 2) assistance in renting an apartment;
- 3) assistance in moving or arranging;
- 4) assistance in dealing with important life matters related to the change of the place of stay.

Art. 7. 1. A person who has been assisted in changing the place of stay, who has no sources of income or is unable to work due to a threat to life or health, may be granted financial assistance for:

- 1) meeting basic life needs;
- 2) covering all or part of the costs of temporarily providing of a flat or renting of a flat;
- 3) covering the costs of obtaining healthcare benefits, referred to in article 15 sec. 2 of the Act of 27 August 2004 on Health Care Services Financed from Public Funds (Journal of Laws of 2008, No. 164, item 1027, as amended), if the person is not subject to compulsory health insurance.

2. The amount of the financial aid referred to in sec. 1 (1) shall be determined taking into account the scope and the nature of the assistance and protection measures provided as well as the remuneration of

the protected person to date. Financial assistance does not exceed PLN 3,500 per month, and PLN 2,000 for a minor.

3. The fees and expenses referred to in article 1. 2 clause 1 point 8 of the Act of June 21, 2001 on the Protection of Tenant's rights, Communal Housing Stock and the Civil Code Amendments (Journal of Laws of 2014, item 150) shall be deducted from the financial aid referred to in sec. 1 (1).

4. The value of compensation for damage caused in this apartment or flat shall be deducted from the financial aid referred to in sec. 1 (1) and (2).

5. The financial assistance referred to in sec. 1 (3), may be granted up to the amount of the monthly voluntary social insurance contribution calculated from the amount corresponding to the average monthly salary referred to in article 68 sec. 4 (1) of the Act of August 27, 2004 on Health Care Services Financed from Public Funds.

6. If the protected person is provided with assistance, referred to in sec. 1 (3), the competent Police commander may indicate doctors and medical facilities that can provide him with health care.

7. The financial aid may be paid in cash against receipt, postal order, by bank transfer or otherwise agreed with the protected person.

8.2 How do you ensure that victims are provided with realistic and practical information about the progress of the case and whether the perpetrator has been detained or released?

When the Police reveal a victim of THB, the victim is contacted directly with officers participating in the activities, i.e. trained officers dealing with THB (human trafficking coordinator). At a later stage, if the victim has been transferred into the care of the National Intervention and Consultation Centre or if the victim reports directly to the National Intervention and Consultation Centre, such contact with the law enforcement authorities takes place via the non-governmental organization. This method of contact with law enforcement authorities is particularly practiced in relation to victims who are foreigners due to the fact that non-governmental organizations provide them with comprehensive counselling, psychological and linguistic care. It is also possible to contact a Border Guard officer, most often the coordinator for THB, or an officer who performed activities with the victim.

8.3 How do you ensure respect for the victims' right to safety, privacy and confidentiality during court proceedings?

In dealing with a victim of THB, Police and Border Guard officers use the "**Algorithm of Conduct of Law Enforcement Officers in Case of Revealing a Crime Consisting in Trafficking in Human Beings**". The document has now been updated as part of the work of the Victim Support Working Group, operating within the Team for Counteracting THB, in line with the provisions of the National Action Plan. The document specifies the procedure of law enforcement agencies. The first step in determining the safety of the victim is to separate them from the perpetrators and, if necessary, to provide medical / psychological support.

Another guiding principle is to take actions in such a way that the victim does not suffer a secondary victimization. In practice, this means that law enforcement agencies strive to carry out procedural actions with the participation of a victim of THB in such a way as to avoid duplicating procedural actions in the future. It is recommended that the victim of THB be heard in court at the stage of the investigation. This is stated in Art. 316 § 3 of the Code of Criminal Procedure "If there is a risk that a witness cannot be heard at a hearing, a party or a prosecutor or another body conducting the proceedings may request the court to be heard by the court".

With regard to children of victims of THB, in order to ensure security, confidentiality and privacy, a special procedure is used: one-time interviews, in a special "safe room", recorded with audio-video and with the participation of a psychologist. This is stated in Art. 185 a-c of the CCP.

As also mentioned in point 8.1, the Act of 28 November 2014 on the Protection and Assistance for the Victim and the Witness is a comprehensive regulation specifying the principles, conditions and scope of application of protection and assistance measures for the victim and the witness and their relatives. Therefore, the group of persons covered by such assistance is not limited to one category of crimes and concerns a broad spectrum of cases.

8.4 In how many cases were witness protection measures used for the protection of victims and witnesses of THB, including children? If witness protection measures/programmes are not applied to victims of trafficking, what are the reasons?

In one case (conducted by the Border Guard in 2018), a witness protection measure in the form of personal protection was applied to one victim (and his family). In other cases, there were no factual grounds for applying the above-mentioned protection measures.

As of September 15, 2020, the Polish Police issued 1256 orders on granting assistance and protection measures on the basis of the above-mentioned Act in 2016-2020. The above number applies to all orders issued in this period without division into specific types of crimes on the basis of which they were issued.

8.5 When victim protection is provided by NGOs, how are NGOs resourced and supported to perform this function and how do the police and the prosecution co-operate with NGOs?

The cooperation of the police with non-governmental organizations takes place on two levels - working and advisory (training). In the working dimension, police officers who carry out their activities in the event of revealing a THB victim present him with assistance offer from non-governmental organizations and inform the non-governmental organization (most often the National Intervention and Consultation Centre) if the person wants to use the help of such an organization. Cooperation at the advisory level consists in the participation of, inter alia, in joint teams, working groups appointed to work within various inter-ministerial groups, as well as during joint training, workshops, conferences or preventive campaigns.

Cooperation between non-governmental organizations and the Border Guard is also based on similar principles.

8.6 How do you ensure that child victims of THB are treated in a child-sensitive way and are provided with protection before, during and after judicial proceedings in accordance with the Council of Europe Guidelines on Child Friendly Justice? Are interviews with children conducted in specially designated and adapted spaces by professionals trained to interview children? What measures are taken in order to ensure a limited number of interviews?

In dealing with a minor victim of THB, Police and Border Guard officers use the "**Algorithm of Conduct of Law Enforcement Officers in the Event of Identification of a Minor Victim of a Crime of Human Trafficking**" (the so-called "**Algorithm for Children**", attached). The document, like the "**Algorithm for Adults**", has now been updated as part of the work of the victim support working group, operating within the Team for Counteracting THB, in accordance with the provisions of the National Action Plan. The document defines the procedure of law enforcement proceedings against children. One of the elements of determining whether an officer is dealing with a victim of THB is questioning the minor.

If, during the questioning, it is presumed that a minor may be a victim of exploitation within the meaning of the definition of THB, a victim of a sexual offense, other form of violence (e.g. harassment) or committed with the use of violence or an unlawful threat, and has not reached the age of 15 at the time of the procedural action, the inquiry should be interrupted as soon as possible. Such a regulation also applies to a minor who has reached the age of 15 but has not attained the age of 18, irrespective of the type of exploitation related to THB, if the act of questioning could have a negative impact on his mental state. The inquiry is also interrupted in a situation where a minor over 15 years of age may have been a victim of a crime against sexual freedom under Art. 197-199 of the Penal Code.

In such a situation, the Police / Border Guard officer is responsible for particularly careful gathering of other information and securing any evidence that may be used to identify the minor as a victim of THB or another crime indicated above.

An officer of the Police / Border Guard immediately contacts the Prosecutor in order to initiate the procedure of interrogating a minor under Art. 185 a of the Code of Criminal Procedure (one-off, recorded interview in a safe room, with the participation of an expert).

It should be noted that so far regular actions have been taken to ensure better access to justice and support for victims - victims of crimes, including victims of THB.

On January 27, 2014, the *Act amending the Act - Penal Code and the Act - Code of Criminal Procedure entered into force, as well as the ordinance of the Minister of Justice on the Manner of Preparing an Interview Pursuant to Art. 185a-185c of the Code of Criminal Procedure and the Conditions to Be Met by the Rooms Intended for Such Interviews*.

Both legal acts relate, inter alia, to protection of minor victims of THB with a one-off interview and to child friendly interview rooms. The obligation to record the course of the interview entered into force on 27 January 2015, and the obligatory interview with a minor victim of a THB in a child friendly interview room located at the seat of the court or within its jurisdiction, entered into force on 27 July 2015.

In line with the above, the interviews with minor victims or minor witnesses of crimes in certain types of cases take place in a special mode specified in the provisions of Art. 185a of the CCP (victim) and 185b of the CCP (witness). Interview in child friendly rooms applies to the need to interview children up to 15 years of age and minors up to 18 years of age, when there is a justified fear that the questioning in other conditions could have a negative impact on their mental state. The rule is that the aggrieved party, who at the time of the interview is under 15 years of age, is interviewed as a witness only if his testimony may be of significant importance for the resolution of the case, and only once, unless important circumstances come to light, the clarification of which requires another interview, or it is requested by the accused who did not have a defence counsel during the first interview of the aggrieved party. The court conducts the hearing at a session with the participation of an expert psychologist. The prosecutor, defence counsel and the victim's representative or an adult person indicated by the victim have the right to participate in the

interview. If the accused person, notified of this action, does not have a defence counsel of choice, the court shall appoint an ex officio defence counsel. At the main hearing, the recorded image and sound of the interview is played and the protocol of the interview is read.

At the same time, it should be noted that pursuant to the *Act of 19 July 2019 amending the Act - Code of Criminal Procedure and certain other acts* (Journal of Laws item 1694), which entered into force on October 5, 2019, provisions on the special procedure for interviewing victims and witnesses referred to in Art. 185a-185d of the CCP were amended. An instructional deadline for interviewing a minor victim was introduced, referred to in Art. 185a of the Code of Criminal Procedure, which should take place immediately, not later than within 14 days from the date of receipt of the request for interviewing by the court. The aim of this proposal is to minimize the traumatic experiences and mental discomfort of juvenile victims.

Moreover, it should be pointed out that in cases of crimes committed with the use of violence or unlawful threats or specified in chapters 23 (crimes against freedom), 25 (crimes against sexual freedom and decency) and 26 (crimes against the family and guardianship) of the Penal Code, a minor witness, who at the time of the interview is 15 years old, shall be interviewed in the manner specified in art. 177 § 1a of the Code of Criminal Procedure (in the mode of videoconference), when there is a well-founded fear that the direct presence of the accused during questioning could have an embarrassing effect on the testimony of a witness or have a negative impact on his mental state. One-time questioning by a court in a child friendly interview room covers also victims of the crime against sexual freedom and decency (Articles 197-199 of the Penal Code) at any age.

The *Act of July 19, 2019 amending the Act - Code of Criminal Procedure and certain other acts* (Journal of Laws item 1694), which entered into force on October 5, 2019, clarified the method of interviewing as a witness a victim who at the time of interviewing was 15 years old, in cases of offenses specified in Art. 197-199 of the Penal Code, in such a way as to equate his guarantees with the victims referred to in Art. 185a of the CCP.

**In this regard, Art. 185c of the Code of Criminal Procedure was supplemented with the following regulations:**

- the aggrieved party is questioned as a witness only when his testimony may be of significant importance for the outcome of the case, and only once, unless important circumstances come to light, the clarification of which requires another questioning;
- the interview is conducted with the participation of an expert psychologist;
- the interview is carried out immediately, not later than within 14 days from the date of receipt of the request;
- a statutory representative or a person under whose constant care the victim remains or an adult indicated by the aggrieved person may also be present at the interview, if this does not restrict the interviewee's freedom of expression.

It should be noted that in 2019 there were 296 child friendly places in district and regional courts throughout the country. Child friendly interview rooms are also located in the buildings of Police stations, prosecutor's offices and non-governmental organizations.



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

9.1 What budget, staff and resources, including technical means, are put at the disposal of law enforcement bodies specialised in combating and investigating THB?

Not all bodies that specialize in combating THB have separate units for this purpose. The National Public Prosecutor's Office does not have a separate unit.

On the other hand, in the Police, by the decision of the Police Commander in Chief of August 5, 2006, the first unit in the structure of the National Police Headquarters dealing with THB was established in Poland. In the following years, the place of operation and the name of the unit for combating THB were changed several times, and finally, on January 22, 2014, the first in Poland Department for Combating THB was established in the structures of the Criminal Bureau of the National Police Headquarters. Then, by Order No. 14 of the Police Commander in Chief of September 22, 2016, Teams for Combating THB were established at the Provincial Police Headquarters and the Warsaw Police Headquarters; and in the Boards of Central Investigation Bureau of Police human trafficking coordinators were instituted. Department for Combating THB consists of 9 officers and 1 civilian employee, Teams for Combating THB at Provincial Police Headquarters and the Warsaw Police Headquarters - 60 Police officers, Central Investigation Bureau of Police - 18 Police officers - coordinators. Moreover, in each Municipal, Poviast and District Police Headquarters positions of coordinators in the criminal service and the prevention service were created. In all voivodeships there are also so-called Voivodeship Teams for Counteracting THB.

In the Border Guard, in each of its Branches (9 organizational units) there are so-called coordinators for combating and preventing THB, located in the operational and investigative division (dedicated to combating the so-called "cross-border crime"). These officers are responsible for coordinating and providing substantive assistance in the situation of victim identification by local units. At the central level, at the Border Guard Headquarters, in Division I of the Operational and Investigation Board there is Section I, which deals with issues of illegal migration and THB, and a coordinator for THB. In the field, the above-mentioned coordinators have their deputies in the number depending on the needs of a given BG Branch. Coordinators and their deputies are subject to training and take part in workshops improving their qualifications. Moreover, on a cascade basis, coordinators conduct training for officers of local units.

The Border Guard has statutory powers to combat human trafficking and to prosecute perpetrators of this crime. The above results from the Act on the Border Guard under Art. 1 clause 1 point 4 j. In cases involving THB, the Border Guard may use operational methods, including in the form of the possibility of operational control (art. 9 e of the above-mentioned act) and controlled purchase (art. 9 f of the above-mentioned act). On the other hand, pursuant to Art. 312 of the Code of Criminal Procedure, the Border Guard has all procedural powers (identical to the powers of the Police) regarding the prosecution of acts in accordance with its competence specified in the BG Act, and therefore in particular to combat the crime of human trafficking.

9.2 If your country has specialised units for financial investigations, financial intelligence units and asset and recovery units, please describe whether and how are they used in investigating and prosecuting THB cases. Which special investigation techniques do these units use? Which public and/or private bodies do these specialised financial investigation units co-operate with in relation to THB cases?

Apart from mentioned in point 9.1 specialized police units dealing with combating THB, the Polish Police also includes Departments dealing with combating economic crime and corruption (at the level of the National, Voivodeship and Municipal Police Headquarters) and at the level of the National Police Headquarters, the Property Recovery Department (and 2 Departments at the voivodeship level). There are no separate financial investigation and financial intelligence units within the police structure.

The provisions on the use of special investigative measures are regulated in the Act of April 6, 1990 on the Police (Journal of Laws of 1990, No. 30, item 179), and in particular in Art.

**Article 19.1** In case of preliminary investigation carried out by the Police to prevent, detect, establish perpetrators and to obtain and record evidence of the perpetrators prosecuted on indictment, of intentional crime:

2) defined **in art. 189a of the Penal Code human trafficking**; when other measures have turned out to be ineffective or will be useless, the district court may, by way of a decision, order an operational control, upon a written request of the Police Commander in Chief or the Commander of Central Investigation Bureau of Police, submitted after obtaining the written consent of the Public Prosecutor General, or at a written request of the provincial Police commander, submitted after obtaining the written consent of the district prosecutor competent for the seat of the requesting Police authority.

1a. The application referred to in sec. 1 shall be presented together with the materials that justify the need to apply operational controls.

2. The decision referred to in sec. 1 is issued by the district court with territorial jurisdiction over the seat of the Police authority submitting the request.

**Art.19a** In cases on crime defined in Article 19 (1), criminal police activities aimed to check previously obtained reliable information about the crime and to establish perpetrators and obtain evidence of crime may consist in secret purchase, sale or takeover of objects relating to crime, subject to forfeiture, or the manufacture, possession, transportation or turnover of which is prohibited, as well as to acceptance or giving of a financial benefit.

2. Preliminary investigations referred to in Paragraph 1 may also involve a proposal to purchase, sell or takeover objects from crime, that are subject to forfeiture or objects, manufacture, possession, transport or sale of which is illegal, as well as the acceptance or giving of financial benefit.

**19.b Ordering a secret surveillance of the manufacture, transport, storage and turnover in crime objects.** To document crimes referred to in Article 19 (1) or establish the identity of those involved in the crimes or take over the objects of crime, the Police Commander in Chief, the Commander of Central Investigation Bureau of Police or the Voivodship Police Commander may institute a secret surveillance of the manufacture, transport, storage and turnover in crime objects, provided this does not involve a threat to human life or health.

2. The district prosecutor competent for the seat of the Police authority in charge of the activities shall be notified of such institution immediately. The prosecutor may order the abandonment of the activities at any time.

It is possible to use these methods in cases that do not concern THB in conjunction with participation in an organized criminal group. Art. 258 of the Penal Code penalizing participation in an organized criminal group is listed in Art. 19.1 of the Police Act as one of the group crimes that enable the application of operational control. According to the guidelines of the General Prosecutor's Office, despite the existing legal regulations, it is not possible to apply controlled purchase in cases of THB. According to the draft of the National Action Plan, the regulations are planned to change so that this working method can be used in the future.

**Art. 22. 1. Assistance of third parties (including informants)**

1. While performing its tasks, the Police may be assisted by persons who are not police officers. It shall be prohibited to disclose the particulars of persons who assist the Police in preliminary investigation activities.

2. Persons who are not police officers may be remunerated for the assistance referred to in section 1. The police, as part of their activities, including investigations of human trafficking, cooperate with many institutions of the financial sector, both public and private. The financial institutions in the state sector include the General Inspector of Financial Information, the National Bank of Poland and the National Tax Administration. Among private sector entities, these include banks and foreign money transfer companies such as Money Gram and Western Union.

The Border Guard does not have separate specialized units for conducting financial investigations. However, in each type of case conducted, the perpetrators' assets and possible capital flow are determined based on their competences / rights, in order to later seize the property against the perpetrator's penalties, compensation damages for the victims or compensation.

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

10.1 How does your country co-operate with other countries to enable victims of THB to realise their right to redress and compensation, including recovery and transfer of unpaid wages after they leave the country in which the exploitation occurred?

In a situation where the victim has suffered a serious damage to health, a disturbance to the functions of an organ of the body or a health disorder lasting longer than 7 days or has died, the entitled person may obtain state compensation (answer to question 4.2.). The cooperation of auxiliary and adjudicating bodies in the Republic of Poland with auxiliary and adjudicating bodies in other EU Member States is regulated in Chapter 3 by the Act of 7 July 2005 on State Compensation for Victims of Certain Prohibited Acts (Article 16 et seq.).

10.2 Has your country co-operated with other countries in the investigation and prosecution of THB cases through financial investigations and/or Joint Investigation Teams? Please provide statistics on such cases and examples from practice.

The exchange of international information takes place through the Polish Liaison Officers, Liaison Officers accredited in Warsaw and through Interpol and Europol. In the event of an exchange of evidence, it is necessary to make a request for an EIO / international legal aid or to exchange information within the JITs.

In cases of THB, the Polish Police have set up three joint investigation teams, the so-called JITs. All these cases were initiated by the British side and concerned the use of Polish citizens in Great Britain for forced labour by Roma people of Polish origin, i.e. "Roma groups". These cases were conducted together with officers from the Dolnośląskie, Kujawsko-Pomorskie and Lubuskie voivodeships.

In 2013-2014, the Border Guard conducted a Joint Investigation Team (JIT) with the Romanian side, concerning a joint investigation into the case of THB from the area of use for begging of citizens of Romania of Roma origin.

On the other hand, a JIT is currently being conducted with the British and Cypriot parties concerning THB in the area of forced marriages of convenience and organizing illegal migration.

10.3 How many mutual legal assistance requests and/or European Investigation Order have you made in THB cases and what was their outcome?

In one of the cases in the area of exploitation to forced labour, 2 European Investigation Orders (EIOs) were issued, addressed to the Swedish side. The Swedish side carried out activities in the form of findings of economic entities (1 EIO) and interviews of the owners (2 EIO).

Currently, search is carried out via INTERPOL with a "red notice" - 1 suspect of THB.

The Ministry of Justice does not keep statistics that would allow to determine whether requests for legal aid addressed to Polish judicial authorities from foreign countries were related to crimes covered by CETS 197, and whether such requests came from Polish courts and prosecutors' offices.

10.4 What forms of international co-operation have proven to be particularly helpful in upholding the rights of victims of trafficking, including children, and prosecuting alleged traffickers?

As part of international cooperation, the police **cooperate with EUROPOL** under EMPACT THB, whose national expert is a representative of the police (joint expert for the Border Guard and the Police), in addition, information exchange and analytical files are exchanged within AP Phoenix via the SIENA mail. The police also participate in cyclical actions to combat human trafficking in the area of exploitation in prostitution, forced labour and begging, the so-called EMPACT Action Day and Large Scale Action Days (EAD, LSJAD) organized with the participation of EUROPOL.

The police also **cooperate with foreign liaison officers** accredited in Poland, incl. **Great Britain, the Netherlands, Romania, Germany and Norway**.

As part of international cooperation, the Border Guard conducts on-going working **cooperation with EUROPOL**, consisting in the exchange of information as part of analytical files, including in particular FP THB. Moreover, the Border Guard participates in regular Joint Action Day campaigns (e.g. "Dragon", "Archimedes", "LS JAD" and others), organized and coordinated by EUROPOL, and consisting in combating THB from the area of exploitation to prostitution, forced labour, child trafficking, etc.

In addition, there is working **cooperation with liaison officers** accredited in Poland in relation to handling specific cases. Measurable cooperation was carried out with officers from **Ukraine, Lithuania, Great Britain, as well as in the earlier years of Romania, Germany and Bulgaria**.

10.5 What international co-operation measures are in place to ensure protection and assistance to victims on return from your country to their countries of origin following their participation in criminal proceedings?

The Polish Police, together with representatives of the Ministry of Interior and Administration, the Border Guard, the Public Prosecutor's Office and non-governmental organizations, participate in the Advisory Panel on combating and preventing THB, organized by the British Embassy in Warsaw. The procedures related to the transfer of victims of THB from Great Britain to Poland have been discussed in the Panel.

Moreover, as part of the work of the Working Group for Supporting Victims of THB, established by the Team for Counteracting THB, a special procedure was developed to analyse the risk of a victim of THB returning to their country of origin. The risk analysis is three-stage, and it is carried out by law enforcement agencies, a non-governmental organization implementing the National Intervention and Consultation Centre programme and the Ministry of Interior and Administration.

The Polish Police also cooperates with the IOM (International Organization for Migration) **as part of the programme of assistance in voluntary return and reintegration addressed to migrants** who would like to return to their country, but are not able to organize the return trip themselves. Assistance in voluntary return to the country of origin may also be provided to foreigners staying illegally in the territory of the Republic of Poland, and the assistance provided includes, inter alia, assistance in obtaining a travel document, medical tests or financing the purchase of a ticket.

10.6 What international co-operation measures are in place to protect and assist victims of THB for the purpose of sexual exploitation through online streaming where the perpetrator is a national or habitual resident of your country and elements of the crime have occurred in your country's jurisdiction?

The matter of blocking the Internet accounts is regulated on the basis of the so-called "notice and takedown" solutions in the Act on Providing Services by Electronic Means (Journal of Laws of 2012, No. 144, item 1204 in Art. 14.1) -

"The responsibility for the stored data shall not be borne by the person, who, making the resources of a teleinformation system available for the purpose of the data storage by a service recipient, is not aware of unlawful nature of the data or the activity related to them, and in case of having been informed or having received a message on unlawful nature of the data or the activity related to them, makes immediately the access to the data impossible."

The police sends information about the unlawful nature of the data to an Internet service provider, e.g. a telephone network or an electronic service provider, e.g. a website. This is mainly related to cases involving the dissemination of child pornography.

## **11. Cross-cutting questions**

11.1 What steps are taken to ensure that victims of THB have equal access to justice and effective remedies, irrespective of their immigration status and the form of exploitation?

A victim of THB has access to law enforcement agencies, including the Police and the Border Guard. All activities performed by officers, both as part of an investigation of THB and other crimes, are carried out on the basis of the provisions of the Penal Code, the Code of Criminal Procedure and a number of other internal regulations, regardless of the immigration status or the form of exploitation of the victim of THB. Therefore, a victim of THB has equal access to all law enforcement agencies on the same terms and conditions as victims of other crimes, regardless of their immigration status, form of exploitation, age or gender.

11.2 What steps are taken to ensure that criminal, civil, labour and administrative proceedings concerning victims of THB are gender-sensitive?

The procedure for dealing with a victim of THB has been described in particular in the documents referred to above in the form of Algorithms ("for adults and children"). The rule is that a person of the same sex as the victim of human trafficking carries out the activities. However, the victim himself is allowed to choose with whom he wants to carry out the activity.

11.3 What steps are taken to ensure that procedures for obtaining access to justice and remedies are child-sensitive, readily accessible to children and their representatives, and give weight to the child's views?

As indicated above (point 6.1), the child has a guardian appointed by a representative of a specialized non-governmental organization. Procedural activities are carried out in a special mode, also described above (section 8.6). The procedure to be followed by law enforcement officers has been specified in the

*Algorithm of Conduct of Law Enforcement Officers in the Event of Identification of a Minor Victim of a Crime of Human Trafficking.*

Within the framework of the second perspective of the Norwegian Financial Mechanism, Programme "Judicial capacity-building and cooperation/Improvement of the efficiency of justice" was implemented. One of the results of the above-mentioned Programme was the improvement of access to justice, including the so-called vulnerable groups (e.g. victims, minors, minorities). As part of the predefined projects, training was carried out, among others, for judges, prosecutors, guardians and staff of centres providing assistance to crime victims, 16 assistance centres for crime victims, providing free legal and psychological advice, and 16 child friendly rooms for interviewing children of victims / witnesses in criminal proceedings, were created. These activities contributed to the improvement of the system of support for victims and witnesses, in particular those belonging to vulnerable groups, and increased efficiency of work of individual court employees.

11.4 What steps are taken to ensure that private entities take steps to prevent and eradicate trafficking from their business or supply chains and to support the rehabilitation and recovery of victims? What options exist for victims of trafficking to access effective remedies from businesses implicated in human trafficking?

As part of the work of the Team for Sustainable Development and Corporate Social Responsibility - an auxiliary body of the Minister of Funds and Regional Policy, the publication "Forced Labour. A Guide: How to Recognize It and Counteract It" was issued. The publication contains practical tips, such as: tools for the initial assessment of the risk of forced labour, employee surveys, information leaflets, lists of check-ups or guidelines for conducting audits. Thanks to this, the handbook is useful both for companies and institutions or organizations that want to protect themselves against the risk of forced labour. It also facilitates the introduction of specific procedures in the field of preventing forced labour, which are often a condition for cooperation with large foreign companies and is designed to help detect possible cases of forced labour and take appropriate steps in such a situation.

11.5 What legal, policy and practical measures are taken in your country to prevent and detect situations where corruption facilitates human trafficking and infringes the right of victims of THB of access to justice and effective remedies? Please provide information on any known or proven cases of corruption or related misconduct of public officials in THB cases and any sanctions issued.

**The Police Internal Affairs Bureau** was established in order to prevent and detect corruption in the police. The Police Internal Affairs Bureau is an organizational unit of the Police of the internal affairs service that performs tasks throughout the country in the field of recognizing, preventing and combating crimes committed by police officers and employees of the Police and crimes against economic turnover committed to the detriment of the Police, specified in art. 296-306 of the Penal Code, detecting and prosecuting perpetrators of these crimes, as well as - to the extent ordered by the Internal Supervision Inspector - officers and employees of the Border Guard and the State Protection Service or fire-fighters and employees of the State Fire Service. The Commander of the Police Internal Affairs Bureau reports directly to the Police Commander in Chief.

In addition, the minister responsible for internal affairs appointed an Internal Supervision Inspector with the help of which he supervises the Police, Border Guard, State Protection Service and State Fire Service, in particular in the field of recognizing, preventing and detecting crimes committed by the above-mentioned officers, including corruption.

There is also an independent unit in the Border Guard: **the Border Guard Internal Affairs Bureau**, whose Commander reports to the Commander-in-Chief of the Border Guard.

The material scope of activities of the Border Guard Internal Affairs Bureau includes in particular:

1) recognition, prevention and detection of:

a) crimes, within the competence of the Border Guard, committed by officers and employees of the Border Guard,

b) offenses specified in art. 229 of the Penal Code, committed by persons who are not officers or employees of the Border Guard in connection with the performance of official duties by officers or employees of the Border Guard,

c) crimes against economic turnover committed to the detriment of the Border Guard, specified in art. 296-306 of the Penal Code

- and the prosecution of their perpetrators;

2) carrying out tasks commissioned by the Internal Supervision Inspector, within the scope resulting from art. 11j sec. 1 (1-3) of the Act of June 21, 1996 on Special Forms of Supervision by the Minister Competent for Internal Affairs (Journal of Laws, item 491, as amended), including identification, prevention and detection of crimes and prosecution of perpetrators of the acts specified in art. 1 sec. 2 (4) (f-h) of the Act of 12 October 1990 on the Border Guard, in the event that these acts concern officers and employees of the Police, the State Protection Service or fire-fighters and employees of the State Fire Service, committed in connection with the performance of their official duties;

3) revealing and recognizing the occurrence of cases and events in the Border Guard that adversely affect the performance of official tasks;

4) carrying out activities in the field of corruption prevention in the Border Guard, in particular those resulting from government anti-corruption programs.

## Part II – Country-specific follow-up questions

12. Please provide information on new developments in your country since GRETA's second evaluation report concerning:

- emerging trends of trafficking in human beings (new forms of exploitation, new recruitment methods, vulnerable groups, gender-specific aspects of trafficking, child trafficking);

One of the emerging trends noted in Poland is the use of the asylum procedure to legalize the stay of persons intended for exploitation (for the first time in 2019).

In Poland, the most common trends in human trafficking are the recruitment of Poles used abroad and the exploitation of foreigners in our country. The victims identified in Poland most often come from European countries (Romania, Bulgaria, Ukraine, Belarus), as well as from Asia (including Vietnam, Philippines, Sri Lanka). They are both women and men, and occasionally children. The dominant forms of exploitation are prostitution and forced labour.

The sectors of exploitation in forced labour are in particular: construction, agriculture, processing and services. Exploitation takes place in Poland, but also outside the Republic of Poland (e.g. Sweden). Forced labour victims in Poland are most often recruited in their countries of origin, often through local employment agencies, where they are misled as to working conditions, pay and accommodation. Moreover, the critical position of the person is exploited and therefore any job offer outside one's own country seems to be attractive. At the place of work, there is wage manipulation or payment of only part of it. In this way, the perpetrators create a specific state of dependence and make the victims dependent on them, because the victims, without leaving the place of exploitation, count on the payment of outstanding remuneration. Perpetrators often use mental and physical coercion, impose performance standards on employees that cannot be met, and apply irrational penalties.

In the case of prostitution and other sexual services, mainly women are exploited, coming from Bulgaria, Romania, Ukraine, Poland, but also from Nigeria, and recently Sierra Leone and Guinea. In this area, the abused women are recruited, in particular, by the method of "LOVER BOY", consisting in creating a strong emotional bond. Sometimes the victims are aware that they will be engaged in prostitution in Poland.

There have also been occasional cases of domestic slavery, with victims coming from Guinea, Gambia and Syria. The case of a woman from Syria who was staying on the territory of the Republic of Poland with her 8-year-old son, who is a citizen of Saudi Arabia, was very special. The findings showed that the above-mentioned woman was exploited as a domestic help, with the simultaneous use of violence against her, including sexual violence. The events took place on the premises of the diplomatic mission of the Kingdom of Saudi Arabia, as well as outside it. The court under Art 316 § 3 of the CCP questioned the aggrieved Syrian citizen. An international search was ordered against the perpetrator - a citizen of Saudi Arabia (red notice of INTERPOL).

Moreover, cases of exploitation in the form of forced marriages of convenience have been reported. During this practice, illegal migration to EU countries is also organized. The procedure takes place in Cyprus and Great Britain. Recruitment takes place mainly in Poland. The victims are Polish citizens who were parties to marriages concluded in Cyprus, mainly with Pakistani citizens. In the case at hand, as indicated above, a JIT with the British side has been conducted since June 24, 2018, currently extended to include representatives of Cyprus.

- the legislation and regulations relevant to action against THB (e.g. criminalisation of THB, identification and assistance of victims of THB, recovery and reflection period, residence permit, supply chains, public procurement);

On February 12, 2018 the Act of November 24, 2017 amending the Act on Foreigners and certain other acts (Journal of Laws of 2018, item 107) entered into force, which modified the provisions of the Act of December 12, 2013 on Foreigners concerning foreign-born victims of human trafficking through:

- extension of the group of circumstances causing a foreigner's stay on the basis of a certificate confirming the presumption that he is a victim of THB within the meaning of art. 115 § 22 of the Act of June 6, 1997 - the Penal Code ceases to be regarded legal in connection with crossing or attempting to cross the border in violation of the law, and the related supplement to the provision specifying the contents of the register of certificates issued to foreigners, referred to in art. 170 of the Act of 12 December 2013 on foreigners (Article 171 (2) of the above-mentioned Act),



- introducing the possibility of granting a temporary residence permit to a minor foreigner who received the status of a victim in the proceedings concerning the crime of human trafficking referred to in art. 189a § 1 of the Penal Code, regardless of whether he has cooperated with the authority competent to conduct proceedings in the case of this crime (Article 176 (2) of the above-mentioned Act),

- resignation from the necessity to confirm by the prosecutor conducting the proceedings in the case of the crime of human trafficking that the foreigner has reasonable concerns about returning to the country of origin, as one of the conditions for granting a permanent residence permit to the foreigner, pursuant to art. 195 (1) (5) of the Act on Foreigners. This circumstance is determined by the administration authority competent to grant a permanent residence permit.

The act amending the act on foreigners and certain other acts was adopted on November 24, 2017 and published in the Journal of Laws of 2018 under item 107. The act entered into force on February 12, 2018.

- the institutional and policy framework for action against THB (bodies responsible for co-ordinating national action against THB, entities specialised in the fight against THB, national rapporteur or equivalent mechanism, involvement of civil society, public-private partnerships);

**Team for Counteracting THB**, chaired by the Minister of the Interior and Administration. The Team consists of representatives of departments within the Ministry of Internal Affairs and Administration and other government administration entities (i.e. the minister responsible for health, the minister responsible for education and upbringing, the minister responsible for social security, the Minister of Justice, the minister responsible for foreign affairs, the minister responsible for internal affairs and public administration, the minister responsible for regional development, the National Public Prosecutor, the Head of the Office for Foreigners, the Head of the Internal Security Agency, the Police Commander in Chief, the Border Guard Commander in Chief), as well as the invited institutions (Chief Labour Inspectorate, National School of Judiciary and Public Prosecution, the Commissioner for Citizens' Rights, Children's Ombudsman, Chancellery of the Prime Minister and the National Public Prosecutor) and non-governmental organizations dealing with THB (La Strady - Foundation Against THB and Slavery, the Association - Po-MOC dla Kobiet i Dzieci im. Marii Niepokalanej, ITAKA Foundation – the Halina Nieć Centre for Missing People, Centre for Legal Assistance, the Salvation Army, You Can Free Us Polska Foundation and Light House Foundation), as well as the International Organization for Migration IOM.

The Team was established under the Regulation No. 6 of the Minister of Interior and Administration of February 15, 2019. The Team is an auxiliary body of the Minister of Interior and Administration and continues the activities of the Inter-ministerial Team for Combating and Preventing THB, which has been operating since 2004.

The tasks of the Team include primarily:

- evaluation of the implementation of programmes aimed at combating and preventing THB;
- initiating activities aimed at combating and preventing THB;
- preparing draft NAPs against THB, monitoring the feasibility of planned tasks and preparing annual reports on the implementation of the NAPs.

**Working Group for monitoring the implementation of the NAP**, composed of experts representing institutions participating in the works of the Team.

**Working Group for the Support of Victims of THB**, composed of experts representing institutions participating in the work of the Team.

**Ad hoc Working Party on a handbook for the judiciary and law enforcement authorities, as well as other bodies involved in combating THB, in the scope of proceedings in cases of THB.**

**Working Group for Labour Inspectors** - on October 19, 2020, during the meeting of the Team for Counteracting THB, recruitment to the working group was initiated, the group will deal with the development of an identification and procedure algorithm for labour inspectors in the case of alleged forced labour. Currently, this group consists of 8 people, apart from the employees of the Department of Analysis and Migration Policy of the Ministry of Interior and Administration.

**Voivodship Teams for Counteracting THB** - Voivodship Teams include representatives of various public institutions, law enforcement agencies and non-governmental organizations at the regional level. The participation of representatives of individual institutions depends on the decision of the voivode. Representatives of voivodship offices, the Police, the Border Guard, prosecutor's offices, labour inspectorates, labour offices, local governments, education boards and educational institutions, as well as non-governmental organizations participate in the work of the teams established so far.

The Ministry of the Interior and Administration continues to play a leading role in coordinating actions against THB. Within the structures of the Department of Analysis and Migration Policy of the Ministry of Interior and Administration, there was the Department for the European Migration Network and Counteracting THB, from March 2020 the Department for Counteracting THB and Hate Crimes, which is responsible for:

- support for the work of the Team for Counteracting THB and Working Groups;
- monitoring of works related to the implementation of tasks included in the National Action Plan against THB;
- proposing tasks in subsequent editions of the National Action Plan;
- monitoring the implementation of public tasks related to the support and protection of victims of THB, commissioned by the Minister of the Interior and Administration (currently the task is called "Running the National Intervention and Consultation Centre for victims of THB").

**Department for Combating THB** of the Criminal Service Bureau (currently the Criminal Bureau) of the Police Headquarters - established by the decision of the Police Commander in Chief of January 22, 2014. The tasks of the Department include, above all, combating crimes related to THB, paedophilia and child pornography. Within the scope of its tasks, the Department for Combating THB cooperates with the organs of justice, public administration and state control, as well as non-governmental and social organizations and public institutions. Moreover, the Department carries out international activities through operational and investigative cooperation with law enforcement agencies of other countries. The Department for Combating THB supervises and coordinates the work of the Teams for Combating THB established on the basis of the Ordinance of the Police Headquarters No. 14 of 2015 in the Criminal Departments of Voivodship Police Headquarters and coordinators in Preventive Departments. The Voivodship Police Teams for Combating THB are responsible for applying the solutions adopted in the Algorithm of conduct of law enforcement officers in the event of revealing the crime of THB, conducting reconnaissance, monitoring potential crime scenes and participating in international operations and training related to combating the practice.

**The Section for Illegal Migration and THB** of the Operational and Investigation Board of the General Headquarters of the Border Guard established in 2009. It is responsible, inter alia, for the coordination and supervision of activities undertaken by the Border Guard in the field of combating human trafficking. In each of the Border Guard divisions in the operational and investigative division, a freelance coordinator for combating THB was appointed, responsible for coordination and

cooperation between the competent organizational units of the Border Guard, the Police and other institutions involved in combating this practice.

**Department for Organized Crime and Corruption in the National Public Prosecutor's Office**

- coordinates the activities of the Public Prosecutor's Office in the area of prosecuting THB. A special prosecutor-coordinator for THB has been appointed. Since 2007, prosecutors acting as consultants in the field of THB have been appointed in the former Appellate Prosecutor's Offices, and currently in each of the Regional Prosecutor's Offices and District Prosecutor's Offices. In 2014, they were sent for use by prosecutors dealing with cases concerning THB. *Tips on conducting proceedings in cases concerning THB.*

**The National Network of Non-Governmental Organizations Against THB** - established in July 2014 as part of a project financed by the Norwegian Fund. Currently, the network consists of 19 non-governmental organizations. The main goal of the Network is to create a highly specialized network of anti-trafficking organizations in order to improve the quality and effectiveness of their work, professionalize activities and strengthen their potential, so that they can be a partner of public institutions and law enforcement agencies in joint activities aimed at preventing THB and supporting victims of this crime. The activities of the Network include, among others strengthening voivodship teams for counteracting THB, developing standards for the provision of services to victims of THB, in particular maintaining security and privacy and respect for the choices of victims, as well as organizing a series of workshops on THB for non-governmental organizations. Thanks to the Network's activities, selected non-governmental organizations from all over Poland are prepared to work with victims of THB.

- the current national strategy and/or action plan for combating trafficking in human beings (objectives and main activities, bodies responsible for its implementation, budget, monitoring and evaluation of results);

**The National Action Plan against THB for 2020-2021** is another consecutive document specifying tasks in the field of counteracting THB. The first document of this type, The National Programme for Combating and Preventing THB was adopted by the Council of Ministers in September 2003. As of 2009, the name of the document was changed to the National Action Plan against THB. In May 2019, the Team for Counteracting THB adopted a draft NAP for the following years. In June-December 2019, the Department of Analysis and Migration Policy of the Ministry of Interior and Administration conducted intra-ministerial and inter-ministerial consultations regarding the content of the above-mentioned document. On April 10, 2020, the Council of Ministers adopted the National Action Plan for 2020-2021.

The NAP is addressed to individual units of central administration as well as other institutions and non-governmental organizations voluntarily engaged in activities against THB in Poland. The tasks provided for in the NAP are financed from the state budget.

The National Action Plan for 2020-2021 (NAP) aims to intensify preventive actions, strengthen the role of Voivodeship Teams for Counteracting THB and introduce corrective actions so that all parts of the anti-trafficking system are complementary.

Thanks to the enormous commitment of the Voivodeship Teams for Counteracting THB, the assumptions of the NAP are implemented with great effectiveness. Thanks to cooperation and exchange of experiences, it was possible to identify certain needs, such as the need to intensify and extend the scope of training for employees who have contact with persons applying for a residence and work permit, information meetings on THB among young people in schools, the need to regulate health insurance for people who are victims of THB and who in most cases do not have such insurance,

the need to increase companies' awareness of the risk of forced labour in their operations within and in the supply chain, and to disseminate knowledge about how to prevent this phenomenon in enterprises and to respond to them.

**The main objective** of the Plan is to ensure the conditions necessary for effective counteraction of THB in Poland and supporting the victims of this crime. In this context, the **detailed** objectives of the Plan are as follows:

- raising awareness of the phenomenon of human trafficking;
- raising the standard of support provided to victims of THB (including minor victims of THB);
- improving the effectiveness of the activities of institutions responsible for prosecuting the crime of THB by improving legal tools, structures and implementing best practices;
- improving the qualifications of representatives of the institutions and organizations involved in preventing THB and supporting the victims of this crime;
- broadening the knowledge on the phenomenon of THB and the effectiveness of actions taken, especially in the context of forced labour;
- strengthening international cooperation.

The system of implementation and monitoring of activities provided for in the Plan consists of the following elements:

- **Team for Counteracting THB**, chaired by the Minister of the Interior and Administration,
- **Working Group for monitoring the implementation of the NAP**,
- **Working Group for Supporting Victims of THB**,
- **Ad hoc Working Group for a handbook for the judiciary and law enforcement authorities, as well as other bodies involved in combating THB, in the scope of proceedings in cases of THB**,
- **Voivodship Teams for Counteracting THB**.

The tools for periodic evaluation of the Plan's implementation are:

- report on the implementation of the National Action Plan approved by the above-mentioned Team and
- report on the work of the Team at the Minister of Interior and Administration for Counteracting THB, submitted to the Minister of the Interior and Administration by the end of February each year.

For the implementation of the tasks provided for in the National Action Plan against THB for 2020, the **Ministry of the Interior and Administration** secured funds in the state budget in the total amount of PLN 1,235,000, including PLN 1,100,000 for the continuation of comprehensive coverage of the needs of victims and victims-witnesses of trafficking in people (point III.4 of the Plan) and PLN 135,000 for other on-going activities resulting from the Plan. The amount of funds is at the same level as in 2019. The funds are secured on an annual basis.

In addition, the **Ministry of Family, Labour and Social Policy** has planned funds in the 2020 budget in the amount of PLN 80,000 for the purpose of training social assistance staff in the field of dealing with a victim / witness of THB.

**In total, the Ministry of the Interior and Administration and the Ministry of Family, Labour and Social Policy have secured funds in the amount of PLN 1,315,000 in their budgets.**

For 2021, funds have been secured in the state budget at a similar level.

The operating costs of Voivodeship Teams for Counteracting THB are financed by voivodes within the expenditure limits set for a given budgetary year, without the need to apply for additional funds for this purpose from the state budget.

- recent case law concerning THB for different forms of exploitation.

Supreme Court judgment of 17 October 2017.III KK 103/17 OSNKW 2018/2/13, KZS 2018/3/8, Biul.SN 2018/2/13

1. In the process of interpreting national criminal provisions, it is permissible to refer to international agreements ratified by Poland, which were published in the Journal of Laws of the Republic of Poland and the application of which does not depend on the issuance of a law (Article 91 (1) of the Polish Constitution); this does not contradict the *nullum crimen sine lege* principle.

2. The wording "THB" (Art. 253 § 1 of the Penal Code in the wording in force until September 7, 2010) could not be equated with the activities of civil law transactions, as a person cannot be the subject of such trade. This formulation concerned the phenomenon of behaviour aimed at human exploitation.

13. Please provide information on measures taken in your country in respect to the following recommendations made in GRETA's second evaluation report:

- develop and maintain a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical data on measures to protect and promote the rights of victims as well as on the investigation, prosecution and adjudication of human trafficking cases;

Initial analyses of the preparation of the concept of the statistical system.

- pursue a proactive approach to the identification of victims of trafficking for all forms of exploitation, and in particular for the purpose of labour exploitation in sectors considered to be at risk, and improve the identification of victims of trafficking in detention centres;

Both the Border Guard and the Police are proactive in identifying victims of THB, regardless of the form of exploitation, country of origin, age or gender of a person as part of their basic tasks and activities in daily service. This is manifested, among others, by increasing annual numbers of positive identification of victims of THB.

Regarding the identification of victims in the Border Guard detention centres, it should be stated that in this respect the operational and investigative division, dealing with criminal cases for THB, cooperates with the division for foreigners, which covers the detention centres. The cooperation has a working character, concerning specific cases, and a strategic one, consisting in participation in joint trainings or workshops. A special Algorithm, developed by the Board on Foreigners of the Border Guard Headquarters, operates in the field of dealing with persons in detention centres. If there is presumption that a potential victim of THB may be detained in a detention centre, the local coordinator for THB (from the operational and investigative division) is notified, who then carries out verification activities. If the presumption is confirmed, the person is released from the detention facility, as mentioned above. Other authorities, e.g. the Police or the Public Prosecutor, may also carry out identifications in detention centres if they learn that a victim of THB may be there.

- strengthen efforts to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with civil society and the private sector;

The Ministry of the Interior and Administration, in cooperation with other ministries, institutions and non-governmental entities, has implemented a number of activities addressed both to the general public and to specific social and professional groups particularly exposed to the phenomenon of THB, including youth and the unemployed.

The most important tasks completed were:

- organization of knowledge competitions on THB;
- presentation of a mobile exhibition on THB;
- distribution of leaflets, educational brochures, posters and other materials informing about the phenomenon of human trafficking;
- launching special e-mail addresses in voivodships for potential victims or people interested in the issues of THB;
- organizing meetings with pupils, students and unemployed people on THB, work abroad and safe travels (in addition, individual, telephone and e-mail consultations were provided);
- promoting safe job placement (promotion of legal offers), counselling in the use of employment agency services;
- information campaigns on THB, in particular on forced labour, addressed to Polish citizens going abroad to work;
- organization of specialist training courses for social assistance employees, primarily the staff of crisis intervention centres, in the field of identifying victims of THB, crisis intervention and the principles of cooperation with other institutions;
- continuation and development of the concept of comprehensive protection of the needs of victims and victims-witnesses of THB - activities of the National Intervention and Consultation Centre for Polish and foreign victims of THB;
- organization of training courses on THB for candidates for the consular corps travelling to destination countries of Polish victims of THB identified abroad.

- ensure that all possible foreign victims of trafficking, including EU/EEA nationals, are consistently offered a recovery and reflection period, regardless of where in Poland they are identified;

On December 10, 2020 the Sejm of the Republic of Poland passed the Act amending the Act on Entering the Territory of the Republic of Poland, Residence and Departure from This Territory of Nationals of Member States of the European Union and Their Family Members, and certain other acts.

The Act introduces on January 1, 2021 to the Act of 14 July 2006 on Entering the Territory of the Republic of Poland, Residence and Departure from This Territory of Nationals of Member States of the European Union and Their Family Members (Journal of Laws of 2019, item 293, as amended) provisions analogous to the provisions of the Act of 12 December 2013 on Foreigners, consisting in the possibility of issuing a citizen of the European Union / EEA / Switzerland and a family member with a certificate confirming that there is a presumption that he is a victim of THB within the meaning of art. 115 § 22 of the Penal Code. This solution will enable EU / EEA / Swiss citizens and their family members to take advantage of the right to social assistance benefits in the form of crisis intervention, shelter, meal, necessary clothing and specific benefit.

According to Art. 41b (2) of the amended act, the first certificate may be issued for a period of 3 months, and in the case of a minor EU citizen or a minor family member who is not an EU citizen, for a period of 4 months from the date of its issue. According to Art. 41b (3) consecutive certificates may be issued for a period of at least 6 months, but not longer than 3 years, if the following conditions for an EU citizen or a family member are met:

- 1) he stays on the territory of the Republic of Poland;
- 2) he cooperated with the authority competent to conduct proceedings in the case of an offense referred to in art. 189a § 1 of the Penal Code, and in the case of a minor foreigner - received the status of an aggrieved party in the proceedings for the crime referred to in art. 189a § 1 of the Penal Code;
- 3) he cut off contacts with persons suspected of committing the crime referred to in art. 189a § 1 of the Penal Code.

These provisions are modelled on the relevant provisions of the Act on foreigners, i.e. Art. 170 - 176.

This act provides for the introduction of appropriate amendments also in the Act of 12 March 2004 on Social Assistance (Journal of Laws of 2020, item 1876) enabling the use of the right to social assistance benefits in the form of crisis intervention, shelter, meal necessary clothes and a specific benefit also by EU / EEA / Swiss citizens and their family members holding a certificate for victims of THB issued on the basis of the Act of 14 July 2006 on Entering the Territory of the Republic of Poland, Residence and Departure from This Territory of Nationals of Member States of the European Union and Their Family Members. The provisions implement Art. 11 of Directive 2011/36 / EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating THB and protecting its victims, replacing Council Framework Decision 2002/629 / JHA (Journal of Laws UE L 101 of April 15 2011, p. 1, as amended).

- guarantee effective access to public health care for all victims of trafficking, regardless of residence status;

Pursuant to the current legal status, victims of THB (who are citizens of the Republic of Poland, another EU / EFTA Member State or a third country) have access to health care services financed from public funds, provided that they have the status of a beneficiary in accordance with Art. 2 of the Act of 27 August 2004 on Health Care Services Financed from Public Funds (Journal of Laws of 2020, item 1398, as amended).

The beneficiaries are: persons covered by universal - compulsory and voluntary health insurance; persons other than the insured, residing in the territory of the Republic of Poland and who have Polish citizenship or have obtained refugee status or subsidiary protection in the Republic of Poland, or a temporary residence permit granted in connection with the circumstances referred to in art. 159 (1) (1) (c) or (d) of the Act of 12 December 2013 on Foreigners, meeting the income criterion referred to in art. 8 of the Act of 12 March 2004 on Social Assistance, for which no circumstances referred to in art. 12 of this act; uninsured persons under the age of 18, with Polish citizenship or who have obtained refugee status in the Republic of Poland or subsidiary protection or a temporary residence permit granted in connection with the circumstances referred to in art. 159 (1) (1) (c) or (d) of the Act of 12 December 2013 on Foreigners, provided that they have a place of residence in the territory of the Republic of Poland; uninsured women during pregnancy, childbirth and the postpartum period, having a place of residence in the territory of the Republic of Poland, who are Polish citizens or foreign women who have obtained refugee status in the Republic of Poland or subsidiary protection, or a temporary residence permit granted in connection with the circumstance referred to in art. 159 (1) (1) (c) or (d) of the Act of 12 December 2013 on Foreigners.

The group of people who can be insured (obligatorily or voluntarily) in the territory of the Republic of Poland is specified in Art 3 of the Act on Health Care Services Financed from Public Funds. The insured may be citizens of the EU / EFTA Member States residing in the EU / EFTA Member State and nationals of third countries who stay in the territory of the Republic of Poland on the basis of a visa for the purpose of performing work, a residence permit for a fixed period, with the exception of a permit granted pursuant to Art. 53a (2) of the Act of 13 June 2003 on Foreigners, a permit to settle, a long-term resident's residence permit of the European Communities, a permit for tolerated stay or persons who have obtained refugee status in the Republic of Poland or subsidiary protection or enjoy temporary protection in its territory, provided that they are subject to compulsory health insurance or insure themselves voluntarily (persons residing in the territory of the Republic of Poland can insure themselves voluntarily, i.e. at least a temporary residence permit).

According to Art. 15 (1) of the above Act, beneficiaries are entitled to healthcare services aimed at maintaining health, preventing diseases and injuries, early detection of diseases, treatment, care, as well as preventing and reducing disability. They are entitled to guaranteed benefits in the field of: primary health care; outpatient specialist care; hospital treatment; psychiatric care and addiction treatment; medical rehabilitation; nursing and care benefits as part of long-term care; dental treatment; spa treatment; supply of medical devices; medical emergency; palliative and hospice care; highly specialized services; health programmes; drugs, drug programmes, and chemotherapy drugs.

One should also point out the special rights to healthcare services financed from public funds. According to Art. 12 of the Act on Health Care Services Financed from Public Funds, the provisions of the Act do not infringe the provisions on healthcare services provided free of charge, regardless of the rights under health insurance pursuant to: Art. 21 sec. 3 of the Act on Upbringing in Sobriety and Counteracting Alcoholism; art. 26 (5) of the Act on Counteracting Drug Addiction; art. 10 of the Act of August 19, 1994 on the Protection of Mental Health; art. 400a (1) and art. 415 (1) (5) of the Act of 12 December 2013 on Foreigners; the provisions of the Act of December 5, 2008 on the Prevention and Combating of Infections and Infectious Diseases in Humans - in the case of health services related to the fight against diseases, infections and infectious diseases, including those related to the prevention and treatment of people infected with SARS-CoV-2 virus; provisions of the Act of 8 September 2006 on the State Medical Aid; the Act of 22 November 2013 on the Procedures of Dealing



with People with Mental Disorders Who Pose a Threat to the Life, Health or Sexual Freedom of Other People. This means that uninsured citizens of the Republic of Poland, EU / EFTA and third countries residing / living in the territory of the Republic of Poland may use healthcare services specified in the above-mentioned acts and financed from the state budget.

Foreigners with an irregular status in the territory of the Republic of Poland are provided with medical assistance in cases of sudden illness and threat to health or life (humanitarian rights are thus guaranteed), which results, among others, from the provisions of the Act on Medical Activities and the Act on the Profession of Physician and Dentist, whereby the entity providing the services has the right to bill the patient for the services provided directly (except for services related to infection with SARS-CoV-2 virus).

- further strengthen co-operation with civil society and build strategic partnerships with a range of civil society actors, including trade unions and academia.

State institutions are involved in numerous campaigns and preventive measures aimed at counteracting and preventing THB. Police and Border Guard officers conduct preventive classes with young people from primary, secondary and higher schools, aimed at identifying threats resulting, among others, from trips abroad in order to work.

An example of such activities may be the participation of the Police in the campaign conducted by the British Embassy under the name of "Big Red Bus", which is aimed at preventive measures against recruitment of young people for forced labour. Another example of such a campaign is the joint EUCPN campaign that launched a pan-European campaign against human trafficking. These activities are carried out mainly to raise public awareness of the phenomenon of THB. In addition, Police and Border Guard officers dealing with THB take part in numerous seminars, conferences and workshops organized by both non-governmental organizations and government institutions (Ministry of Interior and Administration, Ministry of Foreign Affairs, Ministry of Foreign Affairs), including foreign partners.

### Part III - Statistics on THB

14. Please provide the following statistics, **per year starting with 2017**, where available disaggregated as indicated below:

- Number of presumed victims and identified victims of THB in the sense of having been recognised by a state institution or mandated NGO as bearers of rights to services provided for by the Convention (with breakdown by sex, age, nationality, form of exploitation, internal or transnational trafficking, and body which identified them).

#### Victims identified by the Police (presumed victims)

year	Aggrieved persons	Sex	Age	Nationality	Form of exploitation
2017	84	Female 20 Male 63	Minors 1 Adults 83	Poland 81 Ukraine 2	in prostitution, pornography or other forms of sexual abuse 22 at work or in forced services 46 Other forms of exploitation 16
2018	97	Female 20 Male 63	Minors 9 Adults 88	Poland / Polska 69 Belarus 18 Philippines 8 Ukraine 2	In prostitution, pornography or other forms of sexual abuse 34 At work or in forced services 53 Other forms of exploitation 10
2019	98	Female 20 Male 63	Minors 1 Adults 97	Poland 16 Philippines 80 Bulgaria 1 Peru 1	In prostitution, pornography or other forms of sexual abuse 8 At work or in forced services 87 Other forms of exploitation 3

#### Victims identified by the Border Guard (presumed victims)

Year	Aggrieved persons	Sex	Age	Nationality	Form of exploitation
2017	43	Female 16 Male 27	Minors 1 Adults 42	Poland 5 Ukraine 30 Vitnam 4 Belarus 2	In prostitution, pornography or other forms of sexual abuse 4 At work or in forced services 38

				Nigeria 1 Syria 1	Other forms of exploitation 1
2018	65	Female 16 Male 49	Minors 1 Adults 64	Poland 22 Ukraine 18 Belarus 9 Philippines 8 Bulgaria 3 Vietnam 2 The Gambia 1 Guinea 1	In prostitution, pornography or other forms of sexual abuse 5 At work or in forced services 49 Other forms of exploitation 11
2019	98	Female 27 Male 71	Minors 0 Adults 98	Poland 27 Ukraine 46 Uganda 9 Sierra Leone 5 Belarus 3 Guinea 3 Philippines 2 Vietnam 1 Nepal 1 India 1	In prostitution, pornography or other forms of sexual abuse 8 At work or in forced services 80 Other forms of exploitation 10

## Victims identified by Prosecutor's Office

Year	Aggrieved persons	Sex	Age	Nationality	Form of exploitation
2017	453	No data	Minors 30 Adults 423	Poland 212 North Korea 107 Ukraine 59 Vietnam 19 Romania 15 Germany 15 Belarus 12 Bulgaria 8 Mongolia 1	In prostitution, pornography or other forms of sexual abuse 46 At work or in forced services 34 Other forms of exploitation 49

				Congo 1 Nigeria 1 Syria 1 Philippines 1 No citizenship 1	
2018	222	No data	Minors 25 Adults 197	Poland 118 Ukraine 48 Philippines 10 Belarus 4 Bulgaria 2 Germany 2 Vietnam 1 Romania 1 Syria 1	In prostitution, pornography or other forms of sexual abuse 86 At work or in forced services 142 Other forms of exploitation 19
2019	208	No data	Minors 21 Adults 187	Poland 88 Philippines 54 Ukraine 10 Uganda 9 Peru 6 Sierra Leone 5 Belarus 4 Guinea 3 Vietnam 2 Bulgaria 1 Colombia 1	In prostitution, pornography or other forms of sexual abuse 62 At work or in forced services 101 Other forms of exploitation 45

- Number of victims of THB identified as part of the asylum procedure (disaggregated by sex, age, nationality, form of exploitation).

As part of the so-called initial identification, possible in the procedure for granting international protection, the following information was sent to the Border Guard, which officially identified:

- 2017: 2 people (Cameroon, female, 29 years old at the time of application for international protection, probable form of abuse - sexual; Mongolia, female, 41 years of age at the time of application, probable form of abuse - sexual),
  - 2018: 1 person (Vietnam, male, 24 years old at the time of submitting the application for international protection, probable form of exploitation - forced labour),
  - 2019: 0 cases of initial identification as part of the asylum procedure, however, as many as 9 people who received a certificate of being a victim of THB submitted applications for international protection in 2019; identification was made by the Border Guard before submitting the application.
  - 2020: 2 (male, 37 years old at the time of submitting the application for international protection in 2020, Moldova, begging; female, 42 years old at the time of submitting the application for international protection, Ukraine, prostitution).
- Number of victims of THB who received assistance (disaggregated by sex, age, nationality, form of exploitation, internal or transnational trafficking).

People who received assistance under the National Intervention and Consultation Centre /

year	Polish citizens	foreigners	in total	age	nationality	form of exploitation
2017	87	100	187	minors 10 adults 177	Poland 87 Ukraine 48 Tajikistan 8 Vietnam 6 Philippines 6 Belarus 5 Bulgaria 5 Romania 2 Morocco 2 Georgia 2 Sri Lanka 2 Sweden 1 Russia 1 Moldova 1 Nigeria 1 Kenya 1 Congo 1	Forced Labour 74 Sexual abuse 50 Begging 4 Treatment diminishing human dignity 4 Missing persons 5 Unexploited persons 13

					Cameroon 1 Guinea 1 The Gambia 1 Syria 1 Nepal 1 Mongolia 1 Armenia 1 Saudi Arabia 1	
2018	83	98	181	minors 13 adults 167	Poland 83 Ukraine 48 Philippines 18 Romania 6 Vietnam 4 Belarus 3 Bulgaria 3 Cameroon 3 Moldova 2 Tanzania 2 Congo 1 Guinea 1 The Gambia 1 Sri Lanka 1 Mongolia 1 Indonesia 1 Burma 1	Forced Labour 108 Sexual abuse 40 Begging 4 Treatment diminishing human dignity 1 Missing persons 2 Unexploited people 10
2019	58	168	226	minors 15 adults 211	Poland 58 Philippines 79 Ukraine 24 Vietnam 15 Uganda 9 Sierra Leone 6 Guinea 4 Georgia 4 India 3 Cameroon 3 Bulgaria 3	Forced Labour 132 Sexual abuse 28 Begging 0 Treatment diminishing human dignity 1 Missing persons 1 Unexploited people 11

					Belarus 2 Ivory Coast 2 Greece 1 Russia 1 Eritrea 1 Tanzania 1 The Gambia 1 Syria 1 Nepal 1 Mongolia 1 Indonesia 1 Burma 1	
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- Number of child victims of THB who were appointed legal guardians.

No data available

- Number of victims of THB granted a recovery and reflection period (disaggregated by sex, age, nationality, form of exploitation).

Year	Number of victims	Sex	Nationality
2017	15	Female 10 Male 5	Ukraine 11 Belarus 1 Nigeria 1
2018	4	Female 0 Male 4	Vietnam 3 Belarus 1
2019	120	Female 42 Male 78	Philippines 95 Uganda 8 Sierra Leone 5 Georgia 4 Guinea 3 Ukraine 2 Vietnam 1 India 1 Colombia 1

- Number of victims of THB granted a residence permit, with an indication of the type of the permit and its duration (disaggregated by sex, age, nationality, form of exploitation).

Year	Number of permits	Sex	Nationality
2017	25	Female 14 Male 11	Ukraine 19 Belarus 4 South Korea 1 Morocco 1
2018	3	Female 1 Male 2	Ukraine 2 Belarus 1
2019	9	Female 4 Male 5	Philippines 7 Georgia 1

- Number of persons given refugee status or subsidiary/complementary protection on the grounds of being victims of THB (disaggregated by sex, age, nationality, form of exploitation).

2020 (applications were submitted in 2019): 8 people (female, nationality: Guinea - 3, Sierra Leone - 5, probable form of exploitation - sexual abuse or slavery (foreign women ended their trip in Poland; earlier, according to their testimonies, no for exploitation in human trafficking), in this group as many as 6 were unaccompanied minors.

In the previous years, no positive decisions were issued in relation to the applicants.

- Number of victims of THB who claimed compensation, who were granted compensation and who effectively received compensation (disaggregated by sex, age, nationality, form of exploitation, with an indication of whether the compensation was provided by the perpetrator or the State, and the amount awarded).

No data available

- Number of victims of THB who received another form of financial support from the State, with the indication of the amount received.

No data available



- Number of victims of THB who received free legal aid.

Free legal assistance is provided as part of the National Intervention and Consultation Centre - it was obtained by all persons who received assistance under the National Intervention and Consultation Centre (detailed statistics above)

- Number of victims of THB who were returned or repatriated to/from your country (disaggregated by sex, age, country of destination, form of exploitation).

In 2017-2019, there were no victims of THB repatriated to / from Poland.

- Number of investigations into THB cases (disaggregated by type of exploitation, with an indication of the number of victims concerned).

Number of initiated proceedings under Art. 189a of the Penal Code by the Prosecutor's Office /

Year	Number of initiated proceedings
2017	136
2018	79
2019	67

Number of initiated proceedings under Art. 189a of Penal Code by the Police

Year	Number of initiated proceedings
2017	27
2018	33
2019	16

Number of initiated proceedings under Art. 189a of the Penal Code by the Border Guard

Year	Number of initiated proceedings
2017	14
2018	5
2019	6

- Number of prosecutions in THB cases (disaggregated by type of exploitation, with an indication of the number of victims and defendants concerned).

Year	Number of indictments	Number of persons accused
2017	17	47
2018	23	47
2019	17	51

- Number of convicted perpetrators of THB (disaggregated by sex, age, nationality, form of exploitation).

Year	Number of persons convicted by a final judgment	Sex	Foreigners	Age
2017	24	Female 2 Male 22	Bulgaria: 1 (male)	Under 18: 1 Of age: 23
2018	10	Female 2 Male 8	Germany: 1 (male) Bulgaria: 1 (male)	Under 18: 0 Of age: 10

Performing the duties related to the organization, coordination, supervision and implementation of tasks in the field of official statistics, the Ministry of Justice collects statistical data on the functioning of the judiciary through various systems and tools, based on the Act of June 29, 1995 on official statistics. Selected information in the form of statistical tables obtained in annual cycles from the electronic database of the ICT system of the National Criminal Register provide data on finally convicted adults for crimes stipulated in the Penal Code and special acts. Information from National Criminal Register enables the selection of data from a very wide range, e.g. type of crime, detailed sentence, sex, age, citizenship of finally convicted persons, place of crime (voivodship, city, village).

The second main source of data are statistical reports filled in by employees of common courts on a biannual and annual basis incrementally and cumulatively through an IT system dedicated to the needs of statistical reporting. In this way, information is obtained on persons tried and sentenced in the first instance before common courts (this is information collected through the model MS-S6 in the case of tried and sentenced persons in the first instance).

One of the additional functionalities of the IT system dedicated to the needs of statistical reporting is the possibility of electronic transmission of MS-S28 statistical sheets in a public prosecution criminal case with a final judgment for crimes of THB, paedophilia, intolerance, xenophobia, hate crimes. This tool was launched on January 1, 2015, and since then, common courts have been required to fill in the MS-S28 statistical sheets immediately after the judgment becomes final, only in electronic form.

In view of the above, the appendix includes statistical summaries of the Statistical Information Centre of the Department of Strategy and European Funds of the Ministry of Justice in the following scope:

- Appendix 1. Number of adults convicted by a final judgement of selected crimes in 2017-2018, including the type and detailed punishment, sex, age, citizenship of the

perpetrator, place of crime (information obtained from the tables of the National Criminal Register);

- Appendix 2. Number of people tried and convicted of selected crimes in the first instance in district courts in the first half of 2019, including the punishment and aggrieved persons (information obtained on the basis of MS-S60 reports);
- Appendix 3. Number of adults convicted of the crime of THB in 2017-2019, taking into account gender, age, form of THB, citizenship and aggrieved persons (this information is collected through the MS-S28 sheet).

It should be emphasized that the data sources of the Ministry of Justice, such as statistical reports (MS-S6) and statistical tables on adults convicted by a final judgement (National Criminal Register), constitute complete data sets, while MS-S28 sheets can only serve as supplementary information.

- Number of convictions for THB, with an indication of the form of exploitation, whether the victim was adult or child, the type and duration of the penalties, and whether they were effectively enforced or suspended.

Year	Solely-imposed fine	Restriction of liberty	Immediate custodial sentence	Custodial sentence conditionally suspended	Fine and custodial sentence
2017	1	2	13	8	8
2018	0	0	7	3	8

Detailed Information is attached – as indicated above

- Number of judgments in THB cases resulting in the confiscation of assets.

No data available

- Number of convictions of legal entities for THB.

No data available