



GRETA
GROUP OF EXPERTS
ON ACTION AGAINST
TRAFFICKING IN HUMAN
BEINGS

GRETA(2019)10

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

SECOND EVALUATION ROUND

Adopted on 22 March 2019

Published on 3 July 2019

This document is a translation of the original French version.



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Preamble

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

GRETA is composed of 15 independent and impartial experts coming from a variety of backgrounds, who have been selected on the basis of their professional experience in the areas covered by the Convention. The term of office of GRETA members is four years, renewable once.

GRETA's country-by-country monitoring deals with all parties to the Convention on an equal footing. In accordance with Article 38, paragraph 1, of the Convention, GRETA evaluates the implementation of the Convention following a procedure divided into rounds. At the beginning of each round, GRETA selects the specific provisions on which the evaluation procedure is to be based and defines the most appropriate means to carry out the evaluation. GRETA adopts a questionnaire for each evaluation round which serves as the basis for the evaluation and is addressed to all parties.

The first evaluation round was launched in February 2010 and the questionnaire for this round was sent to all parties according to a timetable adopted by GRETA, which reflected the time of entry into force of the Convention for each party. GRETA organised country visits to all parties in order to collect additional information and have direct meetings with relevant actors, both governmental and non-governmental. By the beginning of 2014, most of the parties had been or were being evaluated for the first time, whilst the number of parties to the Convention continues to grow.

GRETA decided to launch the second evaluation round of the Convention on 15 May 2014. Following the first round of monitoring, which provided an overview of the implementation of the Convention by each party, GRETA has decided to examine during this new evaluation round the impact of legislative, policy and practical measures on the prevention of trafficking, the protection of the rights of victims of trafficking, and the prosecution of traffickers. The adoption of a human rights-based approach to action against trafficking in human beings remains at the centre of the second evaluation round. In addition, particular attention is paid to measures taken to address new trends in human trafficking and the vulnerability of children to trafficking. For the second evaluation round, GRETA has adopted a questionnaire to be sent to all states parties which have undergone the first round of evaluation, following a timetable approved by GRETA.

GRETA's reports are based on information gathered from a variety of sources and contain recommendations intended to strengthen the implementation of the Convention by the party concerned. In its recommendations, GRETA has adopted the use of three different verbs - "urge", "consider" and "invite" - which correspond to different levels of urgency of the recommended action for bringing the party's legislation and/or practice into compliance with the Convention. GRETA uses the verb "urge" when it assesses that the country's legislation or policy are not in compliance with the Convention, or when it finds that despite the existence of legal provisions and other measures, the implementation of an obligation of the Convention is lacking. In other situations, GRETA "considers" that it is necessary to make improvements in order to fully comply with an obligation of the Convention. By "inviting" a country to pursue its efforts in a given area, GRETA acknowledges that the authorities are on the right track.

As regards the procedure for the preparation of reports, GRETA examines a draft report on each party in a plenary session. The process of confidential dialogue with the national authorities allows the latter to provide, within two months, comments on GRETA's draft report with a view to providing additional information or correcting any possible factual errors. These comments are taken into account by GRETA when establishing its final report. The final report is adopted by GRETA in a plenary session and transmitted to the party concerned, which is invited to submit any final comments. At the expiry of the time-limit of one month GRETA's report, together with eventual final comments made by the national authorities, are made public and sent to the Committee of the Parties to the Convention.

I. Introduction

1. The first evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings ("the Convention") by Andorra took place in 2013-2014. Following the receipt of Andorra's reply to GRETA's first questionnaire on 3 July 2013, a country evaluation visit was organised from 27 to 29 November 2013. The draft report on Andorra was examined at GRETA's 19th meeting (17-21 March 2014) and the final report was adopted at GRETA's 20th meeting (30 June to 4 July 2014). Following the receipt of the Andorran authorities' comments, on 10 June 2014, GRETA's final report was published on 4 July 2014.¹

2. In its first report, GRETA noted that a draft law providing for an offence of human trafficking to be included in the Andorran Criminal Code was under preparation, and called on the authorities to establish co-ordination between the various actors that would be dealing with cases of trafficking if victims were to be identified. Furthermore, the actors concerned, in particular the police, prosecutors and judges, labour inspectors and social workers, should be sensitised to human trafficking, while civil society and the public at large, including groups vulnerable to trafficking, such as children, women in situations of vulnerability and migrant workers, should also be informed about the risks of human trafficking. GRETA was of the opinion that the Andorran authorities should also take all the necessary measures to make sure that assistance adapted to the needs of victims of trafficking can be provided in order to help them in their physical, psychological and social recovery. Moreover, GRETA recalled that a recovery and reflection period of at least thirty days needed to be provided in internal law to allow victims of trafficking to recover from the exploitative situation they were caught up in and take an informed decision on their possible co-operation with the investigation and prosecution authorities, in particular where the victims are not regularly on the territory. GRETA underlined the necessity to provide in internal law for a renewable residence permit for victims of trafficking whose stay is necessary owing to their personal situation and for the purpose of their co-operation in the framework of the investigations or criminal proceedings. Lastly, GRETA called on the Andorran authorities to provide for effective, proportionate and dissuasive sanctions against the perpetrators.

3. On the basis of GRETA's report, on 5 December 2014, the Committee of the Parties to the Convention adopted a recommendation to the Andorran authorities, requesting them to report back on measures taken by 5 December 2016.² The report submitted by the Andorran authorities was considered at the 20th meeting of the Committee of the Parties (10 March 2017). The Committee of the Parties decided to transmit the authorities' report to GRETA for consideration and to make it public.³

4. On 1 June 2017, GRETA launched the second round of evaluation of the Convention in respect of Andorra by sending the questionnaire for this round to the authorities. The deadline for submitting the reply to the questionnaire was 2 November 2017. Andorra submitted its reply on 11 October 2017.

¹ Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Andorra, GRETA(2014)16, available at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680630c61>

² Recommendation CP(2014)14 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Andorra, adopted at the 15th meeting of the Committee of the Parties on 5 December 2014, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680630c5f>

³ <https://rm.coe.int/16806fd50b>

5. In preparation of the present report, GRETA used the reply to the questionnaire by the Andorran authorities, the above-mentioned report submitted by them to the Committee of the Parties, and information received from civil society. An evaluation visit took place from 13 to 15 June 2018, in order to hold meetings with relevant governmental and non-governmental actors, collect additional information and examine the practical implementation of adopted measures. The visit was carried out by a delegation composed of:

- Mr Frédéric Kurz, member of GRETA;
- Ms Nathalie Martin, member of GRETA;
- Mr Alexander Bartling, Administrator in the Secretariat of the Convention;
- Ms Evgenia Giakoumopoulou, Administrator in the Secretariat of the Convention.

6. During the visit, the GRETA delegation held consultations with officials the Department of Interior and Justice, the Department of Social Affairs, the Ministry of Foreign Affairs, the Police Corps, the Labour Inspection, the Immigration Service, the Public Prosecutor's Office and members of the Judicial Corps. The delegation also met with members of the Andorran Parliament and with the Ombudsman (Raonador del Ciutadà), Mr Marc Vila Amigò.

7. In the course of the visit, the GRETA delegation visited the Accommodation Centre for Children and Young People, under the responsibility of the Ministry of Social Affairs, which could accommodate underage victims of trafficking.

8. The GRETA delegation held separate meetings with representatives of the NGO Caritas, the trade union Unio Sindical d'Andorra, the Andorran Institute for Human Rights, the Bar Association and UNICEF Andorra.

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

10. GRETA wishes to place on record the co-operation provided by the Andorran authorities during the second evaluation visit by GRETA, and in particular by the contact person appointed by the authorities, Ms Patricia Quillacq, Head of the International relations and legal cooperation Section of the Department of the Interior and of Justice, Ministry of Social Affairs, of the Interior and of Justice.

11. The draft version of the present report was approved by GRETA at its 33rd meeting (3-7 December 2018) and was submitted to the authorities for comments on 21 December 2018. The Andorran authorities' comments were received on 20 February 2019 and were taken into account by GRETA when adopting the final report at its 34th meeting (18-22 March 2019). The report covers the situation up to 22 March 2019; developments since that date are not taken into account in the following analysis and conclusions. The conclusions summarise the progress made, the issues which require immediate action and the other areas where further action is needed (see pages 33-36).

II. Main developments in the implementation of the Convention by Andorra

1. Emerging trends in trafficking in human beings

12. No victims of trafficking have been identified on the territory of the Principality of Andorra, which has fewer than 80 000 inhabitants (74 794 inhabitants in 2017⁴) on a territory of 467.63 km² landlocked between France and Spain. Andorra is not part of the Schengen Area and therefore maintains constant checks on its only two borders and two access routes (to and from France and Spain). However, as already emphasised in GRETA's first report, some sectors could present risks of exploitation, particularly those employing seasonal workers (ski resorts, construction, hotel services, catering), as well as domestic work. However, the absence of systematic identification procedures and the lack of training may explain the fact that there have been no trafficking cases detected.

2. Developments in the legal framework

13. The legal framework has developed considerably since the first evaluation round, with the Principality of Andorra having taken a number of measures, including of a legislative nature, to make trafficking in human beings a criminal offence and strengthen protection for victims. Law 40/2014 amending the Criminal Code introduced the following offences: trafficking in human beings for the purpose of organ removal (Article 121*bis* of the Criminal Code), trafficking in human beings for the purpose of slavery or servitude (Article 134*bis* of the Criminal Code), as well as trafficking in human beings for the purpose of sexual exploitation (Article 157*bis* of the Criminal Code).

14. The "Law on measures for action against trafficking in human beings and protection of victims" was passed by the Andorran Parliament on 25 May 2017 and entered into force on 14 June 2017 (published in Official Bulletin no. 39 of 14 June 2017). This law (Law 9/2017) adapts Andorran legislation by amending several laws already in force with a view to fulfilling the obligations arising under the Council of Europe Convention on Action against Trafficking in Human Beings. In particular, it amends the law on immigration (Law 9/2012) by introducing a recovery and reflection period and by introducing a residence and work permit which may be issued upon expiry of the recovery and reflection period, defining the criteria for granting and also renewing it. Law 9/2017 also amends Law 6/2014 on social and public health services by making provision for services and assistance for the physical, psychological and social recovery of trafficking victims, including assisted returns to the country of origin or any other country offering the requisite level of safety, when requested by the victim. Finally, the new law amends Law 17/2008 on Social Security so that trafficking victims and their underage children can receive full reimbursement for services and be included in special social security regimes. The 2017 law stipulates the necessity of establishing a programme for the early detection of THB victims. Further details on the text defining the offence will be provided on the section on substantive criminal law below (see paragraphs 110-117).

⁴ Andorran Government Statistics department: www.estadistica.ad

15. GRETA notes in particular that in accordance with the final provision of the Law 9/2017 on the protection of victims of trafficking in human beings, which provides for the elaboration up of a national programme for early detection of trafficking in human beings, an Action Protocol for the protection of victims of trafficking in human beings, was approved by the government on 6 June 2018, which has established measures for the detection, identification, assistance and protection of trafficking victims. The Protocol seeks to ensure co-ordination between the different stakeholders concerned, including the competent administrations, assistance bodies and civil society, which in effect makes it a national referral mechanism. The Protocol uses the same definition of trafficking in human beings as provided for in the Andorran Criminal Code which revolves exclusively around trafficking in human beings for the purposes of organ removal (Article 121 *bis*), slavery or servitude (Article 134 *bis*) and sexual exploitation (Article 157 *bis*). The Protocol identifies the police as the sole authority competent for the identification of trafficking victims and lays down the procedures to follow in the event of potential trafficking victims being detected, with a view to recognising them as victims and conducting interviews with them in that capacity. It provides for protection and assistance measures, a recovery and reflection period and a residence permit, voluntary return and specific rights for child victims of trafficking in human beings. Finally, it has a "checklist facilitating the identification of victims" appended. According to the information provided by the Andorran authorities, the Action Protocol has the regulatory effect of an agreement adopted by the Council of Ministers, as per the government law of 15 December 2000 (article 16), which acquires full regulatory effect from the moment of publication in the official journal (*Bulletin official*).

16. GRETA was also informed of a number of legislative developments in the areas of immigration and asylum. A law establishing temporary asylum for two years for Syrian refugees was passed initially, in parallel with the opening of the Sant'Egidio humanitarian corridor⁵, followed by Law 4/2018 passed in May 2018, amending the law on immigration and seeking to compensate for the non-ratification of the 1951 Geneva Convention Relating to the Status of Refugees, by allowing residence and access to education and employment for families of refugees (see paragraphs 108-109).

17. Since GRETA's first visit to Andorra, Law 1/2015 on eradication of violence against women and domestic violence has been passed in order to implement the Council of Europe Convention on that topic.⁶ At the time of GRETA's second evaluation visit, a draft Law on equality and non-discrimination had just been presented by the government. The law has since been adopted by the Parliament during its 15 February 2019 session. GRETA was informed that open consultation had been carried out and that a collaborative, cross-sectoral white paper had been officially presented and published on 7 May 2018. The drafting of the white paper, granted by the parliament as early as 2015, has been conducted in a participatory manner, associating also civil society. GRETA welcomes these initiatives intended to promote gender equality, noting that measures to combat violence and sexist stereotypes and specific initiatives promoting independence for women are means of countering the deep-lying causes of trafficking in human beings for various purposes.

⁵ <https://www.santegidio.org/pageID/30284/langID/fr/itemID/25448/Couloirs-humanitaires--Andorre-ouvre-aussi-ses-portes-aux-r%C3%A9fugi%C3%A9s.html>

⁶ Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), CETS no. 210, <https://www.coe.int/fr/web/conventions/full-list/-/conventions/treaty/210>

3. Developments in the institutional framework

18. The new Law 9/2017 and the Action Protocol provide the framework for action against trafficking and the protection of victims. The institutions and entities expressly mentioned in the Protocol and, therefore, required to take action are the police, the Crimes against Persons Unit and the Borders and Foreigners Service, the Labour Inspectorate and the health and social services, particularly where detecting potential trafficking victims is concerned. In addition, the judicial authorities and the public prosecution service will be required to take steps to implement criminal proceedings if such infringements are detected. The Ministry of Social Affairs, Justice and Internal Affairs is the only body authorised to identify victims. In the event of a potential THB victim being detected, a contact person is designated to assist that individual in all administrative dealings (see paragraph 69). According to the authorities, this ministry appears to be in effect the entity best suited to supervise and also to promote the implementation of anti-trafficking strategies, policies and activities.

19. In the event of the victim being an unaccompanied child, a legal guardian is assigned to them. Furthermore, a protocol has been signed with the Accommodation Centre for Children and Young People (*Centre d'Accueil d'Enfants et Jeunes - CAI*) indicating the steps to be followed in order to safeguard the best interests of the child.

20. As pointed out in GRETA's first report on Andorra, there are several associations whose mission it is to protect the rights of vulnerable people, as well as a number of trade unions and a trade union federation (Federation of trade unions of Andorra or USDA). The non-governmental organisations cooperate with the authorities, and in the event that members of a given association were to detect signs suggesting that someone was a victim of THB, they would refer that individual to the authorised services mentioned above. Protecting children in difficulty is also a focal activity for UNICEF, which has an office in Andorra and also runs local projects to promote protection of the rights of the child.

4. National Action Plans

21. Andorra has no national plan to combat trafficking in human beings. Given that no victims have been detected, the Andorran authorities do not consider for the time being action against trafficking to be a priority and they have no plans in the short term to draw up a specific national action plan to tackle trafficking in human beings. In this context, the authorities made reference to the limited human and financial resources and to the necessity to be strategic in their choices of work priorities.

22. GRETA notes that the adoption of the Action Protocol is a step in the right direction to the extent that it constitutes de facto a national referral mechanism and provides guidance in the event of detection of trafficking cases. **However, with a view to meeting the obligations under the Convention, GRETA urges the Andorran authorities to either adopt some form of strategic policy document, focusing on prevention measures, raising awareness of THB and providing training to relevant professionals, or to incorporate measures of prevention of human trafficking in the Action Protocol or in another, already existing national action plan, and to ensure that adequate resources are allocated and that a time-table for the implementation of the activities is established.**

5. Training of relevant professionals

23. In its first report, GRETA stressed the possible link between the lack of training in detection of trafficking victims and the fact that no trafficking victims had yet been identified. GRETA reiterates that, even though no cases of trafficking have been found in Andorra, it is indispensable to train the professionals concerned so that they are able to detect signs of trafficking and react in line with the Convention's provisions.

24. There is still no training or awareness-raising on trafficking in human beings in Andorra for the different actors who might come into contact with potential trafficking victims. Training, including on trafficking in human beings, is nonetheless available in France and Spain for different categories of professionals, on a voluntary basis, in particular for law enforcement officials, prosecutors and judges. In their comments to the draft GRETA report, the Andorran authorities have referred to examples of training undertaken by Andorran professionals in relation to THB⁷ and indicated the intention of the police to take part in conferences and training in 2019.⁸

25. Where the law enforcement agencies are concerned, training in the detection of forged documents is organised annually for all units. GRETA was informed that there were plans for two specialised police officers from the Borders and Foreigners Service to receive training on human trafficking in Spain in November 2019. **GRETA encourages the staff of the Crimes against Persons Unit of the criminal investigations police and police officers working for the immigration service to also undergo this training.**

26. As part of their in-service training, judges and prosecutors may undergo training on trafficking in human beings in collaborative activities with Spain and France. GRETA notes that some members of the judiciary are trained in the area of cybercrime and participate in Octopus Conference workshops run by the Council of Europe.

27. Lawyers do not receive training on trafficking in human beings, but may take courses on cybercrime and violence against women.

28. Given the lack of progress with regard to specific training on trafficking in human beings for the professionals concerned, and in view of the entry into force of the new law and the adoption of the Action Protocol for action against trafficking in human beings and the protection of victims, **GRETA considers that the Andorran authorities should take steps to guarantee that training on trafficking is provided, in Andorra or abroad, to the members of the law enforcement agencies, members of the judiciary, labour inspectors, lawyers, social workers, child protection professionals, medical staff and other groups concerned, in order to improve the detection of and assistance to potential victims of trafficking. In addition, associations whose mission is to safeguard the rights of vulnerable persons and trade unions should be sensitized on trafficking, its different forms and the application of the Protocol for action against trafficking in human beings.**

6. Data collection and research

29. In its first report, GRETA encouraged the Andorran authorities to consider how data on victims of trafficking in human beings would be collected, having due regard to their right to personal data protection, and to support research into THB-related questions.

30. GRETA has not been informed of any research or planned research concerning THB in Andorra.

31. **GRETA considers that the Andorran authorities should increase their efforts to conduct and support research on THB-related issues as an evidence base for future policy measures.** Areas where research could be conducted include THB for the purpose of sexual exploitation, THB for the purpose of labour exploitation in different sectors of the economy (domestic work, seasonal work in ski resorts, construction and hotel services) and trafficking in children for different forms of exploitation (including on the organised live-streaming of sexual abuse of children online).

⁷ Council of Europe online training on the HELP platform; OSCE training in Vicenza (Combatting Human Trafficking along Migration Routes).

⁸ OSCE training in Vienna in April 2019.

III. Article-by-article findings

1. Prevention of trafficking in human beings

a. Measures to raise awareness of THB (Article 5)

32. In its first report, GRETA considered that the Andorran authorities should carry out initiatives to raise awareness of trafficking in human beings and the different forms of exploitation it entails, aimed at the general public (including in schools), civil society and the economic sectors traditionally exposed to trafficking. It also invited them to consider what measures might be envisaged for groups vulnerable to trafficking, particularly children, women in need of protection and assistance or migrant workers.

33. No activities to raise awareness of THB were carried out in Andorra during the reporting period. GRETA was informed that, as a direct consequence of the evaluation visit, an awareness-raising action aimed at the general public was conducted in September 2018 via the publication of a leaflet providing prevention advice.⁹ The leaflet targets children, parents, employees and persons traveling abroad, to sensitise them to dangerous situations which may expose them to risks of trafficking and provides a free telephone line (181) which may be called to obtain assistance.

34. The Raonador del Ciutada (Ombudsman) indicated his intention to visit schools in order to raise awareness of THB issues. GRETA encourages this initiative.

35. Noting that awareness-raising is essential for preventing THB and detecting possible cases, **GRETA considers that the Andorran authorities should continue carrying out initiatives to raise awareness of THB for different forms of exploitation, both amongst the general public and at-risk groups. The impact of the measures should be assessed.**

b. Measures to prevent THB for the purpose of labour exploitation (Article 5)

36. Although no cases of trafficking for the purpose of exploitation of labour have been detected, the Andorran authorities acknowledged that some sectors, notably seasonal work and domestic labour, are particularly at risk from exploitation as the individuals in question are often unaware of the rights they have and might be employed outside the legal framework established by labour law.

37. Where domestic workers are concerned, they mainly originate from the Philippines, and it is the Philippines consulate which checks them upon arrival. If an individual came to settle in Andorra without going via the consulate, the consulate would alert the police, who would then carry out checks. According to the Andorran authorities, the very small size of the Filipino community means that a case of exploitation would quickly become common knowledge.

38. At the time of GRETA's visit, the Labour Inspectorate comprised five labour inspectors to cover between 37,000 and 38,000 employees.¹⁰ Since the visit, the authorities stated that they had increased staff by two additional inspectors.

⁹ The triptych is available in Catalan at:

https://www.aferssocials.ad/images/stories/Collectius/Igualtat/Triptic_SAVTEH.pdf

¹⁰ The inspectors handle around 4,500 consultations face-to-face, at the offices of the Labour Inspectorate, and around 15,000 consultations by telephone.

39. Only very few inspections are carried out on the ground, usually in response to complaints or in case of work accidents. Inspections at the Labour Inspectorate's own initiative are very rare, but the authorities underlined the fact that unannounced visits are possible. There are around 700 inspections, involving the taking of statements and the production of a report, focusing essentially on checks on work safety. It was specified by the authorities that work-related abuse, such as unpaid overtime, do not fall within the scope of criminal law, while since private home visits are not within the competence of the Labour Inspectorate, cases prompting concerns or suspicions of exploitation of labour in domestic work would fall within the scope of competence of the police. The new Action Protocol establishes in this connection that labour inspectors may implement necessary measures and checks within the scope of their competence in order to detect situations of exploitation of labour. It is specified in Article 5 of the Protocol that "if, during an inspection, labour inspectors detect signs of trafficking in human beings, they must immediately notify the Public Prosecution Service, as well as the Police Department so that the latter carries out the relevant inquiries and launches the identification process, without preventing the corresponding procedures being carried out jointly in an organised manner. In such a case, the Department of Labour Inspection shall forward the report setting out the facts, the individuals involved, the evidence obtained and any other information of interest".

40. Andorra's laws and policies on immigration are particularly rigid and hinge on immigration quotas,¹¹ meeting strict, legally enshrined criteria, according to the type of residence permit applied for. It is obligatory to provide proof of income or a remunerated work contract and also to be registered with the state social security services. No one can settle and live in Andorra without work and residence permits, which are required to open a bank account, rent housing, enrol children in school, etc. Reimbursements of health costs and other welfare services are accessible only to registered individuals paying social security contributions. Moreover, foreign workers must be declared with the immigration service, which facilitates checking on a case-by-case basis, while construction workers must undergo a compulsory medical examination in order to obtain a certificate declaring them fit for work. According to the Andorran authorities, these criteria tend to make it very complex and therefore unlikely for people to be irregularly present in the country. Tourists are allowed to stay for a maximum of three months in Andorra and are not allowed to engage in any professional activity without a permit from the immigration service. Persons who are not legally resident in Andorra cannot register for social security or receive any welfare assistance.

41. While noting that it is Andorra's intention to ensure that everyone on its territory is there lawfully, GRETA is concerned that the legal and administrative obstacles created by the current system could place potential trafficking victims in a particularly precarious and vulnerable situation and therefore make them dependent on the traffickers.

42. The authorities stated that no cases of people sleeping at worksites had been found. Only a few cases of forged papers had been uncovered but this related to persons who had voluntarily come to work and needed fake documents to meet the qualification requirements in a given sector.

43. Trade union representatives described working conditions that could foster risks of exploitation: six working days per week, very flexible schedules, rarely paid overtime, free termination of employment and costly lawyers' fees in case of dispute. Their efforts to obtain a 40-hour work week have not been successful, and trade unions do not receive any grants or subsidies and therefore had very little resources to enable them to carry out studies on the situation of workers.

¹¹ Regulations setting permitted immigration quotas establish the minimum levels to be complied with.

44. **GRETA urges the Andorran authorities to take further steps aimed at preventing THB for the purpose of labour exploitation, including by:**

- **raising awareness among the professionals concerned (police officers, labour inspectors, tax officials, prosecutors, judges) of this form of trafficking and the rights of victims;**
- **raising awareness among the general public and, in targeted initiatives, migrant workers of the risk of trafficking for the purpose of labour exploitation;**
- **ensuring that the terms of reference of labour inspectors enable them to contribute to preventing and detecting cases of trafficking for the purpose of labour exploitation, including within households;**
- **working in close collaboration with trade unions, civil society and the private sector to raise awareness of trafficking for the purpose of labour exploitation, and strengthen corporate social responsibility, drawing on the Guiding Principles on Business and Human Rights¹² and Recommendation CM/Rec(2016)3 on human rights and business.¹³**

c. Measures to prevent trafficking in children (Article 5)

45. GRETA has been informed that awareness-raising initiatives had been undertaken in 2018, in particular via the publication of a leaflet disseminated to the general public alerting it to the risks of trafficking and providing a free telephone number (see paragraph 33).

46. **GRETA considers that the Andorran authorities should take additional measures to prevent trafficking in children, in particular by:**

- **strengthening the role and capacity of the child protection systems to prevent trafficking in children and report possible cases of trafficking to the competent authorities;**
- **promoting online safety of children and alerting relevant actors of risks of trafficking in children committed via the Internet.**

d. Measures to prevent trafficking in human beings for the purpose of organ removal (Article 5)

47. GRETA notes that while human trafficking for the purpose of organ removal as defined by the Convention and organ trafficking as defined by Articles 4 to 8 of the Council of Europe Convention against Trafficking in Human Organs¹⁴ – are two distinct crimes, they bear certain similarities and share similar root causes, such as shortage of organs to meet demand for transplantation and poor economic and other conditions that put persons in a vulnerable position. Therefore, measures to prevent organ trafficking can help prevent trafficking for the purpose of organ removal and the reverse is also true.¹⁵ Among the necessary preventive measures, GRETA emphasises the importance of a robust and transparent domestic system for the removal and transplantation of human organs and the need for training of healthcare professionals. GRETA also stresses the importance of conducting a thorough investigation of each case where there is information or suspicion of trafficking for the purpose of organ removal, focusing on abuse of the vulnerability of the "donor" and ensuring that "donors" are treated as victims of trafficking in human beings.

¹² http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

¹³ [Recommendation CM/Rec\(2016\)3](#) of the Committee of Ministers to member states on human rights and business, adopted by the Committee of Ministers on 2 March 2016 at the 1249th meeting of the Ministers' Deputies.

¹⁴ Opened for signature in Santiago de Compostela on 25 March 2015, in force since 1 March 2018.

¹⁵ See the [joint Council of Europe/United Nations study on "Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs"](#) (2009), particularly pages 55 and 56, (study in English only, [executive summary](#)

48. There is no structure on Andorran territory where donated organs (whether from living or deceased donors) can be removed or transplanted on the spot. Consequently, these operations are carried out abroad, in line with the procedures applicable in the countries concerned.

49. Trafficking in human beings for the purpose of organ removal is a criminal offence in Andorran legislation under Articles 121 and 121*bis* of the Criminal Code. Under Article 121, anyone who, without court or administrative authorisation, offers, accepts or traffics human organs, tissues, cells or gametes is liable to a prison sentence ranging from three months to three years, as well as being banned from professional practice for up to five years. The circumstances are aggravated when organs are removed illegally, if the victim is a child or particularly vulnerable or these acts are carried out in the framework of a criminal organisation. Article 121*bis* states that "anyone who, for the purpose of organ removal, recruits, transports, transfers, harbours or receives one or more persons, shall be punished with a prison sentence of between two and six years, without prejudice, where applicable, to penalties that may be imposed for the other offences committed, where at least one of the following means is used: a) when there is use of violence or other forms of intimidation or constraint, or with the threat thereof; b) when there is fraud, deception, abuse of power or of a position of vulnerability; c) where there is an offer or acceptance of payment or a benefit to obtain the consent of a person having *de facto* or *de jure* control over another person;" and "where none of the means mentioned in the previous sub-paragraph is used, the act defined therein shall be deemed as trafficking in human beings for the purpose of organ removal if performed on a child, without prejudice, where applicable, to penalties that may be imposed for the other offences committed". Endangering the victim's life is an aggravating circumstance in all cases.

50. Medical and other health-care professionals are obliged to inform the police should they have suspicions of trafficking for the purpose of organ removal.

51. **GRETA encourages the Andorran authorities to sign and ratify the Council of Europe Convention against Trafficking in Human Organs.**

e. **Measures to discourage demand (Article 6)**

52. The authorities informed GRETA that, since no cases of trafficking in human beings had been detected in Andorra, no measures had been taken to discourage demand for services provided by trafficked persons.

53. **GRETA considers that the Andorran authorities should adopt additional legislative measures (see paragraph 120), as well as educational, social, cultural and other measures to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with civil society, trade unions and the media.**

f. **Border measures (Article 7)**

54. In its first report, GRETA noted that Andorran territory can be entered only by roads from Spain and France and the border crossing points are permanently controlled by the Borders and Foreigners Service of the Andorran police, which also carries out immigration checks within the territory and co-operates closely with its Spanish and French counterparts.¹⁶ There is only road transport linking Andorra to France, Spain and Portugal. The Andorran authorities pointed out that while bus company staff receive no specific training to detect victims of trafficking in human beings from the Andorran government, the staff and drivers of the different companies are given instructions on security in line with community legislation in this area. The bus companies operating between the Principality of Andorra and Spain are under obligation to communicate the list of passengers to the Spanish Ministry of the Interior, and this is done automatically prior to all departures, whether to Andorra or Spain. As Andorra is not part of the Schengen area, the buses are systematically checked upon entering and leaving the territory by the authorities at the Franco-Andorran border.

55. The Action Protocol, in Article 5 on the detection of potential victims, states that "when a presumed case of trafficking is detected at the border by the staff of the Borders and Foreigners Service, they must notify the Public prosecution service and the Police Department". The Appendix to the Draft Protocol sets out a list of indicators in the form of questions to facilitate identification of victims and of traffickers.

56. Article 9 of the Protocol states that once a trafficking victim has been identified, "the risk must be assessed and the necessary steps taken to provide appropriate protection against any acts of reprisals or intimidation, during and after investigations and judicial proceedings against the perpetrators. In concrete terms, this protection may include physical protection". It is specified that it is essentially the law enforcement agencies and customs that would have the task of detecting potential victims and persons irregularly present or in a position of vulnerability when inspecting buses entering Andorran territory. There are also specific bilateral treaties on police and customs co-operation between Andorra, France and Spain, and their scope includes co-operation in all criminal matters, notably transnational crimes, including trafficking in human beings.

57. **GRETA invites the Andorran authorities to maintain their efforts to detect potential victims of THB at border crossings.** GRETA refers in this connection to the United Nations Office of the High Commissioner for Human Rights (OHCHR) 2014 Recommended Principles and Guidelines on Human Rights at International Borders.¹⁷

2. Measures to protect and promote the rights of victims, guaranteeing gender equality

a. **Identification of victims of THB (Article 10)**

58. In its first report, GRETA urged the Andorran authorities to adopt such legislative or other measures as may be necessary to proactively identify trafficking victims and refer them to specialised assistance, providing for the use of operational tools (such as indicators) for detecting possible victims and involving the different actors likely to come into contact with victims, particularly law enforcement officials, labour inspectors and NGOs.

¹⁶ Paragraph 56 of GRETA's first report on Andorra

¹⁷https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf&action=default&DefaultItemOpen=1

59. The Action Protocol of 6 June 2018, implementing Law 9/2017, designates in its Article 6 the police department as the body competent to launch and complete the procedure for identifying trafficking victims. It is specified that as soon as there are "reasonable indications" suggesting that an individual could be a potential THB victim, the identification procedure is triggered, and the potential victim must be afforded the necessary protection measures for the entire duration of that procedure. The Protocol makes express reference to detection by the police, the Labour Inspectorate, Borders and Foreigners Service police or public health or welfare assistance bodies (see also paragraph 18). In all cases, it is stipulated that suspicions of trafficking are to be immediately brought to the attention of the Crimes against Persons Unit of the police, as well as the Public prosecution service (Article 5). Finally, the Protocol states that, in line with the provisions of Article 36 of the Code of Criminal Procedure, anyone aware of a possible case of trafficking in human beings must report it to the Public prosecution service or the criminal investigations police.

60. The Appendix to the Action Protocol also provides a list of questions as a detection aid, which constitutes a first draft for indicators but the list remains very short and superficial. According to the authorities, the indicators are to be developed as time goes on. Nonetheless, in GRETA's opinion, having clear indicators for detecting THB and identifying its victims is an indispensable prerequisite for effective identification of any possible cases of THB.

61. GRETA further notes that the two bordering countries, France and Spain, have taken part in the EU-funded project to develop common guidelines and procedures for the identification of victims of trafficking (Euro TrafGuID). Practical tools for first-level identification of victims of different forms of THB (sexual exploitation, labour exploitation, forced begging and illicit activities) have been developed and are available in Spanish¹⁸ and French.¹⁹

62. According to the information gathered by GRETA, if irregular migrants were identified as trafficking victims, they would be afforded the same rights and protection under the Convention and national legislation that would be enjoyed by anyone staying in Andorra with a residence permit. However, GRETA raises concerns over the capability of the competent authorities and services to identify irregularly present trafficking victims, or over the possibility of self-identification where applicable.

63. While welcoming the adoption of the Law on measures for action against trafficking in human beings and the Action Protocol for the protection of victims of trafficking in human beings, **GRETA considers that the authorities should take additional measures with a view to:**

- **providing indicators for the identification of victims of THB for different forms of exploitation to all professionals who may come into contact with possible victims of trafficking, to enable the proactive detection of trafficking victims;**
- **adapting tools within the framework of the Euro TrafGuID project and making them available to the competent authorities and professionals in Andorra;**
- **increasing efforts to proactively identify victims of THB for the purpose of sexual exploitation and for the purpose of labour exploitation, in particular in the sectors most at risk, by effectively involving labour inspectors and trade unions, as well as encouraging the self-identification of victims.**

¹⁸ <http://www.violenciagenero.msssi.gob.es/otrasFormas/trata/detectarla/home.htm>

¹⁹ https://renate-europe.net/wp-content/uploads/2013/12/2014.11_identification_1_GUIDELINES.pdf;
https://renate-europe.net/wp-content/uploads/2013/12/2014.11_identification_4_BEGGING.pdf;
https://renate-europe.net/wp-content/uploads/2013/12/2014.11_identification_2_SEXUAL-exploitation.pdf;

b. **Assistance measures (Article 12)**

64. In its first report, GRETA urged the Andorran authorities to adopt such legislative or other measures as may be necessary to provide assistance to victims of human trafficking (women, men and children) and help them with their physical, psychological and social recovery (in particular suitable safe accommodation, access to emergency medical care, counselling and material assistance, as well as advice and information on their rights in a language understood by the victim) in accordance with Article 12 of the Convention, including through awareness-raising and training for the actors concerned.

65. Since the first evaluation round, Andorra has made trafficking in human beings a criminal offence (see paragraph 111) and subsequently adopted Law 9/2017 on measures for action against trafficking in human beings and protection of victims, as well as the Action Protocol for the protection of victims of trafficking in human beings. In terms of assistance, Article 8 of Law 9/2017, supplemented by paragraph 9 of the Action Protocol, provides for a recovery and reflection period, financial support (health cover with a right to 100% reimbursement of expenses, access to the tuition support system, payment of the costs of any assisted return to the country of origin), as well as the possibility of referring victims for assistance measures, including access to housing, medical assistance and counselling, legal assistance and advice, social services, translation and interpreting services, as well as the provision of a telephone for emergencies.

66. Moreover, the text of Law 9/2017 expressly stipulates, in Article 8.1, that “the financial, health and social support services granted by the competent authority to a victim of trafficking in human beings may not be made contingent upon the willingness of that individual to testify in criminal proceedings against the traffickers”.

67. As soon as a victim of trafficking in human beings is identified, he/she may benefit from the aforementioned assistance and services. It is sufficient to have a police report or for the victim to self-identify; if the victim is a foreigner, the immigration department shall inform the prosecution or police authorities, which will initiate the recovery and reflection period as well as services and assistance measures.

68. Pursuant to paragraph 9 of the Action Protocol, when there are suspicions of trafficking in human beings, the police service must inform the department responsible for adult equality policy so that a contact person is designated. This would be a social worker who would assist the victim during the identification procedure and in applications for assistance and services to which the victim is entitled during the recovery and reflection period. The Andorran authorities explained that the contact person plays a role of administrator co-ordinating a team comprising a lawyer dealing with legal procedures, a psychologist and a social worker, to ensure that the victim is properly cared for. Guidelines exist for cases of domestic violence and the same approach would be followed in human trafficking cases.

69. If a criminal investigation is opened, the capacity of victim would be automatically recognised, and assistance measures applied immediately. Outside criminal proceedings, the victim would have to lodge a request for assistance in administrative dealings, and it is the Department of Justice and the Interior which would handle the organisation of reception, witness protection and any other assistance that might be needed. A contact person would be appointed as indicated above. However, GRETA is concerned by the requirement currently laid down in paragraph 7 of the Action Protocol that the status of a victim must be certified before the person can benefit from assistance and services. According to the Andorran authorities, this is a drafting issue and, in reality, it is enough to have an indication that a person is a victim, without needing certification of the status of a victim, for them to have access to protection and assistance.

70. In the event of a victim of THB being detected, the authority responsible for providing accommodation would be the Directorate of Social Affairs, and the victim would be accommodated, as regards unaccompanied children, in the Accommodation Centre for Children and Young People, "la Gavernera", intended for children under state guardianship, or, for adults, in one of the flats available to the Directorate of Social Affairs. The location of these flats is kept secret and is known only to the Crimes against Persons Unit of the criminal investigations police. The flats are also frequently changed. Care for trafficking victims would be similar to that provided for domestic violence victims, but each case would be considered on an individual basis to provide the response best suited to trafficking victims' needs.

71. Follow-up would be provided for at least one year after the trafficking victim assistance programme or after the file is closed, with monthly meetings with social and health services, for example. Victims having obtained a residence permit and residing legally in Andorra after the expiry of the recovery and reflection period would automatically be registered with the Andorran social security system and enjoy the same rights as all residents in that respect.

72. Finally, GRETA was informed by the Bar Association that weekly free legal advice consultations were available and would therefore also be accessible to victims of THB after the assistance programme ended. Some 25% of the issues raised relate to labour law. On the other hand, lawyers must observe professional secrecy very strictly and its violation is punishable. Lawyers who might become aware of a case of trafficking in their work could do no more than provide advice to the victim.

73. **GRETA considers that the authorities should take measures so as to:**

- **set up a clearly defined programme for the integration of trafficking victims;**
- **define in a detailed manner the contact person's terms of reference, as well as the exact tasks incumbent upon them in cases of trafficking in human beings;**
- **clarify paragraph 7 concerning the status of a victim and ensure that possible victims receive effective protection as soon as signs of trafficking are detected and throughout the identification procedure and any subsequent criminal proceedings.**

c. **Identification of child victims of trafficking and assistance for those children (Articles 10 and 12)**

74. Paragraph 12 of the Action Protocol for the protection of victims of trafficking in human beings lists a set of special protection measures for child victims "intended to protect their best interests".

75. With regard to the assessment of a victim's age, the Protocol stipulates that "in accordance with Article 10.3 of the Convention, when a victim's age is not established but there are reasons to believe that they may be under 18 years of age, they must be presumed to be a child and granted special protection measures pending verification of their age". According to the additional information received by GRETA, a victim thought to be a child would be sent to the Forensic Medicine Department, where examinations would be carried out to determine their approximate age, in view of, amongst others, their height, weight, bone length, ossification rate, development of teeth, sexual maturity. Until their age has been determined by the competent services, a victim would be regarded and treated as a child and benefit from protection measures intended for children.

76. The Protocol also provides for the designation of a "legal guardian for unaccompanied children so that they are represented, and someone can act in the best interests of the child, following the steps laid down in the Protocol signed with the Accommodation Centre for Children and Young People (CAI)". According to the additional information provided, once checking and identification work has been carried out by the police, in the case of children being involved, the police would forward their report to the judge on duty, who would then determine who is to be the child's legal guardian, under the existing arrangements set out in Article 32 of the Special Law on Adoption and Other Forms of Protection for Vulnerable Children. The Children and Adolescents Department would be the body responsible for assessing the child's situation and the risks they face and for the concrete protection measures required in the short and medium term. According to the Andorran authorities, unaccompanied children who are victims of trafficking would be taken in, accommodated and treated in the same way as any child under state guardianship. The Accommodation Centre for Children and Young People (CAI) would be used to accommodate such children and there are also several flats complying with the same standards which can be used if the centre is at full capacity.

77. Moreover, pursuant to paragraph 12 of the Protocol, immediate measures of assistance, support and protection must be taken in order to ensure the "protection of the physical and mental integrity of the child, as well their education", but also "additional measures of protection during the interviews and the examinations conducted during the criminal investigation and proceedings" are required.

78. Establishing the child's identity and nationality and efforts to find their family are also listed as necessary measures stipulated in the Action Protocol, whereby "unaccompanied children require special attention as they are particularly vulnerable; until a permanent solution is found for the child, reception measures suited to their needs must be applied. It is also necessary to take the relevant steps to establish the child's identity, nationality and/or place of origin, and to have tools for searching for his/her family". The police service would activate that search, on Andorran territory and where applicable abroad, using the existing networks and tools for police and judicial collaboration. In parallel, the Ministry of Foreign Affairs and the Ministry of Social Affairs, Justice and the Interior would also activate their co-operation networks.

79. According to the information passed on by the Andorran authorities, unaccompanied or separated children who are placed under state guardianship and do not have residence permits, such as children whose foreign parents are arrested or indicted in Andorra, are cared for by the Andorran Government, which covers the costs and expenses. These foreign unaccompanied children are therefore automatically protected during their stay and until such time as the question of their guardianship is resolved.

80. Fostering a child in a family is one of the guiding principles of any child protection action as enshrined in the Special Law on Adoption and Other Forms of Protection for Vulnerable Children of 21 March 1996. Were there to be child victims of trafficking whose original family could not be found, it would be necessary to determine whether it is in the child's best interests to be placed with a foster family or kept at the CAI. Within the centre, as in the case of all children under guardianship, a child trafficking victim would benefit from counselling as well as language and adaptation classes.

81. In addition, during GRETA's visit, the Andorran authorities referred to a new programme for young adults between 18 and 25 years of age, who can no longer be accommodated at the CAI. At the time, there were nine young people placed under this programme, which may last months or even years if necessary.

82. The delegation also visited the Accommodation Centre for Children and Young People, which takes in children up to 18 years of age. At the time of the visit, the youngest child was three years old and oldest 16. Some had been victims of sexual violence. The children stay at the Centre for an average of six months and a maximum of two years. As far as possible, they are subsequently placed with foster families. The centre employs 27 staff members, including five who are trained as psychologists, but only one of them works in that capacity. There were surveillance cameras in all the corridors but GRETA was pleased to note that there were none in the bedrooms. Care is individually tailored to each child's needs. The Centre is not closed; the children must be there at certain times but are allowed to leave the premises.

83. GRETA was informed that a law on children's rights was adopted by Parliament at its session on 15 February 2019.

84. GRETA considers that the Andorran authorities should ensure that the competent stakeholders (police, service providers, NGOs, child protection authorities and social workers) undergo appropriate training and are given guidance on proactively identifying child victims of trafficking in human beings.

85. GRETA also invites the Andorran authorities to review the age assessment procedures, ensuring that the best interests of the child are effectively protected, in line with Article 10, paragraphs 3 and 4 of the Convention, and taking into account the Convention on the Rights of the Child and General Comment No. 6 of the Committee on the Rights of the Child.²⁰

d. Protection of private life (Article 11)

86. The professionals concerned by the detection, identification and protection of THB victims are public administration employees and therefore bound by the administrative code and their obligations under it.

87. The protection of victims' private life and identity, in compliance with Article 11 of the Convention, is guaranteed under Law 15/2003 on the Protection of Personal Data and the Regulations of the Personal Data Agency, whose provisions must be interpreted and applied in the light of the Convention. Respect for the privacy of everyone is a fundamental right recognised in Article 14 of the Andorran Constitution.

e. Recovery and reflection period (Article 13)

88. In its first report, GRETA urged the Andorran authorities to provide in law for a recovery and reflection period for victims of trafficking in human beings in conformity with Article 13 of the Convention and to ensure that no deportation takes place from the moment the identification process is started.

89. The new Article 115*bis* of Law 9/2012 on Immigration provides for a once-renewable recovery and reflection period of three months, during which the victim may reside in Andorra, in order to escape the influence of traffickers, recover physically and psychologically and decide whether he/she wishes to co-operate with the authorities in criminal proceedings against the traffickers. It is furthermore specified in Article 8.1 of that law that benefits and services cannot be made conditional on the victim's willingness to co-operate in the investigation and testify in the criminal trial of the traffickers. It is also stipulated that a person granted a recovery and reflection period cannot be subjected to any administrative police measures and will therefore not be detained or returned.

²⁰ General Comment No. 6 Treatment of unaccompanied and separated children outside their country of origin, Committee on the Rights of the Child, Thirty-ninth session, 17 May - 3 June 2005.

90. The recovery and reflection period is accompanied by a set of assistance measures and services (see paragraphs 65-72) which would also be available to victims of THB of Andorran nationality, although for the latter the residence permit granted during the recovery and reflection period is obviously not necessary.

91. The power to grant or refuse the recovery and reflection period lies with the administrative authorities. The immigration department only has to receive a police report or an instance of self-reporting by the victim for the recovery and reflection period to be granted. According to the information gathered by GRETA, it would be possible for a victim to work during that period, although it is designed above all to enable the victim to recover physically and psychologically from the trauma of trafficking.

92. While welcoming the provisions for a recovery and reflection period of more than the minimum of 30 days envisaged in the Convention, **GRETA invites the Andorran authorities to ensure that staff carrying out identification are given clear instructions emphasising the need to grant the recovery and reflection period along the lines defined in the Convention, namely not making it conditional on co-operation on the part of the victim and granting it to victims before formal statements are given to investigators, and in the case of children, to ensure that the best interests of the child are the primary consideration.**

f. **Residence permits (Article 14)**

93. GRETA notes that the recovery and reflection period provided for in Article 13 of the Convention should not be confused with the issue of the residence permit under Article 14 of the Convention.

94. In its first report, GRETA considered that the Andorran authorities should provide in law for the issue of a renewable residence permit to trafficking victims in cases where the competent authority considers that their stay is necessary owing to their personal situation and/or where the competent authority considers that their stay is necessary for the purpose of their co-operation in connection with an investigation or criminal proceedings, in accordance with Article 14 of the Convention.

95. In response to GRETA's recommendation, the authorities have amended their country's legislation by incorporating into Law 9/2017 (Article 3) the possibility for a foreign victim to apply for a residence and work permit. However, analysis of the wording of Article 3 shows that the granting of the residence and work permit is in fact governed by the requirement of proof that this measure is indeed "necessary owing to the individual's personal situation resulting from being a victim of trafficking in human beings", or the requirement of having a certificate of employment (Article 3.2). Despite the waiving in Article 3.3 of quotas and social cohesion criteria so that they do not apply to trafficking victims, given the numerous requirements governing recruitment in Andorra (see paragraph 40), it remains highly unlikely that a trafficking victim would manage to meet them, which creates a real obstacle to obtaining a residence and work permit before the recovery and reflection period expires.

96. In dialogue with the Andorran authorities, the GRETA delegation was told that the contact person tasked with assisting a trafficking victim (see paragraph 69) would be responsible, *inter alia*, for dealing with the Border and Foreigners Police with a view to legalising the victim's stay. Furthermore, the interim period between the end of the recovery and reflection period and the obtaining of a residence permit could be covered by a form of international protection for a foreign trafficking victim that would not be in an irregular situation.

97. However, the very specific and strict conditions linking residence in Andorra to work do raise a number of concerns as to the real possibility for foreign trafficking victims to obtain employment, which itself is dependent on the ability to speak the language. The Andorran interlocutors mentioned the possibility of considering concessions for trafficking victims imposing less stringent requirements, including registration with the employment department without having to meet the normal requirement of having a job. **GRETA considers that the measures regarding requirements for residence applicable to victims of trafficking should be enshrined in law to avoid uncertainty and the risk of arbitrary decisions in the processing of files.**

g. **Compensation and legal remedies (Article 15)**

98. In its first report, GRETA urged the Andorran authorities to adopt legislative or other measures necessary to guarantee compensation for victims of human trafficking, including compensation from the State when compensation cannot be secured from the perpetrator.

99. Anyone found guilty of a criminal offence also bears civil liability for compensation for damages suffered under Article 94 of the Criminal Code. There is still no fund for compensating victims if the perpetrators default.

100. Moreover, the Code of Criminal Procedure enables the judicial authorities to seize and confiscate assets or proceeds of the crime of trafficking in human beings. According to the Andorran authorities, financial investigations and the seizing of assets and proceeds of crime, particularly those of transnational crime or destined for money laundering operations, are an objective that is actively pursued by the judicial and police authorities, in collaboration with numerous other countries. Article 70 of the Criminal Code expressly stipulates the obligation to seize assets generated by the offence of trafficking in human beings while, under Article 116 of the Code of Criminal Procedure, there is provision for the seizing and confiscation of financial assets for which there are sufficient objective reasons to believe that they are the direct or indirect proceeds of crime. Article 118 provides for the possibility for the judge to grant assistance to victims or persons economically dependent on them at the expense of those indicted of the crimes, while Article 176 stipulates that, where the assets of the person convicted are not sufficient to cover all reparation payments to be made, these must be discharged in the following order: 1) compensation for damage and harm caused, 2) court costs, 3) fines, thus emphasising the priority given to compensation and damages.

101. Moreover, where Andorran courts are competent in accordance with the provisions of Article 8 of the Criminal Code (see paragraph 141), trafficking victims may use criminal and civil liability lawsuits in Andorra to obtain compensation that would correspond to damages and interest decided by a judge, even if they have returned to their country of origin.

102. Finally, the Law on International Judicial Co-operation in Criminal Law Matters of 29 December 2000 establishes that the assets of traffickers seized and confiscated in Andorra become the property of the Andorran State, except where stipulated otherwise in an international convention (multilateral or bilateral) such as within the framework of the International Criminal Court where the assets seized are channelled into the Trust Fund for Victims.

103. During the evaluation visit, the Andorran authorities stressed the effectiveness of seizures and confiscations made under a judge's decision to block accounts, with seizures made immediately at the level of the property register. However, some members of the Bar Association expressed their concerns that such measures could be taken too easily, for example without proof that acts have been committed abroad, whereas accounts could be blocked for years. Moreover, while assets can be confiscated, they cannot be used to compensate victims. Victims are awarded damages and interest in respect of civil liability, but it is not possible to award victims the value of seized proceeds of the crime of trafficking.

104. **GRETA considers that the Andorran authorities should guarantee effective access to compensation for victims of trafficking in human beings, and in particular:**

- envisage that compensation for victims may be derived from the confiscation of traffickers' assets;
- ensure that a victims' assistance fund is set up so that state compensation can be paid to any trafficking victim identified as such in the event of the perpetrator(s) defaulting.

h. **Repatriation and return of victims (Article 16)**

105. In its first report, GRETA considered that the Andorran authorities should provide for a specific framework for the return of THB victims to their country of origin, which should preferably be voluntary and needs to be carried out with due regard for the victims' safety and dignity – *inter alia* through an assessment of the risks they face if they return to their country – while also respecting the non-refoulement principle, in accordance with Article 40(4) of the Convention.

106. Article 9 of Law 9/2017 stipulates that an assisted return of a trafficking victim to their country of origin, at their request and after they have benefited from a recovery and reflection period, or a return to another country requested by the victim that provides the necessary conditions of safety and assistance, shall be envisaged once the recovery and reflection period is over. The safety and dignity of a returning victim must be taken into consideration, and this entails assessing the risks they might face. In addition, paragraph 11 of the Action Protocol for the protection of victims of trafficking in human beings covers the issue of voluntary returns, in line with Article 16 of the Convention and other international instruments. Where there are reasonable grounds to presume that a person on the territory of the Principality of Andorra is a victim, they are entitled to request a return to their country of origin. Returns must respect the rights, safety and dignity of the individual while taking account of on-going judicial proceedings. The government must take the necessary measures to enable the individual to return to their country of origin, although it is pointed out that, in the case of children, the best interests of the child must prevail in any decision on repatriation.

107. The Special Law on Adoption and Other Forms of Protection for Vulnerable Children of 21 March 1996 lays down the guiding principles for all actions carried out when children are under state guardianship. It is stated that the best interests of the child shall take precedence in all cases. The methods for determining a child's best interests are set out in chapters II and III of the Law on guardianship and parental rights. In the case of trafficking, the Action Protocol states, in paragraph 12, that "Before carrying out any repatriation, the related risks and safety issues must be assessed; repatriation may take place only if it is in the best interests of the child. Furthermore, it must be ensured that there is someone in the country of origin to care for the child".

108. GRETA notes that Andorra is not party to the 1951 Geneva Convention Relating to the Status of Refugees or to its 1967 Protocol. The Andorran authorities said that they wished to initially develop the legal basis for taking in refugees before considering signing up to that Convention and they had furthermore given an undertaking to the United Nations Human Rights Committee to consider accession to the instrument. The new legislation introducing temporary humanitarian protection for two years, making it possible to take in Syrian refugees as of September 2018, was described as a step in the process of their legalisation, granting them access to education and work among other things. Moreover, Law 4/2018 opens up the possibility of international protection including asylum. The first two families of Syrian refugees arrived in Andorra on 25 October 2018 and were accommodated in two apartments provided for that purpose. All four adults within those families have received residence and work permits under the temporary and transitory protection regime and will be able to apply for an ordinary residence and work permit upon expiry of the two years provided for under the Law on temporary and transitory humanitarian protection. Moreover, the adults have found employment (one of them already has an indefinite contract) or are about to be recruited, while the children are going to school in Andorra.

109. As no trafficking victims have been identified in Andorra, no returns have taken place. Were a foreign victim of trafficking to be identified, steps would be taken to ensure that they would not be sent back to a country where they would be at risk from inhuman or degrading treatment or their lives would be endangered, and the recovery and reflection period would enable them to apply for a residence and work permit. In addition, as Andorra is a State party to the European Convention on Human Rights, the authorities are bound in their action in terms of migration by the principle of non-refoulement, the breach of which would amount to a violation of the European Convention of Human Rights and other instruments. GRETA notes that the Andorran authorities should give full consideration to the UNHCR's guidelines on the application of the Refugees Convention to trafficked people and their possible entitlement to asylum.²¹

3. Substantive criminal law

a. Criminalisation of trafficking in human beings (Article 18)

110. In its first report on Andorra, GRETA urged the Andorran authorities to adopt legislative measures establishing trafficking in human beings as a criminal offence; providing for effective, proportionate and dissuasive sanctions for the perpetrators of the offence of THB; establishing as a criminal offence the aiding and abetting of the intentional committing of a THB offence and an attempt to commit such an offence. GRETA furthermore urged the Andorran authorities to ensure that all the aggravating circumstances listed in Article 24 were applied when determining the penalty for the offence of human trafficking.

111. Law 40/2014 amending the Criminal Code introduces the following offences: trafficking in human beings for the purpose of organ removal (Article 121*bis* of the Criminal Code), trafficking in human beings for the purpose of slavery or servitude (Article 134*bis* of the Criminal Code), as well as trafficking in human beings for the purpose of sexual exploitation (Article 157*bis* of the Criminal Code). Articles 121*bis*, 134*bis* and 157*bis* provide that the criminal offence of trafficking in human beings is constituted when the perpetrator "recruits, transports, transfers, harbours or receives one or more persons", using of the following means: a) by using "violence or other forms of intimidation or constraint, or the threat thereof", b) by using "fraud, deception, abuse of power or of a position of vulnerability", c) by "the offer or acceptance of payments or benefits to achieve the consent of a person having de facto or de jure control over another person." GRETA notes that the constituent elements of trafficking in human beings for the purpose of organ removal, for the purpose of slavery or servitude and for the purpose of sexual exploitation are based on the actions and means as established in Article 4 of the Convention, with the exception of "abduction". As regards sanctions, Articles 121*bis*, 134*bis* and 157*bis* provide for prison sentences going from two to six years, with the obligation to impose a sentence in the upper half in case the victim was particularly vulnerable due to their physical or psychological condition or due to an incapacity. GRETA welcomes the legislative measures taken by the Andorran authorities in bringing national legislation into line with obligations under the Convention.

112. GRETA also notes that as regards children, THB offences as defined under Articles 121*bis*, 134*bis* and 157*bis* are constituted when the actions concern a child, even when none of the means under paragraph 1 of the provision is used.

²¹ UNHCR, Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking, HCR/GIP/06/07, 7 April 2006

113. Furthermore, GRETA notes that Article 134*bis* targets trafficking for the purpose of slavery or servitude, which imply ownership features or at least a particularly serious form of denial of freedom, and therefore does not seem to cover forced labour or services, despite the latter falling within the definition of trafficking under the provisions of the Convention. **GRETA urges the Andorran authorities to take the necessary measures to transcribe all the purposes of trafficking in human beings set out in the Convention in their domestic law, in particular trafficking for the purpose of forced labour or services.**

114. GRETA also notes that there is no specific reference in the Criminal Code to trafficking for the purpose of forced criminality, which exposes victims to prosecution and does not allow application of a non-punishment clause (see paragraphs 123-125).

115. As regards trafficking for the purpose of forced begging, the Andorran authorities indicated that it would most likely fall within the scope of slavery or servitude.

116. **GRETA considers that the Andorran authorities should take all necessary measures to ensure that trafficking for the purpose of forced criminality and forced begging may be subject to effective prosecution and criminal convictions.**

117. With regard to aggravating circumstances, Article 115 of the Criminal Code provides that these apply where the victim is "particularly vulnerable owing to their age, physical or mental state, a disability or any other similar circumstance". Along similar lines, Article 136 of the Criminal Code, providing for aggravated punishment, notably for the offences of slavery, servitude and trafficking in human beings for the purpose of slavery or servitude, states in paragraph 1 that the penalties provided for shall be imposed in the upper half of their range when "the victim is particularly vulnerable owing to their age, a disability or an illness". Likewise, Article 158 of the Criminal Code provides for the application of penalties for offences of a sexual nature, including trafficking in human beings for the purpose of sexual exploitation, stipulating the application of penalties in the upper half of their range when "the victim is particularly vulnerable owing to their age, an illness, a disability or their situation. In all cases, it is considered that a victim is particularly vulnerable owing to their age when aged under 14 years". It was also emphasised that the notion of vulnerability has been used by Andorran justice, particularly in cases of sexual abuse, and that age has been a determining factor, including as regards age difference, the difference in physical strength and any family or professional ties between the victim and the attacker. **GRETA urges the Andorran authorities to consider trafficking of children, i.e. of every person of less than 18 years of age, as an aggravating circumstance, in accordance with Article 24 of the Convention.**

b. **Criminalisation of the use of services of a victim (Article 19)**

118. In its first report, GRETA noted that Andorran law did not contain a criminal offence punishing the act of knowingly using the services of a trafficking victim, as provided for in Article 19 of the Convention and invited the Andorran authorities to consider the possibility of criminalising the use of services which are the object of exploitation resulting from THB, with the knowledge that the person is a victim of trafficking.

119. GRETA notes that in the recent legislative reforms the authorities have not criminalised the use of services which are the object of exploitation as referred to in Article 4, paragraph a, of the Convention, in the knowledge that the person is a victim of trafficking in human beings.

120. **GRETA considers that the Andorran authorities should criminalise the use of services of victims of trafficking for different types of exploitation, in the knowledge that the person is a victim of trafficking.**

c. **Corporate liability (Article 22)**

121. The legislation on corporate liability has remained unchanged since GRETA's first report. In Andorran law, only natural persons may be held criminally liable under Article 24 of the Criminal Code, while Article 71 provides for ancillary penalties applicable to legal persons, including the dissolution of companies and the suspending of a company's activities.

122. **GRETA urges the Andorran authorities to adopt legislative measures allowing for the possibility of holding legal persons criminally liable for the offences provided for in the Convention, in conformity with Article 22.**

d. **Non-punishment of victims of THB (Article 26)**

123. As stated in GRETA's first report, the grounds for exemption from criminal liability in Andorran law include acting under the influence of insurmountable fear (Article 27 of the Criminal Code). There is no case-law on this point as of yet. GRETA is concerned that the criterion of "insurmountable fear" might not cover all trafficking situations, which could make it difficult to apply the non-punishment principle to a number of victims having participated in unlawful activities while compelled to do so by traffickers.

124. The Andorran authorities have pointed out that Article 7 of Law 9/2017 states that "the person concerned may not be subjected to any administrative police measures". They also stress that Article 11 of the Criminal Code states that only free and wilful acts and failures to act may constitute criminal offences and misdemeanours, and argue that if the offending was not an act of freewill, as would be the case for THB victims coerced into illegal activities, Article 27 would apply.

125. **GRETA considers that the Andorran authorities should take further measures to ensure compliance with the principle of non-punishment of victims of THB for participation in unlawful activities, including administrative infringements, when compelled to do so, as set out in Article 26 of the Convention. Such measures should include the adoption of a specific legal provision and/or the development of guidance for police officers, prosecutors and judges on the scope of the non-punishment provision, as well as raising awareness of the non-punishment principle among members of the judiciary.** Reference is made in this context to the recommendations on non-punishment for legislators and prosecutors contained in the paper issued by the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings in consultation with the Alliance against Trafficking in Persons Expert Co-ordination Team.²²

²²

<https://www.osce.org/secretariat/101002?download=true>

4. Investigation, prosecution and procedural law

a. Measures related to ensuring effective investigations (Articles 1, 27 and 29)

126. No investigation has been opened to date into trafficking in Andorra. However, during GRETA's visit, the delegation was informed of a case involving Chinese traffickers who set up fake companies in Andorra on the basis of new legislation dating from 2017 allowing foreign company bosses holding at least 11% of a company's capital to obtain a residence permit as an investor but also to freely move around within France and Spain. The fake companies were set up with the help of Andorran middle-men who also produced fake documents, and people smugglers were alleged to have taken hundreds of Chinese nationals into France in this way. The investigation into trafficking in human beings opened in France by the Central Office for the Suppression of Irregular Migration and the Employment of Irregular Migrants (OCRIEST) in August 2017 resulted in eight suspects being detained, four of whom were Andorran middle-men.²³ However, according to the information received by GRETA, the judge in Andorra did not classify the offence as trafficking in human beings given that none of the perpetrators or victims was present on Andorran territory at any time, focusing instead on document fraud and laundering offences committed by the middle-men.

127. At the time of GRETA's visit, there were 254 police officers across all services, 50 of whom were assigned to the criminal investigations department. There is no group specifically dedicated to trafficking in human beings but the unit responsible for crimes against persons would be competent for THB cases. This unit covers offences against children, violent crimes, violence against women and domestic violence for example. The authorities also have plans to set up a joint group involving the unit responsible for cybercrime and the unit responsible for crimes against persons for trafficking cases. According to information received, 13 new police officers were to be recruited, including one cybercrime analyst.

128. The use of special investigations techniques is governed by the Code of Criminal Procedure which, in the section on searching for evidence, provides, *inter alia*, for the use of phone-tapping in Article 87. Under Article 122^{ter} of the Code of Criminal Procedure undercover officers could be deployed in investigations into offences such as trafficking in children, child prostitution, images of sexual abuse of children and other forms of sexual exploitation, organ trafficking, money or asset laundering or the crimes at the origin of such offences, and for any of the offences listed in Articles 121^{bis}, 134^{bis}, 157^{bis} and 164^{bis} of the Criminal Code. GRETA was told that informants are used, although there are no specific rules governing this practice.

129. According to the Andorran authorities, use of these techniques does not differ depending on whether cases involve crime at national level or transnational organised crime. The legal and judicial guarantees covering these different techniques, particularly where they may affect people's rights to private life, are applicable equally to strictly national cases and to cases involving foreign criminals or organised crime networks. The authorities have pointed out that a reasoned judicial decision ordering phone-tapping, controlled deliveries or undercover work is required in all cases. Likewise, a judge's permission is required to access a server containing images of sexual abuse of children and other forms of sexual exploitation. Finally, it was emphasised in connection with special investigations techniques that they may be used only in such a way that the detective work involved cannot be regarded as entrapment.

²³ http://www.lepoint.fr/faits-divers/andorre-nouvel-eldorado-pour-le-trafic-de-titres-de-sejour-17-03-2018-2203367_2627.php

130. GRETA notes that in the area of cybercrime and specifically images of sexual abuse of children and other forms of sexual exploitation, there have been no cases solely national in scope and these offences have therefore always been dealt with via international cooperation. The authorities pointed out that there is no patrolling of the Internet because of limited human resources. More often than not, it is other States with more powerful IT tools to track down offenders on the web which alert the Andorran authorities and pass on the IP addresses involved. It is noted that the permission of an investigating judge is required to obtain the identity of the individual behind the IP address. However, the Andorran authorities told GRETA that a new draft law intended to amend the Criminal Code was being prepared and would pave the way for a more effective response in investigating offences on the Internet.

131. The criminal legislation on the seizing and confiscation of assets, including cash-flows of criminal origin, is supplemented by Law 14/2017 on preventing and combating the laundering of money and assets and the financing of terrorism of 22 June 2017.²⁴ It is pointed out that the Principality of Andorra is evaluated on a regular basis by Moneyval, follows the recommendations of the Financial Action Task Force (FATF) and has a Financial Intelligence Unit, the UIFAND.²⁵ According to the Bar Association, lawyers would have an obligation to report clients to the UIFAND without warning the client if they were to become aware of any acts linked to money laundering. Numerous requests for judicial assistance relate to money laundering, and experts from neighbouring countries are regularly seconded to the Andorran judicial authorities to assist the Andorran justice system in this type of investigation. Co-operation agreements on training for the members of the Prosecutor's Office have also been signed with the neighbouring states, enabling all the members of the Prosecutor's Office to benefit from the experience of tax prosecutors of those states.

132. GRETA considers that the Andorran authorities should step up their efforts to detect offences of THB for different types of exploitation and ensure their proactive investigation and effective prosecution, leading to proportionate and dissuasive sanctions.

b. Protection of witnesses and victims (Article 28 and 30)

133. In its first report, GRETA considered that the Andorran authorities should ensure that their national legislation would make it possible to take all necessary steps to provide effective and appropriate protection for victims and witnesses of trafficking from possible reprisals or intimidation during and after investigations (such as surveillance measures, physical protection, videoconferencing, anonymity during the investigation), in conformity with Articles 28 and 30 of the Convention.

134. The protection measures noted in the first evaluation round are still valid and involve essentially relocation and protection of witnesses and those reporting crimes from attempts to influence or intimidate them, in accordance with the provisions of Articles 110.2, 111 and 423 of the Code of Criminal Procedure.²⁶

²⁴ https://www.bopa.ad/bopa/029048/Pagines/CGL20170712_09_31_30.aspx

²⁵ <http://www.uifand.ad/>

²⁶ See paragraphs 109 and 110 of GRETA's first report on Andorra.

135. The latest developments result from the new Action Protocol for the protection of victims of trafficking in human beings, which states in paragraphs 5 and 6 that as soon as there are reasonable indications to suspect that someone is a trafficking victim and for the entire duration of the identification procedure, the protection and assistance measures provided for in paragraph 9 of the Protocol apply, as well as any measures required to safeguard the rights of the potential victim and ensure that all contact is broken off with the traffickers' entourage. Paragraph 8 of the Action Protocol, covering interviews with victims, establishes the obligation to ensure that these interviews are confidential, in a language that the victim can understand and with the assistance of an interpreter where necessary, and also in conditions suited to the victim's age, gender and personal circumstances. Paragraph 8 specifically reiterates the recommendations of the World Health Organisation (WHO) based on 10 Guiding Principles for the ethical and safe conduct of interviews of trafficking victims.²⁷ Finally, paragraph 9 stipulates that once a trafficking victim has been identified, the competent authorities must carry out an assessment of the risks faced by the victim and take all the necessary measures to provide appropriate protection against any acts of reprisal or intimidation, during and after the investigation and the judicial proceedings, including through the protection of the victim's personal data, privacy and identity and, where applicable, physical protection.

136. In the case of offences against vulnerable victims, particularly children, video is increasingly used for testimony to avoid victims having to repeat their testimony and statements before the police and during the investigation procedure. Although the defence is still entitled to demand that a victim be questioned again during the hearing, Andorran constitutional case-law has established that it is not indispensable to confront perpetrator and victim in all cases, in order to avoid revictimisation of the victim.

137. Special protection measures for children, and consequently child victims of trafficking, are provided for in the Special Law on Adoption and Other Forms of Protection for Vulnerable Children of 21 March 1996. In addition, Article 12 of the Action Protocol provides for the adoption of "additional protection measures during interviews and examinations to be carried out in the course of investigations and judicial proceedings. In this respect, the interview must be carried out in a short space of time, in suitable conditions and in the presence of the prosecution services while ensuring that the victim is presumed to be a child if there is a doubt".

138. Information received by GRETA indicates that the presence of an educator from social services and also a psychologist may be requested at interviews and hearings. If the victim wishes, a representative of civil society may also be asked to provide assistance in connection with interviews and hearings.

139. There is no agreement with France or Spain for receiving victims outside Andorran borders, despite the issues that arise with regard to their protection and anonymity, given the small size of the country. While the expulsion of the perpetrator of the offence or a ban on them entering the country may be ordered, the effectiveness of these measures is open to question. However, according to the Andorran authorities, the fact that there are so few cases makes it possible to mobilise all available resources to ensure that the victim is protected.

140. GRETA invites the Andorran authorities to ensure that all measures to protect victims of criminal offences are available in practice to victims of THB, witnesses and their legal representatives, to prevent reprisals and intimidation during investigation, as well as during and after the court proceedings.

²⁷ a) Do not harm; do not carry out an interview if it risks making the interviewee's situation worse, b) Know the subject and assess the risks, c) Prepare all the information for referral to assistance measures: do not make promises that cannot be fulfilled, d) Ensure anonymity and confidentiality, e) Select and prepare interpreters and co-workers, f) Obtain informed consent, g) Listen to and respect each person's assessment of their own situation and the risks they face, h) Do not re-traumatise the interviewee, i) Be prepared for emergency intervention, j) Put the information collected to good use.

c. **Jurisdiction (Article 31)**

141. Under Article 8.1 of the Criminal Code, "Andorran criminal legislation shall be applicable to offences attempted or carried out on the territory of the Principality and to related and inseparable offences attempted or carried out outside the territory of Andorra". It is also applicable to any criminal offence attempted or carried out outside Andorran territory by an Andorran national or if the victim is an Andorran.

5. International co-operation and co-operation with civil society

a. **International co-operation (Articles 32 and 33)**

142. In its first report, GRETA welcomed the co-operation already pursued with Spain in the area of training for police officers,²⁸ encouraged the Andorran authorities to develop such partnerships, including with other countries, particularly with regard to training relevant actors,²⁹ and invited the Andorran authorities to continue supporting initiatives aimed at the prevention of trafficking in human beings in countries of origin.

143. As regards exchanges of information with other parties and the obtaining of evidence, the Principality of Andorra is party to numerous conventions on judicial co-operation in criminal matters, including the United Nations Convention against Transnational Organised Crime and the Council of Europe Convention on Cybercrime and its additional protocol, as well as IBERRED,³⁰ which has specific points of contact for trafficking in human beings and brings together states from Central and Latin America, Spain, Andorra and Portugal to facilitate data exchange and communication.

144. It is down to the judicial authorities to immediately forward information they have on a victim of THB who is collaborating with the judicial authorities and might be in danger on the territory of another Party to the Convention, with a view to protecting the victim. The information may be passed directly between judicial authorities or, where necessary, channelled via organisations such as Interpol.

145. According to the Andorran authorities, given the size of the country, disappearances are very rare and quickly detected. In cases where children are irregularly present or do not have the documentation required to travel without a parent or guardian, they could not leave the territory.

146. Andorra has not joined the European Union countries in adopting the 116 000 missing children hotline number. There is only one hotline number for all emergencies requiring the intervention of the police: 110, available 24/7. There is a link to a page dedicated to the protection of children on the welcome page of the Police website.³¹

147. For the time being, there are no bilateral agreements concluded by the Principality of Andorra pursuant to Article 40.2 de la Convention but there are bilateral conventions on police co-operation with France and Spain.

148. The only missing children cases in Andorra have involved the abduction of children of Andorran nationality or to whom Andorran law applied; these cases have always occurred within a family unit (established couple or married partners), and no children have gone missing while placed under state guardianship. The European Convention on recognition and enforcement of decisions concerning custody of children and on restoration of custody of children applies.

²⁸ See paragraph 39 of GRETA's first report on Andorra.

²⁹ See paragraph 40 of GRETA's first report on Andorra.

³⁰ <https://www.iberred.org/>

³¹ <http://www.policia.ad/menors.html>

149. **GRETA considers that the Andorran authorities should continue developing international co-operation for the purpose of training relevant professionals, raising awareness of THB, improving the identification of victims and providing them with necessary accommodation and assistance, as well as conducting investigations on THB in the framework of transnational organised crime.**

b. Co-operation with civil society (Article 35)

150. There are currently no NGOs or other civil society actors specialised in preventing and combating trafficking in human beings in Andorra. The first article of the Action Protocol for the protection of victims of trafficking in human beings lists civil society among the actors that are to be involved in the detection, assistance and protection of THB victims via co-ordination mechanisms and procedures for communication with the administrations competent in this area.

151. **GRETA considers that the Andorran authorities should enhance their efforts to encourage the involvement of civil society actors and the private sector in activities aimed at achieving the purposes of the Convention, including prevention, awareness-raising, training of relevant professionals, identification and assistance of victims of THB.**

IV. Conclusions

152. Since the adoption of GRETA's first report on Andorra in July 2014, progress has been made in a number of areas.

153. GRETA welcomes the developments in the legal framework, with the adoption of the law on the protection of victims of trafficking in human beings, as well as legal developments with regard to migration and asylum, allowing residence and access to education and employment for families of refugees.

154. Further, the Action Protocol for the protection of victims of trafficking in human beings aims to ensure coordination amongst the various stakeholders, notably the competent agencies, bodies providing assistance and civil society, which constitutes a national referral mechanism.

155. GRETA takes note of the efforts made in terms of awareness-raising, in particular via the publication of leaflets disseminated to the general public, alerting it to the risks of trafficking and providing a free telephone number.

156. As regards combating human trafficking for the purpose of labour exploitation, GRETA noted the increase in the number of labour inspectors.

157. Amongst the positive initiatives are also measures taken to combat violence and sexist stereotypes, and initiatives promoting the independence for women, which constitute means of addressing the root causes of trafficking in human beings.

158. Measures have been taken to facilitate the identification of victims, notably through the provision of a list of questions in the appendix to the Action Protocol.

159. GRETA welcomes the setting up of a recovery and reflection period of three months, renewable once, during which the victim cannot be subjected to any administrative police measures and will therefore not be detained or expelled.

160. GRETA notes with satisfaction that a legal guardian is assigned to unaccompanied children, following the steps laid down in the Protocol signed with the Accommodation Centre for Children and Young People (CAI).

161. However, despite the progress achieved, some issues continue to give rise to concern. In this report, GRETA requests that the Andorran authorities to take further action in a number of areas. The position of the recommendations in the text of the report is shown in parentheses.

Issues for immediate action

- **GRETA urges the Andorran authorities to either adopt some form of strategic policy document, focusing on prevention measures, raising awareness of THB and providing training to relevant professionals, or to incorporate such measures of prevention of human trafficking in the Action Protocol or in an existing national action plan, and ensure that adequate resources are allocated and that a precise time-table for its implementation is established (paragraph 22);**
- **GRETA urges the Andorran authorities to take further steps aimed at preventing THB for the purpose of labour exploitation, including by:**
 - **raising awareness among the professionals concerned (police officers, labour inspectors, tax officials, prosecutors, judges) of this form of human trafficking and the rights of victims;**
 - **raising awareness among the general public and, in targeted initiatives, migrant workers of the risk of trafficking for the purpose of labour exploitation;**
 - **ensuring that the terms of reference of labour inspectors enable them to contribute to preventing and detecting cases of trafficking for the purpose of labour exploitation, including within households;**
 - **working in close collaboration with trade unions, civil society and the private sector to raise awareness of trafficking for the purpose of labour exploitation, and strengthen corporate social responsibility, drawing on the Guiding Principles on Business and Human Rights and Recommendation CM/Rec(2016)3 on human rights and business (paragraph 44);**
- **GRETA urges the Andorran authorities to take the necessary measures to transcribe all the purposes of trafficking in human beings set out in the Convention in their domestic law, in particular trafficking for the purpose of forced labour or services (paragraph 113);**
- **GRETA urges the Andorran authorities to consider trafficking of children, i.e. of every person of less than 18 years of age, as an aggravating circumstance, in accordance with Article 24 of the Convention (paragraph 117);**
- **GRETA urges the Andorran authorities to adopt legislative measures allowing for the possibility of holding legal persons criminally liable for the offences provided for in the Convention, in conformity with Article 22 (paragraph 122).**

Further conclusions

- GRETA encourages the staff of the Crimes against Persons Unit of the criminal investigations police and the police officers working for the immigration service to also undergo this training (paragraph 25);
- GRETA considers that the Andorran authorities should take steps to guarantee that training on trafficking is provided, in Andorra or abroad, to the members of the law enforcement agencies, members of the judiciary, labour inspectors, lawyers, social workers, child protection professionals, medical staff and other groups concerned, in order to improve the detection of and assistance to potential victims of trafficking. In addition, associations whose mission is to safeguard the rights of vulnerable persons and trade unions should be sensitized on trafficking, its different forms and the application of the Protocol for action against trafficking in human beings (paragraph 28);

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- GRETA considers that the Andorran authorities should increase their efforts to conduct and support research on THB-related issues as an evidence base for future policy measures (paragraph 31);
 - GRETA considers that the Andorran authorities should continue carrying out initiatives to raise awareness of THB and its different forms of exploitation, both amongst the general public and targeted groups at risk. The impact of the measures should be assessed (paragraph 35);
 - GRETA considers that the Andorran authorities should take additional measures to prevent trafficking in children, in particular by:
 - strengthening the role and capacity of the child protection systems to prevent trafficking in children and report possible cases of trafficking to the competent authorities;
 - promoting online safety of children and alerting relevant actors of risks of trafficking in children committed via the Internet (paragraph 46);
 - GRETA encourages the Andorran authorities to sign and ratify the Council of Europe Convention against Trafficking in Human Organs (paragraph 51);
 - GRETA considers that the Andorran authorities should adopt additional legislative measures (see paragraph 120), as well as educational, social, cultural and other measures to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with civil society, trade unions and the media (paragraph 53);
 - GRETA invites the Andorran authorities to maintain their efforts to detect potential victims of THB at border crossings (paragraph 57);
 - While welcoming the adoption of the Law on measures for action against trafficking in human beings and the Action Protocol for the protection of victims of trafficking in human beings, GRETA considers that the authorities should take additional measures with a view to:
 - providing indicators for the identification of victims of THB for different forms of exploitation to all professionals who may come into contact with possible victims of trafficking, to enable the proactive detection of trafficking victims;
 - adapting tools within the framework of the Euro TrafGuID project and making them available to the competent authorities and professionals in Andorra;
 - increasing efforts to proactively identify victims of THB for the purpose of sexual exploitation and for the purpose of labour exploitation, in particular in the sectors most at risk, by effectively involving labour inspectors and trade unions, as well as encouraging the self-identification of victims (paragraph 63);
 - GRETA considers that the authorities should take measures so as to:
 - set up a clearly defined programme for the integration of trafficking victims;
 - define in a detailed manner the contact person's terms of reference, as well as the exact tasks incumbent upon them in cases of trafficking in human beings;
 - clarify paragraph 7 concerning the status of victim and to ensure that potential victims receive effective protection as soon as signs of trafficking are detected and throughout the identification procedure and any subsequent criminal proceedings (paragraph 73);
 - GRETA considers that the Andorran authorities should ensure that the competent stakeholders (police, service providers, NGOs, child protection authorities and social workers) undergo appropriate training and are given guidance on proactively identifying child victims of trafficking in human beings (paragraph 84);
 - GRETA invites the Andorran authorities to review the age assessment procedures, ensuring that the best interests of the child are effectively protected, in line with Article 10, paragraphs 3 and 4 of the Convention, and taking into account the Convention on the Rights of the Child and General Comment No. 6 of the Committee on the Rights of the Child (paragraph 85);

- GRETA invites the Andorran authorities to ensure that staff carrying out identification are given clear instructions emphasising the need to grant the recovery and reflection period along the lines defined in the Convention, namely not making it conditional on co-operation on the part of the victim and granting it to victims before formal statements are given to investigators, and in the case of children, to ensure that the best interests of the child are the primary consideration (paragraph 92);
- GRETA considers that the measures regarding requirements for residence applicable to trafficking victims should be enshrined in law to avoid uncertainty and the risk of arbitrary decisions in the processing of files (paragraph 97);
- GRETA considers that the Andorran authorities should guarantee effective access to compensation for victims of trafficking in human beings, and in particular:
 - envisage that compensation for victims may be derived from the confiscation of traffickers' assets;
 - ensure that a victims' assistance fund is set up so that state compensation can be paid to any trafficking victim identified as such in the event of the perpetrator(s) defaulting (paragraph 104);
- GRETA considers that the Andorran authorities should take all necessary measures to ensure that trafficking for the purpose of forced criminality or forced begging may be subject to effective prosecution and criminal convictions (paragraph 116);
- GRETA considers that the Andorran authorities should criminalise the use of services of victims of trafficking for different types of exploitation, with the knowledge that the person is a victim of trafficking (paragraph 120);
- GRETA considers that the Andorran authorities should take further measures to ensure compliance with the principle of non-punishment of victims of THB for participation in unlawful activities, including administrative infringements, when compelled to do so, as set out in Article 26 of the Convention. Such measures should include the adoption of a specific legal provision and/or the development of guidance for police officers, prosecutors and judges on the scope of the non-punishment provision, as well as raising awareness of the non-punishment principle among members of the judiciary (paragraph 125);
- GRETA considers that the Andorran authorities should step up their efforts to detect offences of THB for different types of exploitation and ensure their proactive investigation and effective prosecution, leading to proportionate and dissuasive sanctions (paragraph 132);
- GRETA invites the Andorran authorities to ensure that all measures to protect victims of criminal offences are available in practice to victims of THB, witnesses and their legal representatives, to prevent reprisals and intimidation during investigation, as well as during and after the court proceedings (paragraph 140);
- GRETA considers that the Andorran authorities should continue developing international co-operation for the purpose of training relevant professionals, raising awareness of THB, improving the identification of victims and providing them with necessary accommodation and assistance, as well as conducting investigations on THB in the framework of transnational organised crime (paragraph 149);
- GRETA considers that the Andorran authorities should enhance their efforts to encourage the involvement of civil society actors and the private sector in activities aimed at achieving the purposes of the Convention, including prevention, awareness-raising, training of relevant professionals, identification and assistance of victims of THB (paragraph 151).

Appendix

List of public bodies and intergovernmental and non-governmental organisations with which GRETA held consultations

Public bodies

- Department of Interior and Justice
 - Secretary of State of Interior and Justice
 - Police Corps (Borders and Foreigners Service)
 - Directorate of Immigration
 - Labour Inspection
- Ministry of Foreign Affairs
 - Directorate of Multilateral Affairs
- Department of Social Affairs
- Judicial Corps
 - Public Prosecutor's Office
 - Tribunal de Corts
 - Tribunal Superior
- Consell General (Parliament)
- Raonador del Ciutadà (Ombudsman)

Intergovernmental organisations

- UNICEF Andorra

NGOs and other civil society organisations

- Bar Association of Andorra
- Andorran Institute for Human Rights
- CARITAS Andorra
- Unió Sindical d'Andorra

Government's comments

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

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

The Convention requires that "the report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned." GRETA transmitted its final report to the Andorran authorities on 13 May 2019 and invited them to submit any final comments. The comments of the authorities (available only in French), submitted on 5 June 2019, are reproduced hereafter.



Govern d'Andorra
Ministeri de Justícia i Interior

Madame Petya Nestorova
Secrétaria executiva
Convention sur la lutte contre la traite des êtres humains
Bâtiment AGORA
Conseil de l'Europe
F-67075 Strasbourg Cedex

Escaldes Engordany, le 4 Juin 2019

Chère Madame,

J'ai l'honneur de vous faire parvenir les derniers commentaires du Gouvernement d'Andorre au texte du Projet de Rapport rédigé par le Groupe d'experts sur la lutte contre la traite des êtres humains, approuvé par le GRETA à l'occasion de sa 34ème réunion, le 22 mars 2019, que nous avons reçu le 13 mai 2019. Tous les départements et services concernés par le rapport, avec qui l'équipe d'évaluation s'était entretenu, ont été consultés pour cette dernière révision. Le document ci-joint recueille les commentaires des services qui ont désiré apporter certaines précisions. Le reste du document ne soulève pas de commentaires de la part du gouvernement.

Le délai pour envoyer ces commentaires étant le 13 juin 2019, je vous serai reconnaissante de vouloir à votre tour accuser réception du document ci-joint.

Tout en restant à votre disposition pour toute information complémentaire ou quelque action qui soit requise à partir de ce moment, je vous prie de recevoir, chère Madame, l'expression de mes sentiments distingués.



Joan Antoni Leon Peso
Secrétaria d'Etat de la Justice et de l'Intérieur

DEUXIÈME CYCLE D'ÉVALUATION - ANDORRE

DERNIERS COMMENTAIRES DU GOUVERNEMENT D'ANDORRE SUR LE PROJET DE RAPPORT DU GRETA [GRETA (2019)10] CONCERNANT LA MISE EN OEUVRE DE LA CONVENTION

Commentaires du Département de l'Inspection du Travail

Paragraphe 43 – les arguments des Syndicats

En ce qui concerne ce paragraphe, il est vrai qu'il est possible de parler de licenciement libre puisque aussi bien la Loi 35/2008, du 18 décembre, du Code de Relations professionnelle (article 90), comme la Loi qui lui a succédé, 31/2018, du 6 décembre, de Relations Professionnelles (art.84) permette le licenciement « sans cause ». Toutefois, dans ce cas-là, il ne peut être réalisé qu'avec un préavis et avec le paiement d'un dédommagement économique ou indemnisation que la Loi fixe en 25 jours de salaire par année de travail dans l'entreprise, avec un maximum d'indemnisation de 365 jours.

Les Syndicats parlent aussi des « heures supplémentaires rarement payées ». Il est certain, qu'en Andorre, comme dans d'autres pays, certaines entreprises ne paient pas les heures supplémentaires, mais la perception du directeur de l'inspection de travail est que cette conduite est minoritaire, et que la majorité d'entreprises paient ou compensent tout au moins avec des jours de repos ou de vacances supplémentaires les heures de travail extraordinaires réalisées par les travailleurs. Peu de plaintes arrivent au département d'inspection du travail à ce sujet.

Finalement, lorsque les Syndicat affirment que leurs « revendications visant à obtenir des semaines de quarante heures n'ont pas abouti », ce commentaire prête à confusion car depuis 1990, la Loi établit formellement et explicitement que la journée (entendez durée) légale ordinaire du travail est de 40 heures par semaine et que les travailleurs, à l'exception de situations extraordinaires ou de force majeure sont libres d'accepter ou de refuser de faire des heures supplémentaires.



Commentaires du Service d'immigration

Paragraphe 40

«visite médicale pour les travailleurs du bâtiment ».

« Toutes les personnes immigrantes qui arrivent en Andorre et qui demandent une autorisation d'immigration dans son sens le plus large (séjour, séjour et travail, saisonnier, résidences sans activité lucrative, prestation de services de plus de 30 jours, etc...) sont soumises à une visite médicale. »

Précision : la visite médicale pour les travailleurs du secteur du bâtiment découle de l'exigence de la Loi de la sécurité et de l'hygiène au travail et non de la Loi d'Immigration.

Paragraphe 41

Aux vues de la Loi 9/2017, les personnes victimes de traite qui, une fois terminée la période de réflexion, resteraient en Andorre pourraient demander un permis de résidence et travail si elles sont embauchées par une entreprise mais ce permis n'est soumis à aucune condition découlant des Règlements de quota d'autorisations d'immigration, c'est-à-dire, pas de nécessité de prouver une formation ou une expérience préalable, ni toutes les autres exigences du Règlement.

Ces personnes seraient soumises uniquement aux conditions minimales, applicables à tout travailleur en Principauté d'Andorre, découlant de la Loi en vigueur en matière de droit du travail. Il s'agit de conditions plus favorables pour ces personnes compte tenu de leur situation de précarité et vulnérabilité.

Paragraphe 97

La maîtrise de la langue n'est pas un obstacle en Andorre. Actuellement 51% de la population est étrangère et chaque année le pays reçoit de nombreux travailleurs saisonniers (3812 en 2016, 4222 en 2017 et 4765 en 2018) qui ne maîtrisent pas la langue et qui n'ont aucun problème pour obtenir un emploi. Le pays reçoit plus de 8 millions de touristes chaque année et nécessite essentiellement de main d'œuvre qui parle des langues étrangères.

De plus, le ministère en charge de la culture met à la disposition de toutes les personnes des cours gratuits pour apprendre la langue officielle et des centres de libre accès pour l'autoapprentissage, entre autres projets.

Il faut noter que la récente expérience de l'accueil des réfugiés syriens est la preuve que la langue n'est pas un obstacle à trouver un emploi. Deux familles ont été accueillies en Andorre le 29 octobre 2018, et les deux pères de familles ont été embauchés par des



entreprises le 10 décembre 2018 et le 14 janvier 2019, c'est à dire en moins de trois mois depuis leur arrivée au pays.

Il faut tenir en compte que les victimes de traite qui se trouvent en période réflexion et rétablissement font l'objet d'un suivi de la part du ministère des affaires sociales qui peut les orienter et les aider dans leurs démarches.

Commentaires du Département de Police – Aire de Police Judiciaire et Enquêtes Criminelles

Paragraphe 126

Depuis la visite d'évaluation, et de manière très précise pendant le mois de mars 2019, il y a eu une affaire dans laquelle les délits initialement qualifiés étaient les suivants : prostitution, traite d'êtres humains avec finalité d'exploitation sexuelle, proxénétisme, blanchiment d'argent, faux mariage. Ainsi, au regard du protocole d'action pour les victimes de la TEH, les agents de police, en collaboration avec le bureau du procureur, devant tout possible doute dans cette affaire, avaient décidé de qualifier immédiatement la personne qui leur a paru en danger (prostituée) comme potentielle victime de traite d'êtres humains afin qu'elle soit immédiatement dirigée vers le personnel d'affaires sociales et bénéficie de tous les aspects du Protocole d'action pour les victimes de la TEH. Toutefois, après clarification et prise de déclaration, cette personne, de nationalité espagnole, se trouvant sur le territoire de la Principauté d'Andorre depuis 3 semaines, avait agi de son plein accord, était en possession de son document d'identité, et a voulu simplement repartir, une fois les enquêtes préliminaires terminées, vers son pays d'origine et domicile permanent (Espagne, région d'Aragon). L'enquête envers la personne qui tentait peut-être d'établir une base de prostitution en Andorre se poursuit, est en détention préventive depuis lors afin que soient qualifiés les faits. La prostituée est effectivement repartie en Espagne au bout de 48h par ses propres moyens.

Comme cet exemple le démontre, la police, lorsqu'elle se trouve confrontée à un moindre doute de cas de TEH, n'hésite pas à qualifier la possible victime de la traite ainsi, afin qu'elle puisse bénéficier immédiatement de l'activation du Protocole d'Action.



Paragraphe 127

Il est écrit "13 nouveaux policiers devaient être recrutés". La rédaction peut induire à erreur car il pourrait s'en déduire que ces 13 fonctionnaires seraient recrutés pour intégrer le corps de la police judiciaire. Or ces effectifs, une fois leur formation sera finalisé, intégreront le corps général de Police.

