



**GRETA**  
GROUP OF EXPERTS  
ON ACTION AGAINST  
TRAFFICKING IN HUMAN BEINGS

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

**SECOND EVALUATION ROUND**

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## Table of contents

<b>Preamble .....</b>	<b>4</b>
<b>I. Introduction .....</b>	<b>5</b>
<b>II. Main developments in the implementation of the Convention by Poland .....</b>	<b>7</b>
1. Emerging trends in trafficking in human beings and types of exploitation.....	7
2. Developments in the legal framework .....	7
3. Developments in the institutional framework .....	8
4. National Action Plans.....	10
6. Data collection and research .....	13
<b>III. Article-by-article findings .....</b>	<b>15</b>
1. Prevention of trafficking in human beings.....	15
a. Measures to raise awareness (Article 5).....	15
b. Measures to prevent THB for labour exploitation (Article 5).....	16
c. Measures to prevent trafficking in children (Article 5).....	20
d. Measures to prevent trafficking in human beings for the purpose of organ removal (Article 5).....	21
e. Measures to discourage demand (Article 6).....	22
f. Border measures (Article 7).....	23
2. Measures to protect and promote the rights of victims, guaranteeing gender equality.....	23
a. Identification (Article 10).....	23
b. Assistance measures (Article 12).....	25
c. Identification and assistance of child victims of THB (Articles 10 and 12).....	27
d. Protection of private life (Article 11).....	29
e. Recovery and reflection period (Article 13).....	30
f. Residence permits (Article 14) .....	31
g. Compensation and legal redress (Article 15) .....	32
h. Repatriation and return of victims (Article 16).....	34
3. Substantive criminal law .....	35
a. Criminalisation of THB (Article 18).....	35
b. Criminalisation of the use of services of a victim (Article 19).....	36
c. Corporate liability (Article 22) .....	36
d. Non-punishment of victims of trafficking in human beings (Article 26).....	37
4. Investigation, prosecution and procedural law .....	38
a. Measures related to effective investigations (Articles 1, 27 and 29).....	38
b. Protection of witnesses and victims (Articles 28 and 30).....	40
c. Jurisdiction (Article 31).....	41
5. International co-operation and co-operation with civil society .....	41
a. International co-operation (Articles 32 and 33).....	41
b. Co-operation with civil society (Article 35).....	43
<b>IV. Conclusions .....</b>	<b>44</b>
<b>Appendix List of public bodies, intergovernmental organisations, non-governmental organisations and other civil society actors with which GRETA held consultations .....</b>	<b>49</b>
<b>Government's comments.....</b>	<b>50</b>

## 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 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 is responsible for monitoring the implementation of the Convention by the parties and for drawing up reports evaluating the measures taken by each party. In accordance with Article 38, paragraph 1, of the Convention, GRETA evaluates the implementation of the Convention following a procedure divided into rounds. At the beginning of each round, GRETA selects the specific provisions 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 the 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.

Following the first round of monitoring, which provided an overview of the implementation of the Convention by each party, GRETA launched the second evaluation round of the Convention on 15 May 2014. During this new evaluation round, GRETA has decided to examine 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. The questionnaire adopted by GRETA for the second evaluation round is sent to all parties which have undergone the first evaluation round, 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 a 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 submit, 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 comments by the party concerned, is 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 Poland took place in 2012-2013. Following the receipt of Poland's reply to GRETA's first questionnaire on 31 August 2011, a country evaluation visit was organised from 23 to 27 April 2012. The draft report on Poland was examined at GRETA's 15th meeting (26-30 November 2012) and the final report was adopted at GRETA's 16th meeting (11-15 March 2013). Following the receipt of the Poland authorities' comments, GRETA's final report was published on 6 May 2013.<sup>1</sup>

2. In its first report on Poland, GRETA welcomed the steps taken by the Polish authorities to combat trafficking in human beings and support victims of trafficking, through the development of a comprehensive legal and policy framework and the setting up of specialised structures. However, GRETA urged the authorities to include an express prohibition of servitude in the Criminal Code so as to ensure greater certainty and clarity as to the scope of domestic law in regard to THB. In the area of prevention of human trafficking, GRETA noted the need to design future awareness-raising activities in the light of impact assessment of previous measures and research. GRETA also drew attention to the need for adapting the existing anti-trafficking policies with a view to strengthening action against trafficking for the purpose of labour exploitation and addressing the particular vulnerability of children to trafficking. GRETA commended the involvement of non-governmental organisations (NGOs) in the identification of victims of trafficking, but urged the authorities to take further steps to secure the identification of victims, paying increased attention to children and migrants. Further, GRETA urged the Polish authorities to improve the application of the recovery and reflection period and the use of residence permits, as well as to adopt measures to facilitate and guarantee access to compensation for victims of trafficking.

3. On the basis of GRETA's report, on 7 June 2013 the Committee of the Parties to the Convention adopted a recommendation to the Polish authorities, requesting them to report back on the measures taken to comply with this recommendation by 7 June 2015.<sup>2</sup> The report submitted by the Polish authorities was considered at the 16th meeting of the Committee of the Parties (15 June 2015). The Committee of the Parties decided to transmit the authorities' report to GRETA for consideration and to make it public.<sup>3</sup>

4. On 1 September 2015, GRETA launched the second round of evaluation of the Convention in respect of Poland by sending the questionnaire for this round to the Polish authorities. The deadline for submitting the reply to the questionnaire was 1 February 2016. Poland submitted its reply on 8 February 2016.<sup>4</sup>

5. In preparation of the present report, GRETA used the reply to the questionnaire by the Polish authorities, the above-mentioned report submitted by them to the Committee of the Parties and information received from civil society. An evaluation visit to Poland took place from 14 to 18 November 2016, in order to hold meetings with relevant actors, collect additional information and assess the practical implementation of adopted measures. The visit was carried out by a delegation composed of:

- Mr Jan van Dijk, First Vice-President of GRETA;
- Ms Alina Braşoveanu, member of GRETA
- Mr Mats Lindberg, administrator in the Secretariat of the Convention.

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1 <http://rm.coe.int/1680632f48>

2 <http://rm.coe.int/1680632341>

3 <http://rm.coe.int/1680632343>

4 <http://rm.coe.int/168063bb58>

6. During the visit, the GRETA delegation met representatives of the Ministry of the Interior and Administration, which co-ordinates Poland's efforts against trafficking in human beings, including officials of the Unit of the European Migration Network and Prevention of Trafficking in Human Beings, the Unit for Combating Trafficking in Human Beings of the National Police Headquarters, and the Border Guard Headquarters. It also met officials from the Ministry of Justice, including the Prosecutor General's Office and the National School of the Judiciary and Prosecutors, the Ministry of Health, including the Agency for Organ Donations and Transplantations, the Ministry of Family, Labour and Social Policy, the Ministry of Education, the Ministry of Foreign Affairs, including the Office for Foreigners, and the State Labour Inspectorate. Discussions were also held with the Plenipotentiary for Equal Treatment and Civil Society and representatives of the Polish Parliament (*Sejm*).

7. In the course of the visit, the GRETA delegation travelled to Gorzów Wielkopolski where it met the regional anti-trafficking team and visited a crisis centre which can accommodate victims of trafficking. The delegation also visited Child Care Home No. 2 of Warsaw Municipality which can accommodate child victims of trafficking.

8. Separate meetings were held with representatives of NGOs, trade unions, lawyers specialised in representing to victims of trafficking and the Director of the Centre for Human Trafficking Studies of Warsaw University. Discussions were also held with representatives of the offices of the United Nations High Commissioner for Refugees (UNHCR), the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the International Organization for Migration (IOM) in Poland.

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 Polish authorities and in particular by the contact persons appointed by the Polish authorities at different points of the evaluation process to liaise with GRETA, namely Ms Ewa Nowacka, Ms Joanna Sosnowska and Ms Anna Romanowska of the Unit of the European Migration Network and Prevention of Trafficking in Human Beings of the Ministry of the Interior and Administration.

11. The draft of the present report was approved by GRETA at its 28th meeting (27-31 March 2017) and was submitted to the Polish authorities for comments on 12 April 2017. The authorities' comments were received on 14 June October 2017 and have been taken into account by GRETA when considering and adopting the final report at its 29th meeting (3-7 July 2017). The final report covers the situation up to 7 July 2017; developments since that date are not taken into account in the following analysis and conclusions. The conclusions summarise the progress made since the first report, the issues which require immediate action and the other areas where further action is needed (see pages 44-48).

## **II. Main developments in the implementation of the Convention by Poland**

### **1. Emerging trends in trafficking in human beings and types of exploitation**

12. Poland is a country of origin, transit and destination of victims of trafficking in human beings (THB). According to statistics provided by the Polish authorities, the number of presumed victims of THB identified by the Police and the Border Guard was 193 in 2013, 98 in 2014, 58 in 2015 and 119 in 2016 (49% of them were identified by the Police). The National Consulting and Intervention Centre for Victims of Human Trafficking (KCIK) identified and assisted 222 presumed victims of THB in 2013, 207 in 2014, 229 in 2015, and 200 in 2016. As there is a degree of double counting between these two sets of figures, it is not possible to give a total number of the presumed and identified victims of THB in Poland. A separate set of data from the Prosecutors' Office concerning victims of THB identified in the context of criminal proceedings indicates that there were 135 such victims in 2013, 103 in 2014, 115 in 2015 and 79 in 2016; these numbers are mostly included in the first two sets of figures. Thus the lack of comprehensive and coherent statistical system on THB in Poland continues to be a problem (see paragraphs 47-48).

13. Only some of the available sets of data are broken down by sex, age and form of exploitation. Nevertheless, it would appear that the majority of the identified or presumed victims over the period 2013-2016 were female (i.e. 67% of the victims identified by KCIK and 60% of the victims identified by the Border Guard). Trafficking for the purpose of sexual exploitation concerned 34% of the victims identified by KCIK and 14% of those identified by the Border Guard. The number of victims of THB for the purpose of forced labour has grown over the years and constituted 37% of the victims identified by KCIK and 75% of those identified by the Border Guard. The increase in THB for the purpose of labour exploitation has resulted in an increase in the share of male victims. There were 63 victims of trafficking for the purpose of forced begging (mostly foreign nationals trafficked to Poland) and 11 for the purpose of forced marriage among the victims identified by KCIK. A growing new trend is trafficking of people by organised crime groups in order to obtain loans or social benefits on their behalf, usually to Germany and the UK. As regards presumed child victims of trafficking, 118 were identified by KCIK (originating mostly from Romania and Poland) and 17 by the Border Guard.

14. As regards the country of origin of the victims, most of the foreign victims identified during the reporting period originated from Ukraine, Romania and Bulgaria. Other important countries of origin were Vietnam, Philippines, Sri Lanka and North Korea. The number of Polish victims of trafficking identified and assisted by KCIK was 103 in 2013, 71 in 2014, 103 in 2015 and 96 in 2016. The Border Guard identified a total of 10 Polish victims of trafficking in the reporting period and the Police, 127. Polish citizens trafficked abroad were most often identified in the UK,<sup>5</sup> the Netherlands and Germany.

### **2. Developments in the legal framework**

15. The legal provisions related to the recovery and reflection period and residence permits for victims of THB have evolved since GRETA's first evaluation, following amendments to the Law on Foreigners adopted in December 2013 (in force since 1 May 2015). The amendments introduced a certificate for third-country victims of trafficking confirming that the holder is a presumed victim of trafficking and in that capacity may remain in Poland for three months (four months in the case of children). The law further extended the maximum validity of the residence permit granted to victims who co-operate with the law enforcement agencies to three years and introduced the possibility to obtain a permanent residence permit.

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<sup>5</sup> There were 86 presumed Polish victims of trafficking identified in the UK in 2013, 81 in 2014 and 160 in 2015. The most common form of exploitation was forced labour, followed by social benefit or credit fraud.

16. The Law of 28 November 2014 on Protection and Assistance of Victims and Witnesses, which entered into force on 7 April 2015, regulates the protection of victims and witnesses and aims at encouraging their participation in criminal proceedings. Further, amendments to the Code of Criminal Procedure (CCP) increased the scope of victim data anonymisation, allowed for the participation in criminal proceedings of a support person chosen by the victim and extended the possibilities for witnesses to testify using a video link.

17. Further, a number of amendments have been made in the area of compensation for victims of crime, through the Law on 27 September 2013 amending the Code of Criminal Procedure and certain other laws as well as the Law of 5 August 2015 amending to the Law on State Compensation, the Code of Civil Procedure and the Law on Court Fees in Civil Matters. The latter broadened the possibilities of victims permanently resident in Poland and other European Union (EU) member States to seek compensation in situations in which the perpetrator for one reason or another cannot be held legally liable.

18. The above-mentioned measures are discussed in further detail in later parts of this report (see in particular paragraphs 135, 142-144, 151-153 and 190-193).

### **3. Developments in the institutional framework**

19. The Inter-Ministerial Committee for Combating Trafficking in Human Beings, which comprises representatives of ministries, public agencies, NGOs and international organisations, functions as a consultative body of the Prime Minister and continues to be responsible for the overall policy co-ordination of anti-trafficking action in Poland and approving the National Action Plan.<sup>6</sup> The Inter-Ministerial Committee meets twice a year. The expert-level Working Group set up within the Inter-Ministerial Committee for the purpose of monitoring the implementation of actions under the National Action Plan and exchanging information meets four times a year.

20. The Ministry of Interior and Administration continues to play the lead role in the co-ordination of anti-trafficking action. The Unit of the European Migration Network and Prevention of THB, which is subordinated to the Analyses and Migration Policy Department of the Ministry, consists of 13 staff members, seven of whom are involved in activities related to combating THB. This unit provides the secretariat to the Inter-Ministerial Committee.

21. The Polish authorities have indicated that the Inter-Ministerial Committee for Combating Trafficking in Human Beings functions as a mechanism equivalent to a National Anti-trafficking Rapporteur, but in practice its Secretariat, i.e. the Ministry of the Interior and Administration's Unit of the European Migration Network and Prevention of THB, fulfils this function and participates in the Informal EU Network of National Rapporteurs or equivalent mechanisms.

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<sup>6</sup> See paragraphs 23-24 of GRETA's first report on Poland.



22. GRETA would like to stress that Article 29 of the Convention makes a clear distinction between national co-ordination and National Rapporteur. In GRETA's view, the key features of National Rapporteurs' mechanisms in the sense of Article 29, paragraph 4, of the Convention<sup>7</sup> should be the ability to critically monitor the efforts and effectiveness of all state institutions, including national co-ordinators, and to that end maintain a constant exchange with civil society, the research community and other relevant stakeholders. The human rights-based approach to anti-trafficking policies advocated by the Convention requires adequate monitoring and evaluation. A structural separation between monitoring and executive functions enables an objective evaluation of the implementation of anti-human trafficking legislation, policy and activities, identification of lacunae and shortcomings, and the formulation of comprehensive legal and policy recommendations.<sup>8</sup>

**23. GRETA considers that the Polish authorities should keep under review the effectiveness of the Unit for the European Migration Network and Prevention of THB in fulfilling the role of an equivalent mechanism to a National Rapporteur and examine the possibility of designating as a National Rapporteur a separate organisational entity or another independent mechanism for monitoring the anti-trafficking activities of State institutions.**

24. In January 2014, a Unit for Combating Trafficking in Human Beings within the Department for Criminal Service in the National Police Headquarters was established to monitor, co-ordinate and support police activities in the areas of combating THB and sexual abuse of children. It currently employs 10 officers. Further, the teams for combating THB within the Regional Police Headquarters and Warsaw Metropolitan Police Headquarters employ 58 officers and the Central Bureau of Investigation of the Police, 18 co-ordinating police officers involved in the anti-THB teams' work.

25. The process of establishing regional anti-trafficking teams in each of Poland's 16 regions (known as "voivodships"), which began in 2014, was completed in 2016. These teams include representatives of the offices of the regional administrations and the regional structures of the Police, the Border Guard, the State Labour Inspectorate, the Customs Service, the social assistance offices, the employment offices and NGO representatives. The purpose of the regional anti-trafficking teams is to co-ordinate prevention activities, training and the provision of assistance to victims of trafficking. The composition of the regional teams may vary from one region to another. The institutions to which the team's members belong cover the operational costs from their budgets. Awareness-raising campaigns and other activities not directly related to the functioning of the teams are financed from other sources, such as the Ministry of Justice. The GRETA delegation met the anti-trafficking team in Gorzów Wielkopolski, set up on 19 May 2014. At the time of the visit the team had 27 persons involved in its work, including representatives of the police, the Border Guard, the Prosecutor's Office, the District Court, the State Labour Inspectorate, the regional commercial inspection, the regional administration, the social services and NGOs. GRETA welcomes the setting up of regional anti-trafficking teams.

26. A nationwide network of NGOs against THB was created in July 2014 as part of a project funded by the Norway Grants Financial Mechanism. It is led by the La Strada Foundation against Trafficking in Human Beings and Slavery and currently has 19 members.

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<sup>7</sup> "Each Party shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements."

<sup>8</sup> In this context, see also the Summary report on the Consultative Meeting on Strengthening Partnerships with National Rapporteurs on Trafficking in Persons and Equivalent Mechanisms organised by the UN Special Rapporteur on trafficking in persons, especially in women and children, in Berlin, 23-24 May 2013.

#### 4. National Action Plans

27. In its first report, GRETA considered that the Polish authorities should take further steps to ensure that the National Action Plan to combat THB is comprehensive, in particular by stepping up action to combat trafficking for the purpose of labour exploitation and paying increased attention to prevention and protection measures addressing the particular vulnerability of children to trafficking, and to increase co-ordination at the regional level of the activities of public bodies and NGOs involved in the implementation of anti-trafficking measures.

28. The 2013-2015 National Action Plan against THB focused on disseminating knowledge about THB, in particular to risk groups, increasing the range and quality of assistance offered to victims of THB (including children), improving the effectiveness of the investigation and prosecution of THB offences, capacity-building of staff involved in fighting THB and supporting victims, such as law enforcement officials, judicial authorities, employees of the Office for Foreigners, social services and consulates, and improving international co-operation, notably with the UK and the Netherlands.<sup>9</sup> An annual budget of 135 000 PLN (about 31 000 Euros) was made available for financing the implementation of the Plan, as well as another 1 000 000 PLN (about 230 000 Euros) for running the National Consulting and Intervention Centre for Polish and Foreign Victims of Trafficking (KCIK).

29. In addition, close to 2 000 000 PLN (about 460 000 Euros) were made available by the Polish authorities as co-financing of projects financed by the Norway Grants Financial Mechanism, which are linked to the implementation of the National Action Plan.<sup>10</sup> Funding under the Norway Grants has enabled eight anti-THB projects in the reporting period, including training of police officers, border guards, judges, prosecutors, and migration and asylum officials. It has also financed the creation of the previously mentioned national network of NGOs against THB. A number of other projects linked to the implementation of the National Action Plan have been co-funded by the EU and foreign donors. For example, the project "Filling the Gaps in the System of Combating THB in Poland" (FIGAS), implemented by the Centre for Human Trafficking Studies of Warsaw University, the Board Guards Headquarters and the Central Border Guard Training Centre in Koszalin, was financed by the European Commission and implemented between January 2013 and March 2015.

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<sup>9</sup> See page 55 of the of Report on Trafficking in Human Beings in Poland in 2015, prepared by the Unit Against Trafficking in Human Beings in the Analyses and Migration Policy Department of the Ministry of the Interior and Administration [http://www.google.fr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwju57\\_StM7RAhULXhoKHdkzDX8QFggaMAA&url=http%3A%2F%2Fwww.handelludzmi.eu%2Fdownload%2F91%2F13120%2FRaport2015-finalen.pdf&usq=AFOjCNHCnYqYgb7k2BI9Ia\\_A3Bx8LaPh9w&sig2=3W5feAmH43dbFI5LAOyMoA](http://www.google.fr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwju57_StM7RAhULXhoKHdkzDX8QFggaMAA&url=http%3A%2F%2Fwww.handelludzmi.eu%2Fdownload%2F91%2F13120%2FRaport2015-finalen.pdf&usq=AFOjCNHCnYqYgb7k2BI9Ia_A3Bx8LaPh9w&sig2=3W5feAmH43dbFI5LAOyMoA)

<sup>10</sup> For example, in 2015 the Central Border Guard Training Centre in Koszalin, together with IOM, implemented a project co-financed by the Norway Grants entitled "Strengthening the Potential of the Border Guard in Combating Organised Crime, including Trafficking". Under this project, 59 border guard officers were trained in identification of victims of THB. Another project co-funded by the Norway Grants, entitled "Co-operation and Competence as Key to Effective Combating of THB", was implemented by the National Border Guard Headquarters, in co-operation with IOM.

30. The National Action Plan against THB for 2016-2018 was adopted by the Polish Government on 17 August 2016. It is divided into five chapters dealing respectively with: 1) prevention; 2) support and protection of victims; 3) prosecution of THB; 4) training of professionals; 5) studies on THB and evaluation of actions undertaken. Preventive actions are envisaged both for the general public and specific groups, in particular children and young people, Polish citizens planning to work abroad and foreigners planning to work in Poland. It is also foreseen to develop co-operation with employer associations and temporary recruitment agencies. The second chapter includes the development of a National Referral Mechanism for victims of trafficking, the preparation of legal amendments to further improve the support given to victims of THB, the organisation of an annual meeting of co-ordinators of regional anti-trafficking teams and the development of a programme for support and protection of child victims of trafficking. The third chapter focuses on improving co-operation between relevant professional groups such as border guards, police officers and labour inspectors. The fourth chapter envisages training activities for relevant professionals, including law enforcement officials, the judiciary, and other professionals providing assistance to, or likely to encounter, victims of trafficking. The fifth chapter envisages improved data collection and analysis of the assistance provided to victims and THB cases adjudicated.

31. The Ministry of the Interior and Administration draws up annual and final reports on the implementation of the National Action Plans. There is no external, independent evaluation of the National Action Plan against THB, but in principle the Supreme Audit Office is responsible for exercising independent control over all government action plans.

**32. GRETA considers that the Polish authorities should introduce an independent evaluation of the implementation of National Action Plans against THB and other anti-THB projects, as a tool for assessing the impact of the activities and planning future policies and measures to combat THB.**

## **5. Training of relevant professionals**

33. In its first report, GRETA considered that there was a need for further investment in the continuous training and awareness raising of relevant professionals, in particular prosecutors, judges, border police officers, immigration officials, labour inspectors, social workers and members of NGOs likely to come into contact with victims of trafficking.

34. The subject of THB remains part of the curricula of the initial training of police officers at the Police Academy in Szczytno. A more specialised course on THB was developed in 2014 and is being implemented at the Police Academy in Piła. It includes elements of the curriculum for combating THB developed by the European Agency for Law Enforcement Training (CEPOL) and covers relevant national and international legislation, including the updated Law on Social Assistance and the Law on Foreigners, the investigation of THB cases and the establishment of Joint Investigation Teams. A total of 159 police officers have completed this five-day course (a total of 36 hours).

35. Three-day workshops on THB are organised on an annual basis, with some 90 participants in each, for anti-trafficking co-ordinators from the Police, the Border Guard and the Central Bureau of Investigation of the Police, prosecutors, judges, representatives of NGOs and officials from the Ministry of the Interior and Administration. The most recent training took place on 5-9 June 2017 at the Border Guard Training Centre in Koszalin.

36. Training on prevention and combatting of THB is provided continuously to border guard officers. The training covers identification of victims of trafficking and assistance to victims. More advanced training is provided to investigative staff. In 2013-2015 a total of 2557 border guard officers were trained on issues related to THB. Four training sessions on THB for border guards, boarding and check-in staff at Warszawa-Chopin international airport were held in 2014. Further training courses on particular themes with relevance to THB were also organised, such as four courses on the identification of victims of THB in 2013, attended by 417 border guards and delivered by IOM in the framework of the Assisted Voluntary Returns Programme. The e-learning courses developed by the IOM on "Identifying, protecting and assisting victims of human trafficking", were followed by 3329 border guards in the reporting period.
37. A training session on THB for the purpose of labour exploitation, including related case law of national and international courts, was organised by the Prosecutor's Office on 2 December 2016; it was attended by 60 prosecutors. In 2013 one training event was organised for judges and prosecutors on Directive 2011/36/EU and another one on forensic, criminological and legal aspects of trafficking in human beings. However, given the random allocation of criminal cases to judges, there is little incentive to develop specialism in THB.
38. GRETA was informed that training sessions for labour inspectors are organised every year and about one fourth of labour inspectors (i.e. 416 persons) have been trained on THB.
39. There has been no training on THB for health-care professionals, except for those employed by the Ministry of the Interior, who were trained in 2013 and 2015, and those involved in organ transplantations. In their comments on the draft GRETA report, the Polish authorities have referred to a new training programme for nurses and midwives which covers the issue of THB for the purpose of organ removal.
40. Training has also been organised for staff of the Office for Foreigners, on an annual basis as of 2014, on identification of victims of THB, including in the context of voluntary returns and identification of victims among asylum seekers. By way of example, 55 officials of the Office for Foreigners attended training on identification of potential victims of trafficking in human beings among persons applying for refugee status.
41. The Ministry of Family, Labour and Social Policy has provided training to employees of crisis intervention centres as regards assistance to victims of THB, as follows: 2013 – four training sessions involving 87 persons; 2014 – two training sessions involving 44 persons; 2015 – four training sessions involving 95 persons.
42. The Ministry of Foreign Affairs organises periodic training about THB for staff to be sent to consular posts abroad. In 2013-2015, 16 such training sessions were held with a total of 400 participants.
43. Training for social workers is organised four times a year by the Ministry of Family, Labour and Social Policy, in co-operation with the Ministry of Interior and Administration and the NGOs Nobody's Children Foundation and La Strada Foundation. The training focuses on the identification of child victims of THB and their rights. KCIK also organises lectures about THB for students preparing to become social workers.
44. The Network of NGOs against THB organises training sessions on various aspects of THB for its members and public officials. Since the establishment of the network in July 2014, about 260 people have been trained.

45. GRETA welcomes the training on THB given to a range of professional groups, and in particular the annual three-day workshops for police and border guards. **Given the low rate of convictions for THB offences and the low numbers of compensation awards made to victims of trafficking, GRETA considers that training should be strengthened for prosecutors and judges (see also paragraph 188). Further, periodic training on THB should be introduced for other relevant professional groups, such as health-care staff.**

## 6. Data collection and research

46. In its first report GRETA considered that, for the purpose of preparing, monitoring and evaluating anti-trafficking policies, the Polish authorities should develop and maintain a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical information from all main actors and allowing disaggregation (concerning sex, age, type of exploitation, country of origin and/or destination). This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection, including when NGOs working with victims of trafficking are asked to provide information for the national database.

47. Data on THB continues to be collected separately by the Police, the Border Guard and the General Prosecutor's Office. The National Consulting and Intervention Centre for Polish and Foreign Victims of Trafficking (KCIK) maintains a database on the victims it assists. In addition, the Ministry of Family, Labour and Social Assistance collects data on victims of THB supported by the social assistance system. The Ministry of the Interior and Administration receives relevant data from the previously mentioned bodies, but there is double-counting when it comes to presumed and identified victims and the data is not always disaggregated by gender, age and form of exploitation (see paragraphs 12-13).

48. GRETA is concerned by the lack of progress in setting up a coherent data collection system on THB in Poland, which makes it difficult to undertake a comprehensive assessment of the situation and the extent to which measures to combat THB correspond to the actual needs. **For the purpose of preparing, monitoring and evaluating anti-trafficking policies, GRETA urges the Polish authorities to develop and maintain a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical data on measures to protect and promote the rights of victims as well as on the investigation, prosecution and adjudication of human trafficking cases. Statistics regarding victims should be collected from all main actors and allow disaggregation concerning sex, age, type of exploitation, country of origin and/or destination. This should be accompanied by all the necessary measures to ensure the right of data subjects to personal data protection, including when NGOs working with victims of trafficking are asked to provide information for the national database.**

49. There have been a number of studies related to THB in Poland in recent years, conducted by research institutions, NGOs, international organisations and public bodies, such as the Ministry of the Interior and Administration.

50. In the context of the project "Improving Poland's Capacity to Prevent Trafficking in Human Beings", which was funded by the Norway Grants Financial Mechanism and implemented by the Ministry of the Interior and Administration and the Council of Europe, research entitled "Study on Demand Reduction Measures to Combat Trafficking in Human Beings for the Purpose of Labour Exploitation through Engagement of the Private Sector" was published in 2016.<sup>11</sup>

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<sup>11</sup> Zbigniew Lasocik, *Study on Demand Reduction Measures to Combat Trafficking in Human Beings for the Purpose of Labour Exploitation through Engagement of the Private Sector*, April 2016. Available at: <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806b61f0>

51. Another study entitled "Trafficking for Forced Labour: Mechanisms of Formation and Effective Prevention"<sup>12</sup> was carried out in 2014 by the Centre for Human Trafficking Studies of Warsaw University in the framework of the project "ADSTRINGO - Addressing Trafficking for Labour Exploitation through Improved Partnerships, Enhanced Diagnostics and Intensified Organisational Approaches".<sup>13</sup> The aim of this project, which involved a number of countries of the Baltic Sea region, was to gather knowledge about the mechanisms that lead to forced labour and to strengthen co-operation between national and regional institutions. The study collected information on sectors vulnerable to forced labour, recruitment methods and ways of exercising control over people exploited in work. Further, a study entitled "Modern Slavery Landscape in Poland", carried out in 2014 by the Centre for Human Trafficking Studies of Warsaw University as commissioned by the Australia-based NGO Walk Free Foundation, drew a map of modern slavery in Poland.<sup>14</sup>

52. Further, research into the factors that contribute to economic migration was conducted in 2014 by La Strada Foundation together with the Institute of Technology and Education of Koszalin Technical University and the Dutch organisation Fairwork. Another study on prevention of trafficking and the role of national rapporteurs was carried out as part of the project FIGAS, which run from January 2013 to March 2015 with EU funding.<sup>15</sup>

53. In 2016 Leiden University's Asia Centre published a report on research conducted into suspected North Korean forced labour in Poland (see paragraph 76).<sup>16</sup> Another recent research publication focuses on the criminal law provisions and criminological aspects of THB.<sup>17</sup>

54. GRETA welcomes the research on different aspects of THB carried out in Poland, including as regards trafficking for the purpose of labour exploitation, which has been on the rise. **GRETA invites the Polish authorities to encourage and support further research on THB, in particular on the issue of child trafficking.**

<sup>12</sup> Zbigniew Lasocik, Emilia Rekosz-Cebula and Łukasz Wieczorek, *Human Trafficking for Forced Labour in Poland - Effective Prevention and Diagnostics Mechanisms*, Warsaw, October 2014.

[http://www.cbss.org/wp-content/uploads/2012/11/raport\\_polish\\_english\\_ONLINE.pdf](http://www.cbss.org/wp-content/uploads/2012/11/raport_polish_english_ONLINE.pdf)

<sup>13</sup> <http://www.heuni.fi/en/index/researchareas/humantrafficking/adstringo-addressingtraffickinginhumanbeingsforlabourexploitationthroughimprovedpartnershipsenhanceddiagnosticsandintensifiedorganizationalapproaches.html>

<sup>14</sup> Available at: <http://www.globallslaveryindex.org/country/poland/>

<sup>15</sup> For more details, see the Polish authorities' reply to GRETA's questionnaire, pp.33-34.

<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168063bb58>

<sup>16</sup> Marte Boonen, Klara Boonstra, Remco Breuker Christine Chung, Imke van Gardingen, Kim Kwang-cheol, Oh Kyuwook and Anoma van der Veere, *North Korean Forced Labour in the EU: the Polish Case*, available at:

<http://slavestothsystem.eu/wp-content/uploads/2016/07/North-Korean-Forced-Labour-in-the-EU-the-Polish-Case.pdf>

<sup>17</sup> Paweł Łabuz, Irena Malinowska, Mariusz Michalski and Tomasz Safjański, *Handel ludźmi. Przestrzeń prawnokarna i kryminalistyczno-kryminologiczna* (Trafficking in Human Beings: Criminal Law and Criminological Regime), Warsaw, 2017.

### III. Article-by-article findings

#### 1. Prevention of trafficking in human beings

##### a. Measures to raise awareness (Article 5)

55. In its first report GRETA considered that future actions in the area of awareness-raising should be designed in the light of impact assessment of previous measures and research, and that awareness-raising campaigns, education in schools and training of relevant professionals should aim at promoting gender equality and eradicating gender-based violence and the stigmatisation of victims of trafficking.

56. In 2015 the Ministry of Interior and Administration organised a nationwide awareness-raising campaign as part of the project "Improving Poland's Capacity to Prevent Trafficking in Human Beings", funded by the Norway Grants Financial Mechanism (see paragraph 50). It was developed in the light of the findings of the report "Social Awareness of Human Trafficking Threats and Threats Regarding taking up a Job Abroad" published in October 2015. The campaign was addressed to a broad audience and carried a general message that anyone may fall victim to trafficking and require help. The project involved the broadcasting of spots on three nationwide TV channels and the radio in December 2015, mobile exhibitions, re-printing and dissemination of the Council of Europe comic book "You Are Not for Sale", and updating of the KCIC web site. The second part of the campaign was implemented in February/March 2016. Further, lectures for students and future social workers were delivered by Council of Europe experts in October 2016.

57. The website [www.handelludzmi.eu](http://www.handelludzmi.eu) and the associated Facebook page hosted by the Ministry of the Interior and Administration provides basic information on the dangers related to THB and useful information for victims as well as vulnerable groups. The site also contains advice for people planning to take up work abroad and contact details of organisations providing support for victims of THB in Poland and the EU. The website is managed and updated by the Ministry of the Interior and Administration. In 2015 the average number of website hits per month was about 16 000.

58. An awareness-raising project on safe migration and protection against trafficking for Polish emigrants was implemented in 2014 by the NGO La Strada Foundation together with the organisation Fairwork from the Netherlands, the Association of Polish Women in the Netherlands and the Institute of Technology and Education of Koszalin Technical University.

59. The impact of awareness-raising campaigns is usually evaluated by the institutions conducting them, but it appears that the evaluation is often limited to the assessment of whether the indicators or specific output goals that were planned for the campaign were reached, rather than the actual impact of the campaigns. In their comments on the draft GRETA report, the Polish authorities have referred to the above-mentioned report "Social Awareness of Human Trafficking Threats Regarding taking up a Job Abroad", which provides tools for assessing the impact of awareness-raising activities by means of measuring social awareness and attitudes. By way of example, the anti-trafficking team in Świętokrzyskie Region used the report to assess the impact of awareness-raising by means of a survey of the target group.

60. **GRETA considers that the Polish authorities should continue their efforts to raise awareness of THB and design future actions in this area in the light of impact assessment of previous measures. To this end, independent evaluation studies should be made an integral part of future projects to raise awareness.**

**b. Measures to prevent THB for labour exploitation (Article 5)**

61. In its first report, GRETA considered that the Polish authorities should continue their efforts to provide written information to foreign nationals planning to travel to Poland, in a language that they can understand, in order to alert them to the risks of THB, inform them of where to go for help and advice, and provide them with information about their rights.

62. As noted in paragraph 13, THB of foreign nationals for the purpose of labour exploitation in Poland has been on the rise. According to the previously mentioned report "Study on Demand Reduction Measures to Combat THB for the Purpose of Labour Exploitation" (see paragraph 50), there are gaps in the Polish anti-trafficking framework and forced labour is still not adequately addressed (see also paragraph 97).<sup>18</sup>

63. The National Labour Inspectorate carries out inspections to ensure compliance with labour law, occupational health and safety regulations and regulations regarding the activities of employment agencies and the legality of employment of Polish and foreign citizens. Labour inspections can take place at weekends and at night. However, the legislation in force is reportedly ambiguous as regards whether labour inspections need to be announced in advance or not.<sup>19</sup> Labour inspectors also monitor the work of temporary employment agencies to ensure that they comply with the legislation. Labour inspectors can only make inspections in relation to domestic workers if there is a properly registered work contract, which is seldom the case.

64. The National Labour Inspectorate carried out 2026 inspections on the legality of employment in 2013, 2240 in 2014 and 2956 in 2015. The inspections in 2015 concerned foreigners from 129 different countries, including some 21 000 third-country nationals. About 74 % of the inspected foreigners were Ukrainians, who constitute the largest group of illegally employed foreigners.<sup>20</sup> The National Labour Inspectorate and the Border Guard co-operate and since 2009 they have been conducting joint inspections regarding the legality of employment of foreigners.

65. Only a few suspected cases of THB for the purpose of labour exploitation have been found by labour inspectors and referred to the Police, Border Guard or the Prosecutor's Office. Practical difficulties in the labour inspectors' work include language barriers and reluctance or fear of workers to report irregularities.

66. The Law of 9 July 2003 on Employment of Temporary Workers regulates amongst other the rules to be followed by job placement agencies. The National Action Plan for 2016-2018 foresees developing co-operation with temporary employment agencies aimed at preventing THB for forced labour.

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<sup>18</sup> Zbigniew Lasocik, *Study on Demand Reduction Measures to Combat Trafficking in Human Beings for the Purpose of Labour Exploitation through Engagement of the Private Sector*, April 2016, p. 9.

<sup>19</sup> Ibid, pp. 16-17.

<sup>20</sup> Report on Trafficking in Human Beings in Poland in 2015, prepared by the Unit against Trafficking in Human Beings in the Analyses and Migration Policy Department of the Ministry of the Interior and Administration, p. 33.



67. Since 2015, nationals of six countries can get visas with the right to work in Poland for six months per year, based on a Polish employer's "statement of intention to employ".<sup>21</sup> Foreigners employed under this scheme may change employer within the six month period, provided that the new employer duly registers the employment and the total duration of work in Poland per year does not exceed six months. However, the "statements of intention to employ" issued under this scheme appear to be problematic because they do not guarantee employment and migrant workers may be forced to accept any job offer once in Poland. Trade union representatives indicated that abuse by employers tends to increase towards the end of the six-month period during which the "statement of intention to employ" is valid because the employer knows that the employee has to leave Poland at the end of the period. According to trade union representatives, police officers sometimes consider violations of the labour legislation, such as non-payment of wages, as having limited societal harm and are reluctant to investigate them, especially as the punishment is limited to a fine.

68. Polish legislation permits the conclusion of so-called "civil law contracts" which make it possible for an employer and an employee to agree on working conditions below the Polish minimum standards, for example as regards minimum wages and employers' social contributions. According to trade union estimates, some 80% of the Ukrainian citizens working in Poland are working under such "civil law contracts". The relevant legislation has recently been amended and as of 1 January 2017 Polish minimum wages must be paid under "civil law contracts". Labour inspectors are tasked with monitoring whether the wages are effectively paid. However, the minimum working conditions standards do not apply to persons performing work under "specific task contracts") pursuant to which the person accepts to carry out the designated work for a fixed amount of money, regardless of the time it takes. This type of contract is apparently widespread in Poland due to the fact that it is not covered by the obligation for the employer to pay social security contributions.

69. In their comments on the draft GRETA report, the Polish authorities have referred to activities envisaged for 2017, such as launching a programme entitled "National Legalisation of Foreigners' Employment", which will include a training workshop for entrepreneurs employing foreigners and will promote the replacement of "civil law contracts" with employment contracts. The regional anti-trafficking teams, in particular in regions with a high number of Ukrainian workers (e.g. Bydgoszcz), are planning awareness-raising activities in co-operation with the border guard officers and labour inspectors.

70. Following amendments to the public procurement legislation in 2012, companies convicted of illegal employment of foreigners are excluded from participation in public tenders. Similarly, companies in which leading positions are held by natural persons who have been convicted of THB offences are excluded from public tenders.<sup>22</sup> Further, as of 2015, all government procurement agreements have to include social clauses.

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<sup>21</sup> Citizens of Armenia, Belarus, Georgia, the Republic of Moldova, the Russian Federation and Ukraine. The legal basis for this arrangement is a Regulation of the Ministry of Labour and Social Policy of 21 April 2015. According to the Ministry of Family, Labour and Social Policy, there were 665 956 statements of "intention to employ a foreigner submitted by the end of 2015; 97.7 % of them concerned citizens of Ukraine. The vast majority of foreigners working under this scheme are employed in agriculture and construction. According to trade union estimates, there are some 700 000 - 800 000 migrant workers in Poland, some 90 % of whom are Ukrainians.

<sup>22</sup> The public procurement legislation is available at:  
[https://www.uzp.gov.pl/\\_data/assets/pdf\\_file/0008/33110/Public\\_Procurement\\_Law\\_2016\\_consolidated.pdf](https://www.uzp.gov.pl/_data/assets/pdf_file/0008/33110/Public_Procurement_Law_2016_consolidated.pdf)

71. A project entitled "Migrants' Rights in Practice", which has been run by IOM, in collaboration with the Ministry of the Interior and Administration and the State Labour Inspectorate, since November 2011, aims at facilitating the integration of third-country nationals by increasing awareness of their rights and obligations in Poland and strengthening the fight against discrimination and exploitation of migrants in the labour market. The project is co-financed by the European Fund for the Integration of Third-Country Nationals and the Polish authorities. A telephone hotline has been set up as a part of the project, intended for migrants and nationals of Armenia, Belarus and Ukraine who are planning to apply for employment in Poland. The project also hosts a website<sup>23</sup> in eight languages (Polish, English, Chinese, French, Armenian, Russian, Ukrainian and Vietnamese). The hotline and website are promoted through advertisements in the media, leaflets distributed by border guard officers and at universities where foreign students study. Information meetings for migrants about their rights and obligations in Poland and anti-discrimination training for professionals also form part of the project.

72. The Office for Foreigners hosts a website<sup>24</sup> with information in Polish, English and Russian about relevant legislation, possibilities to work in Poland and regulations for issuing residence permits.

73. Some preventive measures are being taken in respect of citizens of countries considered to be at particular risk. Given the relatively high number of Filipino citizens identified in 2014 as victims of THB for the purpose of labour exploitation, a meeting was held at the initiative of the Embassy of the Philippines in Poland, at which Filipino citizens were informed about the risks of trafficking, the rights under Polish legislation and the Polish system of protection and assistance to victims of trafficking.

74. A seminar entitled "Trafficking in Poland in the Context of Recent Events in Ukraine - Diagnosis of the Situation, Strengthened Co-operation and Analysis Challenges" was held in 2014 at the initiative of the Polish Red Cross. The seminar, carried out in co-operation with the Foundation against Trafficking and Slavery and La Strada Foundation, was attended by 50 people, including representatives of the Polish and Ukrainian authorities, NGOs and international organisations. Further, at the end of 2015, a working meeting between the Ministry of the Interior and Administration, IOM and the Ukrainian Consulate in Warsaw took place. The main purpose of this meeting was to discuss the feasibility of conducting joint information activities in 2016 about the dangers of human trafficking for forced labour among Ukrainian job seekers in Poland. Another project targeting Ukrainian citizens planning to take up work in Poland, entitled "Safe Labour in Poland", implemented by EastWestLink, a Polish job placement agency, with co-funding from the Asylum, Migration and Integration fund (AMIF),<sup>25</sup> involved the establishment of a contact point providing legal aid to foreign workers.

75. The job placement agency Aterima together with the NGO PoMOC Association has since 2011 been organising Internet-based awareness-raising activities directed towards people planning to take up work abroad. Further, La Strada Foundation implements a project called "NGO & Co Business Engagement in Addressing Trafficking", which promotes zero tolerance of THB among private companies. Other initiatives undertaken to strengthen respect of human rights by businesses are mentioned in the "Study on Demand Reduction Measures to combat Trafficking in Human Beings for the Purpose of Labour Exploitation through Engagement of the Private Sector".<sup>26</sup>

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<sup>23</sup> [www.migrant.info.pl](http://www.migrant.info.pl)

<sup>24</sup> <http://www.foreignersinpoland.com/office-foreigners/>

<sup>25</sup> [http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund/index_en.htm)

<sup>26</sup> Zbigniew Lasocik, *Study on Demand Reduction Measures to combat Trafficking in Human Beings for the Purpose of Labour Exploitation through Engagement of the Private Sector*, April 2016 pp. 26-30.

76. As noted in paragraph 53, Leiden University's Asia Centre conducted research into suspected forced labour of North Korean citizens in Poland.<sup>27</sup> According to the report, the North Korean workers were employed through temporary employment agencies, their salaries were sent to State accounts in North Korea and therefore they were apparently victims of state-sponsored human trafficking. The report notes that since 2010, the Labour Inspectorate has conducted over 20 inspections of companies employing North Korean workers and irregularities have been found on some occasions, such as at the Crist shipyard in Gdynia. In 2014 a North Korean worker was reportedly killed in an accident at the Crist shipyard, which led to exposing a number of illegal practices by the employers. However, the labour inspectors found that the documentation of the North Korean workers was in order. According to officials from the Ministry of Foreign Affairs met by GRETA during its visit to Poland, since early 2016 no new visas have been granted to North Korean workers and no existing visas have been extended. All visas expired in November 2016, which means that there should be no legally employed North Koreans remaining in Poland. Representatives of the Ministry of Foreign Affairs stated that the newly appointed Polish consular representative in North Korea had been informed of the existing risks and that decisions to grant visas to Poland are taken on an individual basis, there being no general policy regarding certain nationalities.

77. Despite the above-mentioned initiatives, the Polish authorities acknowledge that measures to facilitate legal residence and work in Poland are not sufficient to prevent human trafficking. Most identified foreign victims of trafficking for the purpose of labour exploitation arrived in Poland in compliance with the legislation, but nevertheless they were subjected to exploitation afterwards.

**78. GRETA notes the measures already undertaken in Poland to prevent human trafficking for the purpose of labour exploitation and considers that the Polish authorities should:**

- **review and assess the system of "statements of intention to employ" third-country nationals for periods of six months per year with a view to preventing exploitative practices;**
- **provide the National Labour Inspectorate with necessary resources and further training to effectively prevent and combat THB;**
- **strengthen inspections in sectors considered at risk of THB by engaging with key stakeholders, including with a view to preventing THB in supply chains;**
- **work closely with the private sector, in line with the Guiding Principles on Business and Human Rights,<sup>28</sup> and consider including business representatives in the regional anti-THB teams.**

**79. Further, GRETA invites the Polish authorities to keep under review the effectiveness of the amendments concerning the payment of minimum wages under "civil law contracts" and to monitor the conclusion of "specific task contracts" to ensure that they do not provide a gateway to human trafficking.**

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<sup>27</sup> Available at: <http://slavestothsystem.eu/wp-content/uploads/2016/07/North-Korean-Forced-Labour-in-the-EU-the-Polish-Case.pdf>

<sup>28</sup> [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

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

80. A number of activities to prevent trafficking in children were implemented as part of the National Action Plan for 2013-2015, such as reprinting and disseminating the Council of Europe comic book "You Are Not for Sale", training of teachers and training of social workers, police and border guard officers on the identification and support of child victims of trafficking, in co-operation with the NGOs Nobody's Children Foundation and La Strada Foundation. Competitions for school children were organised for a short story, comic strip or video clip on the topic of human trafficking. The two most recent competition rounds attracted almost 600 entries. Nonetheless, civil society representatives consider that the topic of THB should be included in the national school curricula as awareness-raising measures do not have sufficient coverage.

81. As part of crime prevention, police officers conduct awareness raising on an on-going basis in schools. Pursuant to Ordinance No. 14 of the Chief Police Officer of 22 September 2016, there is a coordinator dealing with prevention of THB at each voivodship, municipal and district (*powiat*) Police headquarters. Nevertheless, according to the Police, it is necessary to conduct training of street workers on how to proactively identify victims of trafficking among children they are in contact with.

82. The Polish authorities have indicated that the school attendance rate of Roma children has increased (from 85.8% in 2004-2005 to 93.2% in 2014-2015). In the school year 2016-2017, some 2 231 students of Roma origin (98% of the Roma population in Polish schools) received additional material assistance (e.g. books, school supplies, gym clothes).

83. In 2012, the NGO Nobody's Children and the Orbis Hotel Group developed a Code of Conduct for the hotel industry with the aim of protecting children from sexual exploitation.<sup>29</sup> By signing the Code of Conduct, the Orbis Hotel Group has committed itself to informing key persons of the Company's policy and co-operating with the police, taxi drivers, owners of bars and restaurants. The activities undertaken by Orbis and the Accor Hotel Group include training hotel staff on how to spot and report cases of child sexual abuse and informing hotel guests through flyers and a website about this problem.

84. According to data of the Ministry of Family, Labour and Social Policy, there were 196 unaccompanied foreign children in 2014 (87 in family foster care and 109 in institutions); 168 in 2015 (75 in family foster care and 93 in institutions); and 200 in 2016 (70 in family foster care and 130 in institutions). There is no information about child victims of trafficking having been identified among these children. According to data from the Office for Foreigners, in 2014-2016, a total of 81 unaccompanied children applied for international protection. In 2016, 30 foreign children absconded from family or institutional care.

85. Children are registered at birth in the hospital registers. Hospitals notify births to the competent authorities and issue a "birth card" to the parents, which should be presented to the competent city hall office in order to officially register the child and obtain a birth certificate. In case the birth does not take place in a health-care facility, persons present during the delivery must declare the birth to the relevant civil status office. Should for whatever reason the procedures explained above not be followed, birth registration may be done upon a court order. There are reportedly some cases of non-registration of Roma children.

<sup>29</sup>

<http://www.orbis.pl/en/sustainable-development/children-protection>

86. **While welcoming the steps taken by the Polish authorities to raise awareness of child trafficking, GRETA considers that the authorities should continue and strengthen their efforts in the area of prevention of child trafficking for the purpose of sexual exploitation, labour exploitation (including exploitation of begging) and forced criminality, in particular by sensitising and training child protection professionals across the country, raising awareness of children through education, and paying increased attention to children from Roma communities, unaccompanied children and migrant children (see also paragraph 126).**

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

87. 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 Organs<sup>30</sup> 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.<sup>31</sup> Among the necessary preventive measures, GRETA underlines the importance of a robust and transparent domestic system for the removal and transplantation of human organs and the need for training of health-care 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, paying attention to the abuse of the vulnerability of the "donor" and ensuring that "donors" are treated as victims of trafficking in human beings.

88. The Law of 1 July 2005 on Cell, Tissue and Organ Recovery, Storage and Transplantation prescribes penalties for illegal practices related to the commercialisation, storage and transplantation of cells, tissues and organs. Article 40a of this Law makes training compulsory for relevant professionals whose work impacts the safety of organ donors and recipients. Three types of training are provided to medical staff who may get involved in harvesting organs or performing transplantations, all of which are compulsory: initial training for new employees, continuous training held at least once every two years, and *ad hoc* training in cases of new or amended legislation or significant scientific progress in the field of transplantation. The training is provided by the Centre for Organisation and Co-ordination of Transplantation "Poltransplant" and covers ethical and legal donation, collection and processing of cells, tissues and organs, as well as measures to prevent trafficking in human organs.

89. Polish citizens may register their refusal to become organ donors after their death. In the absence of such a refusal, any citizen is considered a potential donor. Any hospital has the right to harvest organs from dead donors, but only a number of authorised hospitals have the right to carry out transplants.

90. The institution in charge of managing and supervising the national waiting list for organs is the Centre for Organisation and Co-ordination of Transplantation "Poltransplant". Article 38.3.3 of the Ordinance of the Minister of Health of 4 December 2009 sets out the rules for the management of the list.

91. The Police monitor the Internet for any advertisement regarding organs for transplant and at least on one occasion such an advertisement was found, but there are no known cases of human trafficking for the purpose of organ removal in Poland.

<sup>30</sup> Opened for signature in Santiago de Compostela on 25 March 2015.

<sup>31</sup> See Council of Europe/United Nations, Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs, 2009, in particular pages 55-56; OSCE, Trafficking in human beings for the purpose of organ removal in the OSCE region, OSCE Occasional Paper No. 6, 2013.

92. On 25 March 2015 Poland signed the Council of Europe Convention against Trafficking in Human Organs and the authorities have indicated that work towards amending national legislation in the light of this Convention is on-going. **GRETA encourages the Polish authorities to ratify the Council of Europe Convention against Trafficking in Human Organs as this would contribute to the prevention of trafficking for the purpose of organ removal.**

93. **GRETA invites the Polish authorities to ensure that, as part of their training, medical and other health care professionals involved in organ transplantations continue to be sensitised about THB for the purpose of organ removal.**

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

94. Several of the previously mentioned projects carried out in recent years have had components aimed at discouraging demand for services of victims of trafficking, such as the project "Migrants' Rights in Practice", which was carried out by the IOM office in Warsaw in partnership with the Ministry of the Interior and Administration and the General Labour Inspectorate (see paragraph 71), and the project "Safe Labour in Poland", which was implemented by EastWestLink (see paragraph 74). The latter project promoted a proactive role of the private sector in reducing illegal employment and violations of employees' rights.

95. A National Action Plan for the implementation of the UN Guiding Principles on Business and Human Rights was adopted on 29 May 2017 by the Polish Government. It contains measures to prevent and limit forced labour, including through awareness raising and training of employers and introducing a duty of employers in both the public and private sectors to report on actions taken to prevent forced labour.

96. The Polish authorities have also referred to the criminalisation of illegal employment of foreigners through the 2012 Law on the Consequences of Employment of Foreigners Illegally Staying in the Territory of Poland, which expressly prohibits the employment of a foreigner who is a victim of trafficking in human beings and does not possess relevant valid documents (see also paragraphs 169 and 183).

97. As mentioned in paragraph 50, the "Study on Demand Reduction Measures to Combat Trafficking in Human Beings for the Purpose of Labour Exploitation through Engagement of the Private Sector" was carried out as part of the project entitled "Improving Poland's Capacity to Prevent Trafficking in Human Beings", implemented by the Ministry of the Interior and Administration in partnership with the Council of Europe and financial support from the Norway Grants. The report analysed inter alia international good practices in demand reduction and their applicability to the Polish context.<sup>32</sup> According to this report, a comprehensive professional debate on human trafficking and labour exploitation is still lacking in the public domain and media in Poland and the issue of demand reduction to combat trafficking in human beings is not sufficiently addressed; further, there is a lack of effective mechanisms to check whether companies meet the basic conditions for the elimination of forced labour and only a few Polish companies have codes of conduct for socially responsible production or service.

98. GRETA was not informed of any measures to discourage demand that fosters sexual exploitation leading to trafficking. The use of services of a victim of THB, with the knowledge that the person is trafficked, is still not criminalised in Poland (see also paragraph 169).

<sup>32</sup> Zbigniew Lasocik, *Study on Demand Reduction Measures to Combat Trafficking in Human Beings for the Purpose of Labour Exploitation through Engagement of the Private Sector*, April 2016. Available at: <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806b61f0>

99. **GRETA considers that the Polish authorities should strengthen their efforts to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with civil society and the private sector. This should include the introduction of an incentive system for companies that decide to adopt codes of conduct to publish and effectively implement them. The government should periodically present to Parliament and the public the results of monitoring compliance with such codes.**

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

100. As noted in GRETA's first report, the Border Guard have specialised units dealing with preventing and combating human trafficking and in each region there is an anti-THB co-ordinator.<sup>33</sup> Since May 2014 the Border Guard has had the same mandate as the Police to investigate THB offences. The Border Guard conducts preparatory proceedings as well as investigative and operational activities aimed at gathering evidence against perpetrators of human trafficking. The Police and the Border Guard try to avoid duplication and if it turns out that both authorities are investigating the same case, efforts are made to create joint investigation teams.

101. Border guard officers come across victims of trafficking when conducting checks in places considered at high risk of trafficking, such as roadside nightclubs, or when carrying out work place inspections together with the labour inspectors. The Border Guard follows guidelines on the identification of victims of trafficking, the so-called "Algorithm of Conduct of Law Enforcement Officers in Case of Revealing a Crime of THB" (see also paragraph 104). Indicators of THB are used by first line officers and those investigating THB offences. As regards training of border guard officers concerning THB, see paragraphs 35-36.

102. GRETA notes the positive opinions held by civil society interlocutors as regards the work of the Border Guard in identifying victims of trafficking and investigating THB crime and welcomes the Border Guard's extended mandate as regards such investigations. **GRETA invites the Polish authorities to continue ensuring that Border Guard officers are provided with training and resources to prevent and combat THB.**

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

**a. Identification (Article 10)**

103. In its first report, GRETA urged the Polish authorities to take further steps to ensure that all victims of trafficking are properly identified, including by establishing a National Referral Mechanism (NRM) which defines the roles and procedures of all authorities competent to perform identification and by providing frontline staff with operational indicators, guidance and toolkits to be used in the identification process. GRETA further urged the Polish authorities to ensure that law enforcement officials, social workers, labour inspectors and other relevant actors adopt a more proactive approach and increase their outreach work to identify possible victims of trafficking, including among persons detained as irregular migrants.

<sup>33</sup> See paragraph 126 of GRETA's first report on Poland.

104. As noted in paragraph 30, the development of a NRM is foreseen in the National Action Plan for 2016-2018. In the meantime, the rules and procedures for the identification of victims of trafficking remain the same as at the time of the first GRETA evaluation.<sup>34</sup> The formal identification of victims of THB can be performed by the Police, the Border Guard or the Prosecutor's Office. The identification of victims of trafficking by the Police and the Border Guard follows the "Algorithm of Conduct of Law Enforcement Officers in Case of Revealing a Crime of THB", which provides detailed instructions. According to this document, in case of a report that a person may be a victim of trafficking, the law enforcement official should inform a specially trained officer of the same sex as the possible victim. This officer should establish whether there are reasonable grounds to suspect a THB offence, whether the person could be a victim/witness of this offence, and whether he/she agrees to report the offence.

105. Further, the National Consulting and Intervention Centre for Polish and Foreign Victims of Trafficking (KCIK) can identify victims of trafficking who are legally present in Poland and do not wish to contact a law enforcement agency, or have not been identified as victims of trafficking by such an agency. The Police, Border Guard or any other stakeholder who suspects that a person might be a victim of trafficking can consult the KCIK making use of its specially trained and experienced staff. Though not formally competent to identify victims, a supportive role is played by representatives of other institutions such as social workers, staff of the regional anti-trafficking teams and NGOs which may or do come into contact with victims of THB.

106. According to data provided by the Polish authorities, the Police identified 141 victims of THB in 2013, 50 in 2014, 25 in 2015 and 52 in 2016, and the Border Guard identified 52 victims in 2013, 48 in 2014, 33 in 2015 and 104 in 2016. Further, KCIK identified 222 presumed victims in 2013, 207 in 2014, 229 in 2015 and 200 in 2016. As noted in paragraph 12, there is a degree of double counting between these sets of figures. Few victims of trafficking have been identified at Poland's borders, but because of the Border Guard's mandate to investigate THB offences, they have identified foreign and Polish victims within the country's territory. It is noteworthy that more victims have been identified in some regions, such as Lubuskie Region which is situated along the Polish-German border (31 cases in 2014). As noted in paragraph 65, only a few suspected cases of THB for labour exploitation have been found by labour inspectors.

107. There are 11 centres for asylum seekers in Poland, two of which are initial reception centres and nine provide longer-term accommodation. The Office for Foreigners, which is subordinated to the Ministry of Foreign Affairs, is responsible for processing asylum applications.<sup>35</sup> An "Algorithm for dealing with a person who has applied for refugee status and is potentially a THB victim" has been in use since 2014. It was developed by a working group of representatives of the Ministry of the Interior and Administration, the Office for Foreigners and the Border Guard. In addition, there are internal guidelines for staff of the Office for Foreigners on how to proceed if a presumed victim of trafficking is detected. Since the beginning of 2014 there has been a co-ordinator of the Office for Foreigners with particular responsibility for the identification of possible victims of THB, who are referred to the Border Guard for further verification. By way of example, in 2014 one Ukrainian, one Cameroonian and three Vietnamese asylum seekers were identified as presumed victims of trafficking, and in 2015 one Armenian and three Vietnamese victims were identified. At least one victim of trafficking was granted asylum based on the applicant's status as a victim of THB, in combination with other humanitarian concerns.

<sup>34</sup> See paragraphs 137-146 of GRETA's first report on Poland.

<sup>35</sup> The approximate number of asylum applications in Poland is as follows (with positive decisions in brackets): 2013: 15000 (208); 2014: 8000 (262); 2015: 12000 (348); 2016: 11000 (78). Asylum seekers typically originate from the Russian Federation (North Caucasus), Ukraine and Tajikistan.



108. Border Guard officers may identify victims of trafficking among detained foreign nationals and a few suspected victims of trafficking have been identified in that way. Representatives of the NGO Halina Nieć Legal Aid Centre visit detention facilities and border checkpoints, monitor the situation and provide legal aid to detained foreign nationals. Other NGOs providing legal aid are also allowed access to facilities for irregular migrants. However, because of the remoteness of most of these locations,<sup>36</sup> NGOs have difficulties finding financial resources for the travel and therefore their role in detecting possible victims of trafficking in detention centres is limited.

109. GRETA welcomes the steps taken to improve the identification of victims of trafficking among asylum seekers and irregular migrants. **GRETA notes the plans to introduce a National Referral Mechanism and considers that the Polish authorities should increase their efforts to identify victims of trafficking for all forms of exploitation, including by:**

- **pursuing a proactive approach to the identification of victims of trafficking of all forms of exploitation, and in particular for the purpose of labour exploitation in sectors considered to be at risk;**
- **encouraging use of regular and co-ordinated multi-agency inspections by organisations responsible for regulating employment, health and safety in those sectors most at risk;**
- **improving the identification of victims of trafficking in detention centres, including by ensuring access to such centres by specialised NGOs providing legal aid and by providing sufficient funding to NGOs for such visits.**

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

110. In its first report, GRETA considered that the Polish authorities should take further steps to provide assistance to victims of trafficking, and in particular to ensure that there is a sufficient number of shelter places across the country adapted to the victims' needs, as well as to make sure that when the provision of assistance is delegated to NGOs, the State provides funding and exercises quality control. The authorities were further asked to ensure that suitable accommodation is provided for male victims of trafficking and that they can fully benefit from the assistance measures provided for in law. Further, GRETA stressed that victims of THB should be guaranteed access to public health care.

111. The legal basis for assisting victims of trafficking is provided by the amended Law on Social Assistance. Assistance is financed by the State budget, as delegated to local self-governments or to NGOs, and by the budgets of the local self-governments. The local self-governments can assign the implementation of victim assistance to NGOs following a tender procedure and on the basis of an agreement. The assistance measures to which victims of trafficking are entitled include psychological and legal support, social assistance, safe accommodation, medical care, food in the form of whole-day board or cash benefit for subsistence, clothing and an allowance for special purposes.<sup>37</sup>

<sup>36</sup> The six detention centres in which irregular migrants are kept pending deportation are mostly located in remote areas (Lesznowola, Krosno Odrzańskie, Przemyśl, Biała Podlaska, Białystok and Kętrzyn).

<sup>37</sup> For further details, see paragraphs 150-158 of GRETA's first report on Poland.

112. In 2013-2015, a total of 3 100 000 PLN (about 720 000 Euros) was spent from the Ministry of the Interior and Administration's budget on assistance measures for victims of THB. The National Consulting and Intervention Centre for Victims of Human Trafficking (KCIK) remains the main public institution providing assistance to foreign and Polish victims of trafficking.<sup>38</sup> It is presently run by the NGOs La Strada Foundation and PoMOC. Accommodation is provided in two shelters (one in Warsaw run by La Strada and one in Katowice run by PoMOC, the former being for women only, and the latter for women and any children accompanying them). KCIK organises medical services and psychological support for victims of trafficking, provides translation and interpretation services and runs a telephone hotline. In 2012 a group of volunteers was created to help victims visit doctors, consulates and or the police, as well as accompany victims to attend activities. Accommodation in shelters was provided by KCIK to 153 presumed victims in 2013, 90 in 2014 and 125 in 2015 (there is double-counting as some victims stay longer than one year). The types of assistance received by the victims in 2015 were as follows: social assistance (160 victims), crisis intervention (153 victims), material support (133 victims), legal counselling (120 victims), psychological support (110 victims), medical assistance (35 victims), assistance in obtaining documents (19 victims, including 15 foreigners, with documentation linked to legalising their stay in Poland).

113. The Programme for the Support and Protection of Victims/Witnesses of THB was set up in 2006 in order to cater for foreign nationals who are possible victims of human trafficking.<sup>39</sup> Since January 2010 it has been implemented by KCIK. By way of example, 126 foreign victims of trafficking benefited from the programme in 2015, among whom the largest group were Vietnamese citizens (37), followed by Ukrainians, Filipinos and Romanians.

114. There are 18 crisis intervention centres in Poland which can accommodate victims of trafficking, 15 of which are financed by municipalities. The remaining three are run and financed by NGOs, though these may also receive some financial support from the State or regional budgets. KCIK supports and advises staff of crisis intervention centres who undergo regular training on THB organised by the Ministry of Family, Labour and Social Affairs. For practical reasons, most foreign victims of trafficking are accommodated in the Warsaw area.

115. GRETA visited a crisis intervention centre in Gorzów Wielkopolski. Opened in 1996, it offers safe accommodation to people in need, both women and men, including victims of trafficking. The centre's staff consists of six counsellors, including psychologists and social workers. The centre can provide accommodation to persons in need for up to three months. In 2013 there were five victims of THB accommodated at the centre, in 2014 none, in 2015 one and in 2016 two.<sup>40</sup> All victims were women subjected to sexual exploitation and all but one were foreigners.

116. As part of the services of KCIK, La Strada Foundation organises secure accommodation for men in social assistance centres. In Warsaw, La Strada Foundation offers five places for men and on 25 May 2017 it signed an agreement with the authorities of Warsaw City on setting up transitional housing for male victims of trafficking and their families. Further, PoMOC may provide support to male victims through co-operation with the Society of St. Albert, which runs a shelter for men and families and whose staff have received training on human trafficking.

117. A document entitled "Standards of Safe Shelter for Victims of Trafficking" was adopted by the Ministry of Family, Labour and Social Policy in 2014 and distributed as a guideline to social workers and other staff engaged in the provision of assistance to trafficking victims, including staff of crisis intervention centres. Particular attention is paid to the need to provide safe accommodation for male victims of THB. However, the Department of Social Assistance and Integration is not obliged to monitor the implementation of these Standards.

<sup>38</sup> See paragraph 152 of GRETA's first report on Poland

<sup>39</sup> For further details, see paragraph 152 of GRETA's first report on Poland.

<sup>40</sup> By the time of GRETA's visit in November 2016.

118. A new provision since GRETA's first visit is Article 10 of the Law of 28 November 2014 on Protection and Assistance to Victims and Witnesses, pursuant to which victims, including victims of trafficking in human beings, can be granted financial support from the Victims' Assistance and Post-penitentiary Assistance Fund.<sup>41</sup> This financial support can cover the following kinds of expenses: medical and psychological care, rehabilitation, legal assistance and material support. It is not possible to indicate if any victims of trafficking have received such financial support as no register is kept of the victims who were supported by this fund, but the Polish authorities have stressed that any victim of crime has access to it.

119. GRETA was informed that emergency health care was provided to victims of THB without any problems. However, as was the case during the first visit, access for victims of THB to public health care for non-urgent treatment remained problematic. In their comments to GRETA's draft report, the Polish authorities have indicated that victims of trafficking are provided with medical services pursuant to the 2004 Law on Health Care Services Financed from Public Funds. GRETA notes that while it is stated in this law that Polish and EU citizens and third-country citizens with a residence permit, as well as refugees and persons granted subsidiary protection, are covered by the health insurance necessary for benefitting from medical services, third-country citizens whose stay in Poland is irregular – which is the case of a number of victims of trafficking - do not appear to benefit from these provisions.

**120. GRETA urges the Polish authorities to guarantee effective access to public health care for all victims of trafficking, regardless of residence status, in accordance with Article 12 of the Convention.**

**121. Further, GRETA considers that the Polish authorities should take additional steps to provide assistance to victims of trafficking, and in particular to ensure that sufficient funding is made available to assist victims of THB when the assistance is delegated to NGOs or local authorities.**

### **c. Identification and assistance of child victims of THB (Articles 10 and 12)**

122. In the first report, GRETA considered that the Polish authorities should improve the system for providing assistance to child victims of trafficking, both in terms of accommodation and as regards medium and long-term support programmes tailored to the needs of the children.

123. In order to improve the identification of child victims of trafficking in human beings, a document entitled "Algorithm of Identification of Child Victims of Trafficking in Human Beings and Conduct of Police and Border Guard Officers" was prepared and disseminated in mid-2015. According to it, identification cannot be based only on information provided by the child, but must be supplemented by an in-depth analysis of the child's situation and circumstances. Hearings of presumed child victims must be performed in a child-friendly environment. After the preliminary identification, police and border guard officers should inform the relevant anti-trafficking co-ordinator about the case. In the meantime the presumed child victim should be kept separated from unrelated persons if there is a suspicion that they could be traffickers or their accomplices. In practice, the identification of child victims of human trafficking is most often the result of routine work carried out by police officers or institutions providing social assistance. Children are rarely able to self-identify as victims of trafficking.

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<sup>41</sup> The Victims and Post-penitentiary Assistance Fund is a special-purpose state fund administered by the Minister of Justice. It was created on the basis of the Law of 12 February 2010, amending the Criminal Code and the Law on Environmental Protection. The regulations concerning the Fund are contained in Article 43 of the CCP and the Minister of Justice's Regulation of 29 September 2015 on Victims and Post-penitentiary Assistance Fund. The fund is made up of income from fines and cash adjudged by the courts, deductions withheld from sentenced persons' work income, income from disciplinary punishments, inheritances, legacies and donations, grants and (public) collections. The fund is used to provide various forms of support (medical, psychological, legal, educational) to victims of crime, witnesses and their relatives.

124. According to the Civil Procedure Code, the Family Court is the competent institution to protect the welfare of all children, including victims of trafficking, and act in their best interests. The family court is the respective Department of Family and Juveniles of each District Court, which has judges specialised in family law. Family courts are competent to take decisions in all cases where the interests of the child are considered to be threatened,<sup>42</sup> including as regards placing a child in institutional or foster family care. GRETA refers to the United Nations Committee on the Rights of the Child (CRC), which in its 2015 concluding observations on Poland referred to inappropriate court decisions on the protection of child victims of human trafficking, including concerning their placement in institutions for socially maladjusted children without necessary counselling and other services.<sup>43</sup>

125. Family courts also decide about the appointment of a guardian for a child.<sup>44</sup> Until a suitable guardian is found/family relationships established, individual staff members of the KCIK or child care institutions may act as guardian. There is a pool of such professionals who may act as temporary guardians.

126. There are no specialised shelters for child victims of trafficking in Poland. There used to be, until 2012, a children's home in Warsaw which had places reserved for child victims of THB, but these places were abolished as an unintended consequence of new legislation<sup>45</sup> concerning the organisation of accommodation and support for children, which involved a move towards smaller care units. It was also considered that there were not enough child victims of trafficking in need of accommodation to maintain a specialised institution.<sup>46</sup> According to the authorities, the reform of institutional child care was intended to provide better care through smaller residential units and the staff involved are trained in dealing with child victims of THB and other forms of abuse, despite the lack of a specialised centre for child victims of THB.

127. With the approval of the competent family court, teenaged girls or smaller children accompanying their mother can be placed in one of the two shelters run by KCIK. In other cases, child victims of both sexes are referred to institutional care in children's homes which form part of the child care system or to foster families providing emergency child care. KCIK makes efforts to locate the families of child victims of trafficking in view of family reunification and carries out risk assessment to ensure that the family has not been involved in the trafficking.

128. Unaccompanied foreign children who are not seeking asylum are placed, depending on the circumstances, either in foster care facilities or in guarded centres (in justified cases and provided they are over 15 years old). The decision on placement is taken by the guardianship court, which also appoints a guardian to represent the child in administrative proceedings. Foreign child victims of trafficking are entitled to education on the same terms as any other children and can have Polish language lessons to support their integration.

129. GRETA is concerned by the disappearances of presumed foreign child victims of trafficking from institutional care. Polish child welfare institutions providing accommodation to, amongst others, child victims of trafficking seem not very well prepared to receive foreign child victims, *inter alia*, due to language barriers and lack of interpreters.

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<sup>42</sup> As defined in Article 109 of the Family Code.

<sup>43</sup> Concluding observations on the combined third and fourth periodic reports of Poland by the United Nations Committee on the Rights of the Child, paragraph 50 (c).

<sup>44</sup> Article 99 of the Family Code.

<sup>45</sup> The Law on Family Support and Foster Care, which entered into force on 1 January 2013.

<sup>46</sup> From October 2009 until the end of 2012, five foreign child victims of THB stayed at the children's home in question.

130. When the age of a presumed child victim of trafficking is uncertain, the age stated by the child is checked, where possible, with the diplomatic mission of the stated country of origin or by means of information exchanges with law enforcement agencies of that country. Otherwise, age determination is carried out by means of an x-ray of the wrist and/or teeth. GRETA notes that this method of age assessment does not take into account psychological, cognitive or behavioural factors. According to Article 397, paragraph 4, of the Law on Foreigners, a foreigner who claims to be a child but refuses to submit to a medical examination can be treated as an adult. Until the completion of the age assessment of a victim of THB, a person claiming to be a child will be treated as such. **GRETA invites the Polish authorities to review the age assessment procedures, ensuring that the best interests of the child are effectively protected, 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.**<sup>47</sup>

131. **GRETA urges the Polish authorities to improve the identification and assistance of child victims of trafficking, in particular by:**

- **increasing the capacity to detect child victims of trafficking by training a larger range of professionals who may come into contact with child victims of trafficking in the use of trafficking indicators and involving child specialists in the identification of child victims of trafficking to ensure that the best interests of the child is the primary consideration;**
- **providing safe accommodation for child victims of trafficking and unaccompanied children and addressing the problem of such children disappearing, including by providing adequately trained supervisors and interpreters;**
- **making available reintegration programmes for child victims of trafficking.**

**d. Protection of private life (Article 11)**

132. According to the Law of 29 August 1997 on Personal Data Protection, everyone has the right to protection of his/her personal data. Generally, processing of personal data needs the approval of the person concerned. According to Article 36, the data administrator is obliged to implement technical and organisational measures to ensure the protection of personal data processed, in a manner appropriate to the risks and category of the data being protected, and in particular to protect the data from unauthorised disclosure, takeover by unauthorised persons, processing in violation of the Law, loss, damage or destruction. Every institution or organisation, be it in the public or the private sector, is bound by the rules of the Law. The authority for the protection of personal data is the General Personal Data Inspector, who supervises compliance with the rules.

133. GRETA was informed that personal data of victims of trafficking are kept by KCIK on an internal computer system without network access and the system is blocked with a password. KCIK requests the victims' consent concerning the use of their data.

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<sup>47</sup> [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.

### e. Recovery and reflection period (Article 13)

134. In its first report, GRETA urged the Polish authorities to ensure, in compliance with their obligations under Article 13 of the Convention, that all possible victims of trafficking, including European Economic Area nationals, are systematically informed of the possibility to have a recovery and reflection period and are effectively granted such a period regardless of whether or not they co-operate with the investigation.

135. The recovery and reflection period is currently regulated by the Law of 12 December 2013 on Foreigners, which entered into force on 1 May 2014. According to Article 10 of this law, a foreigner who is presumed to be a third-country victim of trafficking in human beings within the meaning of Article 115 of the CC, shall receive a certificate confirming the existence of that presumption. The certificates are granted by the Police, the Border Guard or the Prosecutor's Office, who have to inform the Ministry of the Interior and Administration in order for it to registers them. Certificates are only issued to victims who at the time of their identification as victims were present irregularly in Poland. According to Article 171(1), a foreigner's stay shall be considered legal during the period of validity of the certificate, i.e. three months from the date of issuance or four months in the case of children. A presumed victim of THB assisted by KCIC would need to contact the Police, Border Guard or Prosecutor's Office in order to obtain a certificate. Being granted a certificate does not require the victim's co-operation in the criminal investigation. While pressure to co-operate is not put on victims, the police would nonetheless explain to them the urgency of police investigations, as evidence can otherwise be destroyed.

136. The certificate, apart from constituting the basis for a temporary residence permit, entitles the victim of THB to a Polish identity document. This identity document can be issued on the basis of Articles 260, 261, 262 and 263 of the Law on Foreigners to persons who have no other proof of identity and are resident in Poland. This identity document cannot serve as a travel document allowing the crossing of the Polish border. The officer issuing the certificate shall inform the foreigner about the availability of assistance measures. The certificate may be suspended if a victim of THB actively, voluntarily and on his or her own initiative has renewed contacts with the traffickers. There are no appeal possibilities against a negative decision as regards the issuance of a victim's certificate.

137. According to Ordinance No. 14 of the Chief Police Office issued on 22 September 2016, persons identified as possible victims of THB are to be informed about their rights in writing in a language they understand, including the possibility to be issued a certificate of the right of residence in Poland and, if need be, an interpreter is to be used.

138. GRETA was informed that to date no certificate has been suspended. In 2014, 22 certificates were issued, in 2015, 33 and in 2016, 23.<sup>48</sup> This rather low number is explained by the Polish authorities by the fact that legally residing victims do not need a certificate to legalise their stay. In the view of civil society representatives met by GRETA, the issuance of the certificate is somewhat arbitrary and practices vary between the issuing authorities in different parts of the country.

139. In their comments on the draft GRETA report, the Polish authorities have referred to a draft amendment to the Law of 14 July 2006 on the Entry into, Residence in and Exit from the Republic of Poland of EU Nationals and Their Family Members, pursuant to which EU and EEA citizens who are presumed victims of trafficking shall be provided with a certificate confirming the existence of such a presumption, similarly to third-country nationals. **GRETA would like to be kept informed of the entry into force of this amendment.**

<sup>48</sup> Out of the 23 adult victims who were issued with certificates in 2016 (12 women and 11 men), 20 were Ukrainian; 21 were victims of forced labour.

140. GRETA recalls that the primary aim of the recovery and reflection period is to distance victims of trafficking from the influence of the perpetrators and to give them sufficient time to take a decision on whether to co-operate with the authorities. Further, GRETA notes that after three months EU citizens can only stay legally in other EU countries if they meet a number of requirements (e.g. economic activity, sufficient resources, being enrolled as a student), therefore the possibility that they would be considered as being irregularly present cannot be excluded and they should logically be entitled to enjoy a recovery and reflection period. **GRETA once again urges the Polish authorities, in compliance with the obligations under Articles 10, 12 and 13 of the Convention, to take additional steps to ensure that all possible foreign victims of trafficking, including EU/EEA nationals, are consistently offered a recovery and reflection period, regardless of where in Poland they are identified.**

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

141. In its first report GRETA urged the Polish authorities to ensure that victims of THB can take full advantage of the right to be granted a residence permit.

142. The Law on Foreigners extended the maximum validity of a residence permit granted to a victim who co-operates with law enforcement agencies to three years (the minimum remains six months). The conditions for this type of residence permit, defined in Article 176 of the law, are that the victim stays on the territory of Poland, co-operates with the authority competent to conduct proceedings in relation to the crime of human trafficking and has terminated all contacts with the persons suspected of committing the crime of human trafficking. Such a temporary residence permit is granted to a foreigner at the request of the administrative authority competent for the place of residence of the foreigner. Foreigners staying on the territory of Poland on the basis of a temporary residence permit for victims of trafficking have the right to exemption from the obligation to obtain a work permit, in accordance with Article 87, paragraph 2, point 1, of the Law of 20 April 2004 on Employment Promotion and Labour Market Institutions.

143. Further, in accordance with Article 181 of the Law on Foreigners, a foreigner residing on Polish territory may be granted a short-term stay if his/her presence on Polish territory is justified by his/her personal situation. Such an authorisation is granted for a period necessary to achieve the "objective pursued", but no longer than six months. The "objectives pursued" may be the person's medical recovery, but may also refer to the interests of the host state, for example to allow a witness to testify in court. Such temporary residence permits are granted to a foreigner at the request of the region competent for the place of residence of the foreigner. So far, no victim of THB has applied for this type of permit. According to the Polish authorities, this is explained by the fact that it is more beneficial for victims of trafficking to obtain a temporary residence permit on the basis of their co-operation with law enforcement officials, based on Article 176 of the Law on Foreigners.

144. Pursuant to the Law on Foreigners, a victim of human trafficking may also apply for a permanent residence permit if he/she: 1) has resided at least one year on the territory of Poland on the basis of a temporary residence permit for victims of THB, immediately before filing an application for a permanent residence permit; 2) has co-operated with law enforcement authorities in criminal proceedings; and 3) has a well-founded fear of return to his/her country of origin, attested to by the prosecutor in charge of the criminal proceedings. A draft amendment to the Law on Foreigners shifts the competence for determination of the presence of a well-founded fear from the prosecutor to the administrative authority competent for granting the permanent residence permit.

145. GRETA was informed that one foreign victim of trafficking was granted a temporary residence permit in 2013, 25 in 2014 and 18 in 2015. The majority of these permits were granted on the basis of the victims' co-operation in the investigation/criminal proceedings. In 2013 one Moldovan victim of trafficking was granted subsidiary protection. Further, in one case, a Ugandan woman who had been trafficked for the purpose of sexual exploitation was granted refugee status, in line with the UNHCR 2006 Guidelines on the application of refugee status to victims of trafficking.<sup>49</sup>

146. GRETA welcomes the legal changes which allow victims of trafficking to be issued residence permits on the basis of their co-operation in criminal proceedings or when required by their personal situation. **GRETA considers that the Polish authorities should take steps to ensure that victims of THB can effectively take advantage of the possibility to be issued residence permits, including by consistently informing victims, in a language they can understand, about the application procedure.**

#### **g. Compensation and legal redress (Article 15)**

147. In its first report, GRETA urged the Polish authorities to adopt measures to facilitate and guarantee access to compensation for victims of trafficking, and in particular to ensure that victims are systematically informed in a language that they can understand of the right to seek compensation and the procedures to be followed, and to enable victims to exercise their right to compensation by building the capacity of legal practitioners to support victims wishing to claim compensation and including compensation into existing training programmes for law enforcement officials and the judiciary. In addition, GRETA urged the authorities to encourage prosecutors to request compensation orders to the largest possible extent and to include all victims of trafficking in the scope of the Law on State Compensation for Victims of Crimes, irrespective of their nationality and residence status or the type of injury sustained.

148. Under Article 300 (2) and (3) of the Code of Criminal Procedure (CCP), victims are to be informed in writing of their rights, including the right to compensation, before the first questioning by the police or the prosecutor, in a simple and comprehensible language which allows persons who are not assisted by professional lawyers to understand their rights and obligations. Leaflets with information on the rights of victims of THB which refer, *inter alia*, to the right to compensation and the right to an attorney, have been issued by the Unit against Trafficking in Human Beings in nine languages (Bulgarian, Chinese, French, English, Polish, Romanian, Russian, Ukrainian and Vietnamese).<sup>50</sup>

149. The provisions concerning victims' access to legal aid have already been described in GRETA's first report.<sup>51</sup> According to Article 87(1) of the CCP, a victim who has the status of a party to the criminal proceedings can avail him/herself of professional legal aid which is provided free of charge if the victim demonstrates inability to bear the costs of legal aid. Representatives of the Polish Bar Council indicated that in practice very few victims of THB are assisted by lawyers during criminal proceedings and suggested that a list of lawyers qualified to provide assistance to victims of THB be drawn up and these lawyers be adequately trained. Further, there is reportedly a shortage of qualified legal interpreters where needed.

150. As noted in GRETA's first report, victims of trafficking may seek compensation: i) during criminal proceedings, by filing a motion in accordance with Article 46 of the CC; ii) in civil proceedings, independently of criminal proceedings, in accordance with the general principles of Article 415 of the Civil Code; iii) on the basis of the Law on State Compensation for Victims of Certain Crimes.<sup>52</sup>

<sup>49</sup> 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.

<sup>50</sup> <http://handelludzmi.eu/hl/o-handlu-ludzmi/informacje-dla-ofiar/6671,Prawa-ofiar-handlu-ludzmi.html>.

<sup>51</sup> See paragraph 180 of GRETA's first report on Poland.

<sup>52</sup> For more details about this law, see paragraphs 184-186 of the GRETA's first report on Poland.



151. Since GRETA's first evaluation, through the Law of 27 September 2013 amending the Code of Criminal Procedure and certain other laws, the scope of ruling on damages and redress in Article 46 of the CC was extended and the conditions for granting compensation were simplified. The amendments also repealed the provisions of Articles 62-70 of the CCP and thus terminated the possibility of seeking compensation by bringing an adhesion claim during criminal proceedings, but compensation from the perpetrator can still be claimed as part of the criminal proceedings or in separate civil proceedings based on Article 415 of the CCP. Further, the obligation to inform the victim of his/her rights was introduced in Article 300 of the CCP by the Law of 28 November 2015 on the Protection and Support of Victims and Witnesses.

152. The Law of 5 August 2015 amending the Law on State Compensation, the Code of Civil Procedure and the Law on Court Fees in Civil Matters (in force since 12 January 2016) broadened the personal scope of the right to compensation by removing the condition of the victim's nationality and replacing it with the condition of the victim's place of residence. According to the amended law, State compensation can be granted if the offence was committed on the territory of Poland or other EU country against a person having his/her permanent place of residence in Poland or other EU country, which in practice excludes third-country nationals.

153. Further, the deadline for applying for State compensation has been extended from three to five years as of the date of the crime being committed and compensation claims can now be submitted by persons other than the injured person on their behalf. The maximum amount of State compensation has been increased from 12000 PLN (about 2800 Euros) to 25000 PLN (about 5800 Euros). The judge decides on the amount of compensation on the basis of evidence presented by the victim about the extent of damage suffered or loss incurred (Article 9(2) of the Law on State Compensation), including any medical certificates. In practice, it is often difficult for victims to present such evidence. The Law of 5 August 2015 broadened the scope of the right to State compensation which can now be obtained even if the perpetrator has not been convicted.

154. Compensation from the perpetrator in criminal or civil proceedings or State compensation can be sought after the victim has returned to his/her country of origin. GRETA was informed that there had been at least one case where a returned victim applied for compensation from the perpetrator in criminal proceedings. There are no known cases of State compensation having been rewarded to victims of THB or to victims who returned to their countries.

155. The Polish authorities have provided two examples of compensation granted to victims of trafficking in the reporting period. Both relate to compensation from the perpetrator in the context of criminal proceedings. In a case pending before the Circuit Court in Szczecin, a 16-year old Polish girl who had been trafficking for the purpose of forced prostitution received compensation of 20 000 PLN (approximately 4700 Euros). In another case pending before the Circuit Court in Legnica, 28 Romanian victims of trafficking for the purpose of forced labour received 4 000 PLN each (approximately 1000 Euros).

156. GRETA welcomes the legislative developments in the area of compensation, some of which are in line with GRETA's previous recommendations, as well as the measures taken to inform victims of trafficking of the right to seek compensation and the procedures to be followed. **However, in the light of the small number of compensation awards to victims of trafficking, GRETA once again urges the Polish authorities to:**

- **ensure a higher consistency in the provision of information about the right to seek compensation to victims of trafficking, including by facilitating the provision of legal aid by lawyers and providing qualified interpreters when needed;**
- **encourage prosecutors to request compensation orders to the largest possible extent and review the role of prosecutors in trafficking cases, in view of removing any contradictions;**

- **make victims of THB eligible for State compensation regardless of their residence status.**

157. **Further, GRETA once again invites the Polish authorities to develop a system for recording claims for compensation by victims of trafficking, as well as compensation awarded to victims of trafficking.**

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

158. In order to ensure the safe return and protection of a victim of THB against re-victimisation, a risk assessment procedure was drawn up in 2014 and is implemented as of 2015 by KCIK, the Border Guard, the Police and by the Ministry of the Interior. As a rule, the risk assessment is performed for third-country nationals and only in justified cases for citizens of the EU (as the latter are normally not subject to expulsion). This risk assessment is carried out in respect of victims of THB included in the Programme of Support and Protection of Victims/Witness of THB.<sup>53</sup> The risk assessment is based on information from the victim, KCIK, the Police and/or Border Guard. The Ministry of the Interior and Administration assesses the situation in the country to which the victim is to be returned. GRETA was informed that in practice risk assessments of victims from Roma communities are challenging because they do not want interviews forming part of the risk assessment to be conducted in their home communities.

159. The IOM office in Poland continues to run a programme of assisted voluntary return of foreigners, including EU citizens, which is proposed to victims of THB. The programme is based on an agreement signed between the Minister of the Interior and Administration and IOM which is co-financed by the European Return Fund. In 2013-2015, 49 victims of THB were assisted through this programme, mainly EU nationals, typically Bulgarian women trafficked for sexual exploitation and Romanian men trafficked for labour exploitation or forced begging. The assistance provided by IOM includes assistance in obtaining travel documents where necessary, organising the return journey and reintegration assistance, including three months of financial support.<sup>54</sup> Additional support may be allocated for starting a business, undergoing education, rebuilding a house or subsidised employment. GRETA was informed that no child victims of THB have taken part in the IOM's voluntary return scheme, though such a return would be possible, following a careful risk assessment.

160. One Polish victim of THB exploited abroad was returned to Poland by IOM in 2015 and NGOs helped 17 other Polish victims of THB return to Poland in the same year.<sup>55</sup>

161. Together with IOM, Poland participates in the TACT project (Transnational Action – Safe and Sustainable Return and Reintegration of Victims of THB) which also involves France, Greece, Italy and Spain, the priority countries of return being Albania, Morocco and Ukraine. The project was initiated in 2015 and is financed from the European Asylum, Migration and Integration Fund. Its goals include the establishment of a co-operation mechanism in the field of safe return and reintegration of victims of THB in the priority countries, strengthening co-operation between relevant institutions and the provision of victims returning to their countries of origin with reintegration support.

<sup>53</sup> See Report on Trafficking in Human Beings in Poland in 2015, prepared by the Unit against Trafficking in Human Beings in the Analyses and Migration Policy Department of the Ministry of the Interior and Administration, page 52.

<sup>54</sup> Returnees receive the equivalent of 1200 PLN (about 280 Euros) in the currency of the country of return on the day of their return and thereafter 1000 PLN (about 230 Euros) at the end of each month, for three months.

<sup>55</sup> Report on Trafficking in Human Beings in Poland in 2015, prepared by the Unit against Trafficking in Human Beings in the Analyses and Migration Policy Department of the Ministry of the Interior and Administration, page 39.

162. **GRETA considers that the Polish authorities should ensure that any repatriation is conducted with due regard for the rights, safety and dignity of victims of trafficking, is preferably voluntary and complies with the obligation of *non-refoulement*. A risk assessment should be carried out for all victims of THB to be returned, be they EU or third-country nationals, and regardless of whether they have been covered by the Programme for Support and Protection of Victims/Witnesses of THB. The Polish authorities should further develop co-operation arrangements with States of return with a view to ensuring effective and comprehensive risk assessment relating to the possible return of victims of THB and enabling their safe return. Full consideration should be given to the UNHCR's guidelines on the application of the Refugees Convention to trafficked people.**<sup>56</sup>

### 3. Substantive criminal law

#### a. Criminalisation of THB (Article 18)

163. In its first report on Poland, GRETA urged the authorities to include an express prohibition of servitude in the definition of THB, so as to ensure greater certainty and clarity as to the scope of domestic law.

164. As was the case at the time of GRETA's first evaluation round, THB is criminalised by Article 115, paragraph 22, of the Criminal Code, which has remained unchanged.<sup>57</sup> As regards the forms of exploitation, this article refers to prostitution, pornography, other forms of sexual abuse, forced labour or services, beginning, slavery, other forms of abuse of human dignity, and harvesting organs, cells and tissues. "Servitude" is still not specifically mentioned as a type of exploitation, despite GRETA's recommendation to this effect. As noted in paragraph 51 of GRETA's first report, the Polish authorities have argued that, in the light of case law of the Constitutional Tribunal pertaining to the infringement of human dignity, in particular on the basis of Article 30 of the Polish Constitution<sup>58</sup> as well as the case law of the European Court of Human Rights, servitude is a form of abuse of human dignity and is covered by this term. **GRETA notes the arguments put forward by the Polish, but nonetheless considers that the Criminal Code should include an express prohibition of servitude in order to contribute to the practical and effective protection against treatment contrary to the Convention on Action against Trafficking in Human Beings.**

165. Forced begging is one of the forms of exploitation under Article 115, paragraph 22, of the CC. In 2014 the Border Guard identified several cases of presumed victims of human trafficking for the purpose of forced begging. These cases concerned citizens of Romania who were recruited by threat of violence, deceit and abuse of their critical situation. In connection with one of the investigations, a Polish-Romanian joint investigation team (JIT) was set up (see paragraph 197).

166. Forced marriage or illegal adoption are not mentioned among the forms of exploitation related to THB but since the list of forms of exploitation in Article 115 of the CC is open-ended (referring to "other forms of abuse of human dignity"), forced marriage and illegal adoption can be considered as part of THB offences. There is no separate offence of forced marriage in Polish legislation, whereas illegal adoption for profit is an offence under Article 211a of the CC.

<sup>56</sup> [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](#)

<sup>57</sup> See paragraph 49 of GRETA's first report on Poland.

<sup>58</sup> Article 30 of the Polish Constitution states that the inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It is inviolable and its respect and protection is the obligation of public authorities.

167. As noted in GRETA's first report, there is no reference to "abuse of a position of vulnerability", but the Polish authorities have clarified that the Convention's term "abuse of power or of a position of vulnerability" is implemented through the notions of "abuse of dependence, abuse of critical situation or a state of helplessness" which are of the same nature and cover the same scope. The Polish authorities indicated that in 2013-2015 Polish courts recorded several cases in which they found an element of abuse of a state of helplessness of the victim. The courts considered that helplessness may result from lack of knowledge of the Polish language, illiteracy, not possessing identity documents, lack of knowledge of one's location, difficult financial or life situation or being under the influence of drugs. The abuse of the state of the victim's helplessness may constitute an aggravating circumstance when deciding on the penalty.

168. Pursuant to Article 189a of the CC, committing the crime of THB is punishable with deprivation of liberty for a minimum term of three years, whereas making preparations to commit this crime is punishable with imprisonment of three months to five years. The court can impose additional measures on the convicted person, such as payment of compensation to the victim, forfeiture of proceeds or making the judgment publically known.

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

169. Polish law does not criminalise the use of services of a victim of THB with the knowledge that the person is a victim of THB. As noted in GRETA's first report,<sup>59</sup> the Polish authorities consider that other provisions are relevant in this respect, such as the criminalisation of the production of child pornography, as well as the criminalisation of illegal employment of foreigners, in particular Article 10 of the 2012 Law on the Consequences of Employment of Foreigners Illegally Staying in the Territory of Poland, which expressly prohibits the employment of a foreigner who is a victim of trafficking in human beings and does not possess relevant valid documents. **GRETA invites the Polish authorities to consider establishing as a criminal offence the use of services of which are the object of sexual or labour exploitation, with the knowledge that the person is a victim of trafficking in human beings.**

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

170. Since the adoption of the first GRETA report on Poland, the Law on the Liability of Corporate Entities has been subject to several changes which concern the catalogue of offences for which a legal entity can be held liable. According to the legislation currently in force, corporate entities can under certain circumstances be held liable for a THB offence when the injured party was abused to provide forced labour or services (Article 16, paragraph 1, item 9, of the Law on the Liability of Corporate Entities). The criteria include that the act was committed by natural persons acting on behalf of or in the interest of a corporate entity, exercising their right or obligation to represent it, to take decisions on its behalf or to exercise internal control. Corporate liability may also apply when the conduct by a natural person representing the corporate entity caused or could cause an advantage to that entity (even non-financial). Sub-contractors can be held liable if their activity can be considered as aiding and abetting or soliciting to commit an offence (Article 18 of the Criminal Code). The Polish authorities did not have knowledge of any cases in which corporate entities were held liable for THB offences in the reporting period.

171. **GRETA considers that the Polish authorities should review the effectiveness of the legal provisions on corporate liability in relation to THB offences, examine the reasons why no legal entities have been prosecuted for trafficking-related acts and, in the light of the findings, take measures to ensure that the criminal liability of legal entities can be acted upon in practice.**

<sup>59</sup> See paragraph 119 of GRETA's first report on Poland.

#### d. Non-punishment of victims of trafficking in human beings (Article 26)

172. In its first report, GRETA stressed the importance of ensuring that the Methodological Guidelines for Prosecutors are fully applied in order to prevent the punishment of victims of trafficking for their involvement in unlawful activities, to the extent that they were compelled to do so.

173. As noted in the first GRETA report on Poland, there are no express provisions in the Criminal Code on relieving of responsibility a person who was compelled to commit an offence, but there are general provisions that according to the Polish authorities can achieve the desired effect.<sup>60</sup> Article 26 of the CC provides for non-punishment in case of a "state of greater necessity".<sup>61</sup> If a victim of THB was acting under the conditions described in Article 26 of the CC while committing an offence, the investigation against that person may be discontinued on basis on the Article 17(1) of the CCP. The same article allows also discontinuing the investigation in situations when the victim was submitted to physical constraint which excluded undertaking and executing any decision by the victim. Further, Articles 59, 60(3), 60(4) and 61 of the CC provide the possibility of extraordinary mitigation of the penalty, conditional suspension of its execution or withdrawal from imposition of a penalty if the particular circumstances arise and the conditions cited in these provisions have been fulfilled.

174. GRETA was informed that in one case in 2014 involving six citizens of "the former Yugoslav Republic of Macedonia" charged with tax offences and illegal production of cigarettes, the non-punishment principle was applied as the prosecutor found that they had been recruited in their country and promised legal work in the EU, after which they were transported to Poland and placed in a closed location in which cigarettes were being produced illegally. The victims were ordered not to leave the property, they were supervised and violence was used against them. The prosecutor decided to discontinue the investigation on the basis of Article 26, paragraph 1, of the CC. The Polish authorities have also referred to the case of a Vietnamese woman suspected of illegally crossing the Polish border who was identified as a victim of trafficking and the investigation was discontinued on the basis of Article 26 of the Convention.

175. According to civil society representatives met by GRETA, the application of the non-punishment principle by the prosecution service varies depending on the location. GRETA was informed of cases in which victims of THB had been convicted of drug smuggling.

176. GRETA is concerned that the existing Criminal Code and Criminal Procedure Code provisions are not sufficient to ensure that victims of trafficking are not punished for unlawful acts committed as a direct result of being subjected to trafficking. **GRETA considers that the Polish authorities should take additional measures to ensure compliance with the principle of non-punishment of victims of THB for their involvement in unlawful activities, to the extent that they have been compelled to do so, in accordance with Article 26 of the Convention. Such measures should include the adoption of a specific legal provision and/or the development of further training for prosecutors on the scope of the non-punishment provision, including with regard to administrative/civil law sanctions.** Reference is made in this context to the recommendations on non-punishment for legislators and prosecutors contained in the paper issued by the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings in consultation with the Alliance against Trafficking in Persons Expert Co-ordination Team.<sup>62</sup>

<sup>60</sup> See paragraphs 204-206 of GRETA's first report on Poland.

<sup>61</sup> "1. Whoever acts with the purpose of averting an immediate danger threatening any well-being protected by law, if the danger cannot otherwise be avoided but the well-being sacrificed has a lower value than that of the well-being rescued, shall be deemed to have not committed an offence. 2. Whoever rescues any well-being protected by law under the circumstances defined in paragraph 1, or sacrifices well-being which does not represent a value manifestly greater than the well-being being rescued, shall also be deemed to have not committed an offence".

<sup>62</sup> <http://www.osce.org/secretariat/101002?download=true>

## 4. Investigation, prosecution and procedural law

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

177. In its first report GRETA considered that there was a need for improving the knowledge and sensitivity of judges, prosecutors, investigators and lawyers about THB and the human rights of victims, paying particular attention to overcoming potential entrenched negative attitudes and prejudices vis-à-vis victims of trafficking.

178. As noted in paragraph 24, in January 2014 a Unit for Combating Trafficking in Human Beings at the Department for Criminal Service of the National Police Headquarters was set up to monitor, coordinate and support police activities in the areas of combating trafficking in human beings and sexual abuse of children.<sup>63</sup> This specialised police unit operates a hotline for THB-cases, which in practice is a mobile phone carried by a member of the department for a week at the time. Anybody in need of help in relation to THB can call this number at any time. The department also operates a corresponding e-mail address. By the time of GRETA's visit there had been 180 calls to the hotline in 2016 and 70 e-mails, but not all communications could be confirmed as relating to THB. The hotline number and e-mail address have been advertised through campaigns and NGOs are involved in disseminating information about them.

179. The Prosecutor's Office investigates offences for which at least three years' imprisonment is foreseen. There is a prosecutor appointed as a focal point for THB cases at each regional Prosecutor's Office and at the General Prosecutor's Office there is a co-ordinator who supervises preparatory proceedings in THB cases.<sup>64</sup>

180. According to information provided by the Polish authorities, the number of investigations into THB cases was 68 in 2012, 76 in 2013, 64 in 2014 and 34 in 2015.<sup>65</sup> The number of indictments was 23 in 2012, 26 in 2013, 15 in 2014 and 7 in 2015. The number of convictions for THB was 22 in 2012, 23 in 2013, 17 in 2014 and 36 in the first half of 2015. The number of final convictions was 16 in 2012, 12 in 2013 and nine in 2014.<sup>66</sup> Most of the sentences involved imprisonment of up to two years, in 11 cases the sentences involved imprisonment of up to three years, and in one case, from eight to 15 years. In 2016, 33 persons were sentenced for THB offences, five of whom received conditional sentences.<sup>67</sup> The statistics are not disaggregated into type of exploitation.

181. According to official statistics, 60 preparatory proceedings were concluded in 2015 and charges were brought in nine cases, which represent 15% of the concluded cases; the corresponding share was 34.2% in 2013 and 23.4% in 2014, thus there seems to be a downward trend. Most commonly proceedings were discontinued pursuant to Article 17, paragraph 1(2) of the CCP.<sup>68</sup> Some investigations were discontinued pursuant to Article 322(1) of the CCP (failure to identify the perpetrators). As it has proved difficult to secure sentences for THB offences, prosecutors sometimes bring charges under other crime headings in order to secure conviction, even if the sanction is not as high as it would have been in the cases of a THB offence.

<sup>63</sup> Until January 2014, there were police officers specialised in combatting THB at the Central Bureau of Investigation of the Police.

<sup>64</sup> The structure of the prosecution service is as follows: Prosecutor General's Office, Regional Prosecutor's Offices (11), Circuit Prosecutor's Offices (45) and District Prosecutor's Offices (342).

<sup>65</sup> The investigations were initiated by the Police or the Border Guard.

<sup>66</sup> See Report on Trafficking in Human Beings in Poland in 2015, prepared by the Unit against Trafficking in Human Beings in the Analyses and Migration Policy Department of the Ministry of the Interior and Administration, page 47.

<sup>67</sup> These are not necessarily final sentences.

<sup>68</sup> "The act does not meet the criteria of a prohibited act or it is acknowledged by the law that the perpetrator has not committed the crime".

182. NGO representatives met by GRETA noted that while the criminalisation of THB in Poland has existed for six years, its application by prosecutors and judges differs across Poland. Lawyers specialised in supporting victims of trafficking expressed the view that the specialised anti-THB units of the police work well, but their work is not matched by that of the Prosecutor's Office, which apparently causes a degree of frustration among the Police. GRETA was informed that some cases of forced labour detected by labour inspectors had not led to prosecutions. An example was given of a case of Ukrainian workers employed to dig ditches in freezing temperatures who were locked in a cellar during the night, which was reportedly not prosecuted.

183. According to the Ministry of Justice, the fact that the Criminal Code contains no provision criminalising forced labour as such does not mean that this type of behaviour remains unpunished in the Polish legal system as it can be punished under different legal provisions, such as Article 191 of the CC ("forcing to a specific behaviour"), Chapter XXVIII of the CC ("crimes against the rights of persons engaged in gainful employment") or Articles 9 to 11 of the Law of 15 June 2012 on the Consequences of Employment of Foreigners Illegally Staying in the Territory of Poland. However, the National Labour Inspectorate has expressed the view that forced labour should be criminalised as a stand-alone offence as this would make prosecutions easier.

184. GRETA refers to the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), which in its 2014 concluding observations on Poland expressed concern about the limited training on gender-sensitive investigation methods of law enforcement officers and the low number of prosecutions and convictions of traffickers.<sup>69</sup>

185. As regards the use of special investigation techniques in police preliminary investigations into suspected THB offences a court may order interception of communications, such as wiretapping, upon written request by the Police Commander in Chief and prior written consent of the General Public Prosecutor or alternatively upon written request by the Regional Police Commander and prior written consent of the District Prosecutor with territorial competence. Article 19a of the Law on Police of 6 April 1990 also allows controlled purchase, sale or takeover of objects relating to a crime. While controlled purchase and controlled delivery are in theory allowed in the investigation of THB offences, the General Prosecutor's Office guidelines state that they should not be used because of the ethical obstacles to treating a victim of THB as a subject of delivery. According to Article 22.1 of the same law, the police may be assisted by persons who are not police officers, for example informants.<sup>70</sup>

186. There is no entity within the police that would exclusively conduct financial investigations. Officers conducting investigations related to THB are obliged to carry out activities aiming to discover the flow of money between the offenders and to seize offenders' property for future penalties. In 2015 the Deputy Prosecutor General sent an order to all prosecutors to investigate the money flow in the course of THB investigations and to ensure that all profits coming from THB are confiscated and forfeited to compensate victims. The Police and Border Guard can seize assets of suspects, such as flats, cars and cash, in cases in which prosecutors have decided to raise charges. An asset recovery division was created within the structure of the Criminal Service Bureau of the National Police Headquarters. There are also co-ordinators of asset recovery at every regional Police Headquarters. In 2013 confiscation of property was ordered in one case of THB and other assets were seized by court order in three THB cases, whereas the corresponding numbers for 2014 were one property and seven other assets seized, and in 2015 one property and eight other assets seized.

<sup>69</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/POL/CO/7-8&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/POL/CO/7-8&Lang=En)

<sup>70</sup> For further details on special investigation techniques, see paragraph 214 of GRETA's first report on Poland.

187. There is no specific legislation concerning blocking, filtering and take-down of illegal Internet content in Poland. The obligation to block or take down illegal content can, however, derive from the decision of a court or a public administration body which is based on the applicable law. The decision must be addressed to the content providers or the Internet service providers considered as the "aiding" person under the relevant law.<sup>71</sup> Further, the Law on Providing Services by Electronic Means regulates any blocking of websites and introduces a solution known as "notice and takedown". In practice, such measures are mainly taken in matters concerning the dissemination of child pornography which could also include live streaming of sexual abuse of children.

188. **GRETA is concerned by the rather low number of convictions for THB and urges the Polish authorities to take measures to ensure that THB offences are prosecuted as such, and lead to effective, proportionate and dissuasive sanctions, including by:**

- **identifying gaps in the investigation and prosecution of THB cases;**
- **reviewing the existing legal provisions and court rulings on forced labour with a view to extending the scope of forced labour to include working conditions contrary to human dignity in line with the ILO indicators of forced labour;**
- **training prosecutors and judges on the rights of victims of THB and developing further their capacity and specialisation to deal with THB cases and fully apply the existing provisions criminalising THB.**

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

189. In its first report GRETA considered that the Polish authorities should extend all special witness and victim protection procedures to cover child victims of THB up to the age of 18.

190. The Law of 28 November 2014 on Protection and Assistance of Victims and Witnesses which entered into force on 8 April 2015 introduced provisions relevant to the protection of victims of THB, such as keeping the secrecy of the place of residence and work (Article 191 of the CCP) and the possibility to testify without the presence of the defendant (Article 390, paragraph 3, of the CCP). Protection measures include change of the victim's place of residence or granting of a new identity; however, such measures have not yet been taken in respect of victims of trafficking. The law also makes it possible to conduct anonymous interviews of victims or witnesses in court hearings.

191. The Law on Protection and Assistance of Victims and Witnesses aims to facilitate access to psychological assistance for victims of crime and police co-ordinators have been appointed at regional police headquarters to ensure co-operation between police units when granting protection and psychological support to victims. Until 27 November 2015 the Police had issued 187 orders to grant assistance and protection on the basis of the Law on Protection and Assistance of Victims and Witnesses, but there is no information whether any of the above concerned a case of trafficking in human beings.

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<sup>71</sup> See Study on Blocking, Filtering and Take-down of Illegal Internet Content in the 47 Member States of the Council of Europe, commissioned by the Secretary General of the Council of Europe and prepared by the Swiss Institute of Comparative Law in 2016. The full study, with further details on relevant Polish legislation, is available at: <http://www.coe.int/en/web/freedom-expression/study-filtering-blocking-and-take-down-of-illegal-content-on-the-internet>



192. The Law of 13 June 2013 amending the Criminal Code and the Code of Criminal Procedure, as well as the Minister of Justice's Ordinance of 18 December 2013 on the preparation of interrogation in the manner specified in Articles 185a-185c of the CC, entered into force in 2014. The CCP provides that child victims of crimes are to be protected by the principle of a single hearing unless relevant circumstances come to light which require another hearing to be held or if requested by an accused who did not have a lawyer at the time of the first hearing. The principle of a single hearing concerns all victims and witnesses up to 15 years of age if their testimony could be important for the resolution of the case. This rule also applies to victims and witnesses up to the age of 18 when there is a justified concern that the direct presence of the accused at the hearing could affect their testimony or have a negative impact on the mental state of the child. A counsel must be appointed for the child and an audio-visual recording of the interview with the child is mandatory. Further, all interviews with child victims or witnesses of human trafficking must be conducted in child-friendly interview rooms.

193. The Law on the Protection and Assistance of Victims and Witnesses provides for the participation in criminal proceedings of support persons chosen by victims/witnesses, including NGO representatives, psychologists and medical experts. The General Prosecutor's Office, in its recommendations for prosecutors conducting cases of THB, encourages the conduct of hearings with the participation of a psychologist.

194. **GRETA considers that the Polish authorities should extend the application of the single hearing principle to cover all child victims of THB, regardless of the precise circumstances and type of THB exploitation in the case.** In the context of protecting child witnesses and victims, GRETA refers to the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.<sup>72</sup>

### c. Jurisdiction (Article 31)

195. Polish courts have jurisdiction if an offence was committed on Polish territory, vessel or aircraft, abroad by a Polish citizen, or abroad by a foreign citizen against the interests of Poland, a Polish citizen or a Polish legal entity. There is a possibility to start or continue criminal proceedings in Poland regarding offences committed in Poland but reported abroad, in the country of residence of the victim. In order to start such proceedings in Poland, the competent authorities in Poland must be informed that an offence was committed. In general, double criminality is the condition for criminal liability for offences committed abroad but, notwithstanding the provisions applicable at the place of committing an offence, a Polish court has jurisdiction in case the offence was committed by a Polish national or a foreigner (whose surrender has not been decided) if Poland is obliged to prosecute such an offence under a treaty, such as offences specified in the Rome Statute of the International Criminal Court.

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

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

196. Poland has concluded bilateral agreements on mutual legal assistance in criminal matters with Algeria, Belarus, Bosnia and Herzegovina, Canada, China, Egypt, Iraq, Libya, Serbia, the USA, Thailand, Vietnam and "the former Yugoslav Republic of Macedonia". Co-operation between Poland and states with which Poland has not concluded an agreement on mutual legal assistance takes place on the basis of reciprocity and the legal provisions of Section XIII, Chapter 62 of the CPC, which regulates judicial assistance and service of documents in criminal cases.

<sup>72</sup> [Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice](#) (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies)

197. International information exchange takes place via Polish liaison officers, foreign liaison officers accredited in Warsaw, as well as via Interpol and Europol. At the bilateral operational level the Polish Border Guard co-operate in particular with counterparts of Romania, Germany and the UK. It is also possible to exchange evidence directly between Prosecutors' Offices in the framework of Joint Investigation Teams (JITs). Since the first GRETA report, three JITs have been established. The first one was established with Romania in 2014 concerning trafficking of Romanian citizens to Poland for exploitation in the form of forced begging. The second JIT was set up with the United Kingdom in 2014 and aimed at investigating trafficking of Polish nationals to the UK for the purpose of labour exploitation. Further, in connection with the suspected functioning of a criminal group operating in Poland and Belgium, forcing Polish workers to work in a network of delicatessen shops in Belgium, an agreement on establishing a JIT for one year was signed on 17 June 2016.

198. Given that a relatively large number of Polish citizens have been identified as victims of THB in the UK, co-operation against THB and in support of its victims has intensified between Poland and the UK. The two Governments have agreed on the creation of an anti-THB co-operation plan, which includes co-operation between NGOs in the field of identification of, and assistance to, victims of THB, preventive actions, organisation of study visits and exchange of law enforcement officials.

199. As a part of actions aimed at preventing trafficking in human beings and related crimes, the Prevention and Traffic Police Bureau of the General Headquarters of the Polish Police has established a partnership co-operation with the Dutch Police. In this context, the project "Your safety - Our Business, Work in the Netherlands" included exchange of experience between the Dutch and Polish police forces combating THB crime.

200. The Polish Border Guard participates in common actions of Frontex against THB and took an active part in developing the Frontex Handbook on Risk Profiles in Trafficking in Human Beings. The Border Guard also co-operates with Europol and participated in the implementation of the multi-annual strategic plan against THB which forms part of the EU Policy Cycle 2014-2017 against serious organised crime. Operation "Archimedes", which took place from 15 to 23 September 2014, is an example of joint international action against THB in which Poland took part. In Poland, the operation involved large numbers of police, border guard and customs officers and led to the identification of 30 presumed victims of trafficking.

201. Since 2013 the Centre for Missing Persons Search of the National Police Headquarters has had an early warning system for missing children called Child Alert. It operates a call centre for reporting missing children to the national toll-free emergency number 995. Information about Child Alert has been disseminated through public media. In addition, a free-of-charge helpline 116 000 is available for parents and children around the clock, offering psychological and legal advice in cases related to missing children, parental abductions, unaccompanied migrant children and other missing children cases.<sup>73</sup> Since 2014 Poland takes part in the Amber Alert Europe initiative for Child Alert operators in Europe which gives cross-border access to data bases on missing children.

**202. GRETA welcomes the steps taken in the area of international co-operation and invites the Polish authorities to continue their efforts in this regard, including by developing co-operation with labour inspectorates abroad.**

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<sup>73</sup> During the seven years of its operation the helpline has answered some 900 000 calls and replied to 33 000 anonymous messages through its associated internet portal ([www.116111.pl](http://www.116111.pl)). The number is presently operated by the NGO Foundation ITAKA Centre for Missing People Search.

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

203. Civil society continues to play a vital role in anti-trafficking action in Poland. Specialised NGOs participate with consultative status in the meetings of the Inter-Ministerial Committee for Combating Trafficking in Human Beings (see paragraph 19). Further, they participate in the expert-level Working Group set up within the Inter-Ministerial Committee for the purpose of monitoring the implementation of the National Action Plan. An expert group on victims of trafficking linked to the Inter-Ministerial Committee provides a framework for the NGOs operating the National Consulting and Intervention Centre (KCIK), namely La Strada Foundation and PoMOC, and relevant public authorities to meet on a monthly basis to discuss action against trafficking and the provision of support to victims. The regional teams against THB also involve NGO representatives.

204. As explained in paragraph 112, KCIK is funded from the budget of the Ministry of the Interior and Administration to provide assistance to victims of trafficking, including the operation of two specialised shelters.

205. The Network of NGOs against THB organises training sessions on various aspects of THB for its members as well as for a range of public officials. Further, NGOs are involved in awareness-raising activities alongside public authorities (see, for example, paragraphs 58 and 74-75) and research (see paragraph 52).

206. However, GRETA was informed that while NGOs were consulted about relevant legislative developments, their proposals and feedback were rarely reflected in the draft legislation or amendments. NGOs also noted with regret that the Government Minister responsible for co-operation with civil society had not yet met with the main anti-trafficking NGOs.

207. GRETA stresses that the important contribution of civil society to anti-trafficking action should be duly recognised and supported by involving them as equal partners in the planning and assessment of anti-trafficking measures. **GRETA considers that the Polish authorities should further strengthen co-operation with civil society and build strategic partnerships with a range of civil society actors, including trade unions and academia.**

## IV. Conclusions

208. Since the adoption of GRETA's first report on Poland in March 2013, progress has been made in a number of areas.

209. The Polish authorities have continued to develop the legal framework relevant to action against trafficking in human beings. The adoption of new legislation on the protection and assistance of victims and witnesses and the legislative amendments in the area of compensation for victims of crime have the potential of promoting the rights of trafficking victims. Another welcome development is the introduction of changes in the Law on Foreigners which allow victims of trafficking to be issued residence permits either on the basis of their co-operation with the competent authorities or when required by their personal situation.

210. Since GRETA's first evaluation, regional anti-trafficking teams have been set up throughout Poland, bringing together representatives of public authorities and civil society. The establishment of a specialised anti-trafficking unit at the Department for Criminal Service of the National Police Headquarters and the appointment of anti-trafficking co-ordinators or focal points at the Police, Border Guard and Prosecutor's Office complement the institutional framework for combating human trafficking.

211. GRETA welcomes the adoption of the National Action Plan to Combat Human Trafficking for 2016-2018 which has a comprehensive scope and pays particular attention to combating trafficking for the purpose of labour exploitation, as well as envisaging the development of a National Referral Mechanism.

212. A range of professional groups have been trained on how to detect and combat trafficking in human beings. The training is often carried out in co-operation with NGOs and, whenever possible, a multi-stakeholder approach is promoted.

213. Research on different aspects of human trafficking has also been carried out by different actors, often within the framework of international projects, paying particular attention to human trafficking such for the purpose of labour exploitation, which has been on the rise.

214. GRETA commends the steps taken since the first evaluation visit to prevent trafficking for the purpose of labour exploitation through raising awareness about this phenomenon and strengthening the capacity of labour inspectors to detect forced labour.

215. Improvements have also been made in the area of protection of victims' rights. GRETA welcomes in particular the steps taken to improve the identification of victims of trafficking among asylum seekers and irregular migrants, including by the adoption of guidelines and indicators for their identification.

216. Further, GRETA commends the efforts made by Poland in the area of international co-operation, both when it comes to law enforcement co-operation and participation in international projects.

217. However, despite the progress achieved, some issues give rise to concern. In this report, GRETA requests the Polish 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 Polish authorities to develop and maintain a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical data on measures to protect and promote the rights of victims as well as on the investigation, prosecution and adjudication of human trafficking cases. Statistics regarding victims should be collected from all main actors and allow disaggregation concerning sex, age, type of exploitation, country of origin and/or destination. This should be accompanied by all the necessary measures to ensure the right of data subjects to personal data protection, including when NGOs working with victims of trafficking are asked to provide information for the national database (paragraph 48);**
- **GRETA urges the Polish authorities to guarantee effective access to public health care for all victims of trafficking, regardless of residence status, in accordance with Article 12 of the Convention (paragraph 120);**
- **GRETA urges the Polish authorities to improve the identification and assistance of child victims of trafficking, in particular by:**
  - **increasing the capacity to detect child victims of trafficking by training a larger range of professionals who may come into contact with child victims of trafficking in the use of trafficking indicators and involving child specialists in the identification of child victims of trafficking to ensure that the best interests of the child is the primary consideration;**
  - **providing safe accommodation for child victims of trafficking and unaccompanied children and addressing the problem of such children disappearing, including by providing adequately trained supervisors and interpreters;**
  - **making available reintegration programmes for child victims of trafficking (paragraph 131);**
- **GRETA once again urges the Polish authorities, in compliance with the obligations under Articles 10, 12 and 13 of the Convention, to take additional steps to ensure that all possible foreign victims of trafficking, including EU/EEA nationals, are consistently offered a recovery and reflection period, regardless of where in Poland they are identified (paragraph 140);**
- **In the light of the small number of compensation awards to victims of trafficking, GRETA once again urges the Polish authorities to:**
  - **ensure a higher consistency in the provision of information about the right to seek compensation to victims of trafficking, including by facilitating the provision of legal aid by lawyers and providing qualified interpreters when needed;**
  - **encourage prosecutors to request compensation orders to the largest possible extent and review the role of prosecutors in trafficking cases, in view of removing any contradictions;**
  - **make victims of THB eligible for State compensation regardless of their residence status (paragraph 156);**
- **GRETA is concerned by the rather low number of convictions for THB and urges the Polish authorities to take measures to ensure that THB offences are prosecuted as such, and lead to effective, proportionate and dissuasive sanctions, including by:**
  - **identifying gaps in the investigation and prosecution of THB cases;**

- **reviewing the existing legal provisions and court rulings on forced labour with a view to extending the scope of forced labour to include working conditions contrary to human dignity in line with the ILO indicators of forced labour;**
- **training prosecutors and judges on the rights of victims of THB and developing further their capacity and specialisation to deal with THB cases and fully apply the existing provisions criminalising THB (paragraph 188).**

#### Further conclusions

- GRETA considers that the Polish authorities should keep under review the effectiveness of the Unit for the European Migration Network and Prevention of THB in fulfilling the role of an equivalent mechanism to a National Rapporteur and examine the possibility of designating as a National Rapporteur a separate organisational entity or another independent mechanism for monitoring the anti-trafficking activities of State institutions (paragraph 23);
- GRETA considers that the Polish authorities should introduce an independent evaluation of the implementation of National Action Plans against THB and other anti-THB projects, as a tool for assessing the impact of the activities and planning future policies and measures to combat THB (paragraph 32);
- Given the low rate of convictions for THB offences and the low numbers of compensation awards made to victims of trafficking, GRETA considers that training should be strengthened for prosecutors and judges (see also paragraph 188). Further, periodic training on THB should be introduced for other relevant professional groups, such as health-care staff (paragraph 45);
- GRETA invites the Polish authorities to encourage and support further research on THB, in particular on the issue of child trafficking (paragraph 54);
- GRETA considers that the Polish authorities should continue their efforts to raise awareness of THB and design future actions in this area in the light of impact assessment of previous measures. To this end, independent evaluation studies should be made an integral part of future projects to raise awareness (paragraph 60);
- GRETA notes the measures already undertaken in Poland to prevent human trafficking for the purpose of labour exploitation and considers that the Polish authorities should:
  - review and assess the system of “statements of intension to employ” third-country nationals for periods of six months per year with a view to preventing exploitative practices;
  - provide the National Labour Inspectorate with necessary resources and further training to effectively prevent and combat THB;
  - strengthen inspections in sectors considered at risk of THB by engaging with key stakeholders, including with a view to preventing THB in supply chains;
  - work closely with the private sector, in line with the Guiding Principles on Business and Human Rights, and consider including business representatives in the regional anti-THB teams (paragraph 78);
- GRETA invites the Polish authorities to keep under review the effectiveness of the amendments concerning the payment of minimum wages under “civil law contracts” and to monitor the conclusion of “specific task contracts” to ensure that they do not provide a gateway to human trafficking (paragraph 79);

- GRETA considers that the authorities should continue and strengthen their efforts in the area of prevention of child trafficking for the purpose of sexual exploitation, labour exploitation (including exploitation of begging) and forced criminality, in particular by sensitising and training child protection professionals across the country, raising awareness of children through education, and paying increased attention to children from Roma communities, unaccompanied children and migrant children (paragraph 86);
- GRETA encourages the Polish authorities to ratify the Council of Europe Convention against Trafficking in Human Organs as this would contribute to the prevention of trafficking for the purpose of organ removal (paragraph 92);
- GRETA invites the Polish authorities to ensure that, as part of their training, medical and other health care professionals involved in organ transplantations continue to be sensitised about THB for the purpose of organ removal (paragraph 93);
- GRETA considers that the Polish authorities should strengthen their efforts to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with civil society and the private sector. This should include the introduction of an incentive system for companies that decide to adopt codes of conduct to publish and effectively implement them. The government should periodically present to Parliament and the public the results of monitoring compliance with such codes (paragraph 99);
- GRETA invites the Polish authorities to continue ensuring that Border Guard officers are provided with training and resources to prevent and combat THB (paragraph 102);
- GRETA notes the plans to introduce a National Referral Mechanism and considers that the Polish authorities should increase their efforts to identify victims of trafficking for all forms of exploitation, including by:
  - pursuing a proactive approach to the identification of victims of trafficking of all forms of exploitation, and in particular for the purpose of labour exploitation in sectors considered to be at risk;
  - encouraging use of regular and co-ordinated multi-agency inspections by organisations responsible for regulating employment, health and safety in those sectors most at risk;
  - improving the identification of victims of trafficking in detention centres, including by ensuring access to such centres by specialised NGOs providing legal aid and by providing sufficient funding to NGOs for such visits (paragraph 109);
- GRETA considers that the Polish authorities should take additional steps to provide assistance to victims of trafficking, and in particular to ensure that sufficient funding is made available to assist victims of THB when the assistance is delegated to NGOs or local authorities (paragraph 121);
- GRETA invites the Polish authorities to review the age assessment procedures, ensuring that the best interests of the child are effectively protected, 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 130);
- GRETA considers that the Polish authorities should take steps to ensure that victims of THB can effectively take advantage of the possibility to be issued residence permits, including by consistently informing victims, in a language they can understand, about the application procedure (paragraph 146);
- GRETA once again invites the Polish authorities to develop a system for recording claims for compensation by victims of trafficking, as well as compensation awarded to victims of trafficking (paragraph 157);

- GRETA considers that the Polish authorities should ensure that any repatriation is conducted with due regard for the rights, safety and dignity of victims of trafficking, is preferably voluntary and complies with the obligation of *non-refoulement*. A risk assessment should be carried out for all victims of THB to be returned, be they EU or third-country nationals, and regardless of whether they have been covered by the Programme for Support and Protection of Victims/Witnesses of THB. The Polish authorities should further develop co-operation arrangements with States of return with a view to ensuring effective and comprehensive risk assessment relating to the possible return of victims of THB and enabling their safe return. Full consideration should be given to the UNHCR's guidelines on the application of the Refugees Convention to trafficked people (paragraph 162);
- GRETA considers that the Criminal Code should include an express prohibition of servitude in order to contribute to the practical and effective protection against treatment contrary to the Convention on Action against Trafficking in Human Beings (paragraph 164);
- GRETA invites the Polish authorities to consider establishing as a criminal offence the use of services of which are the object of sexual or labour exploitation, with the knowledge that the person is a victim of trafficking in human beings (paragraph 169);
- GRETA considers that the Polish authorities should review the effectiveness of the legal provisions on corporate liability in relation to THB offences, examine the reasons why no legal entities have been prosecuted for trafficking-related acts and, in the light of the findings, take measures to ensure that the criminal liability of legal entities can be acted upon in practice (paragraph 171);
- GRETA considers that the Polish authorities should take additional measures to ensure compliance with the principle of non-punishment of victims of THB for their involvement in unlawful activities, to the extent that they have been compelled to do so, in accordance with Article 26 of the Convention. Such measures should include the adoption of a specific legal provision and/or the development of further training for prosecutors on the scope of the non-punishment provision, including with regard to administrative/civil law sanctions (paragraph 176);
- GRETA considers that the Polish authorities should extend the application of the single hearing principle to cover all child victims of THB, regardless of the precise circumstances and type of THB exploitation in the case (paragraph 194);
- GRETA invites the Polish authorities to continue their efforts in this regard, including by developing co-operation with labour inspectorates abroad (paragraph 202);
- GRETA considers that the Polish authorities should further strengthen co-operation with civil society and build strategic partnerships with a range of civil society actors, including trade unions and academia (paragraph 207).



## **Appendix**

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

#### **Public bodies**

- Ministry of the Interior and Administration
  - Human Trafficking Department of the National Police
  - Border Guard Headquarters and Training Centre
- Ministry of Justice
  - Prosecutor General's Office
  - National School of the Judiciary and Prosecutions
- Ministry of Family, Labour and Social Policy
- Ministry of Education
- Ministry of Foreign Affairs
  - Office for Foreigners
- National Labour Inspectorate
- Plenipotentiary for Equal Treatment and Civil Society
- Parliament (Sejm)
- Regional Anti-trafficking Team of Gorzów Wielkopolski

#### **Intergovernmental organisations**

- International Organization for Migration (IOM)
- Office for Democratic Institutions and Human Rights (ODIHR)
- United Nations High Commissioner for Refugees (UNHCR)

#### **NGOs and other civil society organisations**

- All-Poland Alliance of Trade Unions (OPZZ)
- Centre for Human Trafficking Studies of Warsaw University
- Network of Anti-trafficking NGOs
- Polish Bar Council

## **Government's comments**

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

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

The Convention requires that "the report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned." GRETA transmitted its final report to the Polish authorities on 7 September 2017 and invited them to submit any final comments. The comments of the Polish authorities, submitted on 9 October 2017, are reproduced hereafter.



Poland would like to acknowledge receipt of the final report prepared by the Group of Experts on Action against Trafficking in Human Beings (GRETA). The report is the result of a very constructive, open dialogue and co-operation between GRETA, Polish Authorities and representatives of Civil Society.

I would like to emphasize that the visit of GRETA experts was an inspiring experience, as was the case also during previous meetings. I would like to ensure, that all recommendations presented by GRETA were carefully examined and many of them are reflected both in the current activities undertaken by the Polish Government and are taken into account as regards future actions.

It is worth to highlight that Poland is undertaking actions in order to prevent and combat trafficking in human beings since 2003, when the first *National Programme for Combating and Preventing Trafficking in Human Beings* was adopted and the possibility to establish professional structures to cope with the issue was created. The current activities are based on The National Action Plan for 2016-2018 accepted in August 2016.

In the context of the above mentioned document, Poland would like to highlight several issues, both reported in the report and in our comments to the report.

For example, it is worth to underline, that the National Action Plan stipulates the development of a National Referral Mechanism for victims of trafficking. The Plan focuses also on improving co-operation between relevant professional groups, as well as on developing a new algorithm for police for recognising THB offences. Among the other activities stipulated by the Plan, there are also actions undertaken to support and protect child victims of trafficking, including a national referral mechanism for children. In opinion of the Polish authorities, these are extremely important actions that contribute significantly to the effectiveness of measures taken in the area of combating and preventing trafficking in human beings.

Poland would like to underline as well importance of the Interministerial Committee for Combating and Preventing Trafficking in Human Beings, the Interministerial Team for Trafficking in Human Beings and their Expert Group. The role of these bodies is crucial, also in the context of the recommendations submitted by GRETA or other relevant international entities, because they can be widely discussed on a national level, for example thanks to the sessions of the Working Group of the Interministerial Committee for Combating and Preventing Trafficking in Human Beings and during meetings of its Expert Group for Victims' Support.

Taking into account functions of these bodies, especially in the context of an equivalent mechanism, from the point of view of the Polish authorities there is no need to appoint an Independent National Rapporteur or any other independent authority to monitor this issue. In this context, the Unit for the European Migration Network and Prevention against Trafficking in Human Beings functioning within the Analyses and Migration Policy Department of the Ministry of the Interior and Administration should be mentioned as well.

It plays an important role not only as a Secretariat to the Interministerial Team and Committee but it coordinates their functionality, preparing documents as well as conducting all of the consultations. In Poland's opinion, the Unit has got the capacity to monitor Polish anti-trafficking policy in an effective way.

As for other coordinating efforts, during the period covered by the report, the Ministry of Interior and Administration carried out works to find the best solutions to create a single national database that will not only be comprehensive and coherent statistical system on trafficking in human beings, but also can be used for the purposes of preparing, monitoring and evaluating anti-trafficking policies.

Analysis states that very system should be a fully reliable tool for compiling statistical data on measures to protect and promote the rights of victims as well as the prosecution of human trafficking cases; it should involve all of the public bodies as well as NGOs involved. However, it is necessary to make changes to the Border Guard and Police's competence provisions so that these institutions can process and collect data on THB victims. Moreover, what can have very significant impact on every actions to be taken when creating and building any IT/ ICT system using fragile personal data, at present in Poland an amendment of the Personal Data Protection Act introducing into the Polish legal system the *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)* is on the way.

Poland would like to inform as well that special code of conduct in case of THB cases has been implemented and all institutions are aware of the need to support THB victims, including the reflection period matter. Poland informs also that victims of trafficking in human beings from the EU countries can make full use of aid for the THB victims.

Poland also informs that every problem of child victims of the THB crime is in the center of our interest.

Therefore, the actions aimed at increasing the capacity to detect child victims of trafficking are taking place in Poland, on central and on the regional level as well. At each voivodeship, in municipal and poviát Police headquarters there is a coordinator dealing with prevention in the field of trafficking in human beings. Professionals who are members of the regional anti-trafficking teams, and who might be working with human trafficking victims in the future, are taking part in trainings organised by The Ministry of Interior and Administration. During those trainings they learn how to identify and provide adequate care for child victims and how to ensure their safety. The teams are also working in cooperation with NGOs. The regional anti THB teams have in their Action Plans the preventive measures to increase ability to detect a child as a victim of trafficking by providing training for professionals.

As for activities aimed at child welfare, case law should also be mentioned. Common Courts, Family and Juvenile Offices are competent institutions for making important decisions regarding the protection of children - victims of human trafficking. It should be underline that the minors, having the status of a victim, also enjoy the legal protection afforded by the provisions of a penal law as parties to criminal proceedings also at the stage of jurisdiction proceedings. The most important entitlements are: exercising the right of a minor victim by a representative or guardian, the right to use a legal counsel - a legal advisor or a solicitor, the right to use the assistance of an interpreter, the right of the victim as a party to the proceedings to file a complaint against the decision refusing to initiate or discontinue the preparatory proceedings, the right to file applications for the conduct of investigation or proceeding, the right to file applications for the conduct of investigations or proceeding as long as the victim filed the request to act as an auxiliary prosecutor, the right to appeal the judgment of the court of first instance to the court of appeal if the victim has acquired the status of an auxiliary prosecutor.

The above entitlements result in the effective placement of a minor victim of a trafficking offense in the Polish legal system.

As regards GRETA's position on the need to increase training in the group of prosecutors and judges, the Polish authorities would like to ask GRETA to note that we are not in a position to fully support the above recommendation. In particular, in our opinion, this assessment should not be made on the basis of the data it refers to, concerning the percentage of cases prosecuted (decreasing as compared to previous years). This circumstance should not be evidence of the need to increase knowledge of

trafficking proceedings. However, the trainings in this area will continue, Poland recognizes importance of the matter.

It should also be noted that in the trainings conducted by the National School of Judiciary and Public Prosecutor's Office (KSSiP) prosecutors and judges have been trained at all levels since 2010.

Thematic trainings covering criminal, forensic and legal aspects of trafficking in human beings , as well as prevention of trafficking in human beings, ethnic and racial discrimination aspects of THB took place in years 2011,2012,2014,2015 and 2016.

In addition to the above mentioned activities provided by the KSSiP, prosecutors are trained by the National Prosecutor's Office and other entities.

Therefore, insufficient, according to GRETA's position, number of trainings is not the reason for the low rate of convictions for THB offences and the low numbers of compensation awards made to victims of trafficking in Poland. Polish judges and prosecutors are constantly trained in this area. Poland, recognising importance of the matter, is planning to put a strong emphasis on trainings for the professionals working in the area of THB also in the future.

As for insufficient, according to GRETA, number of health services provided to the public ( including the victims of trafficking in human beings as patients), the Polish authorities inform that the victims of trafficking in human beings who are citizens of the Republic of Poland, other EU/EFTA Member State or other third country have access to health care services publicly financed as long as they are beneficiaries referred to in Article 2 of the Act of 27 August 2004 on health care services financed with public funds. The provision includes a list of beneficiaries entitled to the following services: primary health care; specialized ambulatory services; hospital treatment; psychiatric care and addiction treatment; medical rehabilitation; nursing and care-related benefits as part of long-term care; supplying with medical goods, emergency medical services; palliative and hospice care, etc. Also uninsured citizens of the Republic of Poland, EU or third countries residing/living in the territory of the republic of Poland may benefit from healthcare services financed from the state budget.

In that respect, in the opinion of Polish authorities, there is no need to include special provisions concerning victims of trafficking in human beings in the legal provisions relating to the health care services. It seems that the above mentioned broad scope of services includes the health needs of this group of patients.

The Polish authorities would like to re-emphasize that Poland is aware of the fact that the only way to combat trafficking in human trafficking is to work effectively with all kinds of entities and environments that deal with this phenomenon. Over the last years, the understanding of this crime is getting more complex and at the same time, more *tailor - made* actions can be provide. Nevertheless, cooperation with different types of institutions and with different types of environments together with research and program evaluations and learning from the best practices in victim protection and law enforcement remains of utmost importance.

I would like to express that Poland is further interested to continue cooperation with GRETA and to inform GRETA about efforts undertaken in order to combat and prevent this crime.

Warsaw, 25<sup>th</sup> of October 2017

Adam Knych

Deputy Director

of the

Department for Migration Analysis and Policy  
of the Ministry of the Interior and Administration

## **Ad. 12**

### **PL Comment:**

In the context of information that Poland still does not have a single coherent system on THB data, it is necessary to inform that in April 2017 Ministry of the Interior and Administration re-opened the inter-ministerial dialogue with the intention to amend the already binding law in a way to enable the Minister of Interior and Administration to collect and manage of the personalized data on THB.

However, it is necessary to verify the statistical data given in the followings paragraphs:

According to paragraph on statistics provided by the Polish authorities about the number of presumed victims of THB identified by the Police and the Border Guard - the number of presumed victims of THB in 2013 was 151.

Besides, in the above mentioned paragraph, information that percentage of the data identified by the Police is 47% should be verified as well – the proper level of the data identified by the Police is 44%.

## **Ad. 18**

### **PL Comment:**

During the period covered by the report, work took place on draft amendment to the Law of 12 December 2013 on Foreigners, according to that temporary residence permit for victims of human trafficking shall be granted in the case of a juvenile when he/she was granted a status of a victim in the criminal proceedings against the crime of human trafficking if he/she resides in the territory of the Republic of Poland and broke off contacts with persons suspected of committing that crime irrespective whether he/she has started to cooperate with the authority competent to conduct proceedings related to that crime. Expected date of entry into force – first quarter of 2018.

## **Ad. 23**

### **PL Comment/reply:**

In opinion of the Polish authorities, the Interministerial Team for Trafficking in Human Beings, composed of the representatives of many entities involved in combating and preventing this phenomenon [Border Guard, Police, La Strada Foundation, Po-Moc Association, Ministry of the Interior and Administration, Prosecutor Office, local government representatives], acts as an equivalent mechanism and at this stage, from the point of view of the Polish entities involved, there is no need to appoint an Independent National Rapporteur or any other independent authority to monitor this issue. The Unit for the European Migration Network and Prevention against Trafficking in Human Beings functioning within the Analyses and Migration Policy Department of the Ministry of the Interior and Administration plays an important role as a Secretariat to the Interministerial Team for Trafficking in Human Beings led by the Minister of the Interior and Administration. Coordinating the functionality of the abovementioned Team, preparing all documents as well as conducting consultation procedures, the Unit for the European Migration Network and Prevention against Trafficking in Human Beings has got the capacity to monitor Polish anti-trafficking policy in an effective way. The Unit acts also to facilitate contact of the Interministerial Team with external entities. Recommendations submitted by GRETA or other relevant international entities are widely discussed on a national level, usually during the sessions of the Working Group of the Interministerial Committee for Combating and Preventing Trafficking in Human Beings and during meetings of its Expert Group for Victims' Support. Moreover, Deputy Head of the Analyses and Migration Policy Department addresses to each institution acting in the system an inquiry about the position on recommendations and possible ways of legal implementation.

### Ad. 30

#### PL Comment/reply:

The National Action Plan for 2016-2018 against THB in its second chapter includes the development of a National Referral Mechanism for victims of trafficking; among the other activities its worth to underline actions undertaken to support and protect child victims of trafficking, including a national referral mechanism for children.

Besides, in its third chapter, the National Action Plan focuses on improving co-operation between relevant professional groups, as well as, what wasn't mentioned in the GRETA's information, on developing a new algorithm for police for recognising THB offences.

### Ad. 31

#### PL Comment/reply:

In the context of GRETA's consideration that the Polish authorities should introduce an independent evaluation of the implementation of the National Action Plans (*NAPs*), in addition to the GRETA's information on role of the Supreme Audit Office, it's worth mentioning that the individual entities involved in combating and preventing trafficking in human beings (for example, the Police or Border Guard) are subject to the assessment by the Coordinator (Ministry of the Interior and Administration).

### Ad 32

#### PL Comment/reply:

During the period covered by the report, several activities have been carried out by the Ministry of Interior and Administration to work out the best solution to implement additional evaluation mechanisms that could be a part of a larger system of cyclical monitoring of *NAP's* implementation. The creation of such a tool could involve monitoring and evaluation based, for example, on the objectives set for the *NAP*. This type of solution would not only provide information on implementation and quality of the tasks carried out within the *NAP* currently, but also through the information provided in this way it could help to plan better future activities.

### Ad. 39

#### PL Comment/reply:

The periodic trainings on THB for relevant professional groups are carried out in Poland; an example of the Department of Social Assistance and Integration of the Ministry of Family, Labour and Social Policy can be demonstrated. It organizes annually four three-day workshops for social assistance centers workers, poviats centers for family support and regional social policy centers, for each voivodship. About twenty five people take part in every training. To provide trainings for specific groups of employees (including healthcare staff) who may come into direct contact with the risk groups defined in the report, such trainings are currently taking place and will be delivered in the future as well. These issues are included in all newly drawn up specialisation training programmes for nurses and midwives, in the base module on social and organisational issues in the part: *Ethics and Law*, and identified as:

- The issue of human trafficking and trafficking in human organs for transplantation (1 hour lecture + 1 hour conversation lab);



- Nurses and midwives in the face of social exclusion (1 hour conversation lab);
- The responsibility of nurses and midwives with regard to the issue of human trafficking and trafficking in human organs as well as social exclusion (2 hour lecture);

Considering the needs and the scope of the topics addressed, the current training programme is sufficient for the professional group of nurses and midwives. As to the training activities for physicians – recognising the issue of human trafficking as being of vital importance, the Ministry of Health will consider the need for the potential organisation of courses and trainings on the aforesaid topic, in particular courses and trainings dedicated to physicians involved in the collection of cells and tissues as well as organ transplants.

#### Ad. 45

##### PL Comment/reply:

The Polish authorities cannot fully support the GRETA's position on the need to increase training in the group of prosecutors and judges. In particular, such opinion should not be made on the basis of the data it refers to, i.e. point 188, concerning the percentage of cases prosecuted (decreasing as compared to previous years). This circumstance, in Polish opinion, shouldn't be demonstrated as an evidence of the need to increase knowledge of trafficking proceedings. All the more so since the 2016 year rate was around 19.5% of the cases (13 of the 67 cases ended in prosecution).

It should also be noted that during the trainings conducted by the National School of Judiciary and Public Prosecutor's Office (KSSiP) prosecutors at all levels of the public prosecutor's office have been trained. In 2010, for example, two training sessions were organized addressed to prosecutors and judges adjudicating in criminal cases - "The legal aspects of combating discrimination on the basis of racial, ethnic, religious, sexual orientation or gender identity. Criminal, forensic and legal aspects of human trafficking " and 44 persons were trained. In 2011 the training titled: "Criminal, forensic and legal aspects of trafficking in human beings" was organized - addressed to prosecutors, prosecutor's attorneys and judges adjudicating in criminal cases. The training involved 460 participants. In 2012 the above subject was also included in the School's training schedule; f.i. the training on "Prevention of trafficking in human beings and prevention of national, ethnic and racial discrimination" was organized. It involved 46 participants: the judges, prosecutors and prosecutor's attorneys. In 2014 the School's Center for Continuing Training and International Cooperation submitted to the Ministry of Interior an application for funding from the Norwegian funds the training project "Training of judicial personnel and prosecutors in the fight against and prevention of cross-border and organized crime" in which one of the modules provided training on issues related to counteracting, combating and preventing trafficking in human beings. After signing the contract in 2015, a training on "Trafficking in human beings" was organized. Under this project, a total of 510 people were trained - the judges, assistant judges, prosecutors and prosecutor's attorneys. In 2015 in the course of the 7th edition, 332 people were trained and in 2016 - 178 people.

School's Center for Continuing Training and International Co-operation has implemented the training program for the year 2017 in realization of obligations resulting from the provisions of the National Program for Counteracting Trafficking in Human Trafficking. As a result, "The issue of trafficking in human beings" training addressed to the target group of 70 people, recruited from the representatives of the prosecutor's offices and the common courts is in the School's program for the year 2017.

Apart from the trainings provided by the School, prosecutors are directed to trainings organized by the National Prosecutor's Office and other entities as well. On 2 December 2016 a training conference was held at the Prosecutor's Office for prosecutors dealing with the coordination of proceedings for the preparation of criminal proceedings under Article 189 a (1) of the Criminal Code and prosecutors conducting investigations in this field - entitled "Recent trends in human trafficking. Trafficking in human

beings for the purpose of forced labor in the practice of preparatory proceedings and the case law of national and international courts". It was attended by 60 prosecutors.

The issues discussed in the GRETA's remarks and the US Department of State recommendations were discussed in Poland as well. The Public Prosecutor participated as a lecturer and speaker at conferences of national and international human trafficking meetings and conferences, including events organized by the National School of Judiciary and Public Prosecutions, the International Organization for Migration, the Ministry of Interior and Administration and the European Academy of European Law (ERA).

Therefore, insufficient, according to GRETA's position, number of trainings is not the reason for the low rate of convictions for THB offences and the low numbers of compensation awards made to victims of trafficking in Poland. Polish judges and prosecutors are constantly trained in this area. Poland, recognising importance of the matter, is planning to put a strong emphasis on trainings for the professionals working in the area of THB also in the future.

#### **Ad. 48**

##### **PL Comment/reply:**

During the period covered by the report, the Ministry of Interior and Administration carried out works to find the best solution to create a single national database that will not only be comprehensive and coherent statistical system on trafficking in human beings, but can also be used for the purposes of preparing, monitoring and evaluating anti-trafficking policies.

Analysis states that very system should be a fully reliable tool for compiling statistical data on measures to protect and promote the rights of victims, also on the prosecution process in the human trafficking cases; it should involve all of the public bodies as well as NGOs involved in the process.

First, because statistics about victims should be collected from all main actors, but also because the data collected in the system should allow to disaggregate data regarding sex, age, type of exploitation, country of origin and / or destination.

However, these actions should be accompanied by all of the necessary measures to ensure personal data protection to the victims. This is the reason why so many legal difficulties are necessary to solve at the moment, especially when it comes to data protection.

However, it is also necessary to make changes to the Border Guard and Police's competence provisions so that these institutions can process and collect data on THB victims. Moreover, what can have very significant impact on every actions to be taken when creating and building any IT/ ICT system using fragile personal data, at present in Poland, an amendment of the *Personal Data Protection Law*, introducing into the Polish legal system the *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)* is on the way.

Currently, the Ministry of Interior and Administration is considering using as a model the data collection system on hate crimes we currently share with the Police and the tools used in it (a form) - to build a comprehensive data collection system on THB.

#### **Ad. 60**

##### **PL Comment/reply:**

In addition to the GRETA's information, the Polish authorities would like to underline that on the central and regional level they will to continue their efforts to raise awareness of THB. All of the ongoing actions are carried out on the basis of the previous measures' impact assessment. The future actions in this area

will be designed in the light of previous experiences, because this is the only way to ensure adequate and *tailor-made* measures.

Actions on the central and regional level are carried out under the National Action Plan and this is why also the evaluation of the activities already completed within the Plan should be carried out by the institution responsible for the NAP, i.e. the Ministry of the Interior and Administration. Nevertheless, the National Action Plan accepted in August 2016 in its 5th part (*Studies on trafficking in human beings / Evaluation of actions*) contains analytical activities that are also evaluative. According to the mechanisms introduced by the NAP, both in the implementation, evaluation and planning of new tasks are involved not only state institutions but also NGOs, and therefore the evaluation of actions is equal to that undertaken by all parties involved in the process, so an outcome can be a product of all of the parties involved.

Ad. 63

**PL Comment:**

The Polish authorities would like to emphasize following the National Labour Inspectorate, that this point doesn't need to be changed, provided that the words *domestic workers* (as used in the last sentence in paragraph 63) are to be interpreted in a narrow range as *domestic help* only.

Ad. 67

**PL Comment/reply:**

In order to comply with the need to enforce more rigorous approach to the application of the law, the Polish Ministry of Family, Labour and Social Policy in 2016 has prepared an amendment to the already existing regulations, which will introduce control over the simplified system in this area from 1 January 2018.

Ad 84

**PL Comment/reply:**

As to the comment addressed to the data delivered by the Ministry of Family, Labour and Social Policy, according to which :**"There is no information about child victims of trafficking having been identified among these children"** Poland would like to underline that the above mentioned data has been delivered in response to the question posted in the previous version of the report no 131, in which GRETA asked for an information for 2014-2016 on the number of unaccompanied children and identified victims of trafficking among them, and the number of unaccompanied children who have disappeared". Further, GRETA wanted to know where unaccompanied children and victims of trafficking identified among them are accommodated.

The information has been delivered to the extent possible, including the accommodation facilities. Besides, the regional data have been demonstrated – using Małopolskie and Świętokrzyskie regions example.

In 2016 there were 14 foreign children in Małopolska in foster care. They were found not to be victims of human trafficking. In the Świętokrzyskie region, f.i. in 2014 in care and educational institutions (POWs) there have been 3 foreign children - they were not victims of human trafficking. Counting together data in 2015 and 2016 in Świętokrzyskie region's POW there were two foreign children - they were not victims of human trafficking as well.

So, when it comes to provide safe accommodation specifically designed for child victims of trafficking it's worth to underlined, that in most of the cases, regional anti THB teams are reporting, that they have not identified any victims of trafficking in children among Polish or foreign children in their region.

Ad 86

**PL Comment/reply:**

In the process of strengthening prevention of child trafficking for the purpose of sexual exploitation, labour exploitation and forced criminality, Polish authorities are continuing their efforts in this area; by involving different types of institutions and different measures. Part of these activities was mentioned in GRETA's report.

In addition to them, it should be pointed out that since the new school year 2017/2018, according to Article 26 new Law of 14 December 2016 – i.e. *Education Law* (Journal of Laws of 2017, item 59) - schools and educational institutions will be obliged to implement a joint educational and preventive program, containing proactive measures and actions adapted to the developmental needs of students, based on a diagnosis of the needs and problems of the school community, addressed to students, teachers and parents.

Educational program in Polish schools and educational institutions aims to strengthen the sense of individual, cultural, national, regional and ethnic identity, as well as the formation and learning of the sense of dignity and respect for the dignity of others, and the value of knowledge, including the rights of the child and the human being, as a basis for the development of social relationship building skills.

Students learn in the context of family life education about violence and sexual offenses, prevention opportunities, ways of defense; teaching content also includes information about psychological, medical and legal help centers.

Ad. 92

**PL Comment/reply:**

In the period covered by the report, analytical work was ongoing in Poland, aimed at developing optimum solutions in this area. The works towards amending the legislation which will enable the ratification of the Convention will be carried out with the next revision of the *Law on the collection, storage and transplantation of cells, tissues and organs* to which draft assumptions have already been developed. Additionally, it is planned to appoint a Working Party on the design of a draft law regulating the issues related to the collection, storage, transplantation and application in humans of cells, tissues and organs in order to draw up relevant legal provisions that will enable the ratification (the draft order setting up the aforementioned Working Party was submitted for signature to the Minister of Health). It should be noted at this point that it will be possible to launch the ratification process only after the implementation of the relevant amendments to the Polish legislation. Therefore, Poland undertakes appropriate actions in this scope aiming at the ratification and it accepts GRETA's recommendation.

Ad. 93

**PL Comment/reply:**

Polish Organisation and Coordination Centre for Transplantation "Poltransplant" ensures that the initial training for new employees, as well as the continuous training (provided at least every two years) and complementary training (provided in the case of change of procedures or development of scientific knowledge) include thematic blocks concerning ethical and legal donation, collection and processing (if applicable) of cells, tissues and organs, as well as actions against trafficking in human beings. Additionally, trainings for collection coordinators are provided in yearly cycles. Questions concerning ethical and legal aspects of organs donation and transplantation are also discussed under the ETPOD trainings (European Training Program on Organ Donation) provided in Polish hospitals. Transplant registries, which constitute a part of IT system including transplant waiting lists, collection, allocation and transplantation coordination mechanisms, are also used as tools for authorisation of individual transplantation procedures. Therefore, Poland has no objections concerning recommendations of GRETA in this scope. The Ministry of Health will also consider a possible modification of specialization

programmes for physicians, introducing issues related to trafficking in human beings, especially when it comes to training programmes for specialisation in the field of clinical transplantology and clinical transfusion medicine.

Ad. 97

**PL Comment:**

Public Procurement Law in Poland refers to the human trafficking and labour exploitation problem. For example, according to the Article 24 (1), excluded from contract award procedures will be economic operator being a natural person who has been convicted with a final verdict for a criminal offence referred to in Criminal Code, f.i. for trafficking in human beings and offenses against the rights of persons performing paid work (violation of employee rights, social insurance law, OSH - occupational health and safety). Moreover, the Law of 15 June 2012 *on the consequences of entrusting the performance of work to foreigners staying in the Republic of Poland* contrary to regulations stipulates penalty of fine or imprisonment when employing:

- a. foreigners staying in the Republic of Poland without a valid document authorizing to stay;
- b. minor foreigners staying in the Republic of Poland without a valid document authorizing to stay;
- c. persistent entrusting of the work to foreigners.

According to the Law - employing foreigners in conditions of special overuse - is punishable of the penalty of imprisonment for 3 years and employing foreigners being victims of trafficking in human beings - penalty of imprisonment for 3 years.

It must be also stressed that National Action Plan for the implementation of the UN Guiding Principles on Business and Human Rights was approved on the 29th of May, 2017 by the Council of Ministers. At this moment we are at the stage of creating the schedule of implementation of this document. The deadline is until the end of this year. The *NAP* will be evaluated in 2018 and 2020.

The scope of approved National Action Plan has been extended by the provision on:

- implementation of actions concerning maintaining cooperation between governmental institutions and subjects from the business sector with the aim of preventing and limiting the phenomenon of forced labour exploitation, which is one of criminal offences in THB.
- initiating actions imposing the duty to submit a report about the procedures, processes and standards implemented, as proof of preventative actions taken by employers in both the public and private sectors against forced labour.
- verification whether legislation concerns forced labour included in art. 115 par 22 of the Penal Code are sufficient to prosecute the phenomenon of THB for forced labour.
- taking action to prevent forced labour, including educating and informing employers, as well as supporting both the public and the private sectors when it comes to combatting the risk of forced labour exploitation and reacting to such threats.

The *NAP* for the implementation of the UN Guiding Principles on Business and Human Rights create an effective mechanism checking whether companies meet elementary conditions for the elimination of forced labour to reduce the demand of this form of exploitation.

Ad. 98

**PL Comment/reply:**

The Polish law does not contain a general non-punishment provision in case when a perpetrator commits a crime in connection with his/her status as a victim of human trafficking, nevertheless, the issue of non-punishment principle in such cases is a subject to assessments according to the general rules of national criminal law.

There are several legal solutions available in situations when victim of trafficking in human beings is simultaneously suspected of being committed a crime, which grant them immunity (non-punishment).

It is a necessary to distinguish two general categories of situations:

1. In the case of accusation of a victim of trafficking in human beings of a crime related to this situation (a phase of court proceedings), the court has the possibility of application of non-punishment rule, according to Article 59 of the Criminal Code under the following conditions, which should be met together:

- a. accusation of an offense punishable by imprisonment not exceeding three years imprisonment or alternative punitive measures;
- b. the social harm of the act is not significant;
- c. decision on punitive measure, forfeiture or compensation measure is taken, so that the purposes of punishment will be met.

Such provisions are put into the guidelines for prosecutors, conducting pre-trial investigations on trafficking in human beings.

Ad. 99

**PL Comment/reply:**

The issue of taking efforts to discourage demand for the services of trafficked persons was dealt with both during the reporting period and is being analyzed right now by Poland within the Baltic Sea Region Task Force for THB. It is also planned to present this proposal during next meeting of the Inter-ministerial Team.

Ad. 118

**PL Comment/reply:**

Poland would like to contribute to the comment on the Polish Crime Victims and Post-Penitentiary Fund (PCVPPF). The Fund is a special-purpose state fund administered by the Minister of Justice. It was created on the basis of the Law of 12 February 2010, amending the Criminal Code and the Law on Environmental Protection. The regulations concerning the Fund are contained in Article 43 of the CCP and the Minister of Justice's Regulation of 29 September 2015 *on Victims and Post-penitentiary Assistance Fund*. The fund is made up of income from fines and cash adjudged by the courts, deductions withheld from sentenced persons' work income, income from disciplinary punishments, inheritances, legacies and donations, grants and (public) collections. The fund is used to provide various forms of support (medical, psychological, legal, educational) to victims of crime, witnesses and their relatives. Ministry managing the Fund does not keep a register of victims of crime who were supported by the PCVPPF, due to the nature of this crime. Nevertheless, it should be stressed that any victim of crime has equal access to all services provided by the PCVPPF. The choice of the most appropriate service for a victim is the responsibility of the operator implementing the tasks financed from the Fund, following previous detailed familiarisation with the situation of a victim.

Ad. 120

**PL Comment/reply:**

In the opinion of the Polish authorities there is a wide range of health services guaranteed to the public, including the victims of trafficking in human beings (as patients). Poland inform that the victims of

trafficking in human beings (who are citizens of the Republic of Poland, other EU/EFTA Member State or other third country) have access to health care services funded from public resources as long as they are beneficiaries referred to in Article 2 of the Law of 27 August 2004 *on health care services financed with public funds* ( Journal of Laws of 2016, item 1793, as amended). According to the above mentioned Law, list of Beneficiaries includes:

- 1) persons covered by public health insurance, obligatory and voluntary,
- 2) persons other than insured persons and who have their domicile on the territory of the Republic of Poland and who are Polish nationals or have been granted the refugee status or subsidiary protection in the Republic of Poland, or who have a temporary residence permit granted due to circumstances referred to in Article 159(1)(1)(c) or (d) of the Law of 12 December 2013 *on foreigners* and fulfill the income criterion referred to in Article 8 of the Law of 12 March 2004 *on social assistance* and in relation to whom no circumstances referred to in Article 12 of this Law were identified, according to the rules and in the extend defined for insured persons;
- 3) persons other than those referred to in point 1 and 2 under 18 years of age who: a) are Polish nationals; or b) have been granted the refugee status or subsidiary protection in the Republic of Poland or who have a temporary residence permit granted due to circumstances referred to in Article 159(1)(1)(c) or (d) of the Law of 12 December 2013 *on foreigners* and who have their domicile on the territory of the Republic of Poland;
- 4) persons other than those referred to in points 1–3 and who have their domicile on the territory of the Republic of Poland, during pregnancy, delivery and postpartum period, who;
  - a) are Polish nationals; or
  - b) have been granted the refugee status or subsidiary protection in the Republic of Poland or who have a temporary residence permit granted due to circumstances referred to in Article 159(1)(1)(c) or (d) of the Law of 12 December 2013 *on foreigners*.

The list of persons who can be insured (compulsorily or voluntarily) on the territory of the Republic of Poland is defined in Article 3 of the *Law of health care services funded from public funds*. Insured persons are:

- 1) persons who are nationals of a Member State of the European Union or a Member State of the European Free Trade Association (EFTA), having their domicile on the territory of a Member State of the European Union or a Member State of the European Free Trade Association (EFTA);
- 2) persons who are not nationals of a Member State of the European Union or a Member State of the European Free Trade Association (EFTA), a party to the Agreement of the European Economic Area or the Swiss Confederation, who are staying on the territory of the Republic of Poland on the basis of a work visa, a temporary residence permit (except for a permit granted pursuant to Article 181(1) of the Law of 12 December 2013 on foreigners), a permanent residence permit, a longterm resident's EU residence permit, an authorisation to stay for humanitarian reasons, a permit for tolerated stay; 2a) persons who have obtained the refugee status or subsidiary protection or who receives temporary protection on the territory of the Republic of Poland;
- 3) persons who are not nationals of a Member State of the European Union or a Member State of the European Free Trade Association (EFTA), who have legally their domicile on the territory of a Member State of the European Union or a Member State of the European Free Trade Association (EFTA) other than the Republic of Poland;

– if they are subject to compulsory health insurance pursuant to Article 66 or who are voluntarily insured according to the rules defined in Article 68. Pursuant to Article 15(1) of the aforementioned Law, in accordance with the rules laid down in the Law, beneficiaries are entitled to healthcare services, the aim of which is health preservation, illness and injuries prevention, early detection of diseases, treatment, nursing, as well as disability prevention and alleviation.

They are entitled to the following services and benefits: primary health care; specialized ambulatory services; hospital treatment; psychiatric care and addiction treatment; medical rehabilitation; nursing and care-related benefits as part of long-term care; dental treatment; health-resort treatment; supplying with medical goods on the request of an authorised person and their repair, as referred to in the *Law on reimbursement*; emergency medical services; palliative and hospice care; highly specialised services; healthcare programmes; medication; foodstuffs for particular nutritional uses and medical devices

available in a pharmacy by prescription; drug schemes set out in the *Law on reimbursement*. In that respect, in the opinion of Polish authorities, there is no need to include special provisions concerning victims of trafficking in human beings in the *Law on health care services*. It seems that the above mentioned broad scope of services guaranteed to the recipients includes the health needs of this group of recipients (as patients).

Also, special entitlements to health care services financed from public funds needs to be indicated. According to Article 12 of the *Law on health care services funded from public funds*, the provisions of the Law are without prejudice to the provisions concerning free-of-charge health care services regardless of the entitlements to healthcare services on the basis of:

- 1) Article 21(3) of the Law of 26 October 1982 *on upbringing in sobriety and counteracting alcoholism*;
- 2) Article 26(5) of the Law of 29 July 2005 *on counteracting drug addiction*;
- 3) Article 10 of the Law of 19 August 1994 *on the protection of mental health*;
- 4) provisions of the Law of 5 December 2008 *on preventing and combating infections and infectious diseases in people* – in the case of healthcare services related to combating diseases, infections and infectious diseases;
- 5) provisions of the Law of 8 September 2006 *on the State Medical Rescue Services*;
- 6) Article 6(1)(5) of the Law of 7 September 2007 *on the Pole's Card*;
- 7) Article 16(1) and Article 25 of the Law of 22 November 2013 *on procedures for dealing with persons with mental disorders posing risks the life, health or sexual freedom of other people*.

This means that uninsured citizens of the Republic of Poland, EU or third countries residing/living in the territory of the republic of Poland may benefit from healthcare services set out in the regulations referred to in Article 12, financed from the state budget.

#### **Ad 124**

##### **PL Comment/reply:**

Common Courts, Family and Juvenile Offices are competent institutions for making important decisions regarding the protection of the welfare of children - victims of human trafficking. However, it should be underline that a minor, having the status of a victim, also enjoys the legal protection afforded by the provisions of a penal law as a party to criminal proceedings also at the stage of jurisdiction proceedings.

The most important entitlements are:

- exercising the right of a minor victim by a representative or guardian,
- the right to use a legal counsel: a legal advisor or a solicitor,
- the right to use the assistance of an interpreter,
- the right to file a complaint against the decision refusing to initiate or discontinue the preparatory proceedings,
- the right to file applications for the conduct of investigation or proceeding,
- the right to file applications for the conduct of investigations or proceeding as long as the victim filed the request to act as an auxiliary prosecutor,
- the right to appeal the judgment of the court of first instance to the court of appeal if the victim has acquired the status of an auxiliary prosecutor.

The above entitlements result in the actual placement of a minor victim of a trafficking offense in the Polish legal system.

#### **Ad. 129**

##### **PL Comment/reply:**

The law enforcement entities in Poland apply all methods provided for by law to limit cases of disappearances of presumed foreign child victims of THB.



## **Ad. 130**

### **PL Comment/reply:**

Poland informs that the law enforcement bodies in Poland apply all methods provided for by law to determine the age of a person.

Undoubtedly, the results of medical examinations enable the more accurate determination of the age than psychological observation.

Nevertheless, at every stage of proceedings with minors, the regulations in force in Poland, they oblige every institution involved to follow welfare of the minor. For instance, the Foreigners Law imposes an obligation on a court hearing a request to place a foreigner in a guarded center together with a minor under his or her care the obligation to follow the minors' good.

Also, the obligation to consider the welfare of a child in the context of placing unaccompanied minors in the SOC requires that the following be taken into account in particular:

- 1) level of physical and mental development of a minor foreigner;
- 2) personality characteristics of a minor foreigner;
- 3) the circumstances of the detention of a minor foreigner;
- 4) personal conditions for the placement of a minor foreigner in a guarded center.

## **Ad. 131**

### **PL Comment/reply:**

Poland informs that actions aimed at increasing the capacity to detect child victims of trafficking are taking place in Poland, on central and on the regional level as well. Especially, by training professionals who may come into contact with child victims of THB but also by informing public society.

At each voivodeship, in municipal and poviast Police headquarters there is a coordinator dealing with prevention in the field of trafficking in human beings.

Professionals who are members of the regional anti-trafficking teams, and who might be working with human trafficking victims in the future, are taking part in trainings organised by The Ministry of Interior and Administration. During those trainings they learn how to identify and provide adequate care for the child victims as well as how to ensure their safety. The teams are also working in cooperation with NGOs – La Strada and Committee for the Protection of Children's Rights. The latter is working with an international organisation – International Service, which prevents illegal adoptions. Besides, as known from cases that took place in the regions, accommodation for human trafficking victims and interpreters are being provided by the NGO's, including La Strada.

The regional anti THB teams have in their Action Plans the preventive measures to increase the ability to detect a child as a victim of trafficking by providing training for professionals. For example, some of the regional anti-trafficking teams are going to hold in 2017 the conferences for professionals working in family support and foster care organisations in order to increase their knowledge in said matter before summer holidays when foster care students are most at risk. The regional teams are informing, that even more overall informing and trainings activities will be scheduled in the nearest future. For example, Wielkopolska regional anti-trafficking team will make it its priority to prepare effective reintegration programmes for child victims of trafficking in human beings. Involving child specialists, trained supervisors and adequate interpreters in order to secure the victim's best interest is the primary consideration for the teams work.

Nevertheless, it has to be underlined, that some of the regions reporting that, f.i. in the period from 2014

to 2016 in given region there were just a few cases of human trafficking attempts, all of which were prevented by the police and none of them referring to a child victim, so all of the actions have preventive and informational character, and actually there is no need to take in the given region any actions to ensure the reintegration of child victims of trafficking.

Nevertheless, it is necessary to consider further informational actions and trainings, especially in a form of short trainings for employees of children shelters. NGO's, f.e. You Can Free Us - is planning to provide some trainings for professionals (teachers and careers) who may come in contact with child THB victim; as to the information for the public as a part of trafficking crime prevention, the Police conduct on ongoing basis training and talks in schools.

As to the information about the measures taken to ensure the rehabilitation and reintegration of child victims of trafficking - Poland informs that already in 2010, the Department of Migration Policy of the Ministry of Interior and Administration, in cooperation with the La Strada Foundation, the Police Headquarters and the Headquarters of the Border Guard, decided to launch the pilot program - "Program of support and protection of minor victims of trafficking in Poland" in Małopolskie, including establishment of a safe childcare center for children - victims of trafficking in human beings. As part of the actions undertaken, a childcare center's staff, having already an experience working with foreign children was trained by the La Strada Foundation in the field of working with children - victims of human trafficking.

To this day, Małopolskie region can be a good example how to implement the adequate measures to ensure the rehabilitation and reintegration of child victims of trafficking. There is a Center for Persons - Crime Victims in the voivodship, offering psychological, legal and other forms of assistance financed from the public budget.

At the same time, the Director of the 24-hour Crisis Intervention and Counseling Center in Myślenice (the Center obtained grants from the Regional Operational Program for the Małopolska Region for the years 2014-2020) declared its readiness to provide specialized care and shelter to victims of trafficking until they will be provided with care in specialist centers. Acting in the Małopolska Legal Aid Center of Halina Nieć offers access to translators.

#### **Ad. 140**

##### **PL Comment/reply:**

Poland informs that victims of trafficking in human beings from the EU countries make use of aid for victims.

EU nationals may legally stay in the territory of Poland for up to 3 months or 6 months if they search for employment. However, practice shows that Poland respects the free intra-EU movement of persons and law enforcement bodies are flexible when it comes to the duration of stay of EU nationals in the territory of Poland. In case of a longer stay of a potential victim of trafficking in human beings, after being identified and granted with aid, this person may try to find employment and legalise stay by registering with the Voivodship Office, having jurisdiction over the place of stay of this person.

#### **Ad. 146**

##### **PL Comment/reply:**

In Poland, every procedure involving foreigners' participation assures that foreigner has an access to information in a language that he / she understands.

Moreover, pursuant to the Ordinance No 14 of the Chief Police Officer, 22 September 2016, in case of contact with a person identified as a potential victim of trafficking in human beings who does not speak Polish, an interpreter is used. These persons are instructed in writing about their rights, in a language they can understand. The body of the instruction contains the information about a possibility of issuing a certificate of the right of residence in the Republic of Poland. Currently, an information campaign is being carried out related to the Mobile application for refugees (in four languages) explaining the procedure in the Republic of Poland. The project is carried out by Caritas Poland and Office For Foreigners. The target

group are refugees, however, the project may also be used by potential victims of trafficking in human beings from third countries.

#### **Ad. 156**

##### **PL Comment/reply:**

Poland informs that the amendment to the Law of 7 July 2005 *on state compensation to victims of certain intentional offences* (Journal of Laws of 2016, item 325) allows to pay compensation to victims if the offence has been committed in the territory of the Republic of Poland to the detriment of a natural person, irrespective of their nationality. The only prerequisite is the place of permanent residence in the territory of the Republic of Poland or another EU Member State.

It seems that when compared to the previous GRETA report, the present one contains a modified recommendation as regards granting compensation to victims of trafficking in human beings. While the previous report contained a recommendation in a form of providing all victims of this crime with access to compensation (regardless of the loss they suffered and related costs), now it seems that the point is only to abolish the statutory requirement to apply for compensation in a form of permanent residence in Poland or another EU country (Article 4 of the Law of 7 July 2005 *on state compensation granted to victims of certain offences*). If GRETA really aims at eliminating the requirement referred to in Article 4 of the Law, it is worth noting that this provision does not indicate the requirement in a form of nationality, hence, if this recommendation was to be executed (which would require amending Article 4 of the Law and would also go beyond the requirements of Article 1 of the *Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims*), it would be necessary to modify its wording by removing the word "nationality".

However, if the recommendation still refers to providing all victims of trafficking in human being with access to compensation pursuant to the above Law, regardless of the loss they suffered, then it would be necessary to refer negatively to this recommendation in view of the fact that victims of trafficking in human beings may use the right to compensation in the course of criminal or civil proceedings, from the resources of the Polish Crime Victims and Post-Penitentiary Fund, as well as, to a specific extent, to compensation pursuant to the Law of 7 July 2005 *on state compensation to victims of certain offences*, which is sufficient in the light of the requirements of Article 15 of the 2005 *Convention*. In addition, *the Law on state compensation* governs the specific extent of benefits granted to victims. Fulfilling this so broadly understood recommendation would lead to a need to remodel the Law completely, and also to introduce a system of pursuing claims which is competitive towards civil law.

#### **Ad. 157**

##### **PL Comment/reply:**

A possibility of building such system has been under discussion during reporting period in Poland. However, it has to be stressed, that the database on the number of submitted applications for compensation and data concerning payment of compensation, has to have at the same time access to the system containing data from completed legal proceedings, which means that it should be an interinstitutional system, covering different type of data and information, therefore, its creation will require the adoption of very complex solutions.

#### **Ad. 162**

##### **PL Comment/reply:**

In Poland: "in order to ensure the safe return and protection of a victim of THB against re-victimization, a risk assessment procedure was drawn up in 2014 and is implemented as of 2015 by the KCIK, the Border Guard, the Police and by the Ministry of the Interior. As a rule, the risk assessment is performed for third-country nationals and only in justified cases for citizens of the EU. The risk assessment is carried out for victims of THB having been covered by the Programme of Support and Protection of Victims/Witness of THB. The risk assessment is based on information from the victim, from the KCIK and from the Police or Border Guard. The Ministry of the Interior and Administration assesses the situation in the country to which the victim is to be returned."

However, the main document complying with the rights, safety and dignified return of victims of trafficking an Agreement between the IOM and Minister of the Interior and Administration as of 2005 should be mentioned at first. In 2011 the above mentioned Agreement was amended and the category of THB victims is one of the crucial parts of the conduct guidelines for IOM and Ministry of the Interior and Administration.

#### **Ad. 164**

##### **PL Comment/reply:**

In the opinion of the Polish authorities the definition of Article 115(22) of the Criminal Code does not need to be extended. The definition of „servitude” is absorbed by the element of the definition „or other forms of abuse degrading human dignity”.

#### **Ad. 169**

##### **PL Comment/reply:**

At present and in the reporting period as well, informational and raising awareness activities were taking place in Poland in this respect; the Police, for example, participates in information campaigns and carry out preventive activities aimed at raising awareness also among potential clients of victims of trafficking in human being. These actions are aimed at reducing criminogenic behaviour.

#### **Ad 176**

##### **PL Comment/reply:**

In Poland's opinion, although the legislation does not contain a specific provision implementing the non-punishment clause, nevertheless, the existing regulations allow not to initiate or to discontinue the criminal proceedings, as evidenced by the example quoted in the report. In this light, there is no need to adopt a specific provision implementing Article 26 of the 2005 Convention. It would be sufficient to provide specific training for prosecutors.

As regards the allegation of the lack of a general clause for the trafficking of human beings for their crimes, it should be noted that, in coordination with the Department for Organized Crime and Corruption, research has also been conducted in relation to the practice of the use of a criminal conviction or non-trafficking victims. The analysis covered the years 2014 -2016.

The data available on the basis of the above studies show that both the training activities and the actions taken in the context of the coordination of trafficking in human beings provide tangible results, as is best

illustrated by the fact that in 2016 no case was filed against a wronged offender under Article 189a(1) of the Criminal Code.

Ad. 183

**PL Comment/reply:**

The Polish authorities would like to inform that there is a debate in this matter in Poland. Regardless of its final outcome, even if it were decided to amend the provisions of the Criminal Code by introducing separate type of forced labour criminal offence, according both to the institutions directly applying current law and the statistics, is obvious that the present legal status is not an obstacle to carry effective countermeasures. Ministry of Justice stated that fact that the Criminal Code contains no provision determining explicitly the punishability of forcing a person to perform forced labour does not mean that this type of behaviour remains unpunished in the Polish legal system.

Public Prosecutor's Office states that although is not a statutory authority and only applies those norms that are legally binding, however, when it comes to refer to the GRETA's comments suggesting that low effectiveness of combating trafficking in forced labour is caused by the lack of a separate act (such as compulsory labour), this statement cannot be justified.

Also, the Police states that forced labour is a part of the definition of trafficking in human beings in Article 115(22) of the Criminal Code and is sufficient to combat this type of crime. Meanwhile, the Police indicates a necessity of updating the definition of forced labour itself. The definition which is currently applicable in Poland was established in 1930 and is contained in the Convention No 29 of the International Labour Organisation (ILO). The same has been underlined by the Main Office of the Border Guards; in addition, it was pointed out by the Border Guard that the other thing is forced labor and what else is the use for forced labour, as defined in Article 115 (22) of the Criminal Code.

Meanwhile, the Polish National Labour Inspectorate (*PNLI*) shares the GRETA's view regarding the need to penalise forced labour as a stand-alone criminal offence by the Polish law.

In the past the *PNLI* several times took a stand that forced labour should be a separate criminal offence. In *PNLI*'s opinion, it would make prosecution of these practices easier.

Moreover, according to the *PNLI*, the penalisation of forced labour by the Polish law will mean fulfilling the obligation stipulated in Article 25 of the ILO Forced Labour Convention (No 29) adopted in Geneva on 28 June 1930 and in Article 1 section 1 of the Protocol of 2014 to the aforementioned Convention.

Ad. 188

**PL Comment/reply:**

In Poland's opinion, when referring to the allegation of inadequacy of penalties for trafficking in human beings, it should be pointed out that within the framework of the activities of the National Prosecutor's Office judgments were rendered in the category of forbidden acts. Measures undertaken by the Public Prosecutor's Office in the indicated area focus on submitting correct applications for punishment and appealing against appealed decisions. In 2016, the predominance of applications for punishment of deprivation of liberty was at the level of 3-5 years of imprisonment, i.e. 69 (34.5%). Sentenced sentences in this interval were 28 (14%). Conclusions with an extraordinary mitigation of the penalty, below the bottom threat public prosecutors filed 19 (9.5%), respectively, sentences of less than 3 years imprisonment were recorded 33 (16.5%). On the other hand, applications for punishment of more than 5 years of imprisonment -15 (7.5%), judgments - 6 (3%). The qualification change took place in 12 cases, acquitted of 15 people. The courts, adjudicating the penalty of deprivation of liberty below the lower

threat, ie 2 years imprisonment, Article 60 (3) or Article 60 (4) of the Criminal Code. The Article 45 of the Criminal Code constituting the obligatory forfeiture of the property derived from the crime or its equivalent.

Taking into account the above, it is important to note that prosecutors, when formulating their application for a sentence, must also consider, in addition to circumstances relevant to a particular case, general prevention considerations related to the nature of the offense and the kind of protection which it protects. It should be added that, according to the Article 53 of the Criminal Code. The size of the punishment must not exceed the degree of fault of the perpetrator, and therefore not in all cases it is possible to impose a severe punishment in the social sense.

As regards the problem of non-error identification in relation to preparatory actions and accusations, it should be noted that, in coordination, the errors and deficiencies disclosed are corrected on an on-going basis. It should be emphasized that the results of the actions taken as a result of coordination, supervisory supervision and training activities bring the desired result. Despite the finding of further errors and shortcomings in the preparatory proceedings, it should be acknowledged that investigations into trafficking in human beings are conducted at a good level.

#### **Ad. 194**

##### **PL Comment/reply:**

In the opinion of the Polish authorities, the provisions currently in force in Poland fully respect the needs indicated by GRETA. Pursuant to Article 185a of the Criminal Code, a victim of trafficking in human beings, who is under 15, should be heard only once, unless the relevant circumstances come into light, the explanation of which requires another hearing or if it is requested so by the accused, who did not have a defender at the time of the first hearing of a victim. This rule also applies to a person aged 15-18, if there is a reasonable concern that in other circumstances the hearing could have a negative impact on the mental condition of this person.

Firstly, currently, the type of abuse laid down in Article 115(22) of the Criminal Code does not matter any longer for the application of the rule of one-time hearing for minor victims of trafficking in human beings. Pursuant to Article 185a of the Criminal Code, the rules resulting from this provision shall apply in cases of crimes committed with the use of violence or unlawful threat or referred to in Chapters XXIII, XXV and XXVI. Chapter XXIII contains the crime of trafficking in human beings (Article 189a of the Criminal Code). In addition, the wording "committed with the use of violence or unlawful threat" applies to other crimes than those laid down in Chapter XXIII.

Secondly, it should be stressed that applicable Article 185a of the Code of Criminal Procedure is now consistent with the Guidelines by the Committee of the Ministers of the Council of Europe on child-friendly justice. These Guidelines do not order to treat all minor victims in the same way. Just the opposite, in accordance with the Guidelines, minor victims should be treated differently, depending on their age, special needs, maturity and degree of understanding.

#### **Ad. 207**

##### **PL Comment/reply:**

The National Action Plan is putting a strong emphasize on strengthening co-operation between all of entities involved in combating THB crime, first of all with the NGO's. Besides, the Polish authorities intend to unify the data collection system in order to gather information in the THB area in the most effective way, i.e. to enable effective data collection, data research, evaluation and identification of the most effective measures. Tasks to be fulfilled within the National Action Plan are of national character, but they concern actions undertaken either by central authorities within the scope of creation of universal legal regulations and model practices or actions undertaken in every region via appropriate units (in particular voivodship (regional) units for THB countering). The cooperation system introduced by the Plan consists also of the actions taken by the Interministerial Committee on Fighting Against and Preventing Trafficking in Human Beings, advisory body to the Prime Minister. The Committee is composed of the

representatives of governmental administration (minister competent for education, minister competent for social security, Minister of Justice, minister competent for foreign affairs, minister competent for health, minister competent for interior, minister competent for administration, Head of the Office for Foreigners, Head of the Internal Security Agency, Police Commander in Chief, Border Guard Commander in Chief) as well as other, invited institutions (National Labour Inspectorate, National School of Judiciary and Public Prosecution, Commissioner for Human Rights, Children's Rights Ombudsman, Chancellery of the Prime Minister and National Public Prosecutor). The very strong emphasis is putting on the NGOs acting in the THB area, who are the members of the Committee as well - La Strada Foundation Against Trafficking in Human Beings and Slavery, Caritas Poland, Empowering Children Foundation (formerly: Nobody's Children Foundation), Itaka Foundation - Missing Persons Searching Centre, The Halina Nieć Legal Aid Center, Association Po MOC for Women and Children of the Mary Immaculate) and International Organization for Migration IOM. Over the last years, the understanding of this crime is getting more complex and at the same time, the more *tailor - made* actions can be provide. Nevertheless, cooperation with different types of institutions and with different types of environments together with research and program evaluations and learning from the best practices in victim protection and law enforcement is of utmost importance.

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