



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

GRETA(2019)14

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

**SECOND EVALUATION ROUND**

Adopted on 11 July 2019

Published on 9 October 2019



Secretariat of the Council of Europe Convention  
on Action against Trafficking in Human Beings  
(GRETA and Committee of the Parties)  
Council of Europe  
F-67075 Strasbourg Cedex  
France

[trafficking@coe.int](mailto:trafficking@coe.int)

[www.coe.int/en/web/anti-human-trafficking](http://www.coe.int/en/web/anti-human-trafficking)

## Table of contents

<b>Preamble .....</b>	<b>5</b>
<b>I. Introduction .....</b>	<b>6</b>
<b>II. Main developments in the implementation of the Convention by Switzerland .....</b>	<b>8</b>
<b>1. Emerging trends in trafficking in human beings .....</b>	<b>8</b>
<b>2. Developments in the legal framework .....</b>	<b>8</b>
<b>3. Developments in the institutional framework.....</b>	<b>9</b>
<b>4. National Action Plan.....</b>	<b>11</b>
<b>5. Training of relevant professionals.....</b>	<b>12</b>
<b>6. Data collection and research .....</b>	<b>14</b>
<b>III. Article-by-article findings.....</b>	<b>16</b>
<b>1. Prevention of trafficking in human beings .....</b>	<b>16</b>
a. Measures to raise awareness of THB (Article 5) .....	16
b. Measures to prevent THB for the purpose of labour exploitation (Article 5) .....	18
c. Measures to prevent trafficking in children (Article 5) .....	21
d. Measures to prevent trafficking for the purpose of organ removal (Article 5) .....	24
e. Measures to discourage demand (Article 6) .....	24
f. Border measures (Article 7) .....	26
<b>2. Measures to protect and promote the rights of victims, guaranteeing gender equality .....</b>	<b>28</b>
a. Identification of victims of THB (Article 10) .....	28
b. Assistance measures (Article 12) .....	33
c. Identification and assistance of child victims of THB (Articles 10 and 12) .....	36
d. Protection of private life (Article 11) .....	39
e. Recovery and reflection period (Article 13) .....	40
f. Residence permits (Article 14).....	42
g. Compensation and legal remedies (Article 15) .....	43
h. Repatriation and return of victims (Article 16).....	45
<b>3. Substantive criminal law .....</b>	<b>46</b>
a. Criminalisation of THB (Article 18).....	46
b. Criminalisation of the use of services of a victim (Article 19) .....	48
c. Corporate liability (Article 22).....	49
d. Non-punishment of victims of THB (Article 26) .....	49
<b>4. Investigation, prosecution and procedural law.....</b>	<b>51</b>
a. Measures related to ensuring effective investigations (Articles 1, 27 and 29).....	51
b. Protection of witnesses and victims (Articles 28 and 30) .....	54
c. Jurisdiction (Article 31) .....	54
<b>5. International co-operation and co-operation with civil society .....</b>	<b>55</b>
a. International co-operation (Article 32) .....	55
b. Co-operation with civil society (Article 35) .....	58
<b>IV. Conclusions .....</b>	<b>59</b>

**Appendix I - List of public bodies, intergovernmental organisations,  
non-governmental organisations and other civil society actors with which  
GRETA held consultations ..... 66**

**Government's comments..... 67**

## Preamble

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

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

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

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

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

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

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

## I. Introduction

1. The first evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings ("the Convention") by Switzerland took place in 2014-2015. Following the receipt of Switzerland's reply to GRETA's first questionnaire on 31 July 2014, a country evaluation visit was organised from 29 September to 3 October 2014. The draft report on Switzerland was examined at GRETA's 22nd meeting (16-20 March 2015) and the final report was adopted at GRETA's 23rd meeting (29 June-3 July 2015). Following the receipt of the Swiss authorities' comments, GRETA's final report was published on 14 October 2015.<sup>1</sup>

2. In its first evaluation report, GRETA noted that the Swiss authorities had put in place a legal and institutional framework for combating trafficking in human beings (THB). While acknowledging the co-ordinating role played by the Swiss Co-ordination Unit against Trafficking in Persons and Smuggling of Migrants (KSMM) at federal level, GRETA urged the Swiss authorities to provide it with sufficient financial and human resources in order to ensure that it could achieve the objectives set out in the National Action Plan. Given that most competences in the area of anti-trafficking action lie with the cantons, GRETA called on the Swiss authorities to ensure that all cantons develop co-ordination mechanisms for combating human trafficking. GRETA considered that there was a need to carry out information and awareness-raising campaigns regarding different forms of human trafficking in Switzerland, and that increased attention should be paid to reducing the vulnerability to trafficking of groups at risk, such as persons engaged in prostitution, unaccompanied children, migrants and asylum seekers. Further, GRETA urged the Swiss authorities to ensure that all victims of trafficking are identified as such, and to devise an identification procedure that takes account of the specificity of the situation of child victims of trafficking. GRETA also urged the Swiss authorities to ensure that all assistance measures provided for in the Convention are guaranteed in practice to victims across the country. GRETA noted discrepancies between cantons with regard to granting of a recovery and reflection period, as well as residence permits, to victims of trafficking, and considered that further training and guidance were necessary so that victims of trafficking could benefit in practice from these rights. In addition, GRETA called upon the Swiss authorities to adopt a provision on the non-punishment of victims of trafficking for their involvement in unlawful activities, to the extent that they had been compelled to do so, and/or to develop relevant guidance. Moreover, GRETA considered that specialisation and training of judges and prosecutors regarding trafficking in human beings should be improved.

3. On the basis of GRETA's report, the Committee of the Parties to the Convention adopted a recommendation to the Swiss authorities, requesting them to report back on measures taken by 30 November 2017.<sup>2</sup> The report submitted by the Swiss authorities was considered at the 22nd meeting of the Committee of the Parties (9 February 2018). 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 2 January 2018, GRETA launched the second round of evaluation of the Convention in respect of Switzerland by sending the questionnaire for this round to the Swiss authorities. The deadline for submitting the reply to the questionnaire was 4 June 2018. A request by the Swiss authorities for an extension of the deadline was granted and Switzerland submitted its reply on 28 June 2018.<sup>4</sup>

---

<sup>1</sup> Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland, GRETA(2015)18, available at:

<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168063cab6>

<sup>2</sup> Recommendation CP(2015)13 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland, available at:

<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168063cab4>

<sup>3</sup> Available at: <https://rm.coe.int/cp-2018-1-rr-che-en/16807902df>

<sup>4</sup> <https://rm.coe.int/greta-2018-16-rq2-che-en/16808e2c95>

5. In preparation of the present report, GRETA used the reply to the questionnaire by the Swiss authorities, the above-mentioned report submitted by them to the Committee of the Parties, and information received from civil society. An evaluation visit to Switzerland took place from 5 to 9 November 2018 in order to hold meetings with relevant governmental and non-governmental actors, collect additional information and examine the practical implementation of adopted measures. The visit was carried out by a delegation composed of:

- Mr Ryszard Piotrowicz, Second Vice-President of GRETA;
- Ms Alina Braşoveanu, member of GRETA;
- Ms Evgenia Giakoumopoulou, Administrator in the Secretariat of the Convention;
- Mr Markus Lehner, Administrator in the Secretariat of the Convention.

6. During the visit, the GRETA delegation met with representatives of the Federal Office of Police, the Federal Office of Justice, the State Secretariat for Migration, the Federal Department of Foreign Affairs, the State Secretariat for Economic Affairs, and the Conference for the Protection of Children and Adults. Discussions were also held with officials in the cantons of Bern, Geneva, Luzern, St. Gallen, Ticino, Vaud and Zurich, including police officers, prosecutors, labour inspectors, representatives of the victim support offices, and migration and asylum staff.

7. Separate meetings were held with representatives of non-governmental organisations (NGOs) and trade unions, researchers and lawyers. The GRETA delegation also met officials from the local offices of the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR).

8. In the course of the visit, the GRETA delegation visited an asylum reception centre in Boudry, three shelters accommodating victims of human trafficking, in the cantons of Bern, Geneva and Vaud respectively, and an emergency shelter for children in the canton of St. Gallen.

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 Swiss authorities and in particular the valuable assistance provided before, during and after the visit by the contact person appointed by the Swiss authorities, Mr Boris Mesaric, Head of Section, Section against Trafficking in Persons and Smuggling of Migrants, Federal Office of Police (Fedpol), and Mr Laurent Knubel, Deputy Head of Section, Section against Trafficking in Persons and Smuggling of Migrants, Fedpol.

11. The draft version of the present report was approved by GRETA at its 34th meeting (18-22 March 2019) and was submitted to the Swiss authorities for comments on 18 April 2019. The deadline for submitting the comments was 19 June 2019. A request by the Swiss authorities for an extension of the deadline was granted until 24 June 2019. The authorities subsequently requested another extension, until the end of August 2019, which was not consented by GRETA as the adoption of the final report on Switzerland had been scheduled for GRETA's 35th meeting (8-12 July 2019). The authorities' comments were eventually received on 3 July 2019, shortly before GRETA's 35th meeting. GRETA nevertheless took the comments into account when adopting the final report at that meeting. The report covers the situation up to 12 July 2019; developments since that date are not taken into account in the following analysis and conclusions. The conclusions summarise the progress made, the issues which require immediate action and the other areas where further action is needed (see pages 59-65).

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

### **1. Emerging trends in trafficking in human beings**

12. Switzerland continues to be a country of destination and, to some extent, a transit country for trafficked persons. According to information provided by the Swiss authorities, the number of victims of THB identified by the police was 35 in 2014, 47 in 2015, 90 in 2016, 108 in 2017, and 64 in 2018. About 76 % of the victims were female. There were 11 children among the victims identified in the period 2014-2017. The Swiss authorities have indicated that Thailand, Romania and Hungary were the main countries of origin of the identified victims, followed by Bulgaria and China. There were also some cases of identified victims from the Dominican Republic, Brazil and Nigeria. The available data on identified victims is not disaggregated by type of exploitation, but the Swiss authorities have informed GRETA that an adaptation of the police crime statistics was planned to make this possible from 2020 onwards.

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

13. There have been no legislative changes since GRETA's first evaluation report directly related to action against THB. It should be recalled that Switzerland is a federal state composed of 26 cantons which retain all powers and competencies not delegated to the Confederation by the Swiss Constitution. Each canton has its own legislative and executive bodies as well as court system, and is responsible for matters ranging from police and prosecution to welfare, health-care and social policies. Nevertheless, the Swiss Criminal Code (CC), which criminalises trafficking in human beings in Article 182, applies throughout the country, as does the Swiss Code of Criminal Procedure (CCP) and federal legislation related to the assistance to victims of crimes, the extra-procedural protection of witnesses, the entry and residence of foreigners, and asylum.

14. On 1 January 2019, the Federal Law on Foreigners and Integration (LEI; SR 142.20) entered into force. While no changes have been made to the provisions governing the residence of victims and witnesses of trafficking in human beings, this new law determines in Article 4 the aims pursued by the policy of integration of foreign nationals in Switzerland and the framework of the integration policy in Articles 53 et seq. Victims of trafficking in human beings who obtain a long-term residence permit in Switzerland can benefit from these measures. In accordance with Article 55 of the LEI, the special needs of the persons concerned must be taken into consideration by the cantons.

15. Further, on 1 March 2019, a new asylum procedure entered into force in Switzerland. Under the new system, an accelerated procedure to process asylum claims within 140 days applies by default and a legal representative is appointed to each asylum seeker from the outset of the procedure to support him/her through all procedural steps. On arrival in Switzerland, asylum seekers have to submit their applications in one of six designated regional federal asylum centres, where they can stay for a maximum of 140 days (previously 90 days). Some 60% of asylum applications are expected to be processed under the accelerated procedure within 140 days or, if another European state is responsible for the asylum application, the Dublin procedure will apply. Persons whose asylum applications require further clarification are distributed among the cantons and subject to an extended procedure.

16. Switzerland ratified the 2014 Protocol to the ILO Forced Labour Convention on 28 September 2017, which entered into force for Switzerland on 28 September 2018.



### 3. Developments in the institutional framework

17. The Swiss Co-ordination Unit against Trafficking in Persons and Smuggling of Migrants (KSMM), set up in 2003, continued to co-ordinate the fight against THB at federal level until the end of 2018. As explained in GRETA's first report, the KSMM Steering Committee, composed of representatives of the federal authorities, cantonal authorities, three NGOs and IOM Switzerland, acted as the decision-making body and monitored the development and implementation of anti-trafficking measures in Switzerland.<sup>5</sup> The Executive Secretariat of the KSMM was subordinated to the Central Division of the Federal Office of Police (Fedpol). Several thematic working groups were set up under the KSMM in order to facilitate the implementation of the National Action Plan. In its first evaluation report, GRETA urged the Swiss authorities to allocate sufficient financial and human resources to ensure that the KSMM could achieve the objectives set out in the National Action Plan on combating trafficking in human beings.

18. During the second evaluation visit to Switzerland, GRETA was informed of plans to replace the Steering Committee with a "Platform against Trafficking in Persons and Smuggling of Migrants", which would have no decision-making powers. Further, the Executive Secretariat of the KSMM had been placed, since July 2018, under the National Crime Prevention Division of Fedpol and renamed to "Unit against Trafficking in Persons and Smuggling of Migrants". GRETA was concerned that this apparent downgrading of the federal co-ordination structures responsible for anti-trafficking activities may result in a weakening of Switzerland's capacity to combat human trafficking. It appeared that the changes were being implemented without thoroughly consulting relevant stakeholders. GRETA's delegation met with representatives of seven cantonal roundtables against human trafficking (in Bern, Geneva, Luzern, St. Gallen, Ticino, Vaud and Zurich) and there was broad consensus among them that strong co-ordination structures at federal level are a precondition for an effective and comprehensive anti-trafficking action at cantonal level.

19. Following the second visit to Switzerland, GRETA decided to send a letter to the Swiss authorities, enquiring about the future institutional setup of anti-trafficking action. In reply, the Swiss authorities stated that the new Platform against Trafficking in Persons and Smuggling of Migrants would enable more regular exchange of experience and specialised know-how between stakeholders, and that incorporating the Unit against Trafficking in Persons and Smuggling of Migrants into Fedpol's National Crime Prevention Division allows for more focus on prevention and victim protection, as well as a more flexible deployment and management of resources. Further, in their comments on the draft GRETA report, the Swiss authorities noted that some uncertainties had arisen over the roles, powers and responsibilities of the services involved in the fight against trafficking in human beings. For example, there was a lack of clarity as regards the effect of decisions taken by the Steering Committee which differed from decisions taken by the Federal Department of Justice and Police or the Federal Council. On 19 November 2018, the Steering Committee discussed the draft rules of procedure of the new Platform against Trafficking in Persons and Smuggling of Migrants and decided to set up a working group to rework the draft. This working group met for the first time on 3 April 2019, discussed different organisational models and mandated the Unit against Trafficking in Persons and Smuggling of Migrants to develop a proposal on behalf of Fedpol; the next meeting of the working group was planned to take place on 28 June 2019. At the same time, the working group asked that the taking over by Fedpol of the entirety of the activities of the KSMM, as defined in Article 13 of the Federal Council Order on Measures to Prevent Offences Linked to Trafficking in Human Beings, be formally approved by the Head of the Federal Department of Justice and Police.

---

<sup>5</sup> Article 13 of the Order on Measures to Prevent Offences linked to Trafficking in Human Beings (RS 311.039.3).

20. Some of the thematic working groups set up by the Steering Committee, such as those on child trafficking and labour exploitation, appear to have been discontinued. At the time of GRETA's visit, the following working groups were operational: victim protection (related to action 18 of the National Action Plan); asylum and THB (action 19); training (action 4); guidelines and procedures on identification (action 14); development of checklists with THB indicators (action 3). The Swiss authorities have indicated that the working group on victim protection had not met in recent months, but should be reconvened in 2019 to finalise the document that it had been preparing. The working group of asylum and THB has continued to meet regularly (see paragraph 132), as has the group of training. Further, the group responsible for preparing indicators has completed the revision of the list of indicators in April 2019 and the new list needs to be approved by Fedpol before being translated into the different national languages by the end of 2019. In addition, the working group set up under action 14 of the National Action Plan has met regularly and together with the Conference of Swiss Cantonal Police Commanders, it has carried out a survey of all Swiss cantons on practices relating to the identification of victims of human trafficking by the police. The results of this survey are being analysed and will serve as a basis for the development of the guidelines. Further, the exchange platform on unaccompanied children and child trafficking, related to action 24 of the National Action Plan, was scheduled to meet for the first time on 25 June 2019, under the leadership of the Association of Cantonal Migration Services.

21. At cantonal level, the co-ordination of anti-trafficking action is organised in the form of roundtables, which bring together different stakeholders (police, public prosecutor's office, migration authorities, crime victims assistance services and NGOs). Their composition varies between cantons, as does the frequency of their meetings (in general, once per year). The number of cantons having set up such roundtables (18 out of 26) has remained unchanged. Some of the cantons without roundtables on THB are small in terms of size and population.<sup>6</sup> The authorities informed GRETA that an independent academic study had been commissioned to assess whether the policies and mechanisms adopted in the cantons are adequate to address the local risk factors of THB. The outcome of this research is expected to shed light on the need for setting up cantonal structures for co-ordinating anti-trafficking activities.

**22. GRETA considers that the Swiss authorities should ensure that the new Platform against Trafficking in Persons and Smuggling of Migrants, the Unit against Trafficking in Persons and Smuggling of Migrants and the different working groups set up under the National Action Plan are capable of ensuring efficient co-ordination of policies and actions against trafficking in human beings, in particular by providing adequate financial support and staff to enable the work of the Platform and working groups, and continuing to involve and consult civil society.**

**23. Further, given the significant competences of the cantons related to anti-trafficking action and the protection of its victims, GRETA considers that the Swiss authorities should continue their efforts to harmonize the institutional framework and co-ordination structures for the fight against trafficking at federal and cantonal level. The objective should be to strengthen the coherence and effectiveness of the action of all stakeholders involved in preventing and combating trafficking in all its forms, and to identify and assist victims of trafficking without discrimination, regardless of their place of residence in Switzerland.**

---

<sup>6</sup> The cantons without roundtables on THB are Appenzell Ausserrhoden, Appenzell Innerhoden (with some 16,100 inhabitants), Glarus, Graubünden, Jura, Nidwalden, Schaffhausen, Uri (with some 36,300 inhabitants).

24. According to the Swiss authorities, there are no plans to designate an independent 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> **GRETA considers that the Swiss authorities should examine the possibility of establishing an independent National Rapporteur or designating another existing mechanism for monitoring the anti-trafficking activities of state institutions, as provided for in Article 29, paragraph 4, of the Convention.**

#### 4. National Action Plan

25. Following the expiry of Switzerland's first National Action Plan to Fight Human Trafficking for the period 2012-2014, KSMM set up a working group to draft a new action plan. This second National Action Plan, for the period 2017-2020,<sup>9</sup> was approved by the Federal Department of Justice and Police in September 2016 and subsequently by the KSMM Steering Committee on 30 November 2016. In the introductory part of the plan, the general approach of the Swiss authorities to combating human trafficking is laid out and it is explained how the recommendations made by GRETA in its first report have been addressed. There are 28 envisaged measures, grouped under four thematic pillars (prevention, prosecution, protection of victims and partnership). Each measure is supposed to be financed by the agency responsible for its implementation.

26. GRETA welcomes the adoption of the second National Action Plan and the fact that it reflects many of GRETA's previous recommendations. However, GRETA notes that the uncertainties around the future of the federal co-ordination structures (see paragraphs 18-19) are delaying the implementation of some of the measures envisaged in the plan, for example when it comes to the development of a training concept (see paragraph 28) or an exchange platform on unaccompanied children and child trafficking (see paragraph 20). GRETA is concerned about the lack of information on which body will be responsible for preparing and adopting the next National Action Plan against trafficking in human beings and which agencies and organisations would be involved.

27. The Swiss authorities have indicated that the drafting of the second National Action Plan was preceded by an evaluation of the previous plan and that a similar evaluation will take place at the end of the current plan; however, the methodology of the evaluation remains to be defined, including whether an organisation which is external for the federal administration a body would carry it out.

28. **Given the absence of a national rapporteur, GRETA considers that the Swiss authorities should commission an independent evaluation of the implementation of the National Action Plan on action against trafficking in human beings upon its expiry to assess the impact of the activities, and serve as a basis for the planning future policies and measures to combat human trafficking, in particular the development of the next National Action Plan.**

---

<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.

<sup>9</sup> Available at: <https://www.fedpol.admin.ch/fedpol/fr/home/aktuell/news/2017/2017-04-13.html>

## 5. Training of relevant professionals

29. In its first report, GRETA considered that the Swiss authorities should ensure that all relevant professionals across the country are trained periodically in THB and the rights of victims of trafficking. Further, GRETA considered that the initial training of all police officers should include a module on human trafficking.

30. Action 4 of the National Action Plan provides for the development of a general training and awareness-raising strategy and concept for all professional groups that come into contact with presumed victims of trafficking. A survey was conducted in 2017 among some 30 target groups from 19 cantons with a view to determining training needs, the availability of staff to undergo training and any obstacles. However, the work on developing a training concept has stalled. The authorities of several cantons informed GRETA's delegation that they were waiting for this concept before beginning to mobilise resources and start with training activities at their level. According to the Swiss authorities, work on the draft training concept continues, the draft needs to be finalised and adapted to the changes in the national co-ordination structures before being resubmitted to the working group on training by the end of 2019.

31. Four training courses have been organised at the Swiss Police Institute since GRETA's first evaluation: three basic one-week courses, respectively from 1 to 5 June 2015 (with 30 participants), from 30 May to 3 June 2016 (with 42 participants), and from 14 to 18 May 2018 (with 34 participants), as well as a three-day refresher course from 8 to 10 May 2017 (with 27 participants). Participants included criminal police officers, prosecutors and officials from cantonal migration authorities. In 2018, 34 representatives of the police, prosecution and border guards were trained on trafficking in human beings.

32. Action 15 of the National Action Plan envisages the integration of a basic training module on combating human trafficking in all police schools in Switzerland as part of the initial training of police officers. The Swiss authorities have specified that the basic training of police officers is organised separately for each inter-cantonal police concordat<sup>10</sup> and training on THB is already offered by some police concordats, for example in the North-Western part of the country at the inter-cantonal police school in Hitzkirch (Lucerne). The inclusion of the topic of THB in the examinations at the end of the basic police training is a matter for the Swiss Police Institute).

33. In 2017, the State Secretariat for Migration, in co-operation with the Association of Cantonal Migration Authorities and the NGO FIZ, ran three one-day regional workshops for cantonal migration staff, with a total of 57 participants. The workshops explained the application of the "Competo" procedure, which is recommended to be used by the cantonal migration authorities so that victims of trafficking are granted a recovery and reflection period and residence permits in a harmonised way throughout Switzerland (see paragraphs 179).

34. The Federal Office of Police (Fedpol) organised a workshop on labour exploitation on 24 April 2017, with some 20 participants from the cantonal police forces, a prosecutor and two labour inspectors. Presentations of case studies addressed the use of indicators for the identification victims of trafficking for the purpose of labour exploitation and the necessity of pro-active, long-term investigations to gather evidence in these cases. Fedpol organised a second workshop on 12 June 2018, attended by 94 participants, including 46 officers from 16 cantonal police forces, 14 prosecutors and 19 labour inspectors from different cantons, as well as 15 specialists from the Federal Department of Justice and Police. A brochure on THB for the purpose of labour exploitation has been prepared by the Directorate of Labour of State Secretariat for Economic Affairs and will be published in the course of 2019; it targets cantonal labour inspectors and contains indicators for detecting cases of THB, useful contacts and information on the rights of victims.

---

<sup>10</sup> In Switzerland, inter-cantonal police co-operation is based on agreements ("concordats").

35. The Geneva Academy of Social Work has organised two interdisciplinary seminars for professionals involved in action against trafficking in human beings, including officials from the cantonal prosecution and migration authorities, as well as from crime victim support centres. The first seminar was an introductory course on action against trafficking in human beings, which took place on 9 November 2015, with 38 participants. The second was a two-day interdisciplinary seminar, organised on 14 and 15 November 2016, with 50 participants.

36. On 16 December 2015, a training day took place for judges and registry staff of the Federal Administrative Court of Switzerland, with the participation of the State Secretariat for Migration and the NGO FIZ. Some 60-70 participants attended this training.

37. Juvenile court judges of French-speaking Switzerland and Ticino were introduced to the legal and institutional framework for combating THB and different forms of child trafficking on 25 May 2018 in Bellinzona (Ticino).

38. Further, at the request of the roundtables of the cantons of Valais and Neuchâtel, the Unit against Trafficking in Persons and Smuggling of Migrants organised training sessions in these cantons in November 2018.

39. A campaign to raise awareness among medical staff was launched in 2018, with a view to improving identification of possible victims, in particular in emergency departments (see paragraph 65).

40. Awareness raising among the consular staff in Swiss diplomatic missions with a view to identifying potential victims of human trafficking and taking appropriate precautions is an integral part of the training curriculum of members of the consular staff. In 2018, Fedpol participated in the training of consular officials with a module on trafficking in human beings, which focused on visa applications.

41. The NGO ACT212 (Consulting and Training Centre against Human Trafficking and Sexual Exploitation) organised a training course under the title "Loverboy<sup>11</sup> - A Curious Name for a Brutal Business" on 21 September 2018 in Bern for experts in the fight against THB, teachers, psychologists, parents and other interested parties. The same training is planned to be delivered in French in November 2019.

42. **GRETA urges the Swiss authorities to devise and provide training programmes for labour inspectors and prosecutors dealing with labour exploitation cases.**

43. **Further, GRETA considers that the Swiss authorities should continue their efforts to ensure that comprehensive training programmes are organised in a systematic and harmonised way across Switzerland for all relevant officials, in particular police officers, prosecutors, judges, staff of victims support centres, officials dealing with asylum seekers and irregular migrants, child welfare staff, education staff and medical professionals. The relevance, effectiveness and reach of these programmes should be evaluated at sufficiently regular intervals.**

---

<sup>11</sup> A pimp who pretends to be in love with a girl or young woman and makes her dependent on him in order to force her into prostitution.

## 6. Data collection and research

44. In its first report, GRETA considered that the Swiss authorities should refine the existing data collection system on trafficking in human beings by compiling statistical information on measures to protect and promote the rights of victims from all main actors, including specialised NGOs, and allowing disaggregation, including by type of exploitation.

45. As explained in the first report, collecting statistical data on human trafficking in Switzerland falls within the remit of the Federal Office of Statistics (FSO). For this purpose, the cantonal police forces provide crime statistics on offences, perpetrators and victims, cantonal courts transmit statistics regarding convictions, and crime victim support centres provide statistics on victims of human trafficking who have benefited from support and assistance. Data taken from criminal police statistics can be disaggregated by sex, age, country of origin and nationality, but not by type of exploitation. The Unit against Trafficking in Persons and Smuggling of Migrants is responsible for analysing the collected data.

46. Victim assistance statistics contain data gathered by victim assistance centres according to the Victim Assistance Act, which are submitted to the FSO. Victims who contact specialised NGOs directly are not included in these statistics. It is unclear whether victims who are assisted by specialised NGOs with funding from cantonal victim assistance centres are included in the statistics.

47. Regarding police crime statistics, action 10 of the National Action Plan provides for an adaptation of the input method. According to the authorities, this will make it possible to disaggregate data on THB by type of exploitation from 2020 onwards.

48. Further, in reaction to GRETA's previous recommendations, action 11 of the National Action Plan foresees a modification of the statistics on victim assistance by including statistical data on the provision of assistance by NGOs. The FSO, which is the responsible agency for this action, has indicated that this necessitates the establishment of a list of specialised NGOs and would require an amendment to the order on the recording of federal statistics (RS 431.012.1). The authorities have referred to plans to carry out an evaluation of the statistics and revise them in collaboration with the Conference of Cantonal Directors of Social Affairs, without being in a position to specify the timeline.

49. **In order to create an evidence base for future policy measures, GRETA considers that the Swiss authorities should continue to develop and maintain a comprehensive and coherent statistical system on THB by compiling reliable statistical data from all main actors, including specialised NGOs, on measures to protect and promote the rights of victims, and allowing disaggregation concerning types of exploitation. 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.**

50. In its first report, GRETA considered that the Swiss authorities should conduct and support further research on THB in Switzerland, in particular with regard to trafficking for the purpose of labour exploitation, child trafficking, trends amongst vulnerable groups, including asylum seekers and irregular migrants, and internal trafficking.

51. A number of studies on trafficking in human beings and the exploitation of prostitution have been commissioned by the Swiss authorities in recent years. The Federal Office of Police commissioned the Swiss Forum for Migration and Population Studies of Neuchâtel University to carry out a qualitative study on the exploitation of labour in Switzerland in the context of trafficking in human beings.<sup>12</sup> The study, published in March 2016, and highlighted the economic sectors at risk, as well as the general characteristics of situations of exploitation (see paragraph 64). Another study commissioned by the Federal Police, entitled "The sex trade as a gateway to trafficking in human beings?", assessed the scale and structure of the sex work market in Switzerland and explored the links between prostitution and trafficking in human beings.<sup>13</sup>

52. Further, university studies and other academic publications are produced each year on the topic of THB, which contribute to increased knowledge on this subject. One piece of research analysed case law and the perspective of victims and persons in prostitution, trafficking in human beings and forced prostitution in Switzerland.<sup>14</sup> Another publication provided an overview of the links between trafficking in human beings and asylum.<sup>15</sup>

53. Moreover, the specialised legal review, ASYL, dedicated its issue 3/2018 to the linkages between THB and asylum. Articles addressed, *inter alia*, the situation of victims of THB for the purpose of labour exploitation in the asylum procedure, and the protection of victims of trafficking in the Dublin procedure.<sup>16</sup>

54. Under action 12 of the National Action Plan, a report on the exploitation of children in Switzerland has to be drawn up with a view to updating the information in the report produced by UNICEF on the subject in 2007. In May 2019, the Swiss authorities mandated the Swiss Centre of Competence for Human Rights (CSDH) to prepare an independent research on this issue. This research is being carried out by the University of Bern, which is part of the CSDH, and is due to be submitted to the authorities by the end of 2020 for publication.

**55. GRETA invites the Swiss authorities to conduct and support further research on THB-related issues as an important source of information on the impact of current policies, as well as a basis for informing future policy and measures. Areas where research is needed include internal trafficking, trafficking for the purpose of labour exploitation, child trafficking, trafficking for the purpose of forced begging and for exploitation of criminal activities, as well as the use of information and communication technologies for the purpose of committing THB, including online sexual abuse through live streaming.**

<sup>12</sup> J. Probst/ D. Efonayi-Mäder, *Exploitation du travail dans le contexte de la traite des êtres humains* (Exploitation of labour in the context of trafficking in human beings), Situation in Switzerland 2016; available at : <https://www.fedpol.admin.ch/dam/data/fedpol/aktuell/news/2016/2016-04-06/ber-sfm-menschenhandel-f.pdf> <https://www.fedpol.admin.ch/dam/data/fedpol/aktuell/news/2016/2016-04-06/ber-sfm-menschenhandel-d.pdf>.

<sup>13</sup> L. Biberstein/M. Killias, *Erotikbetriebe als Einfallstor für Menschenhandel? Eine Studie zu Ausmass und Struktur des Sexarbeitsmarktes in der Schweiz*, 2015; available (in German) at: <https://www.alexandria.unisg.ch/252621/>

<sup>14</sup> C. Baur-Mettler, *Menschenhandel und Zwangsprostitution in der Schweiz. Eine Analyse der Rechtsprechung und die Sicht betroffener Opfer und Prostituierte*, 2014, available at: <https://www.schulthess.com/verlag/detail/ISBN-9783725571055/Baur-Mettler-Caroline-Sarah/Menschenhandel-und-Zwangsprostitution-in-der-Schweiz?bpmlang=fr>

<sup>15</sup> N. Frei, *Menschenhandel und Asyl, Die Umsetzung der völkerrechtlichen Verpflichtungen zum Opferschutz im schweizerischen Asylverfahren* (Trafficking in Human Beings and Asylum, Implementation of international obligations for the protection of victims in the Swiss asylum procedure), 2018, available at: <https://www.nomos-shop.de/Frei-Menschenhandel-Asyl/productview.aspx?product=30361>

<sup>16</sup> N. Frei/A.-L. Graf-Brugère, *L'exploitation au travail en procédure d'asile : obligations positives et qualité de réfugié*, pp. 3-14; C. Hruschka, *Der Schutz von Menschenhandelsopfern in Dublin-Verfahren*, pp. 19-27, available at: <https://www.staempfliverlag.com/detail/ISBN-2270000219032//ASYL>

### III. Article-by-article findings

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

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

56. In its first report, GRETA noted that few awareness-raising measures had taken place in Switzerland, depending on the initiative of individual cantons, and considered that the Swiss authorities should carry out information and awareness-raising campaigns on different forms of THB, with a special attention to raising awareness of THB for the purpose of labour exploitation and child trafficking.

57. Action 2 of the National Action Plan provides for various awareness-raising initiatives aimed at the general public, co-ordinated by IOM Bern and aimed at informing the public about trafficking in human beings.<sup>17</sup> There is usually a mobilisation of awareness raising around the European Day against Human Trafficking (18 October), when counter-trafficking action weeks are organised and various events take place in different cantons with the participation of federal agencies, cantonal institutions, international organisations, members of civil society and universities. For example, with the support of 18 stakeholders involved in action against human trafficking in Switzerland, exhibitions, debates, film screenings, lectures, theatre plays, poster campaigns and other initiatives took place in October 2015 to draw public attention to the existence of trafficking in human beings in the country.

58. Further, from 17 October to 3 November 2017, for the third edition of the counter-trafficking weeks, 31 awareness-raising activities linked to 21 different events were run. One of the key messages focused on the diverse profiles of potential victims, who may be women, girls, men or boys. A special focus was placed on highlighting the existence of various forms of exploitation, in particular labour exploitation. Overall more than 1,700 people were reached directly.

59. On 18 October 2017, an "information bus" containing a mobile exhibition, aimed at raising public awareness of trafficking in human beings, was launched jointly by IOM Bern and the Mission against THB of the French-speaking cantons and Ticino (*Mission des cantons latins pour la lutte contre la traite des êtres humains*). The project received a grant from Fedpol (50% of the budget). Between October 2017 and December 2018, the information bus made 29 stops in 12 different cantons.<sup>18</sup> Passers-by were invited to visit the bus and find out more about the topic of human trafficking. The mobile exhibition in the bus presented information on human trafficking in Switzerland and globally. With the help of real stories, visitors could discover what human trafficking is, how to identify potential victims and who to contact in case of suspicion. An estimated 9,000 people were directly informed in this manner.<sup>19</sup> GRETA notes that different views were expressed by interlocutors throughout the visit as regards the effectiveness of the action and its impact.

60. According to information provided by the Swiss authorities, more than 90 media outlets reported on the topic of THB during the counter-trafficking weeks in 2017-2018.

61. The one-year project "Open your eyes: Counter-Trafficking Weeks and Information Bus" foresees the continuation of IOM Bern's prevention activities in 2019: the co-ordination of the fourth edition of counter-trafficking weeks and the continuation of the information bus, with a focus on schools (see paragraph 90) and embassies/community leaders. It is also planned that the bus visits cities and regions where no stop has been taking place before.

<sup>17</sup> Further information on the site [www.18oktober.ch/fr](http://www.18oktober.ch/fr)

<sup>18</sup> <https://www.18oktober.ch/en/bus-stops-2017-2018>

<sup>19</sup> A video was produced to summarise the results of the project, available at: <https://www.youtube.com/watch?v=dv2uCKp2VIA&feature=youtu.be> For more information, see the project website ([www.18oktober.ch](http://www.18oktober.ch)) and IOM Bern's website.



62. On 18 October 2018, IOM Bern organised a conference in Geneva on the topic “Digital technology: an unprecedented opportunity for the prevention of trafficking”, in co-operation with the Federal Department of Foreign Affairs. The main goal was to highlight the potential of information and communication technology in helping to prevent human trafficking, as well as to create an opportunity for multidisciplinary exchange and networking between key counter-trafficking stakeholders and private technology companies based in Switzerland or in other countries. At this conference, technical instruments specifically developed to raise awareness, report suspicions of THB and improve data collection were presented, including mobile apps, programming tools and forensic technology to facilitate identification, spotlights and aggregated databases, blockchain technology, and online referral systems. The conference was attended by 85 representatives of the diplomatic and international community, Swiss anti-trafficking experts and business representatives.

63. IOM Bern and the Federal Department of Foreign Affairs organised jointly on 24 June 2019 in Bern an international roundtable on “Addressing Human Trafficking and Exploitation in the Hospitality Sector”, bringing together government officials, international experts, NGOs and representatives of the hospitality sector.

64. In line with action 1 of the National Action Plan, a campaign to raise awareness among medical staff was launched in 2018 with a view to improving identification of THB situations and victims in the hospital environment (accident and emergency units).<sup>20</sup> Fedpol has produced materials (brochures, pocket cards and a short film) to be provided to the cantonal authorities, which are organising and funding the training.. The awareness-raising campaign for medical staff was presented to the heads of the cantonal round tables against trafficking in human beings at their annual meeting on 29 November 2018 and some cantons have planned to organise sessions on the campaign in 2019. GRETA stresses the importance of using this campaign to mainstream the knowledge through a policy-led approach.

65. During the visit, GRETA’s delegation met with several civil society organisations running awareness-raising campaigns and conducting trainings. For instance, the organisation Astrée, based in Lausanne (canton of Vaud), has established a close co-operation with the police, as well as with other institutions and NGOs which may be in contact with potential victims of trafficking and refer them to Astrée. In 2017, Astrée organised awareness-raising sessions for psychiatrists and interpreters working with migrants and held a workshop on detecting victims of trafficking as part of the trainings provided to the Swiss Organisation on Assistance to Refugees (OSAR).

66. The NGO ACT212, based in Bern runs a confidential helpline operating nationally, conducts training (see paragraph 121) and runs awareness-raising activities. ACT212 organised the screening of the documentary “Verliebt, verführt, verkauft” (In love, seduced, sold) about the “loverboy” *modus operandi*. According to the information received, such actions have resulted in family members, teachers and social workers calling the helpline about possible cases of human trafficking.

67. GRETA welcomes the awareness-raising activities undertaken in Switzerland, in co-operation with IOM, civil society and the business sector. Although the initiatives aim to cover the whole country, they rely on the co-operation of the cantons, which has been variable.

**68. GRETA invites the Swiss authorities to continue developing awareness-raising activities aimed at preventing human trafficking for different forms of exploitation, by involving civil society organisations and trade unions, and to plan future information and awareness-raising campaigns on the basis of previous research and impact assessment.**

---

20

<https://www.fedpol.admin.ch/fedpol/fr/home/kriminalitaet/menschenhandel/kampagne.html>

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

69. In its first report on Switzerland, GRETA considered that the Swiss authorities should strengthen their action against trafficking for the purpose of labour exploitation and involve trade unions in anti-trafficking action at the central and cantonal levels.

70. The National Action Plan for 2017-2020 includes measures specifically targeted at THB for the purpose of labour exploitation. Thus action 7 foresees the compiling and distribution of information materials (brochures) to raise awareness of THB among labour inspectorates (see paragraph 34).

71. Following the recommendation of the KSMM, the cantonal authorities responsible for supervising the labour market have been integrated in the cantonal roundtables for anti-trafficking co-operation. All the cantonal roundtables in French-speaking Switzerland and Ticino have done this. The situation varies from one canton to another in German-speaking Switzerland. For example, the round table of the canton of Bern has integrated labour inspection into its mechanism and has set up a specific working group on labour inspection processes. The study on the exploitation of labour in Switzerland in the context of THB commissioned by Fedpol, published in 2016 (see paragraph 51), calls for the systematic inclusion of labour inspectorates in the roundtables. However, the setting up and composition of cantonal roundtables for anti-trafficking co-operation are a matter for the cantons concerned. In order to promote good practices at cantonal level, the National Action Plan provides for an external study of the measures taken by the cantons to combat trafficking in human beings (action 25).

72. In the canton of Geneva, there is a working group of the cantonal roundtable devoted to labour exploitation, the membership of which includes the trade union SIT (*Syndicat interprofessionnel des travailleuses et travailleurs*). This enables the sharing of information amongst stakeholders, and there is well-established collaboration on the issue. There is also a group of four specially trained labour inspectors whose task is to train other inspectors. In the canton of Vaud, the labour inspectorate had formally joined the roundtable; according to the authorities, all labour inspectors in the canton had been sensitised through several information sessions, to improve their ability to detect potential cases of victims of trafficking for the purpose of labour exploitation.

73. Further, in the canton of St. Gallen, a working group on labour exploitation was set up, which is led by a public prosecutor and aims at introducing a new approach in the fight against THB for the purpose of labour exploitation, by sensitisation, training and networking of the relevant stakeholders. In the canton of Ticino, a centre of expertise dedicated specifically to prosecuting situations of labour exploitation was set up within the cantonal police in 2016.

74. There are three different groups of labour inspection bodies in Switzerland. First, there are the cantonal labour inspectorates, whose mandate is to check the application of the Labour Law (LTr; RS 822.11) and the regulations on the protection of health and safety at work. Second, there are cantonal agencies responsible for monitoring illegal work pursuant to the Law on Measures to Combat Illegal Labour (LTN; RS 822.41). They receive reports and check whether employers and employees comply with their obligations of declaration and authorisation arising under social insurance law, legislation on foreigners and law governing taxation at source. Third, there are inspection bodies under the Federal Law on Workers Posted from Foreign Countries (RS. 823.20). The Swiss authorities have stressed that cantonal labour inspectors are obliged to follow the application of labour legislation and health and safety regulations, and therefore THB does not form part of their competences. Labour inspectors who suspect a case of THB during an inspection should report this to their hierarchy or an independent internal body, so that the information can be forwarded to the competent authority. In practice, any observations relating to a potential exploitation situation will be transmitted to the police, either directly by the labour inspectors or by the management of their services. Combined labour controls are frequently carried out together with cantonal migration authorities, health control authorities and/or the cantonal police (see paragraph 126).

75. According to the database of the International Labour Organisation ILOSTAT, in 2015 Switzerland had a rate of 1.3 inspectors per 10 000 employed persons. The Swiss authorities have stated that the number of persons employed in labour inspection bodies in 2018 was 221 in the cantonal enforcement authorities, 56 in the State Secretariat for Economic Affairs (SECO), including inspectors and other employees in the field of working conditions, and 277 in the Swiss National Accident Insurance Fund (Suva). In 2018, the implementing bodies verified compliance with working and wage conditions among 173,000 people and in more than 42,000 companies in Switzerland. At national level, 7% of Swiss companies, 35% of posted workers and 31% of independent service providers were audited. For Swiss companies, the wage underbid rates recorded by the cantonal tripartite commissions (remained stable at 13% over the 2017-2018 period, as did the rates of violation of minimum wages recorded by the joint commissions in 2018, which amounted to 24%. On the other hand, rates fell among posted workers, from 16% to 15% of wage underbidding recorded by the cantonal tripartite commissions and from 25% to 21% of the rate of violations of minimum wages recorded by the joint commissions. The implementing bodies apply a risk-based control strategy, which means that the sectors most exposed to labour exploitation risks are more closely controlled. These include catering, construction and personnel placement companies. It also means that the wage underbidding rates and minimum wage violation rates thus calculated are therefore not representative of the overall labour market situation in Switzerland and must be interpreted with caution.

76. The activities of recruitment and temporary work agencies are regulated by the Law on Employment Services and Services Hiring (LSE) and the related orders and are subject to licensing. Support measures were introduced on 1 June 2004 to protect workers from the risks of undercutting Swiss pay rates and working conditions, and to guarantee that Swiss and foreign companies compete on the same terms. Under the Law on Workers Posted from Foreign Countries (RS 823.20),<sup>21</sup> foreign employers posting workers to Switzerland must comply with Swiss minimum pay and working conditions. Employers who infringe the mandatory provisions of this law are subject to sanctions imposed, ranging from warnings through administrative fines to a ban on the company from offering its services.

77. Further, the Swiss authorities have stressed that placement agencies must meet certain requirements to obtain a license to practice. In particular, the company must be entered in the Swiss Register of Trade, have suitable premises and not exercise any other professional activity that could be harmful to the interests of job seekers or employers. Placing agents are liable to a maximum fine of CHF 100,000 if they procure work for a person without having the necessary authorisation or place foreigners in work without complying with the stipulations of the law governing foreign labour (Article 39, paragraph 1, of the LSE). A client using the services of an unlicensed placing agent is liable to a maximum fine of CHF 40,000 (Article 39, paragraph 2, indent a, of the LSE). Directly placing someone from abroad in work in Switzerland is illegal and therefore punishable in criminal law, both for the foreign placing agent and their client in Switzerland. This means that a foreign placing agent recruiting workers for an employer in Switzerland must work with a placing agent licensed in Switzerland, in which case the partner licensed in Switzerland must guarantee a placement service complying with the rules of the profession. By making the end customer and the licensed partner placing agent liable, Swiss legislation on work placement also seeks to provide effective protection for job-seekers recruited abroad.

78. In 2012, the National Council's Committee on economic affairs and taxation decided to reinforce the existing level of joint liability in the Law on Workers Posted from Foreign Countries (RS 823.20) for the construction, civil engineering and finishing's sectors, so that contractors bear civil liability for subcontractors' failure to comply with minimum pay-rates and working conditions. This shared liability extends to all subcontractors in the contractual chain.<sup>22</sup> In line with a decision by Parliament, a report has been drawn up to evaluate the effectiveness of the joint liability rule, five years after its entry into force on 15 July 2013. The evaluation report, published on 20 June 2018, shows that this rule has achieved its aims: when contractor companies award construction jobs to subcontractors, they check that the latter comply with pay and working conditions.<sup>23</sup> According to the authorities, this reinforced joint liability has made companies take greater care when subcontracting work and is above all a deterrent to infringing provisions on wages on Swiss worksites.

79. Considering that migrant workers, particularly those whose stay is not regular, are a group vulnerable to trafficking, GRETA stressed in its first report the need for providing training and information to officials from cantonal authorities responsible for monitoring illegal work in order to detect possible victims of human trafficking and refer them to the competent authorities. In this respect, the authorities have referred to the Federal Law of 17 June 2005 on Measures to Combat Illegal Labour (LTN) and the order pertaining to that law, which provide for various measures to help enforce the obligations of declaration and authorisation related to labour arising under social insurance law, legislation on foreigners and fiscal law, particularly taxation at source. In particular, the law lays down the following measures: administrative relief for declarations to social insurance bodies and the tax authorities through the introduction of the simplified calculation procedure for very small-scale salaried activities; creation of cantonal monitoring bodies for combating illegal labour; communication of findings of checks between the authorities and the bodies concerned; creation of additional sanctions, such as exclusion from public tenders and a cut in public financial aid. When the LTN entered into force, the cantons created cantonal monitoring bodies for combating illegal labour, which receive reports and check whether companies comply with their obligations of declaration and authorisation arising under social insurance law, legislation on foreigners and the law governing taxation at source. They report any infringements they find to the authorities competent for matters regarding foreigners, social insurance and tax.

80. In its first report, GRETA referred to reported cases of domestic servitude in private households. The cantonal agencies responsible for monitoring illegal work can inspect private households but usually only do so when there are serious suspicions of irregularity. In Geneva, the competent agency has developed a standard form for inspecting households where domestic workers are employed in order to monitor working standards and also detect possible victims of trafficking. During the visit, GRETA's delegation was informed that two labour inspectors working with the trade union SIT in Geneva and in charge of domestic work have been specifically sensitised to the risks of trafficking in human beings. The domestic work sector is largely covered by SIT, which counts amongst its members about 1,000 persons who are recruited through direct contracts with their employers and not through agencies. Since 2003-2004, SIT has initiated work on the rights of undocumented persons, which has in turn allowed them to create ties with the community of domestic workers.

81. Further, on 21 June 2017, the Federal Council instructed the Federal Department of Economics, Training and Research to support the cantons in the development of a model to complement domestic workers' standard contracts, which provides for regulations on the remuneration of attendance times and contains other workers' rights, such as breaks, a day and a half of free time per week, and the right to Internet access. The cantons will examine the incorporation of these provisions into the standard employment contracts and decide on the next steps.

---

<sup>22</sup> The aims of joint liability are three-fold. Firstly, these regulations were intended to have a preventive effect, making contractors select their subcontractors with care. A second aim was to better combat abuses regarding working conditions and pay within the subcontracting chain in the construction industry, an area at risk in respect of trafficking in human beings. Thirdly, it was sought to enhance the competitiveness of companies complying with the stipulations of the law, by preventing unfair competition from companies not paying the minimum wage.

<sup>23</sup> Link to the Federal Council report: <https://www.news.admin.ch/news/message/attachments/52789.pdf>

82. Further, in order to reduce the vulnerability of migrant workers and the risk of domestic servitude taking place in private homes, consultation centres for undocumented migrants have been set up by NGOs in the cantons of Aargau, Basel-Stadt, Bern, Fribourg, Geneva, Lucerne, Ticino, Valais, Vaud and Zurich. A website and an information brochure published by the trade union UNIA and centres for undocumented migrants provide information and refer irregular migrants to the consultation centres.

83. As explained in the first report, the working conditions of domestic staff recruited abroad by members of the diplomatic community are regulated by the Order on the Conditions of Entry, Stay and Work of Domestic Workers for Persons Benefiting from Privileges, Immunity and Exemptions of 6 June 2011.<sup>24</sup> Employment contracts for domestic workers must follow a model contract and be signed before the person's arrival in Switzerland. Contracts are checked by consulate officials during an individual interview, which is obligatory to obtain a visa to enter Switzerland. During the interview, domestic workers are informed about their rights and obligations, as well as working standards and conditions. Once the domestic workers are in Switzerland, they meet officials from the Federal Department of Foreign Affairs, where they are informed of the possibility to contact the authorities in case of difficulties with their employers. During both interviews, officials must ensure that the workers have fully understood the terms of their work contract. They can turn to the Federal Department of Foreign Affairs or the Office of the Mediator (*Bureau de l'Amiable compositeur*) which has been set up in Geneva to resolve conflicts involving persons benefiting from diplomatic privileges and immunities. Nevertheless, NGOs reported that diplomatic employers find ways of not applying these directives by bringing domestic staff as alleged family members to Switzerland. Further, NGOs reported cases where the involvement of the Office of the Mediator was not successful.

84. GRETA stresses the need to create strong partnerships with the private sector in order to increase action against trafficking for the purpose of forced labour (see also paragraph 108).

85. While welcoming the legislative and practical steps already taken, **GRETA considers that the Swiss authorities should take further steps to prevent THB for the purpose of labour exploitation, in particular through:**

- **raising awareness amongst the general public as well as amongst migrant workers about the risks of THB for the purpose of labour exploitation;**
- **sensitising all relevant professionals, including labour inspectors, staff of other inspecting agencies, law enforcement officers, prosecutors and judges, on THB for the purpose of labour exploitation and the rights of victims of such exploitation;**
- **establishing effective mechanisms to allow irregularly present migrant workers to lodge complaints in respect of labour standards against employers and obtain effective remedies without the risk of the sharing of their personal data or other information with immigration authorities for the purposes of immigration control and enforcement.**

86. **Further, GRETA urges the Swiss authorities to broaden the mandate of labour inspectors to cover the detection of cases of THB and to build their capacity in this respect (see also paragraph 139).**

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

87. In its first report, GRETA recommended that the Swiss authorities carry out information and awareness-raising campaigns on different forms of THB, with special attention being paid to child trafficking.

---

<sup>24</sup> See paragraph 112 of GRETA's first report on Switzerland

88. According to the authorities, the Swiss context, particularly the very low number of trafficking cases involving children, as well as the fact that child victims are nearly always of migrant origin, does not require systematic awareness raising in Swiss schools of the dangers of THB. However, the specific problem of victims of "loverboys" is taken seriously by the Swiss authorities, given the scale of this phenomenon in Europe. Targeted awareness-raising and prevention measures are being looked at, but one difficulty is the lack of information on the scale and characteristics of the phenomenon in Switzerland (see also paragraph 66).

89. In several cantons, the child and adult protection services are members of the roundtables for anti-trafficking co-operation and take part in awareness-raising initiatives organised by the cantonal round tables, as well as training courses organised by the KSMM and the Mission against THB of the French-speaking cantons and Ticino, one example being the Children Protection Service of the canton of Geneva. Interdisciplinary training courses on trafficking in human beings organised in French-speaking Switzerland are aimed at all professionals dealing with THB, including professionals working with children. Participation in this training is voluntary.

90. The previously mentioned information bus includes an information corner and a movie on child trafficking in Switzerland. Following successful experiences made with the information bus at universities, high schools and professional schools, IOM Bern and its partners decided to engage in a new phase of the bus project in 2019, with a specific focus placed on awareness-raising at schools for children aged 15 and over). In addition, in the framework of the counter-trafficking weeks 2019, a graphic competition on the topic of labour exploitation has been launched by IOM Bern, under the title "Art against human trafficking". The contest targets specifically students (15 years old and older).<sup>25</sup>

91. The Conference of Cantonal Directors for Social Affairs, which is comprised of representatives of the social departments of all cantons, has produced recommendations on unaccompanied children in the asylum system, underlining the importance of sensitising and training all persons in contact with such children and raising awareness amongst the children themselves to the risks of trafficking. It is further recommended to take measures and create structures ensuring the prevention of trafficking and the disappearance of unaccompanied children.<sup>26</sup>

92. GRETA is concerned by reports about the situation at the southern border of Switzerland (Como-Chiasso), notably in the summer months of 2016. According to civil society reports, 4,649 unaccompanied children were transferred to foreign authorities in 2016 without proper procedures being followed and without having been appointed a legal guardian for the procedure. Dozens of unaccompanied children were also sent back to Italy immediately, without the appointment of a legal guardian, because they were assumed to have made false statements about their age and to have claimed to be younger in order to receive special assistance. In some cases, the unaccompanied children were not permitted to ask for asylum in Switzerland, on the basis that, according to by border guards, some of them had already been at the Swiss border check point before and did not want to ask for asylum in the first place, but to move onwards to Germany, which made their later asylum claims implausible. Other sources describe similar situations of children being returned to Italy without having had access to an interpreter or any form of assistance, under a bilateral agreement signed in Rome in 1998, and in spite of their express wish to claim asylum in Switzerland.<sup>27</sup> Concerns have also been raised about the situation at the border in Brig, considering the lack of adequate accommodation for unaccompanied children. The Swiss authorities have indicated that of the 4,649 children in question, less than half were unaccompanied children and more than 40% indicated that they were over 17 years of age. According to the authorities, in case of language problems, the national telephone translation service of the Federal Office of Health is used.

93. According to Article 64, paragraph 4, of the Foreigners Act, the competent cantonal authorities shall immediately appoint a representative for any unaccompanied foreign child to safeguard his/her

<sup>25</sup> <https://www.18oktober.ch/en/competition>

<sup>26</sup> [http://www.sodk.ch/fileadmin/user\\_upload/Aktuell/Empfehlungen/2016.05.20\\_MNA-Empf\\_sw\\_f.pdf](http://www.sodk.ch/fileadmin/user_upload/Aktuell/Empfehlungen/2016.05.20_MNA-Empf_sw_f.pdf)

<sup>27</sup> [https://www.swissinfo.ch/fre/rapport-d-intersos\\_pour-les-migrants-mineurs--c-est-le-jeu-de-l-oie/43867134](https://www.swissinfo.ch/fre/rapport-d-intersos_pour-les-migrants-mineurs--c-est-le-jeu-de-l-oie/43867134)

interests during the removal proceedings. However, GRETA was informed that the Swiss border guards experience difficulties in securing the appointment of such a representative, in particular in the canton of Ticino.

94. Furthermore, as per the SEM statistics, there were 556 “unchecked departures” of children in Switzerland in 2017. According to information shared with GRETA by civil society organisations, these cases concern mostly Eritrean children, due to the tightening of migration regulations towards Eritreans. Some of them reappear in Germany or in other European countries, while others remain missing. The fear of extradition and the inability to legally continue their journey to another European country to join family members leads many to go underground, where they are exposed to risks of abuse and trafficking. The Swiss authorities have stressed that the protection of unaccompanied children has been strengthened with the entry into force of the new asylum procedure on 1 March 2019 and that such children are systematically assigned a trusted person, also acting as legal representative, from the beginning of the procedure. The migration authorities are reportedly not aware of any cases of children identified as victims of trafficking in human beings who have disappeared.

95. **GRETA urges the Swiss authorities to strengthen efforts to prevent trafficking of unaccompanied or separated children by addressing the problem of such children going missing, in particular by providing suitable safe accommodation and adequate supervision, as well as systematically carrying out police investigations into disappearances of unaccompanied and separated children and strengthening follow up and alert systems on reports of missing children.**

96. **Further, GRETA considers that the Swiss authorities should take further measures to prevent trafficking in children, in particular by:**

- **raising public awareness about the risks and different manifestations of child trafficking (including exploitation of begging, forced criminality and early, child and forced marriages);**
- **sensitising and training teachers, educational staff and child welfare and health-care professionals across the country about THB and its different forms, and ensuring that sensitisation programmes on the matter of THB are put in place in schools;**
- **mainstreaming the prevention of trafficking in the training of all staff working with unaccompanied and separated children, ensuring the best interests of the child;**
- **integrating the prevention of THB in training on online safety.**

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

97. GRETA notes that while trafficking in human beings 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>28</sup> are distinct crimes, they 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>29</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 THB.

98. The Swiss authorities have taken legislative measures to prevent THB for the purpose of removal of organs through legislation and regulations on organ transplantations and removal of organs, including requirements for the living donation procedure (information/consent, evaluation/selection, follow-up and registry) and criteria for authorising centres for living donation. These include the Law on Transplantation (RS 810.21)<sup>30</sup> and the Order on Transplantation (RS 810.211.31). According to Article 27 of the Law on Transplantation, only transplantation centres authorised by the Federal Office of Public Health (OFSP) are allowed to transplant organs and no permission is required for those centres. However, organ removal is subject to an obligation to report to the OFSP.

99. In accordance with the Order on Transplantation, the service responsible for monitoring living organ donors is the Swiss Organ Living-Donor Health Registry and the one monitoring recipients is the Swiss Transplant Cohort Study. The waiting list is monitored by the National allocation service (Swisstransplant) as per Article 19 of the Law on Transplantation.

100. Further, guidance to relevant professionals is provided through the 2008 Directives of the Swiss Academy of Medical Sciences on Donation of solid organs by living persons.

101. On 10 November 2016, Switzerland signed the Council of Europe Convention against Trafficking in Human Organs (CETS No. 216) and is preparing to ratify it.

**102. GRETA considers that the Swiss authorities should ensure that health-care professionals and hospital administrations involved in the transplantation of organs, as well as other relevant professionals, are made aware of the indicators of trafficking for the purpose of organ removal and are given instructions on how to deal with such cases.**

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

103. In its first report, GRETA considered that the Swiss authorities should continue their efforts to discourage demand for services of trafficked persons, for all forms of exploitation, in partnership with NGOs, trade unions, international organisations and the private sector, bearing in mind that such measures should be balanced and not lead to the criminalisation of victims of trafficking.

<sup>28</sup> Opened for signature in Santiago de Compostela on 25 March 2015.

<sup>29</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.

<sup>30</sup> In particular Articles 12 to 15c (provisions governing organ removal and monitoring of donors), Articles 16 to 23 (provisions governing the allocation of organs) and Articles 24 to 29 (reporting obligations and rules for authorisation).

<sup>31</sup> Articles 9 to 12f and 15a to 15c.



104. The awareness-raising activities referred to in paragraphs 57-59 had as one of their aims to discourage demand. Through documentations, videos, flyers and exhibitions, which explain the elements of trafficking and illustrate them with stories of victims of different forms of exploitation, the campaigns contribute to discouraging demand by sensitising the general public to the situations of persons whose services they may seek.<sup>32</sup> Further, a website has been set up informing clients of prostitution of signs that should raise suspicion of human trafficking and how to react.<sup>33</sup>

105. On 9 December 2016, the Federal Council adopted a report outlining a National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights.<sup>34</sup> It aims, *inter alia*, to improve consistency and synergies between the human rights-based fight against human trafficking and the UNGP, and includes support to the independent policy dialogue being conducted by the UN Special Rapporteur on trafficking in persons, especially women and children, in order to prevent the risk of human trafficking in value chains.<sup>35</sup> As part of the implementation of this plan, the State Secretariat for Economic Affairs and the Federal Department of Foreign Affairs published a brochure for Swiss small and medium enterprises in May 2019, giving them a practical overview of the opportunities and challenges of responsible business management and providing international and national guidelines on how to integrate human rights issues into business management.

106. In line with action 6 of the National Action Plan for 2017-2020, the topic of trafficking in human beings will be tackled with umbrella associations representing the business sector and big companies at events focusing on business and human rights.

107. In the process of public tender awards by the Confederation, bidders must comply with stipulations regarding the protection of workers and working conditions and guarantee equal pay for women and men. There are also provisions of this type in cantonal laws. The Order on Public Tenders states, *inter alia*, that if the service is provided abroad, the tenderer shall comply with at least the basic conventions of the ILO, which include action against forced labour (Article 7, paragraph 2, OMP, RS 172.056.11).

108. **GRETA considers that the Swiss authorities should adopt and strengthen legislative, administrative, educational, social, cultural or other measures to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with civil society, trade unions and the media, including by:**

- **implementing educational programmes at schools, stressing the importance of gender equality and respect for the dignity and integrity of every human being and the consequences of gender-based discrimination;**
- **highlighting the risks of trafficking and other forms of sexual and gender-based violence linked to prostitution, and strengthening awareness-raising campaigns of such risks, targeted at men and boys in particular;**
- **raising awareness of the responsibility and the important role of the media and advertising in tackling demand which leads to human trafficking;**
- **setting up programmes supporting persons who want to leave prostitution;**

<sup>32</sup> <https://www.18oktober.ch/en/counter-trafficking-weeks>

<sup>33</sup> <http://www.verantwortlicherfreier.ch/en/index.html>

<sup>34</sup> <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-64884.html>

<sup>35</sup> <https://www.newsd.admin.ch/newsd/message/attachments/48579.pdf>

- **working closely with trade unions, civil society and the private sector to raise awareness of trafficking for the purpose of labour exploitation, prevent trafficking in supply chains and strengthen corporate social responsibility, drawing on the Guiding Principles on Business and Human Rights<sup>36</sup> and Recommendation CM/Rec(2016)3 on human rights and business.<sup>37</sup>**

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

109. In its first report, GRETA invited the Swiss authorities to continue their efforts towards the detection of THB cases in the context of border controls through the involvement of the Border Guard Corps in anti-trafficking action and co-operation with neighbouring countries.

110. As explained in GRETA's first report, Swiss representations refuse visas where there are reasonable grounds to believe that a person is a victim of THB or involved in THB. An examination of the applicant's social and financial background is carried out if they come from a country that is particularly at risk. In parallel, if there are any suspicions regarding a person receiving entrants in Switzerland, the competent authorities examine the situation of that person to ascertain whether there is any risk of participation, be it direct or indirect, in trafficking in human beings.

111. The authorities have pointed out that the possibilities of identifying the victims or perpetrators of trafficking in human beings at the border are very limited, partly because it is legal to enter Switzerland in order to engage in prostitution and partly because the potential victims may not yet be in a situation of exploitation when crossing the border or do not yet know what awaits them. A series of border control measures have nonetheless been taken to prevent THB through border control measures. For instance, cantonal police officers at the Schengen external border at Zurich Airport are trained to spot unusual or suspect behaviour. The replies given by persons entering Swiss territory at the first line of control undergo a credibility assessment and where there are inconsistencies, in-depth clarification is undertaken at the second line of checks. Perpetrators can be identified through entries made in the different computerised search systems (RIPOL/SIS) or the internal system (Greko NG). In addition, special actions may be undertaken, depending on the situation and risk analysis.

112. Reference is made to paragraph 92 concerning unaccompanied children being transferred to foreign authorities when entering through the Southern border with Italy. An important development concerning the Southern border with Italy is the entry into force of the police and customs co-operation agreement with Italy on 1 November 2016, defining the framework for co-operation, also covering trafficking in human beings and migrant smuggling and paving the way for numerous forms of co-operation, including in the sphere of passports and other travel documents, visas and entry and exit stamps in order to identify fake documents. An interagency group for the counteracting people smugglers, made up of the Ticino Cantonal Police, the Federal Police, the Border Guards and officials from Germany and Italy, was set up in 2015 and adjusted in January 2018, following the drop in the number of migrants. At present, 100% of the operational side of this group is handled by Ticino Cantonal Police staff (TESEU-GIRP Section). The TESEU Section is part of the Criminal Investigations Police and deals with trafficking in human beings for the purposes of sexual exploitation and exploitation of labour, as well as the smuggling of migrants, particularly at Chiasso. The section is also responsible for administrative checks and the prosecution of offences linked to prostitution.

<sup>36</sup> [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

<sup>37</sup> Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on human rights and business, adopted by the Committee of Ministers on 2 March 2016 at the 1249th meeting of the Ministers' Deputies.

113. The Swiss authorities also participate in FRONTEX transborder operations. Profiling and risk analysis are performed by a specialised airport police unit on the basis of passenger data before planes land. If there are anomalies or anything pointing to illegal migration, migrant smuggling, trafficking in human beings or drug trafficking, additional checks or surveillance measures are put in place.

114. On 27 June 2018, an international round table was organised by the Federal Department of Foreign Affairs and IOM Bern, together with cantonal and federal stakeholders, to discuss the identification of victims by ground staff and airlines.<sup>38</sup> It resulted in the formulation of concrete recommendations targeting airlines and the aviation sector, as well as the establishment of a referral mechanisms at Zurich Airport. As a follow up to the roundtable, SWISS International Air Lines created a Task Force to explore the feasibility of implementing awareness-raising of its staff.

115. The possibilities, procedures and legal provisions for legal migration to Switzerland depend on whether the person migrating comes from a European country covered by the Agreement on the Free Movement of Persons signed by Switzerland and the European Union or from a third country. For nationals of countries covered by the this agreement wishing to migrate to Switzerland with a view to engaging in gainful activity, the free movement of persons encompasses the right to enter Switzerland, stay, gain access to employment or set up as a freelancer.<sup>39</sup> Nationals of third countries may be admitted with a view to engaging in gainful activity on condition that their admission serves the economic interests of Switzerland, their Swiss employer has submitted an application or, in the case of freelancers, financial conditions and requirements governing the running of a business are met and the requirements laid down in Articles 20 to 25 of the Law on Foreigners are fulfilled. The permission granted is subject to an annual quota.

116. **GRETA invites the Swiss authorities to continue their efforts to detect and prevent THB through border control measures, including by:**

- **continuing to build the capacity of all competent authorities to detect indicators of THB among persons arriving in Switzerland and to ensure prompt and effective access to assistance and protection;**
- **provision of information to foreign nationals seeking asylum or arriving irregularly, in a language that they can understand, about the risks of THB, their rights and where to receive advice and legal assistance. In this context, GRETA refers to the United Nations Office of the High Commissioner for Human Rights (OHCHR) 2014 Recommended Principles and Guidelines on Human Rights at International Borders.<sup>40</sup>**

<sup>38</sup> "How can aviation contribute to combatting human trafficking?", available at: <https://rm.coe.int/annexe-7-international-round-table-zurich-airport-27-06-2018-eng/16808e2c8f>

<sup>39</sup> For an overview of arrangements for the free movement of persons with the EU, see the SEM factsheet: <https://www.sem.admin.ch/dam/data/sem/eu/fza/personenfreizuegigkeit/factsheets/fs-uebersicht-fza-f.pdf>

<sup>40</sup> [http://www.ohchr.org/Documents/Issues/Migration/OHCHR\\_Recommended\\_Principles\\_Guidelines.pdf](http://www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf)

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

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

117. In its first report, GRETA urged the Swiss authorities to ensure that all victims of trafficking are properly identified, in particular by ensuring that a formalised victim identification procedure, including common indicators and tools, is applied throughout the country, and by strengthening the identification of victims of trafficking amongst migrant workers and asylum seekers.

118. There is no centralised process for the formalised identification of victims of THB in Switzerland. Anti-trafficking action, including the identification of victims, is organised at the cantonal level. In most cantons, cantonal roundtables act as victim referral mechanisms and a presumed victim of THB may be reported by any member of the roundtable (police, prosecutors, victim assistance services and NGOs). Relevant professionals who come across indicators of trafficking are instructed to refer presumed victims to specialised assistance services which are managed within the framework of cantonal anti-trafficking co-operation mechanisms. Decisions regarding identification are taken by the competent cantonal authorities participating in the roundtables. However, as noted previously, in eight cantons there are still no roundtables on THB and therefore the approach to victim identification remains fragmented.

119. A list of indicators for trafficking has been drawn up within the framework of the KSMM and has been distributed to all cantonal anti-trafficking roundtables. It is also used by those federal services that may come into contact with trafficking victims. The Swiss authorities have indicated that the revision of the list of indicators was completed in April 2019, but the new list needs to be approved by Fedpol and translated into the different national languages.

120. Under action 14 of the National Action Plan, it is foreseen to develop guidelines and procedures concerning the identification of human trafficking victims by the police within the framework of multidisciplinary co-operation. It is planned that a working group set up by the Conference of the Cantonal Police Commanders of Switzerland will devise an instrument setting out best practices, backed up by examples (see paragraph 20). The Swiss authorities informed GRETA that a survey was carried out in all Swiss cantons, as part of the thesis of a student from the University of Bern, in collaboration with the cantonal police and the police of the city of Zurich and with the participation of NGOs, in order to map good practices in the identification of victims of THB by the police. This research will be used to prepare guidelines which should contribute to the harmonisation of practices in the identification of victims of THB between cantons.

121. As noted in GRETA's first report, a telephone line providing information to victims of human trafficking (0800 20 80 20) is run by the legal service of the Protestant Social Centre (CSP) in Geneva, with support from private funds, covering the canton of Geneva, as well as the French-speaking part of Switzerland. A cantonal information campaign publicising the helpline took place during nine months in 2017-2018. According to the CSP, the information campaign led to an increase in the number of calls received. In 2015, the Bern-based ACT212 founded a similar hotline (0840 212 212), which operates nationwide. ACT212 has also observed an increase in calls made to the hotline following campaigns and conferences.

122. In some cantons the police has units specially tasked with preventing and analysing prostitution (*Milieuauflklärung*). Where the situation allows, targeted efforts are made to speak to vulnerable persons to inform them of possibilities that exist as regards assistance for victims and criminal prosecution. In some cantons, this task is contractually assigned to specialised NGOs. In Zurich, the specialised Police Service against Human Trafficking, comprising two officers, regularly visits places where prostitution takes place. In addition, the team includes two officers for victims' assistance, three investigators and three support officers for telecommunications surveillance. Similar police units exist in other cantons, including Vaud (CIPRO) and Geneva (*Brigade de lutte contre la traite et la prostitution illicite*).

123. The issue of identification of victims of trafficking for the purpose of labour exploitation was addressed in a study on labour exploitation commissioned under the first National Action Plan (see paragraph 51). The study researched four cantons (Bern, Geneva, Ticino and Zurich), and identified certain risk sectors. The construction sector was found to present the highest risk in all four cantons, with a particularly large number of cases in Zurich. Another sector at risk is the catering and hotel sector. Exploitation in domestic service was mostly reported in the canton of Geneva. Exploitation also reportedly occurs in the agricultural sector, albeit to a lesser extent. The authors concluded that few measures exist to combat trafficking for labour exploitation in Switzerland. The experts interviewed by the researchers considered that co-operation with the labour market authorities and social partners should be strengthened, since they are in the best position to detect exploitation. According to the study, those interviewed emphasised that developing a proper strategy at cantonal level for combating trafficking for the purpose of labour exploitation depends on the commitment of key players within public administration and NGOs, expertise of public prosecutors, police officers and victim assistance services, as well as the availability of resources and political will. Other recommendations included strengthening co-operation and networking between various players, further training, and developing a list of indicators to help identify possible victims.

124. In the current National Action Plan, some measures are specifically targeted at THB for the purpose of labour exploitation. Action 9 envisages the development of guidelines on the identification of situations of human trafficking for the purpose of labour exploitation.

125. The integration of the agencies tasked with inspecting the labour market in the cantonal roundtables has been recommended by the KSMM. As noted in paragraph 71, the French-speaking cantons and Ticino have already done so, but the situation varies in the German-speaking cantons. GRETA notes that all labour inspection agencies can come across victims of trafficking and should be involved in the cantonal anti-trafficking roundtables. GRETA also stresses the importance of providing training to inspectors monitoring illegal work in order to detect possible victims of human trafficking and refer them to the competent authorities. As noted in paragraph 74, THB does not form part of the competences of labour inspectors and there are no statistics on presumed victims of THB identified by labour inspectors.

126. In the canton of Bern, joint checks are carried out by the police, the migration authorities and the labour inspectorate. This means that the situation of an undocumented migrant worker will not be examined solely in the light of the regulations governing their presence in the country and with regard to labour law, but also in the light of whether they may have been victims of criminal offences (such as loan-sharking or trafficking in human beings). By way of example, the authorities referred to controls carried out in hairdressing salons in Bern in the spring of 2018, during which abuses were found with regard to employment contracts and precarious employment relationships.<sup>41</sup> The results of the inspections led to similar inspections taking place in Zurich and Winterthur. In the canton of Basel City, the government has decided to make the fight against trafficking in human beings one of the three strategic priorities in the fight against crime. In 2017, a new task force was set up to reinforce the fight against THB and its members received training.

---

41

[https://www.srf.ch/news/p/polizeirazzien-gegen-coiffeure-in-bern?ns\\_source=srf\\_app](https://www.srf.ch/news/p/polizeirazzien-gegen-coiffeure-in-bern?ns_source=srf_app)

127. A process was devised under the AGORA concept for identifying organised and forced begging in 2011. According to the authorities, the AGORA concept was recommended in the same year as a best practice for application throughout Switzerland by the Swiss Union of Cities and Towns.<sup>42</sup> The Swiss authorities informed GRETA that training on the AGORA concept was provided in Bern City in 2018.

128. In its first report, GRETA urged the Swiss authorities to ensure the identification of victims of trafficking amongst migrant workers and asylum seekers. According to the authorities, the State Secretariat for Migration (SEM) has pursued its efforts to identify potential trafficking victims among asylum seekers, and the numbers of such cases have increased. However, the Swiss authorities have stressed that the SEM does not conduct formal identification of victims of THB and limits itself to detecting possible victims on the basis of their allegations, referring them to the criminal investigation authorities, LAVI counselling centres and specialised organisations. According to statistics provided by the SEM, 84 presumed victims of trafficking were detected among asylum seekers in 2014, 32 in 2015, 73 in 2016, and 100 in 2017. In the Dublin procedure, 19 presumed victims were detected in 2014, 17 in 2015, 34 in 2016 and 41 in 2017.

129. The GRETA delegation visited the federal reception centre for asylum seekers in Boudry which has been a test centre for the new asylum procedure since 2018. Accelerated, extended and Dublin procedures are processed in this centre. Persons awaiting removal are held in a separate centre at Boudry. At the time of the visit, the centre was accommodating 120 persons for a capacity of 250. It was indicated that after the end of the on-going refurbishment, the total capacity would be increased to 480 and one of the buildings would be set aside for accommodating particularly vulnerable persons, including victims of trafficking, who would be provided with specialised assistance. The reception centre is run by a private company, and although training is provided to its staff, it is not clear whether it has covered trafficking in human beings. An NGO mandated to provide legal assistance to asylum seekers, Caritas, visits the reception centres. The GRETA delegation met two officials serving as focal points on trafficking in human beings, one as part of the asylum procedure and the other for the Dublin procedure. These focal points ensure co-ordination between the various actors in the reception centre and the SEM. Within the framework of the asylum process, eight victims of trafficking in human beings had been identified in the eight months preceding GRETA's visit, all of whom were women trafficked for the purpose of sexual exploitation. It was explained that sensitive cases are screened by observing the list of arrivals, taking into consideration, *inter alia*, gender, age and nationality of the persons.

130. GRETA was informed by NGOs of cases in which victims of THB were not identified in the asylum process and received a negative decision regarding their asylum application. They remained in Switzerland as irregular migrants and subsequently came to the attention of outreach work organisations after having experienced further exploitation in Switzerland. The lack of early identification mechanism gives rise to GRETA's concern, since it reduces the possibilities for victims of trafficking to benefit from timely support in the asylum process, both with regard to procedure and reception conditions.

131. Under the lead of the SEM, a working group on asylum and human trafficking set up pursuant to action 19 of the National Action Plan (see paragraph 20) was tasked with drawing up proposals for ensuring that victims of THB are identified and receive assistance within the asylum procedure. The working group is supposed to address the following issues: regulation of human trafficking victims' stay in Switzerland under the Asylum Act and the Federal Law on Foreigners; optimising existing processes concerning victim identification, victim assistance, information to applicants and co-operation with stakeholders; dealing with victims of THB in the context of the Dublin procedure; and dealing with unaccompanied foreign children. The Swiss authorities have informed GRETA that since the beginning of 2019, two sessions of the working group have been organised. The working group has drawn up general recommendations on the above-mentioned issues and is currently working on proposing of concrete solutions for their application, in accordance with Switzerland's international legal obligations.

42

[https://uniondesvilles.ch/cmsfiles/Traite%20de%20mineurs%20\(01013\)\\_2.pdf](https://uniondesvilles.ch/cmsfiles/Traite%20de%20mineurs%20(01013)_2.pdf)

132. GRETA notes that on 28 July 2016 the Federal Administrative Court of Switzerland handed down an important judgement on the credibility assessment of victims of trafficking in the asylum procedure and the positive obligations of the authorities to identify victims of trafficking.<sup>43</sup> In the case of the planned deportation of a Nigerian woman who claimed to be a victim of trafficking and had a number of health problems, the Court noted that, in the asylum procedure, victims of THB would often be accused of a lack of credibility because they make contradictory statements. It referred to a decision of the European Court of Human Rights which had stated that untrue statements in earlier proceedings constituted a typical testimony of victims of human trafficking and therefore should not automatically lead to the assumption that the subsequent human trafficking allegations were unreliable.<sup>44</sup> The Court found that the establishment of the facts by the SEM had been deficient, in violation of the obligations under international law and the case-law of the European Court of Human Rights under Article 4 of the European Convention on Human Rights, and asked the SEM to reassess the case, taking into account the requirements of Article 10, paragraph 2, of the Council of Europe Convention on Action against Trafficking in Human Beings. The Swiss authorities have informed GRETA that the principles established in this judgment were taken into account by the working group on asylum and THB in the preparation of its recommendations. New SEM employees are sensitised, as part of their basic and continuous training, of the particularities of asylum applications submitted by victims of torture and trauma. Persons responsible for interviewing potential victims are trained on the use of specific questioning techniques adapted to the profile of the asylum seeker. The requirements when conducting the credibility assessment are weighted according to the profile of the person interviewed.

133. As noted in paragraph 15, the new asylum procedure provides that all asylum seekers are entitled from the outset of the procedure to free legal representation, as soon as they arrive at a federal asylum centre. This service is provided by NGO lawyers selected through a tender procedure. The legal representatives are involved in all stages of the asylum procedure, take part in all hearings and represent the asylum seeker in the event of a complaint. Officials and civil society representatives met by the GRETA delegation considered that the revised asylum procedure provides for better possibilities for victims of trafficking to be identified at an early stage, thanks to the availability of free legal assistance from the very beginning of the asylum procedure. The new procedure is also an opportunity to establish new centralised processes and train all actors involved, which could further facilitate proactive detection at an early stage. On the other hand, interlocutors noted that the shorter time frame for asylum determination means that there may be too little time to build trust with vulnerable persons, especially due to the lack of interpreters and cultural mediators.

134. GRETA expressed concerns in its first report about the application of the Dublin Regulation<sup>45</sup> to presumed victims of THB.<sup>46</sup> The Directives on the Law on Foreigners, a policy document issued by the State Secretariat for Migration on the implementation of this law, stipulate in paragraph 5.7.4. that if an asylum seeker becomes a victim of trafficking in Switzerland while the Dublin Regulation procedure is ongoing, the criminal proceedings and Dublin procedure will run concurrently. This means that the person will be returned to the country where he or she was first registered, in accordance with the Dublin Regulation, if the requirements for this return are met. A special visa will be issued to enable the person concerned to return to Switzerland in order to participate in the criminal proceedings. According to the authorities, if the person claims to be a victim of trafficking, Switzerland will inform the state responding to the Dublin request that the person is a potential victim of trafficking.

<sup>43</sup> FAC, D-6806/2013 of 18 July 2016, available at: [https://www.refworld.org/cases,CHE\\_TFS,58b410254.html](https://www.refworld.org/cases,CHE_TFS,58b410254.html)

<sup>44</sup> European Court of Human Rights, *L.O. v. France*, decision of 26 May 2015, para.31, available at: <http://hudoc.echr.coe.int/eng/?i=001-155655>

<sup>45</sup> Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Dublin III Regulation). The Dublin III Regulation has been applied by Switzerland since 1 January 2014, replacing the Dublin II Regulation in force until then.

<sup>46</sup> See paragraph 123 of GRETA's first report on Switzerland.

135. GRETA notes that in a judgment of 14 February 2019, the Federal Supreme Court of Switzerland upheld the appeal of a woman from Kenya who had become a victim of THB in Switzerland and had been refused a short-term residence permit for the duration of the relevant investigation and criminal proceedings.<sup>47</sup> The Court concluded that the woman concerned should have been issued with a short-stay permit, referring to Article 14(1)(b) of the Council of Europe Convention on Action against Trafficking in Human Beings. The Federal Supreme Court dismissed the lower court's view that the woman could return to Switzerland if necessary for the purpose of the criminal proceedings after her return to Italy under the Dublin procedure, noting that this approach is incompatible with the needs of an effective prosecution.

136. GRETA stresses that the application of the Dublin procedure to victims of trafficking runs contrary to the obligation to assist and protect such victims. In cases where the first interview with an asylum seeker reveals that another state is responsible for the asylum request, the transfer of the person to this state is often arranged so quickly that potential victims of THB go unnoticed. Specialised NGOs noted that there was a lack of co-ordination with them before returning victims of THB. GRETA recalls that Article 10, paragraph 2, of the Convention stipulating that if the competent authorities have reasonable grounds to believe that a person has been a victim of trafficking in human beings, that person shall not be removed from its territory until the identification process has been completed by the competent authorities. GRETA once again stresses the state's obligation to identify victims of trafficking among asylum seekers who are subject to the Dublin Regulation procedure, in order to avoid any risk of reprisals from traffickers or re-trafficking and to ensure that the State's obligations to provide a recovery and reflection period, assistance and protection to victims in accordance with Articles 12 and 13 of the Convention, are fulfilled. In this context, GRETA notes that Article 17.1 of the Dublin Regulation III permits States to unilaterally take responsibility for the determination of an asylum claim, even where the objective responsibility criteria allow for a request to be submitted to another Member State of the EU.

137. GRETA welcomes the ongoing work on improving the identification of victims of trafficking, linked to several actions of the National Action Plan, and the progress made by the working group on asylum and THB.

138. Taking into account the activities of the working group on asylum and THB, **GRETA considers that the Swiss authorities should ensure that:**

- **increased attention is paid to the proactive detection of victims of trafficking among asylum seekers and persons placed in immigration detention, allowing sufficient time to gather necessary information and taking into account their traumatic experience. In this context, training on the identification of victims of THB and their rights should be provided to asylum officers and staff working in immigration detention centres;**
- **the application of the Dublin Procedure to presumed victims of THB is reviewed.**

139. **Further, GRETA urges the Swiss authorities to take steps to ensure that all victims of trafficking are properly identified and can benefit from the assistance and protection measures contained in the Convention, in particular by:**

- **ensuring that a formalised victim identification procedure is put into place in all cantons without further delay, defining the roles and responsibilities of all stakeholders and including indicators for identifying victims of different forms of exploitation;**
- **increasing efforts to proactively identify victims of trafficking for the purpose of labour exploitation, by reinforcing the capacity and training of labour inspectors, and involving trade unions and other relevant actors in the work of the cantonal roundtables on human trafficking.**

---

<sup>47</sup> 2C\_373/2017.



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

140. In its first report, GRETA urged the Swiss authorities to make sure that all victims under Swiss jurisdiction benefit from assistance measures, to secure a sufficient number of places across the country, offering adequate conditions and adapted to the needs of victims of THB, and to ensure that male victims of human trafficking can fully benefit from the assistance measures provided for in law, including suitable accommodation. GRETA also considered that adequate funding of NGOs assisting victims of human trafficking should be maintained to provide short-term and long-term assistance, depending on the victims' needs, irrespective of the canton where they are assisted.

141. As noted in GRETA's first report, the legal basis for providing assistance to victims of crime, including victims of trafficking, is provided by the Federal Law on Assistance to Victims of Crimes (LAVI). Article 2 of the LAVI stipulates that assistance includes urgent advice and support, long-term assistance provided by crime victims support centres, and financial aid for third-party assistance providers.

142. For a victim to be able to benefit from the assistance services provided for in the LAVI, the offence must have taken place in Switzerland or the victim must be domiciled in Switzerland at the time of the offence and the application for assistance (Article 17). This provision deprives all victims of trafficking where the exploitation took place outside Switzerland from the benefits of the LAVI. GRETA stressed in its first report that the Convention (Article 12, paragraph 1) obliges States Parties to provide assistance to all victims located on their territory, the crucial aspect being that the persons are within their jurisdiction and not the place where the crime took place. In this context, the Swiss authorities referred to action 22 of the National Action Plan, which foresees that the Conference of cantonal directors of social affairs (CDAS) would seek solutions to comply with this obligation. According to the Swiss authorities, the Conference of Cantonal Directors of Social Affairs (CDAS) has requested a legal clarification on the basis of which it will decide on the next steps and possible measures to be taken.

143. Assistance to victims of human trafficking falls within the competence of each canton. Pursuant to Article 26 of the LAVI, the responsible canton is the canton in which the offence was committed. Article 26 of the LAVI also stipulates that if the offence has been committed in more than one place, the responsible canton is the one in which the criminal investigation was first initiated; if no criminal investigation has been initiated, the responsible canton is the canton of residence of the victim; and if the victim does not have a residence in Switzerland, the responsible canton is the canton in which the first request for compensation or redress was made. Pursuant to Article 9 of the LAVI, cantons must establish crime victims support centres which provide services adapted to the needs of different types of victims, until the victim's state of health is stable and the impact of the crime is redressed or compensated. Assistance is granted to a victim on the basis of a decision of the crime victim support centre of the canton concerned. Assistance can be entrusted to a third-party organisation, i.e. specialised NGOs. It must include medical, psychological, social, financial and legal assistance and, where needed, accommodation.

144. The cantonal authorities in charge of assisting victims which work with specialised NGOs have concluded service or collaboration agreements with them, guaranteeing funding for the assistance provided. The funding for assistance comes from the LAVI system and welfare services, in accordance with rules laid down by each canton. Some cantons have decided to assist victims of trafficking without referring them to specialised NGOs. In these cantons, the LAVI centres take care of organising the assistance (e.g. St. Gallen and Ticino).

145. When the financing of assistance under the LAVI comes to an end because it is considered that the consequences of the offence have been eliminated or compensated, it is generally the cantonal or municipal welfare assistance system which continues to provide the necessary financial means. For example, in the co-operation agreements of most German-speaking cantons with NGOs, it is foreseen that the assistance is paid under the LAVI for six months, after which the welfare offices take over. The Conference of Swiss Liaison Offices for the Law on Victim Assistance (CSOL-LAVI) adopted in 2010 recommendations regarding the question of the relationship between assistance under the LAVI and welfare assistance.<sup>48</sup> However, in practice, the question often arises as to how long a victim should be granted assistance under the LAVI and when social welfare assistance should begin. If social welfare assistance applies, the additional question arises as to which canton is responsible if a victim is being accommodated in another canton because they are receiving special professional help. In order to clarify these issues, action 23 of the National Action Plan envisages the drawing up of new recommendations by the CSOL-LAVI and the Conference of Cantonal Directors of Social Affairs (CDAS) in 2019. The Swiss authorities have stated that on 18 September 2018, the CSOL-LAVI, in collaboration with CDAS, published a document specifying the delimitation and combination of social welfare assistance and assistance to victims, and clarifying the responsibilities of cantons for funding victim assistance.<sup>49</sup>

146. Further, to encourage uniform application of existing legal instruments in the cantons, action 18 of the National Action Plan provides for the drawing up of a reference document (entitled "National victim protection programme"), describing all the instruments for granting assistance and protection to THB victims in Switzerland throughout the entire process, beginning with identification and ending with integration or reintegration.

147. The assistance standards are governed by the LAVI and cantonal directives. According to Article 14 of the LAVI, the services available include appropriate medical, psychological, social, material and legal assistance. The contracts concluded with the NGOs ensure that these standards are complied with when services are provided. The medical and psychological assistance required from third parties is provided by the NGOs and funded in principle by the sickness insurance funds and secondarily by the cantonal authorities providing assistance to victims.

148. In addition to assistance provided pursuant to the LAVI, in Zurich, a co-operation agreement exists between the cantonal authorities and NGOs (FIZ, Teen challenge, Fortis) about the responsibilities concerning counselling and assistance of presumed victims of trafficking. The cantonal social welfare office covers the cost of integration measures for half a year after the first six months covered by the LAVI. In Luzern, a co-operation agreement exists between the cantonal authorities and the NGO FIZ, and after the first six months the LAVI centre looks for solutions within the canton of Luzern. Similarly, there is a co-operation arrangement in Geneva between the crime victims support centre and the NGO Au Coeur des Grottes, pursuant to which funding is provided for three months, after which the NGO relies on funds from private donors. In the canton of Ticino, there is no co-operation agreement and the assistance for victims of THB is organised by the LAVI centre in a general manner; thus victims of THB are accommodated in women's shelters or hotels.

---

<sup>48</sup> [http://www.sodk.ch/fileadmin/user\\_upload/Fachbereiche/Opferhilfe/SODK\\_Empf\\_Opferhilfe\\_f\\_Web\\_def.pdf](http://www.sodk.ch/fileadmin/user_upload/Fachbereiche/Opferhilfe/SODK_Empf_Opferhilfe_f_Web_def.pdf), point 5.

<sup>49</sup> [http://www.sodk.ch/fileadmin/user\\_upload/Fachbereiche/Opferhilfe/2018.09.18\\_Grundlagenpapier\\_SVK-OHG\\_SKOS\\_Opferhilfe\\_und\\_Sozialhilfe.pdf](http://www.sodk.ch/fileadmin/user_upload/Fachbereiche/Opferhilfe/2018.09.18_Grundlagenpapier_SVK-OHG_SKOS_Opferhilfe_und_Sozialhilfe.pdf)

149. The capacity of specialised shelter accommodation for trafficking victims in Switzerland has increased during the reporting period. In German-speaking Switzerland, there are about 40 places available. The NGO FIZ in Zurich provides 24 places for women and transgender persons; men are admitted on an exceptional basis. Teen Challenge in the canton of Glarus provides up to 10 places for women and men. Further, the Fortis shelter run by the NGO trafficking.ch in the canton of Bern offers 10 places and the NGO also provides three places in a flat. In French-speaking Switzerland, there are two specialised centres for women and child victims. In Lausanne, the NGO Astrée opened in 2015 a counselling service and a shelter for victims (with up to 10 places), with services financed by the cantonal authorities. In Geneva, the NGO Au Cœur des Grottes runs a shelter with 40 places (not only for THB victims). In the other cantons of Latin Switzerland, female victims are accommodated mainly in institutions for victims of domestic violence and male victims in reception centres for adults in difficulty.

150. The GRETA delegation visited the shelter run by the NGO Astrée in the canton of Vaud. The shelter accommodates female victims of THB (with their children, if any) and usually works to full capacity. In 2017, 17 victims were hosted. There is at least one staff member present at any time. The length of stay is supposed to be up to six months, but in reality most persons stay for nine to 12 months. In 2019, Astrée is planning to provide three apartments for semi-autonomous living after stays at the shelter.

151. GRETA also visited the Fortis shelter run by the NGO trafficking.ch in which is situated in the canton of Bern. The shelter can host victims of trafficking referred from several cantons (Aargau, Basel-Stadt, Bern, Solothurn and Zurich). It is located in a house and has a capacity of 10 places. On the day of the visit, the shelter hosted five victims of trafficking (three women, a teenage girl with her baby, and a transgender person). The shelter's staff comprises six persons supported by a group of volunteers.

152. According to figures of the Federal Office of Statistics, in 2014-2017, the number of male victims of trafficking in human beings turning to victim support centres ranged between seven and 13 per year. As noted above, the Fortis shelter in the canton of Bern as well as the Teen challenge in the canton of Glaris provide accommodation and assistance to male victims, and the Protestant Social Centre (CSP) in Geneva offers legal advice. The NGO Astrée in the canton of Vaud provides counselling for male victims and organises their accommodation in a reception centre for migrants (EVAM).

153. The State Secretariat for Migration (SEM) has adopted an internal guideline for case managers in case of detection of presumed victims of trafficking among asylum seekers. However, this guideline does not refer to the rights of victims of trafficking under international law and do not include instructions on contacting specialised NGOs providing assistance to victims of THB. The guideline foresees the handing out of a brochure with telephone numbers of cantonal victim assistance offices to those victims who have become victims in Switzerland. This reflects the SEM's general understanding that the responsibility for assistance to victims of trafficking lies exclusively with the cantons. In general, for financial reasons, cantons do not transfer victims detected in the asylum system to specialised support centres for victims of THB, but host them in asylum centres, which according to NGOs do not provide the specialised assistance envisaged by Article 12 of the Convention. This approach was also supported by the Federal Council.<sup>50</sup> Pursuant to action 19 of the National Action Plan, proposals to ensure assistance to human trafficking during the asylum procedure should be developed by the SEM.

<sup>50</sup> Reply of the Federal Council of 16 August 2017 to the inquiry by Min Li Marti, available at: <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20173310>

154. GRETA welcomes the increase in the number of places in shelters providing specialised assistance to victims of trafficking, including men. Nevertheless, GRETA notes that the provision and level of assistance still varies depending on the canton where the victim is identified. The period of assistance funded by the crime victims support centres varies and in cantons where there are no co-operation agreements with specialised NGOs and no cantonal funding, victims are not always provided with accommodation and assistance adapted to their needs. Further, victims of THB who were not exploited in Switzerland continue to lack access to assistance under the LAVI. Several working groups set up under the National Action Plan are supposed to address these issues, but little progress has been made so far.

**155. Recalling the recommendations made in its first report, GRETA once again urges the Swiss authorities to ensure that all victims under Swiss jurisdiction, including asylum seekers and persons exploited abroad but identified in Switzerland, benefit from assistance measures in accordance with Article 12, paragraph 1, of the Convention.**

**156. GRETA takes note of the document issued by the CSOL-LAVI, in collaboration with CDAS, clarifying the responsibilities of cantons for funding victim assistance, and considers that the Swiss authorities should ensure that the recommendations made in it are followed in practice.**

**157. Further, GRETA considers that the Swiss authorities should continue making efforts to provide a secure a sufficient number of accommodation places, offering adequate conditions and adapted to the needs of victims of THB, in all cantons. In this context, adequate funding should be provided to NGOs assisting victims of human trafficking.**

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

158. In its first report, GRETA urged the Swiss authorities to set up a procedure for the identification of child victims of trafficking, and to provide assistance to child victims of trafficking which takes into account their specific circumstances.

159. The working group on child trafficking under the KSMM has not met since GRETA's first evaluation. Under action 24 of the National Action Plan, it was planned to establish a platform enabling regular exchanges of information on unaccompanied children and trafficking in children between the federal and cantonal bodies. According to NGOs, this measure was included in the plan upon the insistence of civil society organisations, but it has not been implemented as no financial resources were made available. According to information provided by the Swiss authorities, the first meeting of this platform was planned to take place on 25 June 2019, organised by the Association of Cantonal Migration Services, in collaboration with the Swiss Child Protection Service.

160. The National Action Plan envisages several other measures related to child trafficking. The draft document on trafficking indicators (see paragraph 119) includes a list of indicators specifically on child trafficking. According to the authorities, trafficking in children will be taken into account when devising a general training concept (see paragraph 29). A report on trafficking of children in Switzerland is supposed to be prepared (see paragraph 50). Moreover, child trafficking is to be included in the victim protection programme (action 18) and standards on identification and victim assistance during the asylum procedure (action 19).

161. According to the authorities, the child protection services are members of the cantonal roundtables for anti-trafficking co-operation in several cantons. However, with the exception of situations of the exploitation of begging of children (see paragraph 118), there are no child-specific identification procedures in place in Switzerland. The NGO Child Protection/ECPAT Switzerland has developed, together with other NGOs, a manual entitled "Child trafficking - prevention, identification and assistance to child victims", which provides instructions in cases of suspicion of child trafficking, in various situations such as the asylum procedure, border crossing or in connection with petty crime.<sup>51</sup>

162. In several cantons the child and adult protection services take part in training courses organised by the KSMM and the Mission against THB in the French-speaking cantons and Ticino, one example being the child protection service in Geneva. The interdisciplinary training on THB organised in the French-speaking part of Switzerland are aimed at all professionals concerned by THB, including professionals working with children.

163. The few identified cases of trafficking in children in Switzerland (11 in the period 2014-2017) have involved exploitation in begging, exploitation in criminal activities and sexual exploitation. Under the previously mentioned AGORA concept (see paragraph 127), a procedure and a set of measures were defined in 2011 with the Swiss Union of Cities and Towns in order to take adequate action in cases of children engaging in begging and identify possible victims of THB.<sup>52</sup>

164. Concerning the identification of victims of trafficking among asylum-seeking unaccompanied foreign children, the SEM reportedly uses the list of indicators developed by KSMM (see paragraph 108). According to the SEM, from 2014 until the time of GRETA's visit, seven children in the asylum procedure were identified as presumed victims of trafficking. In 2017, Child Protection/ECPAT Switzerland published a flyer entitled "Child trafficking in the field of asylum - identification and action in cases of suspicion". According to NGOs, where a possible child victim of THB is detected during an interview with the SEM, it is not clear what procedures would be followed. The Swiss authorities have indicated that unaccompanied asylum-seeking children have access to legal representation for as long as their asylum proceedings last. During their stay in a federal centre for asylum seekers, this representation is provided by bodies specialised in the representation of persons seeking asylum in Switzerland, which are independent of the federal authorities. Through their role as a trusted person, they also represent the child in all procedures and measures related to the problem of trafficking. Before the child leaves the asylum centre, the SEM notifies the migration authorities of the canton of allocation and provides them with detailed information on the person concerned. In addition to the mention that a potential victim of trafficking has been detected, this information includes the nature of the ongoing proceedings, the existence of any criminal proceedings, and the victim's agreement to the transmission of the facts related to THB to the relevant police unit. In addition, the cantonal migration authorities inform the adult and child protection authority of the detection of a presumed victim of trafficking. The latter initiates the steps towards accommodation in a structure adapted to the child concerned and the appointment of a guardian in the canton of allocation.

165. According to Swiss legislation, when a presumed child victim of trafficking is detected, the child and adult protection court should assign a temporary guardian, who has the task of representing the child on Swiss territory. Assigning temporary guardianship enables children to register for medical insurance and have access to medical care. If criminal proceedings are instituted, the public prosecution service should also appoint a guardian to represent the child in the proceedings, so the child will have two guardians, one in the civil procedure and one in the criminal procedure.

---

<sup>51</sup> The manual was published in 2006 and updated in 2016. It is available in French, German and Italian at: <https://www.kinderschutz.ch/fr/fachpublikation-detail/manuel-traite-des-enfants-prevention-identification-et-soutien-des-victimes-mineures.html>

<sup>52</sup> The recommendations of the Swiss Union of Cities and Towns are available at: [https://uniondesvilles.ch/cmsfiles/Traite%20de%20mineurs%20\(01013\)\\_2.pdf](https://uniondesvilles.ch/cmsfiles/Traite%20de%20mineurs%20(01013)_2.pdf)

166. In addition to the guardianship arrangements, the child protection authority can order any other necessary measures, based on Articles 307-327c of the Civil Code, such as specific counselling/representation or withdrawal of parental rights when there is a real danger to the child's welfare. If necessary, all interviews, counselling and the providing of information are carried out with an interpreter. The cantonal child and adult protection authority co-ordinates the assistance measures with other agencies concerned, notably centres providing advice to young people and families, social services, and the migration authorities. If it is not possible to reintegrate children in their family or this is deemed not to be in their best interest, the child is placed with a foster family. Children may also be placed in educational institutions.

167. The GRETA delegation visited the "Schlupfhuus" shelter for children in St. Gallen, which accommodates children having experienced physical, psychological or sexual violence. It is one of very few specialised institutions in Switzerland and can receive children around the clock. The centre accommodates children aged 6 to 17 years referred from different parts of Switzerland as well as Liechtenstein. The children are usually referred by the child protection authorities. The shelter has a capacity of eight places and was accommodating six children at the time of GRETA's visit, one of whom was a victim of trafficking (a 16-year old girl from Romania). The children stay on average about 15 days and around 90 children are received per year. GRETA was informed that child victims of trafficking represent only one to two per cent of the children hosted at the shelter. They are referred by the police, judicial authorities or child protection authorities. The shelter has the staff equivalent of 6.8 full-time posts and may call upon external experts, such as psychologists. GRETA noted that the shelter's staff had not received training on THB and was not aware whether the 16-year old child victim of trafficking had a legal guardian.

168. There are no specialised shelters for child victims of THB under 16 years of age (those over 16 can be accommodated together with female victims of THB in the shelters run by FIZ, Au Coeur des Grottes and Astrée). Staff working in child-care institutions are not trained in THB, nor on the specific needs of victims.

169. As regards methods used to verify the age of a presumed child victim of trafficking where the age is uncertain, police and prosecution services base their assumptions on the victim's statements or documents in his/her possession. Where there is doubt about the age of a presumed victim, there are two means of resolving uncertainty. First, a request for international assistance is made through Interpol or Europol in order to obtain information on the identity and age of the person concerned in the country of origin. Secondly, the police or the SEM (in case the presumed child has applied for asylum) can request a forensic medical examination, which follows the "three pillars" method, comprising an X-ray of the wrist (age by bone density), dental examination (dental age) and physiological examination (body formation and sexual maturity). If the findings do not unequivocally establish that the victim is an adult, the person is presumed to be a child. GRETA notes that this method of age assessment does not take into account psychological, cognitive or behavioural factors.<sup>53</sup>

<sup>53</sup> See also the statement of the ENOC Adopted at the 17<sup>th</sup> ENOC Annual General Assembly held on 27 September 2013 in Brussels, available at: <http://enoc.eu/wp-content/uploads/2015/01/ENOC-2013-Statement-on-Children-on-the-Move-EN.pdf>

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

- **ensuring that a formalised procedure for the identification of child victims of THB is put into place in all cantons, which takes into account the special circumstances and needs of child victims, involves child specialists and ensures that the best interests of the child are the primary consideration in all proceedings relating to child victims of THB and children at risk;**
- **ensuring that relevant actors take a proactive approach and increase their outreach work to identify child victims of THB, by paying particular attention to unaccompanied and separated foreign children;**
- **providing further capacity-building to stakeholders (police, NGOs, child protection authorities, social workers) as well as guidance for the identification of child victims of THB for different purposes, including the exploitation of begging and exploitation of criminal activities.**

171. **Further, GRETA invites the Swiss authorities to review the age assessment procedures with a view to ensuring that the best interests of the child are effectively protected, taking into account Article 10, paragraph 3, of the Convention, the Convention on the Rights of the Child, General Comment No. 6 of the Committee on the Rights of the Child<sup>54</sup> and the Council of Europe Action Plan on Protecting Refugee and Migrant Children in Europe (2017-2019).**

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

172. As regards the protection of the confidentiality of information and the personal life and identity of victims of THB, relevant professionals are subject to professional secrecy and the data protection regulations. The Federal Act on Data Protection applies to federal bodies and private persons, and the cantonal laws to cantonal administrative services.

173. For officials of crime victim support centres, Article 11 of the Federal Law on Assistance to Victims of Crimes stipulates that no information concerning a victim may be passed on without their consent. Breaches of this professional secrecy are punishable with a fine or imprisonment of up to three years. The sole exception provided for in law relates to the passing on of information to the child protection services and/or prosecution authorities, where the physical, mental or sexual integrity of a child victim or another child is seriously in jeopardy.

174. As concerns prosecution services and criminal courts, the Code of Criminal Procedure (CCP) governs the processing of personal data gathered during criminal proceedings (Article 95 and following), as well as the information that may be made public (Article 74). Pursuant to Article 74, paragraph 4, of the CCP, in cases involving a victim of crime, the authorities and private individuals may only identify the victim or provide information that enables his or her identification outside public court proceedings if the assistance of the public in enquiries into a felony or in tracing suspects is required, or if the victim or his or her survivors consent.

175. The child protection services, which are bound by professional secrecy, ensure that the identity of a child victim of trafficking is not made publicly known through the media or by any other means. According to the Swiss authorities, the child protection services are guided in their actions by the best interest of the child.

<sup>54</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)**

176. In its first report, GRETA considered that the Swiss authorities should ensure the application of the recovery and reflection period across the country, in accordance with Article 13 of the Convention, including by strengthening the training of cantonal police forces, prosecuting authorities, crime victims support centres and migration authorities of all cantons.

177. As noted in GRETA's first report, the legal basis of the recovery and reflection period in Switzerland is Article 35, paragraph 1, of the Federal Council Order on Admission, Stay and Exercise of Gainful Activities (OASA; RS 142.201). The order stipulates that, where there are grounds to believe that an irregular migrant is a victim of, or witness to, trafficking in human beings, the cantonal migration authority must grant him or her a recovery and reflection period of at least 30 days in order to recover and decide whether to co-operate with the authorities.

178. The SEM and the Association of cantonal immigration departments have devised a procedure named "Competo", intended to regulate the stay of THB victims through a uniform procedure, which should be applied by the migration authorities across Switzerland. This procedure was integrated into the directive relating to the Federal Law on Foreigners and describes the granting of the recovery and reflection period in detail.<sup>55</sup> A request for a recovery and reflection period may be made by presumed victims themselves or by any service or organisation in contact with them, including specialised counselling centres. Where there are well-founded suspicions of trafficking in human beings, the request is approved by the competent cantonal migration authority. The latter confirms in writing that a recovery and reflection period of at least 30 days has been granted. The cantonal migration authorities can decide to grant a longer period or to extend it on the basis of the person's circumstances.

179. According to the authorities, in practice, the reflection and recovery period is often granted for at least 90 days instead of the minimum of 30 foreseen by law. Third-country nationals as well as of EU/EEA nationals can benefit from the period. The SEM organised training workshops for cantonal migration services on the "Competo" procedure in 2017, in collaboration with NGOs and the cantonal authorities.

180. According to statistics provided by the authorities, the number of recovery and reflection periods granted to victims of THB has increased over the years: there were 27 such periods granted in 2014, 45 in 2015, 48 in 2016, and 55 in 2017.

181. Specialised NGOs reported that, in their experience, the recovery and reflection period is usually granted when it is requested by them. However, they pointed out that the "Competo" procedure is not legally binding and does not set standards concerning the assistance services that are to be provided to presumed victims during the recovery and reflection period. The Swiss authorities have stressed that the "Competo" procedure is an integral part of the SEM guidelines and should be considered as a guideline. Further, NGOs referred to cases in which there was a suspicion of THB, but as the persons concerned did not disclose their story immediately and as they had an irregular residence status, they were deported.

182. In its first report, GRETA had expressed its concerns about the fact that the recovery and reflection period can be terminated prematurely if a possible victim has indicated that he or she does not want to co-operate, pursuant to Article 35, paragraph 3, of the OASA. GRETA stressed that possible victims should be allowed the full duration of the recovery and reflection period so that they have sufficient time to recover and take an informed decision on whether to co-operate. These concerns are corroborated by reports from NGOs that it is a recurring pattern that the recovery and reflection period is ended prematurely when the victim does not consent to collaborate with the authorities.

<sup>55</sup> See section 5.7.2.3 and the flowchart attached to the directives relating to the Federal Law on Foreigners, available at: <https://www.sem.admin.ch/sem/fr/home/publiservice/weisungen-kreisschreiben/auslaenderbereich.html>



183. GRETA is also concerned by the possibility to prematurely terminate the recovery and reflection period under Article 35, paragraph 3, of the OASA, where the beneficiary has deliberately renewed contacts with the alleged traffickers. GRETA notes that it may prove difficult to establish whether a victim has voluntarily renewed contact or has been pressured into it by the traffickers. GRETA stresses again that, in such a case, the recovery and reflection period must not be revoked without taking due account of the individual's personal circumstances and examining them in depth.

184. Despite the existence of the "Competo" procedure, there are differences in the practice of granting a recovery and reflection period among cantons. In Ticino, for example, a recovery and reflection period was granted recently for the first time by the migration authority, apparently because of the involvement of a lawyer who requested it on behalf of the victim. In Zurich, the granting of the permit is a standard procedure, and following the first interview, which concerns basic facts and security issues, the police do not contact the presumed victim during the 30-day period if the victim does not request it. There seems to be no practice of granting the recovery and reflection period to victims of THB for the purpose of labour exploitation.

185. In the asylum procedure, the Swiss authorities do not grant a recovery and reflection period where there are reasonable grounds to believe that an asylum seeker is a victim of human trafficking. The authorities maintain that the Federal Law on Foreigners is not directly applicable to the asylum procedure (Article 14 of the Law on Asylum), but that they "take into consideration" the reflection and recovery period in the asylum procedure as the procedural timeframes for issuing a decision on an asylum request and, where applicable, ordering expulsion, are longer than 30 days.

186. As regards persons subject to the Dublin procedure, according to the authorities, no decision is taken during a period of at least 30 days following the identification of a presumed victim of trafficking in human beings. The victim's transfer to another state under the Dublin procedure may be postponed, within the timeframes provided for in the Dublin Regulation, if the victim has been exploited in Switzerland and has lodged a criminal complaint. GRETA stresses that, under the Convention, the recovery and reflection period should apply to all persons where reasonable grounds exist that they are victims of THB, independently of the fact that the person has sought asylum, together with the obligation to provide assistance measures which may not be covered by the standard asylum assistance.

187. While welcoming the introduction of the "Competo" procedure and the practice of granting longer periods than the minimum of 30 days stipulated by the Convention, GRETA remains concerned about discrepancies in cantonal practices, the different treatment of victims of forms of exploitation other than sexual, and the non-application of the recovery and reflection period to asylum seekers, including those to whom the Dublin procedure applies. The Swiss authorities have stated that the type of exploitation does not in any way influence the granting of the recovery and reflection period and that there are no known cases where the reflection period had not been granted to an identified victim of trafficking. In addition, the authorities referred to training on the "Competo" procedure which was provided to the cantonal migration services.

**188. GRETA considers that the Swiss authorities should take further steps to ensure, in compliance with their obligations under Article 13 of the Convention, that all possible foreign victims of trafficking, regardless of the forms of exploitation, are systematically offered a recovery and reflection period and all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention during this period.**

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

189. In its first report, GRETA considered that the Swiss authorities should ensure that victims could fully benefit from the right to obtain a renewable residence permit regardless of the canton competent to issue it.

190. As explained in the first report, victims of human trafficking who co-operate with the prosecuting authorities are issued a short-stay residence permit to for the likely duration of the criminal proceedings by the competent cantonal authorities (Article 36 of the OASA). The maximum duration of the permit is one year renewable for the length of the proceedings.<sup>56</sup>

191. For victims who do not wish to co-operate with the authorities after the recovery and reflection period, as well as victims who have co-operated following the criminal proceedings, an application for a residence permit on humanitarian grounds may be lodged on the basis of "extremely serious situations of hardship" (Article 30, paragraph 1.b of the Law on Foreigners, read in conjunction with Article 31 of the OASA). If a cantonal authority wishes to grant a permit on humanitarian grounds, it must submit the application to the SEM. In the case of victims of trafficking, an "extremely serious situation of hardship" may, for example, arise when the person's return to the country of origin cannot reasonably be enforced owing to the risk of re-victimisation, lack of prospects of social integration or the impossibility of dealing adequately with a health problem. In cases where the personal situation of a victim is not considered as extremely serious, but where expulsion cannot be reasonably imposed owing to the threat posed to the individual by the perpetrators of trafficking in the country of origin or because of other obstacles, the SEM may grant temporary admission at the request of the competent immigration service (Article 83 of the Law on Foreigners and Article 36, paragraph 6, of the OASA).<sup>57</sup>

192. According to figures provided by the Swiss authorities, 52 short-term residence permits for the purpose of co-operation were issued to victims of trafficking in 2014, 54 in 2015, 85 in 2016, and 90 in 2017. Further, the Swiss authorities have indicated that the number of residence permits granted on humanitarian grounds to presumed victims of THB was 19 in 2014, 15 in 2015, 21 in 2016, 14 in 2017 and 16 in 2018. According to the SEM, provisional admissions were granted to presumed victims of THB at the end of the asylum procedure in 27 cases in 2014, 13 in 2015, 15 in 2016, 16 in 2017 and 18 in 2018. GRETA notes the considerable number of residence permits issued to victims of THB.

193. NGOs noted that the application process for a residence permit on humanitarian grounds was very long (up to two and a half years). They also pointed out difficulties in obtaining such a permit after the expiry of the recovery and reflection period for victims who do not wish to, or cannot, co-operate with the prosecution authorities. The issuing of permits depends on the cantonal authorities and the SEM. NGOs also reported cases in which a victim who had co-operated with the authorities and was in a difficult personal situation did not receive a humanitarian residence permit.

194. According to data provided by the SEM, 27 persons detected as possible victims of trafficking during the asylum procedure were granted asylum in 2014-2017. However, GRETA was informed that victims of trafficking are rarely recognised as refugees in Switzerland due to a restrictive refugee recognition policy and the fact that they are often not considered to fall under the definition of a "member of a particular social group".

<sup>56</sup> See also paragraph 5.7.2.4 of the Directives on the Law on Foreigners.

<sup>57</sup> Ibid., paragraph 5.7.2.7.

195. **GRETA considers that the Swiss authorities should continue making efforts to ensure that victims of trafficking, regardless of the form of exploitation, can fully benefit in practice from the right to obtain a renewable residence permit for the purpose of co-operating with the authorities or for their personal situation, without prejudice to the right to seek and enjoy asylum. In this context, GRETA refers to the UNHCR 2006 Guidelines on the application of the Refugee Convention to victims of trafficking.<sup>58</sup>**

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

196. In its first report, GRETA welcomed the existence of a state compensation scheme accessible to victims of human trafficking, and considered that the Swiss authorities should ensure that victims of THB enjoy effective access to compensation from the perpetrators.

197. As explained in GRETA's first report, persons who have suffered a direct violation of their physical, sexual or mental integrity as a result of an offence, may claim compensation from the perpetrator as part of criminal proceedings (Articles 116, 122 and following of the CCP). To this end, they must constitute themselves as private claimant (Article 118 of the CCP). In addition, any victim of crime, including human trafficking, can lodge a civil claim against the perpetrator in order to obtain compensation in civil proceedings.

198. Lawyers representing victims noted that it was very difficult to prove material damage, for examples for unpaid wages, due to alleged debts owed by the victims, because judges are reluctant to accept this. In general, the courts find it difficult to quantify the specific amount of lost income, even though this should be possible under Article 42 of the Federal Act on the Amendment of the Swiss Civil Code (SR 220). According to NGOs, the compensation granted to victims of THB by Swiss courts is generally too low (lower than compensation paid, for example, in the case of rape). Further, lawyers informed GRETA that in case of successful compensation claims, actual payment by the perpetrator often did not take place.

199. The legal basis for confiscating assets of perpetrators to provide compensation to victims is provided in Articles 70 to 73 of the CC. It is also possible to confiscate assets not derived from a criminal activity for procedural costs, penalties, fines and compensation (Article 263, paragraph 1, sub-paragraph b, and Article 268, paragraph 1, sub-paragraphs a and b, of the CCP). According to the authorities, substantial assets (including real estate) have been confiscated in connection with criminal proceedings instituted for trafficking in human beings in Brazil and Hungary.

200. The authorities referred to a case where, in March 2018, a criminal court in the canton of Fribourg convicted a Swiss man of trafficking in human beings for the purpose of sexual exploitation and sentenced him to 16 years' imprisonment. The offences had been committed in Thailand. The perpetrator had forced more than 80 children to engage in explicit sexual acts in order to produce images of child sexual abuse. The court awarded compensation to three Thai victims for moral damage ranging from CHF 40,000 to 50,000.<sup>59</sup>

---

<sup>58</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 and persons at risk of being trafficked, HCR/GIP/06/07, 7 April 2006.](#)

<sup>59</sup> <https://www.20min.ch/ro/news/romandie/story/Le-pedophile-de-Pattaya-ecope-de-16-ans-de-prison-29875218>

201. Victims of crime also have the right to state compensation for pecuniary and non-pecuniary damage under Article 2 of the LAVI. For state compensation to be awarded, the crime must have taken place in Switzerland and it must be duly established through criminal proceedings or other means. The court with jurisdiction in the criminal case obliges the perpetrator to pay any damages and/or satisfaction. If the perpetrator is unable to pay, the victim's lawyer files an application with the victim support office. The payment of state compensation is thus subsidiary and is granted only if the perpetrator fails to pay or pays only part of the sum. Decisions on compensation are made on the basis of the damage suffered by the victim and the costs incurred, such as medical expenses or loss of income, also taking into account the victim's financial resources. Non-pecuniary damage is calculated according to the degree of suffering of the victim, within the maximum amounts set in the LAVI. The maximum amounts of compensation provided for in the LAVI are CHF 120,000 (approximately 106,000 euros) for pecuniary damage and CHF 70,000 (approximately 61,800 euros) for non-pecuniary damage.

202. Pursuant to Article 24 of the LAVI, a victim can be granted state compensation after his/her return to the country of origin. A person domiciled abroad who has been a victim of an offence in Switzerland is entitled to contributions to the costs of treatment at their place of residence (Article 14, paragraph 2, of the LAVI). Article 27, paragraph 3, of the LAVI provides that compensation for non-pecuniary damage may be reduced "if the person has his/her residence abroad and, given the cost of living in the place of residence, the moral compensation would be disproportionate."

203. NGOs reported that the proceedings to grant State compensation can take a long time. According to them, in some cases the LAVI offices cannot pay the money to the victims because they are no longer in Switzerland and contact to them cannot be re-established. Further, when victims return to their countries of origin, there are in some cases significant cuts in the amount of compensation paid, which is adjusted to the cost of living in the respective country. GRETA takes note of the provision in Article 27, paragraph 3 of the LAVI, according to which the compensation awarded can be adjusted to the cost of living in the country of residence, and is concerned that this regulation can potentially have a negative impact on trafficked persons taking into account their specific situation.

204. GRETA was informed that state compensation was awarded to 14 victims of trafficking in human beings in 2014, 29 in 2015, 23 in 2016, and 19 in 2017.

205. Article 30 of the LAVI provides for the exemption of the requirement to pay court costs and the right to free legal aid for all crime victims, including for the purpose of claiming compensation. The costs of legal aid are covered by the cantonal crime victims support centres. When the victims' assistance offices or specialised NGOs put victims in contact with the lawyers, they can provide legal representation for up to four hours. According to lawyers, these four hours are sufficient to advise the victim about his/her rights and make a request for legal aid. The requirements for legal aid are that the victim does not have enough money and that the case is not futile.

206. **GRETA invites the Swiss authorities to continue taking steps to facilitate and guarantee access to compensation for victims of THB, and in particular to:**

- **ensure that courts take duly into account the material damage suffered by victims when deciding on compensation from perpetrators;**
- **ensure that State compensation is granted and paid in due time.**

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

207. As explained in GRETA's first report, since 2008 the IOM Office in Bern has been mandated by the SEM to implement specialised assistance for the voluntary return of victims and witnesses of human trafficking. Since May 2011, this assisted return programme has also been offered to presumed victims of trafficking in the asylum procedure. Further, THB victims wishing to return to their countries of origin under the Dublin procedure have access to the assisted return programme under a pilot scheme running since June 2016. Following an assessment of the pilot scheme, the SEM has decided, starting from January 2019, that the assistance return programme will be available on a permanent basis to victims of THB under the Dublin procedure who wish to return to their countries of origin.

208. Victims of human trafficking wishing to benefit from the assisted voluntary return programme have to contact the cantonal advisory service for return (CVR), which informs them about the assistance they are entitled to before and after departure. There is a special procedure allowing the NGO FIZ to assist victims of THB who wish to return to their countries of origin, pursuant to which victims receive specialised return counselling directly from FIZ, without having to contact the CVR. FIZ then prepares a request for return assistance and sends it to the CVR, which make an application for assisted return to the SEM. After approving the application, the SEM mandates IOM Bern to organise the return of the person concerned to the country of origin, liaising with relevant governmental agencies and NGOs.

209. According to available data, 75 victims of human trafficking, including one child, were voluntarily returned to their countries of origin in 2014-2017 within the framework of the programme of assisted voluntary return. The principal countries of origin of victims were Hungary (19 persons), Thailand (17), Nigeria (10), Romania (9) and Bulgaria (3). The victims were primarily subjected to sexual exploitation (50 persons). There were also 10 victims of labour exploitation and seven victims of both sexual and labour exploitation (for 10 persons no information is available about the form of exploitation).

210. According to the Swiss authorities, before a forced return of a victim of trafficking, an analysis of the situation and the victim's personal relations is carried out and taken into consideration, in order to respect the principle of *non-refoulement*. If the victim has been in the asylum procedure, the SEM consults the available information on the country of origin, contacts a specialist on the internal affairs of the country of origin or launches other investigative measures in order to assess the risks faced by the person concerned in the country of origin. Where a victim of trafficking has not applied for asylum, it is for the competent cantonal migration authorities to ensure that sending him/her back to the country of origin is lawful, possible and enforceable. Where necessary, the opinion of the SEM may be sought, notably where a specific situation requires investigative measures to be carried out in the country of origin.

211. In case of plans to return of a child victim of trafficking, the child and adult protection court is informed and seeks assistance from the International Social Service for an assessment of the risks. If the return of the child is carried out within the framework of voluntary return assistance for THB victims funded by the SEM, IOM Bern follows specific internal procedures when preparing a child's return to the country of origin. In the decision-making process for the return of an unaccompanied child and its preparation, the principle of the best interests of the child must always prevail in all decisions, and long-term reintegration must be ensured. The child's situation following return must be monitored for a period of at least six months. The guardian's signature is required on all the forms used to prepare the return, and IOM only accepts to implement such return if a legal guardian is identified in Switzerland and in the country of origin.<sup>60</sup>

---

<sup>60</sup> IOM Bern, Practical Guide to the return and reintegration of vulnerable persons (Section on the return of unaccompanied children, pp. 106-125), available at: [https://switzerland.iom.int/sites/default/files/New%20Website%202017/IOM%20Publications/un\\_guide\\_pratique\\_fr\\_0.pdf](https://switzerland.iom.int/sites/default/files/New%20Website%202017/IOM%20Publications/un_guide_pratique_fr_0.pdf)

212. **GRETA considers that the Swiss authorities should continue to take steps to ensure that the return of victims of THB is carried out with due regard for their rights, safety and dignity, is preferably voluntary, and complies with the obligation of *non-refoulement*. Full consideration should be given to the UNHCR's guidelines on the application of the Refugees Convention to trafficked people. Further, the Swiss authorities should ensure that the best interests of the child are effectively respected, protected and fulfilled, *inter alia*, through an assessment of risks and safety carried out, prior to any removal measure, by specialised bodies in co-operation with the competent contacts in the country of origin, especially for unaccompanied children. The Swiss authorities should also continue to develop co-operation with countries of origin of victims with a view to ensuring that risks are correctly assessed, and that trafficking victims can return in safety and effectively reintegrate.**

### 3. Substantive criminal law

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

213. In its first report, GRETA considered that stating explicitly in the definition of trafficking in human beings in Article 182 of the CC the notions of forced labour or services, slavery, practices similar to slavery, and servitude as types of exploitation, as well as the irrelevance of the consent of a victim to the intended exploitation, could improve the implementation of anti-trafficking provisions.

214. The criminalisation of THB under Swiss law, in Article 182 of the Criminal Code (CC) has not changed since GRETA's first report and reads as follows:

- "1. Any person who as a supplier, intermediary or customer engages in the trafficking of a human being for the purpose of sexual exploitation, exploitation of his or her labour or for the purpose of removing an organ is liable to a custodial sentence or to a fine. The soliciting of a person for these purposes is equivalent to trafficking.
2. If the victim is a minor or if the offender acts for commercial gain, the penalty is a custodial sentence of not less than one year.
3. In every case, a monetary penalty must also be imposed.
4. Any person who commits the act abroad is also guilty of an offence. Articles 5 and 6 [of the Criminal Code, respectively on offences against minors abroad and on offences committed abroad prosecuted in terms of an international obligation] apply."<sup>61</sup>

215. As explained in GRETA's first report on Switzerland, Swiss law does not require the use of means for the offence of human trafficking to be established. According to the authorities, the legislator considered that including a list of means in Article 182 of the CC would be unnecessarily restrictive. The authorities have stressed that case-law has shown this approach to be desirable as it makes it possible to achieve a broader application of the offence of human trafficking.<sup>62</sup> Consequently, the notion of "abuse of a position of vulnerability" is not set out in Article 182 of the CC. The Swiss authorities pointed to a judgment of the Court of the canton of Schwyz of 12 November 2015,<sup>63</sup> in which the court stated that it is necessary to check whether a victim was in a difficult economic situation, which makes their consent legally ineffective, and referred to the Federal Supreme Court a case where the court ruled that formal consent to work as a prostitute and transfer to Switzerland is not effective if it is attributable to the person's difficult circumstances in the country of origin.<sup>64</sup> The particular vulnerability of child victims is expressly taken into account and constitutes an aggravating circumstance (Article 182, paragraph 2, of the CC).

<sup>61</sup> Unofficial translation.

<sup>62</sup> See GRETA's first report on Switzerland, paragraph 37.

<sup>63</sup> STK 2014 80, EGV-SZ 2016.

<sup>64</sup> BGE 129 IV 81, E. 3.1

216. In its first report, GRETA noted the lack of a minimum threshold of the prison sentence for the basic offence of human trafficking, as well as the low threshold of the prison sentence provided for under Article 182, paragraph 2, of the CC, and underlined that the offence of trafficking in human beings is a severe violation of the victims' human rights and calls for sanctions commensurate with its gravity. The Swiss authorities have stated that judges are given a wide margin of appreciation in fixing the length of sentence and that several offences are often combined with the result that the basic prison sentence is increased by up to half of the maximum sentence laid down for the additional offence.

217. As noted in GRETA's first report, Article 182, paragraph 1, of the CC refers to sexual exploitation, the removal of organs and labour exploitation, but does not mention expressly forced labour or services, slavery, practices similar to slavery, and servitude. The Swiss authorities have stated that all legislative provisions are to be read in conjunction with the Federal Gazette, which refers to the definition contained in Article 4 of the Convention and clarifies that "labour exploitation" covers the notions of forced labour or services, slavery, practices similar to slavery, and servitude.<sup>65</sup>

218. The previously mentioned qualitative study on the exploitation of labour in Switzerland in the context of trafficking in human beings (see paragraph 51) highlighted the fact that THB for the purpose of labour exploitation occurs in Switzerland, but the absence of a clear definition of "exploitation" poses problems when it comes to the criminal justice response of labour exploitation.<sup>66</sup>

219. GRETA notes the Federal Court judgement 1B\_450/2017 of 29 March 2018, according to which, even if a person without residence or work permit has not been entirely free from pressure, especially as regards their choice of gainful activity or recruitment, and even under unfavourable conditions or in manifest violation of Social Insurance Law and/or Labour Law, this does not in itself substantiate suspicions of a violation of Article 182 of the CC. In issuing this decision, the Court emphasised the fact that the person in question continued to have the ability to refuse the proposed job or leave it. In light of this judgment, GRETA is concerned that the interpretation of Article 182 of the CC as regards THB for the purpose of labour exploitation may be too narrow and restrictive. GRETA recalls in particular that in the case *Chowdury and others v. Greece*,<sup>67</sup> the European Court of Human Rights found violations of Article 4 with regard to trafficking for the purpose of labour exploitation, stressing that "victims may willingly accept the exploitation because they have no alternative to make a living or because they do not perceive it as exploitation."

220. While trafficking for the purpose of exploiting criminal activities is not expressly mentioned in Article 182 of the CC, the Swiss authorities have stressed that it can be assimilated to labour exploitation as no distinction is drawn between legal and illegal work. If the constituent elements of trafficking in human beings are not all present, the general rules governing involvement (instigator, accomplice, co-perpetrator, intermediary) are applicable. Attention was drawn to a case where the perpetrators had forced the victims not only into prostitution but also into committing robberies in several banks. In this case, the Winterthur district court in the canton of Zurich handed down a conviction on 20 June 2013 under Articles 182 (trafficking in human beings), 195 (encouragement of prostitution), 183 (sequestration and abduction), 190 (rape), 189 (sexual constraint), 181 (constraint) 140 (robbery) and 160 (concealment) of the CC, as well as under Article 117 of the Federal Law on Foreigners (unauthorised employment of foreigners).<sup>68</sup>

<sup>65</sup> Federal Gazette No. 17 of 3 May 2005, FF 2005 2639, pages 2665-2667.

<sup>66</sup> University of Neuchâtel, Labour exploitation in the context of human trafficking. A baseline study for Switzerland, March 2016. Available at: [https://www.ksmm.admin.ch/dam/data/fedpol/aktuell/news/2016/2016-04-06/res-sfm-menschenhandel\\_e.pdf](https://www.ksmm.admin.ch/dam/data/fedpol/aktuell/news/2016/2016-04-06/res-sfm-menschenhandel_e.pdf)

<sup>67</sup> European Court of Human Rights, *Chowdury and others v. Greece*, March 2017. Available at: [https://ec.europa.eu/anti-trafficking/case-law/chowdury-and-others-v-greece-0\\_en](https://ec.europa.eu/anti-trafficking/case-law/chowdury-and-others-v-greece-0_en)

<sup>68</sup> DG120034-K/U/fg.

221. According to the Swiss authorities, forced begging is covered by the notion of trafficking for the purpose of labour exploitation. On the basis of suspicions of forced begging, notably in the city of Bern, the KSMM decided to devise the AGORA concept for identifying cases of organised begging and forced begging. In this respect, the Swiss authorities referred to a case in which a child had been trafficked for the purpose of forced begging with the involvement of his family, which was detected and prosecuted in Geneva. The child, of Roma origin, had been rented out by his father, in an agreement signed before a solicitor in Romania, at the age of 16 or 17. When the victim was discovered by the Geneva police, he was 18 years and 2 days old. The perpetrators were found guilty of trafficking in human beings and sentenced to three years in prison in 2016.<sup>69</sup> In the canton of Bern, GRETA was informed that the law enforcement authorities were carrying out preliminary investigations into cases of children begging with their families, but there were no known cases of trafficking in children in connection with organised begging. The measures envisaged by the AGORA concept, which provide for protection tailored to children, entailing not only temporary care and accommodation in safe locations in Switzerland, but also a procedure for the repatriation of those affected, have not been implemented in recent years. According to the authorities, awareness-raising efforts and the increased presence and checking activities of the cantonal police and the alien police have had a preventive effect.

222. Forced marriage is an offence in its own right in Swiss law, criminalised under Article 181a of the CC. Marriage may be used as a means of legalising the victim's stay on Swiss territory in order to exploit the victim, and therefore Article 182 of the CC could be applicable to cases of arranged or sham marriages which leads to the person's exploitation for sexual or other purposes. There is no relevant case-law in this respect under Article 182 of the CC.

223. The irrelevance of the victim's consent to exploitation is not stated in Article 182 of the CC, but the Swiss authorities have indicated that the *travaux préparatoires*, published in the Federal Gazette, state that consent does not automatically preclude Article 182 from applying.<sup>70</sup> This has been confirmed by the Federal Supreme Court's case-law (see paragraph 219). Nevertheless, **GRETA considers that stating explicitly in law the irrelevance of the consent of a victim to the intended exploitation could improve the implementation of anti-trafficking provisions.**

224. **Given that Article 4(a) of the Convention provides the minimum content of the types of exploitation included in the definition of THB, GRETA also considers that the Swiss authorities should state explicitly in the definition of trafficking in human beings in the Criminal Code the notions of forced labour or services, slavery, practices similar to slavery, and servitude as types of exploitation.**

225. **Further, GRETA invites the Swiss authorities to define the parameters and constituents of labour exploitation.**

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

226. In its first report, GRETA noted that there is no provision criminalising the use of services of a victim of THB, with the knowledge that the person is a victim of THB, as provided for in Article 19 of the Convention.

227. There have been no new legislative developments in this respect. The Swiss authorities have stated that Article 193 of the CC on the exploitation of a person in a position of need or dependency could apply in such cases. Further, the authorities have stated that employers who knowingly illegally employ or exploit foreign workers are punishable under the Aliens Act and, depending on the circumstances, under the provisions of the Criminal Code (e.g. coercion, abuse of distress, encouragement of prostitution).

<sup>69</sup> See Appendix 4 to the replies to the GRETA questionnaire: <https://rm.coe.int/annexe-4-article-de-presse-sur-traite-impliquant-mineur-aux-fins-de-me/16808e2c8c>

<sup>70</sup> Federal Gazette No. 17 of 3 May 2005, FF 2005 2639, p, 2665.



228. **GRETA considers that the Swiss authorities should adopt legislative measures to criminalise the use of services with the knowledge that the person is a victim of THB, as stipulated by Article 19 of the Convention.**

c. Corporate liability (Article 22)

229. In its first report, GRETA invited the Swiss authorities to encourage the full use of the provisions of the CC concerning the liability of legal entities (Article 102 of the CC), seizure (Articles 263 to 268 of the CCP) and confiscation of criminal assets (Articles 70 to 73 of the CC) in human trafficking cases, including by publishing guidance for law enforcement officials and prosecutors.

230. GRETA was informed of a popular initiative for responsible companies, carried by a coalition of 114 organisations involved in social support, human rights, women's rights, environmental protection and church affairs, trade unions and unions of shareholding employees, which was lodged on 10 October 2016 with the Federal Chancellery.<sup>71</sup> The initiative calls for companies to be obliged to protect human rights and the environment in all of their business dealings, including abroad throughout their supply chains. In the process of the revision of the law governing limited companies, the National Council's Committee on Legal Affairs proposed a counter-project to the initiative in the form of legal measures against human rights violations and breaches of international environmental standards committed by companies which have their head office in Switzerland. On 12 March 2019, the Council of States (Senate) recommended the responsible business initiative for refutation. The counter-proposal has been returned to the National Council and the process of debating it is ongoing.

231. **GRETA invites the Swiss authorities to keep under review the application of the legal provisions concerning corporate liability for THB with a view to ensuring effective investigation and prosecution of any suspected offences related to THB committed by legal entities, including banks and other financial institutions, and that the sanctions or measures are effective, proportionate and dissuasive.**

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

232. In its first report, GRETA considered that, in order to ensure compliance with Article 26 of the Convention, the Swiss authorities should adopt a specific provision on the non-punishment of victims of trafficking for their involvement in unlawful activities, to the extent that they were compelled to do so, or issue and promote guidance to public prosecutors encouraging them to be proactive in establishing if an accused is a potential victim of trafficking. GRETA stresses in particular that while the identification procedure is on-going, possible victims should not be punished for unlawful acts related to public order or immigration legislation.

233. As noted in GRETA's first report, there is no specific provision in Swiss law on the non-punishment of victims of human trafficking. The Swiss criminal law system is based on the principle that the perpetrator of a criminal offence can only be convicted if he or she acted with the ability to determine or assess the unlawfulness of the act committed, in accordance with Article 19 of the CC. Articles 52 to 55 of the CC set out conditions in which persons may be exempted from punishment or have criminal proceedings against them suspended. Should victims of THB commit a punishable offence to save themselves or others from direct harm, it is for the public prosecutor's office to examine the conditions of legitimate defence and legal necessity in accordance with Articles 15 to 19 of the CC, and in particular to ascertain whether there was a situation of necessity pursuant to Article 17 of the CC.

---

<sup>71</sup> The Responsible Business Initiative, <https://corporatejustice.ch/>

234. Accordingly, a victim is not criminally liable if they were coerced to commit an illegal act while being exploited. In the opinion of the Swiss authorities, if a victim is nonetheless convicted, it implies that the person was not identified as a victim, which is not a matter of failure to have the necessary law in place. Reference should be made to actions 16 (training of prosecution authorities in the sphere of trafficking in human beings) and 17 (networking between public ministries) of the National Action Plan 2017-2020, which are designed to improve identification of victims and prevent the punishment of victims of THB, which often results from infringements of the aliens' legislation.

235. According to NGO reports, there are cases where victims of trafficking are being fined or prosecuted for offences of the alien's legislation, labour laws or regulations on prostitution. This situation creates a deterrent effect on victims of trafficking, who are less likely to report their cases to the authorities for fear of being prosecuted or expelled from the Swiss territory. One organisation reported five cases in which victims were not treated as such but rather, once they contacted the authorities, were considered to have violated labour or immigration laws, and received fines or were expelled from the country. During the visit, interlocutors underlined the fact that these measures target particularly persons from the Roma community and often result in both the victims and the perpetrators being returned to their countries of origin. GRETA is concerned that victims of forced criminal activity are often not identified as such and end up in custody. In this context, the criminalisation of begging places the victims of forced begging in a situation of heightened vulnerability.

236. It was further brought to the attention of GRETA that police officers are obliged to report offences (e.g. against immigration law), and that they have to initiate steps for preliminary investigation without instituting criminal proceedings. Only the public prosecutor's office has the power to waive these. In addition, during police controls, if potential victims do not immediately disclose their story to the police and are not detected as possible victims, they may be fined and/or removed from Swiss territory. It is therefore important to involve the structures providing assistance to victims at the earliest stage possible and to ensure that a recovery and reflection period can be obtained.

237. Moreover, GRETA is concerned by information it has received regarding the practice in some cantons to use co-operation with the authorities as leverage. Should the victim of THB end collaboration, they may be fined or removed from Swiss territory. In addition, in some cases, orders of summary punishments are not waived completely but only deferred and could in theory be re-activated any time. The authorities have indicated that the exemption from punishment cannot be definitively granted by the courts to the victim until the perpetrator has been convicted, failing which there is a risk of objection that the accusation is biased. In their view, the sanctions would not be reinstated in the event that the victim would cease to cooperate with the authorities.

238. GRETA is concerned that in the absence of specific provision in law on the non-punishment of victims of THB there remains too much leeway for interpretation and no clear standards on when non-punishment would be applied, as it is currently at the discretion of the Public Prosecutor's Office to waive prosecutions for acts that have been committed under the influence of traffickers.

**239. GRETA urges the Swiss authorities to ensure compliance with Article 26 of the Convention through the adoption of a provision on the non-punishment of victims of trafficking for their involvement in unlawful activities, to the extent that they were compelled to do so, and/or by developing relevant guidance. Public prosecutors should receive training on THB and be encouraged to be proactive in establishing if an accused person is a potential victim of trafficking while considering trafficking in human beings as a serious violation of human rights. While the identification procedure is on-going, potential victims of trafficking should not be punished for immigration-related offences.**

## 4. Investigation, prosecution and procedural law

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

240. In its first report, GRETA considered that the Swiss authorities should make further efforts to ensure that THB offences for all types of exploitation are proactively investigated and prosecuted promptly, leading to proportionate and dissuasive sanctions, by building further the capacity and specialisation of police officers, prosecutors and judges.

241. As noted in GRETA's first report, Swiss law provides for the initiation of criminal proceedings *ex officio* by the criminal justice authorities (police and public prosecutor's office), where they are aware of or have grounds for suspecting that an offence has been committed (Article 7 of the CCP). The victim does not have to press charges in order for criminal proceedings to be started. The prosecution of cases of human trafficking lies in the hands of cantonal prosecutors' offices, unless there is a component of organised crime within the meaning of Article 260ter of the CC, in which case the federal criminal police conducts the investigation, the Attorney General of Switzerland is in charge of the prosecution and the Federal Criminal Court has jurisdiction to hear the case.

242. Regarding structures and staffing of the cantonal prosecution authorities, the situation varies from one canton to another, which the Swiss authorities explain by the differences between the cantons in terms of size, population and available resources, as well as by the fact that the cantons are not affected to the same extent by trafficking in human beings. For instance, Zurich, Geneva, Bern, Ticino and Vaud have set up specialised units. In the other cantons (Solothurn, St Gallen, Thurgau, Lucerne, Schwyz, Fribourg, Neuchâtel and Valais), the police has specialists trained in action against trafficking in human beings, but no investigation unit solely dedicated to this area.

243. According to the data provided by the Swiss authorities, the number of criminal investigations under Article 182 of the CC was 46 in 2014, 58 in 2015, 125 in 2016 and 125 in 2018. GRETA notes the increase in the number of investigations related to THB since 2014. As regards the number of final convictions, there were, on the basis of Article 182 of the CC alone, two convictions in 2014, nine in 2015, 10 in 2016 and four in 2017, with sentences of up to 3.5 years' imprisonment. Further, on the basis of Articles 182 and 195 of the CC (sexual exploitation), there were three convictions in 2014, 10 in 2015, one in 2016 and one in 2017, with sentences of up to 17 years' imprisonment.

244. In one criminal case, two persons were sentenced in March 2016 by a court in Geneva for aggravated trafficking in human beings to three years of imprisonment, including respectively 18 months and 15 months without suspension. The offenders, a mother and her son, had taken a disabled child from Romania to Geneva in order to exploit him in begging together with them.<sup>72</sup>

245. The Swiss authorities have also referred to a case in the canton of Geneva where four persons have been prosecuted for THB and loan sharking<sup>73</sup> because they brought domestic workers from India on tourist visas and forced them to work in their household for very low salaries under difficult working and living conditions.<sup>74</sup> The criminal proceedings in this case are not yet completed.

---

<sup>72</sup> Tribune de Genève, *Deux Roms condamnés pour traite d'êtres humains*, 10 May 2016, available at : <https://www.tdg.ch/geneve/actu-genevoise/deux-roms-condamnes-traite-etres-humains/story/26066938>

<sup>73</sup> Loan sharking is criminalised in the Swiss Criminal Code under Article 157 (Profiteering) : "1. Any person who for his own or another's financial gain or the promise of such gain, exploits the position of need, the dependence, the weakness of mind or character, the inexperience, or the foolishness of another person to obtain a payment or service which is clearly disproportionate to the consideration given in return, / any person who acquires a debt originating from an act of profiteering and sells or enforces the same, : is liable to a custodial sentence not exceeding five years or to a monetary penalty. 2. If the offender acts for commercial gain, he is liable to a custodial sentence of from one to ten years."

<sup>74</sup> Le Temps, *Une riche famille indienne poursuivie*, 20 October 2018, page 9.

246. During the evaluation visit, the GRETA delegation was informed of an on-going investigation concerning trafficking in human beings for the purpose of labour exploitation in the construction industry in Zurich, involving some 30 to 50 foreign workers who were recruited abroad on the basis of misleading information, worked without work contract and did not receive the salaries promised to them. The Swiss authorities have indicated that the criminal proceedings in this case were ongoing and should be completed by the end of 2019.

247. The Swiss authorities have pointed to persistent difficulties in prosecuting forced labour cases. Criminal investigations and prosecutions into THB for the purpose of labour exploitation remain rare. The difficulties encountered and reported by the cantonal criminal prosecution authorities stem from a number of factors. Identifying victims of this form of THB is challenging, especially as many of them do not consider themselves to be victims and are reluctant to co-operate with the supervisory and investigation authorities. Characterising all the constituent elements of THB for the purpose of labour exploitation remains an issue and there is not sufficient related case-law for the courts to refer to.

248. In addition, difficulties arise from the interpretation of Article 182 of the CC and the notion of "exploitation". According to prosecutors met in the cantons of St. Gallen, Bern and Zurich, the provision does not give a sufficiently concrete description of the acts, the means or the compulsion of the victim. In practice, prosecutors have difficulty in assessing whether the courts will consider the facts prosecuted as falling within the scope of THB under Article 182 of the CC. Labour exploitation is prohibited under the Civil Code, unlike sexual exploitation which is in itself criminalised under Article 195 of the CC, independently of THB. According to the Civil Code, exploitation is presumed if a person is continually prevented from exercising their fundamental rights in violation of labour provisions and legislation on compensation, health and safety at work. Such treatment could include starvation, psychological violence, blackmail, kidnapping or even physical injury, sexual violence and death threats. The breaching of labour regulations of itself does not constitute exploitation, which requires certain acts set out under the criminal law, including blackmail, kidnapping, sexual violence, death threats or other restrictions of freedom.

249. The Swiss authorities further explained that, in many situations, the lack of elements of compulsion means that criminal proceedings cannot be instituted under the offence of trafficking in human beings. For instance, in situations where the victim accepts conditions of remuneration that do not comply with Swiss labour law and are highly unfavourable without the employer needing to exert any pressure on the employee, the case would be prosecuted under the criminal offence of loan-sharking (Article 157 of the CC) and not trafficking in human beings.

250. The Swiss authorities have referred to the participation of Switzerland for the first time in the joint action days organised by Europol against labour exploitation. In May 2017, the action days resulted in 68 persons being checked and seven potential victims being identified in different cantons. In 2018, nine cantons participated in the joint action days. The cantonal police forces checked 290 persons, 224 identity documents and 40 vehicles, detected six presumed victims of trafficking and arrested seven suspects.

251. Further, a centre of expertise dedicated specifically to prosecuting situations of exploitation through labour was set up within the cantonal police of Ticino in 2016. According to information provided by the Swiss authorities, only one case has so far been transmitted by the Ticino Centre of Expertise to the competent public prosecutor's office; the charges were trafficking in human beings (Article 182 of the CC) and extortion and blackmail (Article 156 of the CC), but only the latter offence was retained by the judge.

252. As noted in GRETA's first report, trafficking in human beings is amongst offences for which covert surveillance measures may be used. The use of such measures is authorised under the CCP, the Federal Law on the Surveillance of Postal Correspondence and Telecommunications (LSCPT; RS 780.1), the Order on Covert Investigations (OISec; RS 312.81) and the cantonal laws governing the police. When criminal proceedings have been opened, the prosecutor may request that covert surveillance measures be approved by the competent court. This is also applicable to cases not involving organised crime.

253. Regarding action to counteract the misuse of the Internet in relation to THB, the Swiss authorities informed GRETA that the emphasis is on combating child sexual abuse and illicit pornography. The National Service for Co-ordinating Action against Internet-based Crime (SCOCI) comes under the Federal Criminal Investigations Police. The SCOCI covers monitoring,<sup>75</sup> clearing<sup>76</sup> and analysis.<sup>77</sup> The police has reportedly very rarely come across cases of trafficking in human beings involving the use of the Internet . It was explained that the police do not have the authority nor the technical means to block websites, which can be done only on a voluntary basis by the provider or if required by court order.

254. Assets constituting the proceeds of, or resulting from, an offence, the equivalent value or even the benefit illegally gained from an offence can be blocked if in Switzerland and recovered for the competent foreign authority. GRETA was informed of one case of international judicial assistance involving the blocking and recovery of assets in connection with a THB offence. In most cantons, specialised investigation groups handle financial investigations and the confiscation of the proceeds of crime. According to the authorities, the proceeds of crime are, to the extent possible, systematically confiscated in the course of criminal proceedings (see paragraph 199).

255. Joint Investigation Teams (JITs) are governed by Article 20 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, which entered into force in respect of Switzerland on 1 February 2005, enabling Switzerland to set up JITs, *inter alia*, for THB-related offences. The Swiss authorities informed GRETA of an on-going revision of the legislation aiming to introduce the setting up of JITs in domestic law. In practice, the use of JITs is possible as long as it is considered to be relevant, and this is assessed on a case-by-case basis. The Swiss authorities reported one case of mutual legal assistance, which resulted in a JIT being established with Bulgaria. The case concerned women recruited in Bulgaria through the "loverboy" *modus operandi*. The values obtained in Switzerland through the exploitation of victims were largely transferred to Bulgaria where the network was funded to recruit new victims.

**256. GRETA considers that the Swiss authorities should continue to take measures to ensure that THB offences for different forms of exploitation are investigated and prosecuted effectively, leading to proportionate and dissuasive sanctions, including by:**

- **improving the harmonisation and co-ordination of practices between the different cantons as regards the specialisation of cantonal prosecution services;**
- **ensuring that law enforcement agencies have sufficient human and financial resources to conduct investigations in THB cases, including then they involve the use of Internet;**
- **systematically carrying out financial investigations in order to locate, seize and confiscate the assets of the perpetrators, with a view to securing compensation of victims, as well as improving the possibility to identify the principals perpetrators (leaders) behind organised THB.**

---

<sup>75</sup> Research carried out on the Internet to detect wrong-doing and perform initial processing of reports of suspicious activity.

<sup>76</sup> Legal examination of suspected criminal content, co-ordination with procedures in progress and forwarding of files to the competent prosecution authorities (in terms of location and of content) in Switzerland and abroad.

<sup>77</sup> Analysis at national level of the phenomenon of Internet-based crime, overview of criminal actions and means used to commit offences, statistics and trends.

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

257. In its first report, GRETA welcomed the availability of witness protection programmes to victims and witness of human trafficking, and invited the Swiss authorities to ensure that they benefit from adequate protection wherever needed.

258. Witnesses involved in an investigation or criminal proceedings can be protected from possible reprisals or intimidation on the basis of the Federal Law on Extra-procedural Protection (LTém), which was introduced in 2013.<sup>78</sup> Underlining the strict confidential rules, the small size of the country, and the small number of witness protection cases, the Swiss authorities could not communicate information on witness protection.

259. In the absence of witness protection measures within the meaning of the aforementioned law, the police have a duty to safeguard the life and integrity of victims in the event of a specific threat, in consultation with the NGOs specialising in providing assistance to this type of victim.

260. Victims of offences may be assisted by a person of trust, in addition to their legal counsel, at every stage of the proceedings, in accordance with Article 152, paragraph 2, of the CCP. This person may be an NGO representative, a psychologist or a social worker.

261. Taking into consideration the importance of assistance as regards victims' willingness to testify, the Swiss authorities emphasised their efforts to ensure that presumed victims are clearly and transparently informed of their rights and obligations, as well as the opportunities and risks inherent in criminal proceedings. Pursuant to the LAVI, presumed victims receive support through victim assistance arrangements and can be accommodated in specialised shelters or flats whose location is known only to a select group of individuals. Victims are assisted by specialised staff, notably from NGOs, including FIZ, Astrée, and Coeur des Grottes, and telephone and Internet access may be restricted to avoid any intimidation attempts from outside. GRETA notes, however, that the role of the LAVI and the assistance provided to victims of THB may vary from one canton to the other (see paragraphs 143-144), as well as also depending on the form of exploitation to which they have been subjected to.

262. While welcoming the range of victim and witness protection measures provided for in Swiss law, **GRETA invites the Swiss authorities to ensure that the existing provisions on the protection of victims and witnesses are effectively and equally applied to protect victims and witnesses of THB at the investigation, trial and post-trial stages, throughout the territory, and regardless of the form of exploitation.**

c. **Jurisdiction (Article 31)**

263. When offences are committed abroad, Swiss prosecution authorities may also be competent in cases where the perpetrator is a Swiss national, including if the act is also punishable in the State where it was committed and the perpetrator is in Switzerland, in application of the active personality principle, established in Article 7, paragraph 1, indent a, of the CC. In addition, the passive personality principle also applies, in accordance with Article 7, paragraph 1, indent b, of the CC, which gives competence to Swiss prosecution authorities when a Swiss national is a victim of a crime or misdemeanour, subject to the condition that the act is also punishable in the State where it was committed and the perpetrator is in Switzerland.

---

<sup>78</sup> See GRETA's first report on Switzerland, paragraph 205.

264. The Swiss authorities also have jurisdiction in cases where a crime or misdemeanour which Switzerland is under obligation to prosecute under an international agreement is committed abroad, on condition that the act is also punishable in the State where it was committed and the perpetrator is in Switzerland, as per Article 6 of the CC. In this respect, the Swiss authorities pointed to a case in March 2018, in which a criminal court in the canton of Fribourg convicted a Swiss man of trafficking in human beings for the purpose of sexual exploitation, sentenced him to 16 years' imprisonment and awarded to three victims of Thai nationality compensations for moral damage for offences which had been committed in Thailand (see also paragraph 200).

265. The double jeopardy requirement is not applicable when a victim of trafficking in human beings is under the age of 18 years, in which case Article 5 of the CC<sup>79</sup> applies and the perpetrator may be prosecuted without taking account of foreign law. The *lex mitior* principle is not applicable either.

266. Furthermore, the Swiss authorities underlined that under Article 7, paragraph 1, of the CC, which establishes the principle of lawfulness, the prosecution authorities are required to open and conduct proceedings, within the limits of their competence, where they are aware of offences or of grounds for presuming that offences have been committed, even if the complaint was lodged abroad.

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

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

267. In Switzerland, international co-operation with other States in preventing and combating trafficking in human beings is an integral component of treaty policy in the area of international legal co-operation in criminal law matters. The legal basis for international co-operation in criminal law matters is the Federal Law on International Co-operation in Criminal Matters (EIMP; RS 351.1), as well as the Federal Order on International Co-operation in Criminal Matters of 24 February 1982 (OEIMP, RS 351.11). Swiss legislation allows a broad spectrum of co-operation, covering extradition, mutual legal assistance, the transfer of persons and the delegation of procedures. Switzerland follows the principle that the EIMP should be applicable if it is more favourable than a treaty. Where a treaty exists but is based on a list of offences not including trafficking in human beings, the EIMP will be applicable and mutual legal assistance will also be possible as regards THB.

268. Switzerland regularly receives requests for assistance and makes such requests to other countries with regard to THB offences. These requests mostly concern the interviewing of victims, but other measures may be requested, such as the interviewing of defendants, house searches, the transmission of documents and transborder surveillance.

269. Switzerland signed an agreement with Europol in 2004,<sup>80</sup> as well as a judicial co-operation agreement with Eurojust in November 2008.<sup>81</sup> Switzerland participates in the EMPOL work of Europol and its European Migrant Smuggling Centre (EMSC) and is a member of INTERPOL's Human Trafficking Expert Group. Its involvement in these operational groups makes it possible to develop transnational analyses or, in addition to exchanging information, to implement operational measures such as joint action days. GRETA also notes that Fedpol is involved in the EMPACT platform and participates regularly in joint action days against human trafficking (see paragraph 250).<sup>82</sup>

<sup>79</sup> Article 5 of the CC concerns offences committed abroad against children.

<sup>80</sup> <https://www.europol.europa.eu/agreements/switzerland>

<sup>81</sup> <http://www.eurojust.europa.eu/press/PressReleases/Pages/2008/2008-12-01-b.aspx>

<sup>82</sup> [https://www.ksmm.admin.ch/dam/data/ksmm/dokumentation/fact\\_sheet/fs-menschenhandel-e.pdf](https://www.ksmm.admin.ch/dam/data/ksmm/dokumentation/fact_sheet/fs-menschenhandel-e.pdf)

270. In parallel to multilateral co-operation, there are bilateral police agreements in place in particular with all the neighbouring States. The Swiss authorities have highlighted the Agreement between the Swiss Confederation, the Republic of Austria and the Principality of Liechtenstein on Transfrontier Police Co-operation (RS 0.360.163.1) which entered into force on 1 July 2017, and mentions trafficking in human beings in its preamble.

271. Further, the Italian and Swiss authorities jointly present in the Chiasso police and customs co-operation centre, as well as the French and Swiss authorities in the Geneva police and customs co-operation centre, facilitate the exchange of police information on an all-year-round day-to-day basis, support transfrontier operations and, through their activities, keep channels of communication open, including in the area of action against trafficking in human beings and migrant smuggling. The presence of Swiss police attachés in a number of other counties supports local co-operation.

272. Switzerland has set up a number of police co-operation projects with some of the main countries of origin of persons trafficked to Switzerland, namely Romania and Bulgaria, and an interdisciplinary project with Hungary. The project "Improving Police Co-operation in the Field of Countering Trafficking in Human Beings between Switzerland and Romania" was devised at the request of the Romanian Inspectorate general and implemented in close collaboration with Fedpol and the cantons. The project was launched in the summer of 2015 and by the end of 2017, all the planned activities had been carried out, except for the closing conference which took place in 2018. The aim of the project was to step up police co-operation between Switzerland and Romania to improve identification of trafficking cases and the investigations of those cases. This was achieved through various activities, notably study visits for Romanian and Swiss police specialists and NGO representatives to exchange good practices, undergo training on Roma culture at Slatina Police College in Romania and implement action weeks in Switzerland.<sup>83</sup>

273. In the period 2015-2018, under the Swiss-Bulgarian Co-operation Programme on Combating Trafficking in Human Beings, the Swiss Government funded a number of anti-trafficking activities with Bulgaria, to the total amount of CHF 1,863,477. The programme supported the process of identification, referral, assistance and reintegration of victims of trafficking in Bulgaria with knowledge exchange with, and technical assistance from Swiss partners. The different components were implemented by three different organisations: the Bulgarian National Commission for Combating Human Trafficking, the NGO Animus Association Foundation and IOM Bulgaria.<sup>84</sup> Amongst the key results of the programme are the setting up of a multi-agency mobile team to deal with alerts of trafficking, the opening of two shelters (one for adults and one for children), as well as a transit centre for victims of trafficking in Sofia.

---

<sup>83</sup> In 2017, three study visits (one in Switzerland and two in Romania) and an action week in Switzerland were organised. During the 2015-2017 phase of the project, a total of 13 project activities - including four action weeks, three Roma culture training sessions and six study visits - were carried out. Thanks to the action weeks implemented in Switzerland, during which joint teams of Romanian and Swiss inspectors and NGO representatives toured districts known for prostitution and were able to communicate with Romanian sex workers in their own language and obtain information on any cases of exploitation and also potential victims. At the same time, Romanian women engaging in prostitution in Switzerland were offered support by the police or a specialised NGO if they were in situations of exploitation. Various study visits were carried out in Switzerland and Romania, in the regions of origin of sex workers and at the investigation units involved.

<sup>84</sup> In February 2017, a workshop was organised for twenty or so Swiss experts, with 4 or 5 lecturers from Switzerland and Bulgaria presenting specific topics. The aim of the workshop was, among other things, to understand the structures and possibilities of the players involved in action against trafficking in human beings in the two countries, exchange ideas and experience and step up co-operation between the authorities. On the Bulgarian side, case studies were presented on the situation of Roma and the specific characteristics of their culture. In addition, Fedpol organised a study visit to Bulgaria in June 2017 for representatives of the cantonal police of Vaud and Bern cantons, Zurich municipal police and prosecutors from Solothurn and Zurich. The visit focused on exchanges of experience with the Bulgarian police services and NGOs in Varna. Meetings with the Roma communities were also organised during the visit, providing valuable insight into the conditions in which victims are exploited.



274. The project Swiss-Hungarian Transnational Co-operation on the Referral of Victims of Trafficking was implemented from April 2017 to March 2018. The aim of the project was to improve identification of, support t, and return and reintegration, of Hungarian victims of trafficking who are exploited in Switzerland, by describing the procedures that exist in Switzerland and Hungary, as well as the functioning of a transnational referral mechanism. Three study visits were organised involving experts from the competent authorities and organisations of both countries.

275. According to the Swiss authorities, the above-mentioned projects have made it possible to forge contacts, instil mutual trust and gain insight into the working conditions and the challenges of detecting and combating trafficking in human beings in Switzerland and some of the main countries of origin, while exchanges of information have significantly increased between the criminal investigations police, thereby boosting the number of investigative activities.

276. Other projects have been supported by the Directorate of Development and Co-operation (DDC) of the Federal Department of Foreign Affairs and by the State Secretariat for Migration (SEM). The Swiss Agency for Development and Cooperation (SDC) has financed anti-trafficking projects in the framework of the Swiss contribution to new EU Member States, including Bulgaria and Romania. The overall budget dedicated specifically to human trafficking in Bulgaria and Romania amounts to CHF 5.3 million for the period 2009-2019. Other countries involved in these projects are Bosnia and Herzegovina, Kosovo\* and Serbia.

277. As regards the SEM, it has financed a project in Nigeria<sup>85</sup> (implemented by UNODC from 2015-2017, overall budget of CHF 550,000) aiming at improving the capacities of law enforcement officers, counsellors and social workers to deal with victims of trafficking in persons and smuggling of migrants in Nigeria. Since 2012, the SEM has also been supporting UNHCR and IOM in the fight against human trafficking in Sudan. Within the framework of the common strategy 2015-2017 of UNHCR, IOM, UNFPA, UNODC and UNICEF, the SEM supported the project "Strengthening Protection Responses for Victims of Trafficking and Others at Risk in the East of Sudan and Khartoum" from December 2015 to March 2017. Through this project, referral mechanisms for victims of trafficking were improved, and a new safe house for witnesses of cases of THB was established in the east of Sudan. In parallel, IOM supported two existing safe houses in Khartoum through SEM funding from June 2015 to August 2017.

278. Moreover, the Swiss authorities informed GRETA of various initiatives at multilateral level. Switzerland is engaged within the framework of the UN Convention on Transnational Organised Crime States Parties Conference in the clarification of the definition of trafficking in the Palermo Protocol and supports the revision of the Model Law and Guidelines to the Trafficking Protocol. Furthermore, Switzerland supports an initiative by the UN Special Rapporteur on Trafficking in Persons, especially Women and Children, aimed at the prevention of trafficking in supply chains.

**279. GRETA welcomes the considerable efforts made by Switzerland in the area of international co-operation and invites the Swiss authorities to continue developing international co-operation in the investigation and prosecution of transnational cases of human trafficking, and to explore further possibilities for co-operation with governmental and non-governmental actors in the main countries of origin of trafficking victims.**

---

\* All reference to Kosovo whether to the territory, institutions or population, in this report shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

<sup>85</sup> "Support and Capacity Building to NAPTIP (Nigerian National Agency for the Prohibition of Traffic in Persons and Other Related Matters) on Strengthening Law Enforcement Response and Victim Support".

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

280. Three NGOs (FIZ, Cœur des Grottes and ECPAT Switzerland) participate in the national co-ordination platform. The measures in the National Action Plan 2017-2020 were devised and discussed within the framework of this platform, with the active involvement of these three NGOs.

281. At cantonal level, most of the anti-trafficking cantonal roundtables incorporate local NGOs specialising in or directly concerned by action against trafficking in human beings. The KSMM has recommended incorporating public and private victim assistance bodies which actually care for trafficking victims in the canton, as well as specialised victim assistance bodies and trade unions. However, it is for each canton to decide on the composition of its own round table.

282. In its first report, GRETA expressed the view that trade unions should be involved in anti-trafficking action at the central and cantonal levels. However, trade unions are still only represented in the cantonal roundtable of Geneva. During GRETA's meeting with the Swiss Trade Union Federation (SGB/USS), it was mentioned that they were considering ways of being more active and involved in anti-trafficking.

283. During GRETA's second evaluation visit, several interlocutors from civil society expressed their concerns as regards the restructuring of the KSMM (see paragraphs 18-19) and the consequent loss of competence for the NGOs that were members of the Steering Committee. NGOs were actively involved in the elaboration of the National Action Plan against trafficking in human beings and they feared that, in light of the strictly consultative role they have been given under the new information platform, they will not be able to contribute sufficiently to future policy development. In this context, civil society representatives stressed the need for the setting up of a National Rapporteur (see paragraph 24).

284. **GRETA considers that the Swiss authorities should ensure that the restructuring of the KSMM does not impede the active and close co-operation between the authorities and civil society. The authorities should continue building strategic partnerships with NGOs and trade unions, through involving them in the planning, monitoring and evaluation of anti-trafficking action, the victim identification process, the provision of assistance to victims of trafficking, and the reintegration and rehabilitation of victims of THB, including by ensuring long-term funding for anti-trafficking activities of NGOs.**

## IV. Conclusions

285. Since the adoption of GRETA's first report on Switzerland in July 2015, progress has been made in a number of areas.

286. The adoption of the second National Action Plan to Fight Human Trafficking (2017-2019), which reflects many of GRETA's previous recommendations and involves the setting up of a number of thematic working groups, is a positive development.

287. Efforts have been made to provide training on human trafficking and the identification of victims to a wide range of officials, following a multi-stakeholder approach.

288. GRETA welcomes the research commissioned by the Swiss authorities on different aspects of human trafficking, including on labour exploitation in the context of human trafficking and on the links between prostitution and human trafficking.

289. The Swiss authorities have made efforts to raise public awareness of human trafficking, in co-operation with IOM, civil society and the private sector. GRETA commends that campaign to raise awareness among medical staff launched in 2018 with a view to improving the identification of possible victims, in particular in emergency departments.

290. Moreover, legislative and practical steps have been taken to prevent and combat human trafficking for the purpose of labour exploitation, including the setting up of consultation centres for undocumented migrants, with the involvement of NGOs and trade unions.

291. Furthermore, GRETA welcomes the ongoing work on improving the identification of victims of trafficking and the progress made by the working group on asylum and human trafficking.

292. *Another positive development is the increase in the number of places in shelters providing specialised assistance to victims of trafficking, including men.*

293. The number of victims granted State compensation has increased and the Swiss authorities have reported confiscations of substantial assets in connection with criminal proceedings instituted for human trafficking.

294. *Further, GRETA notes the increase in the number of criminal investigations for human trafficking and the participation of Switzerland in joint action days against labour exploitation.*

295. Moreover, GRETA commends the engagement of Switzerland in *international co-operation*, including through supporting co-operation projects in the main countries of origin of persons trafficking to Switzerland, as well as various initiative at multilateral level.

296. However, despite the progress achieved, some issues give rise to concern. In this report, GRETA requests the Swiss 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 Swiss authorities to devise and provide training programmes for labour inspectors and prosecutors dealing with labour exploitation cases** (paragraph 42);
- **GRETA urges the Swiss authorities to broaden the mandate of labour inspectors to cover the detection of cases of THB and to build their capacity in this respect** (see also paragraph 139) (paragraph 86);
- **GRETA urges the Swiss authorities to strengthen efforts to prevent trafficking of unaccompanied or separated children by addressing the problem of such children going missing, in particular by providing suitable safe accommodation and adequate supervision, as well as systematically carrying out police investigations into disappearances of unaccompanied and separated children and strengthening follow up and alert systems on reports of missing children** (paragraph 95);
- **GRETA urges the Swiss authorities to take steps to ensure that all victims of trafficking are properly identified and can benefit from the assistance and protection measures contained in the Convention, in particular by:**
  - **ensuring that a formalised victim identification procedure is put into place in all cantons without further delay, defining the roles and responsibilities of all stakeholders and including indicators for identifying victims of different forms of exploitation;**
  - **increasing efforts to proactively identify victims of trafficking for the purpose of labour exploitation, by reinforcing the capacity and training of labour inspectors, and involving trade unions and other relevant actors in the work of the cantonal roundtables on human trafficking** (paragraph 139);
- **GRETA once again urges the Swiss authorities to ensure that all victims under Swiss jurisdiction, including asylum seekers and persons exploited abroad but identified in Switzerland, benefit from assistance measures in accordance with Article 12, paragraph 1, of the Convention** (paragraph 155);
- **GRETA urges the Swiss authorities to improve the identification of and assistance to child victims of trafficking, in particular by:**
  - **ensuring that a formalised procedure for the identification of child victims of THB is put into place in all cantons, which takes into account the special circumstances and needs of child victims, involves child specialists and ensures that the best interests of the child are the primary consideration in all proceedings relating to child victims of THB and children at risk;**
  - **ensuring that relevant actors take a proactive approach and increase their outreach work to identify child victims of THB, by paying particular attention to unaccompanied and separated foreign children;**
  - **providing further capacity-building to stakeholders (police, NGOs, child protection authorities, social workers) as well as guidance for the identification of child victims of THB for different purposes, including the exploitation of begging and exploitation of criminal activities** (paragraph 170);

- **GRETA urges the Swiss authorities to ensure compliance with Article 26 of the Convention through the adoption of a provision on the non-punishment of victims of trafficking for their involvement in unlawful activities, to the extent that they were compelled to do so, and/or by developing relevant guidance. Public prosecutors should receive training on THB and be encouraged to be proactive in establishing if an accused person is a potential victim of trafficking while considering trafficking in human beings as a serious violation of human rights. While the identification procedure is on-going, potential victims of trafficking should not be punished for immigration-related offences** (paragraph 239).

### Further conclusions

- GRETA considers that the Swiss authorities should ensure that the new Platform against Trafficking in Persons and Smuggling of Migrants, the Unit against Trafficking in Persons and Smuggling of Migrants and the different working groups set up under the National Action Plan are capable of ensuring efficient co-ordination of policies and actions against trafficking in human beings, in particular by providing adequate financial support and staff to enable the work of the Platform and working groups, and continuing to involve and consult civil society (paragraph 22);
- Given the significant competences of the cantons related to anti-trafficking action and the protection of its victims, GRETA considers that the Swiss authorities should continue their efforts to harmonize the institutional framework and co-ordination structures for the fight against trafficking at federal and cantonal level. The objective should be to strengthen the coherence and effectiveness of the action of all stakeholders involved in preventing and combating trafficking in all its forms, and to identify and assist victims of trafficking without discrimination, regardless of their place of residence in Switzerland (paragraph 23);
- GRETA considers that the Swiss authorities should examine the possibility of establishing an independent National Rapporteur or designating another existing mechanism for monitoring the anti-trafficking activities of state institutions, as provided for in Article 29, paragraph 4, of the Convention (paragraph 24);
- Given the absence of a national rapporteur, GRETA considers that the Swiss authorities should commission an independent evaluation of the implementation of the National Action Plan on action against trafficking in human beings upon its expiry to assess the impact of the activities, and serve as a basis for the planning future policies and measures to combat human trafficking, in particular the development of the next National Action Plan (paragraph 28);
- GRETA considers that the Swiss authorities should continue their efforts to ensure that comprehensive training programmes are organised in a systematic and harmonised way across Switzerland for all relevant officials, in particular police officers, prosecutors, judges, staff of victims support centres, officials dealing with asylum seekers and irregular migrants, child welfare staff, education staff and medical professionals. The relevance, effectiveness and reach of these programmes should be evaluated at sufficiently regular intervals (paragraph 43);

- 
- In order to create an evidence base for future policy measures, GRETA considers that the Swiss authorities should continue to develop and maintain a comprehensive and coherent statistical system on THB by compiling reliable statistical data from all main actors, including specialised NGOs, on measures to protect and promote the rights of victims, and allowing disaggregation concerning types of exploitation. 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 (paragraph 49);
  - GRETA invites the Swiss authorities to conduct and support further research on THB-related issues as an important source of information on the impact of current policies, as well as a basis for informing future policy and measures. Areas where research is needed include internal trafficking, trafficking for the purpose of labour exploitation, child trafficking, trafficking for the purpose of forced begging and for exploitation of criminal activities, as well as the use of information and communication technologies for the purpose of committing THB, including online sexual abuse through live streaming (paragraph 55);
  - GRETA invites the Swiss authorities to continue developing awareness-raising activities aimed at preventing human trafficking for different forms of exploitation, by involving civil society organisations and trade unions, and to plan future information and awareness-raising campaigns on the basis of previous research and impact assessment (paragraph 68);
  - GRETA considers that the Swiss authorities should take further steps to prevent THB for the purpose of labour exploitation, in particular through:
    - raising awareness amongst the general public as well as amongst migrant workers about the risks of THB for the purpose of labour exploitation;
    - sensitising all relevant professionals, including labour inspectors, staff of other inspecting agencies, law enforcement officers, prosecutors and judges, on THB for the purpose of labour exploitation and the rights of victims of such exploitation;
    - establishing effective mechanisms to allow irregularly present migrant workers to lodge complaints in respect of labour standards against employers and obtain effective remedies without the risk of the sharing of their personal data or other information with immigration authorities for the purposes of immigration control and enforcement (paragraph 85);
  - GRETA considers that the Swiss authorities should take further measures to prevent trafficking in children, in particular by:
    - raising public awareness about the risks and different manifestations of child trafficking (including exploitation of begging, forced criminality and early, child and forced marriages);
    - sensitising and training teachers, educational staff and child welfare and health-care professionals across the country about THB and its different forms, and ensuring that sensitisation programmes on the matter of THB are put in place in schools;
    - mainstreaming the prevention of trafficking in the training of all staff working with unaccompanied and separated children, ensuring the best interests of the child;
    - integrating the prevention of THB in training on online safety (paragraph 96);

- 
- GRETA considers that the Swiss authorities should ensure that health-care professionals and hospital administrations involved in the transplantation of organs, as well as other relevant professionals, are made aware of the indicators of trafficking for the purpose of organ removal and are given instructions on how to deal with such cases (paragraph 102);
  - GRETA considers that the Swiss authorities should adopt and strengthen legislative, administrative, educational, social, cultural or other measures to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with civil society, trade unions and the media, including by:
    - implementing educational programmes at schools, stressing the importance of gender equality and respect for the dignity and integrity of every human being and the consequences of gender-based discrimination;
    - highlighting the risks of trafficking and other forms of sexual and gender-based violence linked to prostitution, and strengthening awareness-raising campaigns of such risks, targeted at men and boys in particular;
    - raising awareness of the responsibility and the important role of the media and advertising in tackling demand which leads to human trafficking;
    - setting up programmes supporting persons who want to leave prostitution;
    - working closely with trade unions, civil society and the private sector to raise awareness of trafficking for the purpose of labour exploitation, prevent trafficking in supply chains and strengthen corporate social responsibility, drawing on the Guiding Principles on Business and Human Rights and Recommendation CM/Rec(2016)3 on human rights and business (paragraph 108);
  - GRETA invites the Swiss authorities to continue their efforts to detect and prevent THB through border control measures, including by:
    - continuing to build the capacity of all competent authorities to detect indicators of THB among persons arriving in Switzerland and to ensure prompt and effective access to assistance and protection;
    - provision of information to foreign nationals seeking asylum or arriving irregularly, in a language that they can understand, about the risks of THB, their rights and where to receive advice and legal assistance. In this context, GRETA refers to the United Nations Office of the High Commissioner for Human Rights (OHCHR) 2014 Recommended Principles and Guidelines on Human Rights at International Borders (paragraph 116);
  - GRETA considers that the Swiss authorities should ensure that:
    - increased attention is paid to the proactive detection of victims of trafficking among asylum seekers and persons placed in immigration detention, allowing sufficient time to gather necessary information and taking into account their traumatic experience. In this context, training on the identification of victims of THB and their rights should be provided to asylum officers and staff working in immigration detention centres;
    - the application of the Dublin Procedure to presumed victims of THB is reviewed (paragraph 138);

- GRETA takes note of the document issued by the CSOL-LAVI, in collaboration with CDAS, clarifying the responsibilities of cantons for funding victim assistance, and considers that the Swiss authorities should ensure that the recommendations made in it are followed in practice (paragraph 156);
- GRETA considers that the Swiss authorities should continue making efforts to provide a secure a sufficient number of accommodation places, offering adequate conditions and adapted to the needs of victims of THB, in all cantons. In this context, adequate funding should be provided to NGOs assisting victims of human trafficking (paragraph 157);
- GRETA invites the Swiss authorities to review the age assessment procedures with a view to ensuring that the best interests of the child are effectively protected, taking into account Article 10, paragraph 3, of the Convention, the Convention on the Rights of the Child, General Comment No. 6 of the Committee on the Rights of the Child and the Council of Europe Action Plan on Protecting Refugee and Migrant Children in Europe (2017-2019) (paragraph 171);
- GRETA considers that the Swiss authorities should take further steps to ensure, in compliance with their obligations under Article 13 of the Convention, that all possible foreign victims of trafficking, regardless of the forms of exploitation, are systematically offered a recovery and reflection period and all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention during this period (paragraph 188);
- GRETA considers that the Swiss authorities should continue making efforts to ensure that victims of trafficking, regardless of the form of exploitation, can fully benefit in practice from the right to obtain a renewable residence permit for the purpose of co-operating with the authorities or for their personal situation, without prejudice to the right to seek and enjoy asylum. In this context, GRETA refers to the UNHCR 2006 Guidelines on the application of the Refugee Convention to victims of trafficking (paragraph 195);
- GRETA invites the Swiss authorities to continue taking steps to facilitate and guarantee access to compensation for victims of THB, and in particular to:
  - ensure that courts take duly into account the material damage suffered by victims when deciding on compensation from perpetrators;
  - ensure that State compensation is granted and paid in due time (paragraph 206);
- GRETA considers that the Swiss authorities should continue to take steps to ensure that the return of victims of THB is carried out with due regard for their rights, safety and dignity, is preferably voluntary, and complies with the obligation of *non-refoulement*. Full consideration should be given to the UNHCR's guidelines on the application of the Refugees Convention to trafficked people. Further, the Swiss authorities should ensure that the best interests of the child are effectively respected, protected and fulfilled, *inter alia*, through an assessment of risks and safety carried out, prior to any removal measure, by specialised bodies in co-operation with the competent contacts in the country of origin, especially for unaccompanied children. The Swiss authorities should also continue to develop co-operation with countries of origin of victims with a view to ensuring that risks are correctly assessed, and that trafficking victims can return in safety and effectively reintegrate (paragraph 212);
- GRETA considers that stating explicitly in law the irrelevance of the consent of a victim to the intended exploitation could improve the implementation of anti-trafficking provisions (paragraph 223);



- 
- Given that Article 4(a) of the Convention provides the minimum content of the types of exploitation included in the definition of THB, GRETA considers that the Swiss authorities should state explicitly in the definition of trafficking in human beings in the Criminal Code the notions of forced labour or services, slavery, practices similar to slavery, and servitude as types of exploitation (paragraph 224);
  - GRETA invites the Swiss authorities to define the parameters and constituents of labour exploitation (paragraph 225);
  - GRETA considers that the Swiss authorities should adopt legislative measures to criminalise the use of services with the knowledge that the person is a victim of THB, as stipulated by Article 19 of the Convention (paragraph 228);
  - GRETA invites the Swiss authorities to keep under review the application of the legal provisions concerning corporate liability for THB with a view to ensuring effective investigation and prosecution of any suspected offences related to THB committed by legal entities, including banks and other financial institutions, and that the sanctions or measures are effective, proportionate and dissuasive (paragraph 231);
  - GRETA considers that the Swiss authorities should continue to take measures to ensure that THB offences for different forms of exploitation are investigated and prosecuted effectively, leading to proportionate and dissuasive sanctions, including by:
    - improving the harmonisation and co-ordination of practices between the different cantons as regards the specialisation of cantonal prosecution services;
    - ensuring that law enforcement agencies have sufficient human and financial resources to conduct investigations in THB cases, including then they involve the use of Internet;
    - systematically carrying out financial investigations in order to locate, seize and confiscate the assets of the perpetrators, with a view to securing compensation of victims, as well as improving the possibility to identify the principals perpetrators (leaders) behind organised THB (paragraph 256);
  - GRETA invites the Swiss authorities to ensure that the existing provisions on the protection of victims and witnesses are effectively and equally applied to protect victims and witnesses of THB at the investigation, trial and post-trial stages, throughout the territory, and regardless of the form of exploitation (paragraph 262);
  - GRETA welcomes the considerable efforts made by Switzerland in the area of international co-operation and invites the Swiss authorities to continue developing international co-operation in the investigation and prosecution of transnational cases of human trafficking, and to explore further possibilities for co-operation with governmental and non-governmental actors in the main countries of origin of trafficking victims (paragraph 279);
  - GRETA considers that the Swiss authorities should ensure that the restructuring of the KSMM does not impede the active and close co-operation between the authorities and civil society. The authorities should continue building strategic partnerships with NGOs and trade unions, through involving them in the planning, monitoring and evaluation of anti-trafficking action, the victim identification process, the provision of assistance to victims of trafficking, and the reintegration and rehabilitation of victims of THB, including by ensuring long-term funding for anti-trafficking activities of NGOs (paragraph 284).

## **Appendix I**

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

#### **Public bodies**

- Federal Office of Police
- Federal Office of Justice
- State Secretariat for Migration
- Federal Department of Foreign Affairs
- State Secretariat for Economic Affairs
- Conference for the Protection of Children and Adults
- Roundtables against human trafficking in Bern, Geneva, Luzern, St. Gallen, Ticino, Vaud and Zurich

#### **Intergovernmental organisations**

- International Organization for Migration (IOM)
- United Nations High Commissioner for Refugees (UNHCR)

#### **Civil society organisations**

- ACT212
- Amnesty International
- Antenna MayDay/SOS Ticino
- ASTREE
- Au coeur des grottes
- Centre Social Protestant Geneva
- ECPAT Switzerland
- FIZ
- International Social Service (SSI)
- Swiss Council for Refugees (OSAR)
- SIT Trade Union
- Swiss Trade Union Federation (SGB/USS)
- UNIA Trade Union

---

## **Government's comments**

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

GRETA engaged in a dialogue with the Swiss 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 Swiss authorities on 30 July 2019 and invited them to submit any final comments. The comments of the authorities, submitted in French on 12 September 2019, are reproduced hereafter (unofficial translation in English).

Schweizerische Eidgenossenschaft  
Confédération Suisse  
Confederazione Svizzera  
Confederaziun svizra

Federal Department of Justice and Police (DFJP)  
  
Federal Office of Police (Fedpol)  
National Crime Prevention Division  
Section against Trafficking in Persons and Smuggling  
of Migrants

## **COMMENTS of the Swiss authorities**

### **on the GRETA report concerning the implementation of the Council of Europe Convention on action against trafficking in human beings by Switzerland**

#### **Second evaluation round**

*(unofficial translation in English by the Council of Europe)*

The Swiss authorities firstly wish to thank GRETA and more specifically the delegation led by Mr Ryszard Piotrowicz, 1st Vice-President of GRETA, for the dedication shown in this evaluation process. The Swiss authorities greatly appreciate the close interest expressed in the measures taken in the cantons against trafficking in human beings and thank GRETA for the in-depth clarification given, reflected in the fine detail contained in the report. The Swiss authorities also wish to thank everyone who contributed to the drafting of the report.

GRETA's evaluation report is a valuable tool for the Swiss authorities, enabling them to identify weaknesses in the national mechanism so that it can be improved. Accordingly, the Swiss authorities will be eager to read GRETA's final conclusions and recommendations, which will certainly have repercussions at political level.

The Swiss authorities further wish to thank GRETA for taking their comments on the draft GRETA report into consideration.

The Swiss authorities welcome continued dialogue with GRETA and stand ready for further exchanges of information and also the third evaluation round.

The Swiss authorities set out their final comments on GRETA's evaluation report below.

#### **General observations**

The different phases of the evaluation of Switzerland were highly satisfactory on the whole. More specifically regarding the process defined for preparing the evaluation report, the Swiss authorities would have liked greater transparency concerning the comments and opinions passed on by the voluntary sector to the GRETA experts. GRETA has referred in its report on several occasions to cases reported directly by the NGOs and drawn up recommendations based on them. The Swiss authorities would appreciate it if such cases, once anonymised, were also submitted to them for analysis and comment before GRETA drew any conclusions. For example, it would have been desirable to organise in-depth discussion with the contact person on these comments when the delegation visited. It would also have been more productive to have details of the foundations for these various comments in order to be able to express a more comprehensive view. Experience has shown that a more extensive analysis and a more two-sided evaluation would have made it possible to draw different conclusions. Discussing the voluntary sector's comments with the Swiss authorities would have had the added bonus of cutting down the number of comments the Swiss authorities had to make on the draft evaluation report.

The Swiss authorities note that, despite the explanations given, some of GRETA's recommendations remain unchanged from the first evaluation round and mirror the opinions and demands of certain NGOs. This is particularly the case regarding the recommendations on the funding of NGOs, the number of places available and the non-punishment clause. The Swiss authorities feel that a more critical approach should have been taken when examining these claims.

## Specific observations

### Paragraph 23

*“Further, given the significant competences of the cantons related to anti-trafficking action and the protection of its victims, GRETA considers that the Swiss authorities should continue their efforts to harmonize the institutional framework and co-ordination structures for the fight against trafficking at federal and cantonal level. The objective should be to strengthen the coherence and effectiveness of the action of all stakeholders involved in preventing and combating trafficking in all its forms, and to identify and assist victims of trafficking without discrimination, regardless of their place of residence in Switzerland.”*

The Swiss authorities duly note GRETA's recommendation, which should however be qualified: while harmonisation between the different cantons is desirable and possible through the promotion of good practice, the Confederation has no means whatsoever of laying down rules for the internal organisation of cantons. Nor is this necessary, as it is only the outcome of cantonal authority action that is decisive and not questions of structure and organisation.

### Paragraph 28

*“Given the absence of a national rapporteur, GRETA considers that the Swiss authorities should commission an independent evaluation of the implementation of the National Action Plan on action against trafficking in human beings upon its expiry to assess the impact of the activities, and serve as a basis for the planning future policies and measures to combat human trafficking, in particular the development of the next National Action Plan.”*

The Swiss authorities duly note the position expressed by GRETA and reserves the right to evaluate the national action plan in the most appropriate manner. It should be pointed out in this connection that the national action plan does not define the impact but rather the practical goals of the different measures. Furthermore, the Swiss authorities believe that it is not really possible to gauge the impact of the activities as regards real improvement in action against trafficking in human beings. The question of whether the 2017-2020 national action plan will be evaluated by an organisation outside the federal administration remains open.

### Paragraphs 85 and 86

*“While welcoming the legislative and practical steps already taken, GRETA considers that the Swiss authorities should take further steps to prevent THB for the purpose of labour exploitation, in particular through:*

*[...]*

- *establishing effective mechanisms to allow irregularly present migrant workers to lodge complaints in respect of labour standards against employers and obtain effective remedies without the risk of the sharing of their personal data or other information with immigration authorities for the purposes of immigration control and enforcement.”*

*“Further, GRETA urges the Swiss authorities to broaden the mandate of labour inspectors to cover the detection of cases of THB and to build their capacity in this respect (see also paragraph 139).”*

The Swiss authorities take note of GRETA's recommendation. However, they draw GRETA's attention to the fact that implementing this recommendation would entail changes to legislation, which fall within the

remit of the political sphere. The Swiss authorities very much doubt that the legislator could be convinced to make such changes.

Where paragraph 85 is concerned, the Swiss authorities consider that offering such a systematic guarantee of impunity is ultimately tantamount to legitimising illegal residence and work. Is it really conceivable that a breach of the law (illegal residence and work) could be legitimised by another breach of the law (violation of labour regulations)? Indeed, such a practice would constitute unequal treatment in respect of other foreign workers who have residence and work permits and have had to comply with the regulations.

Regarding the mandate of labour inspectors, it would have to be ascertained whether a political majority would be in favour of extending it. The Swiss authorities furthermore point out that the current legal provisions already enable labour inspectors to report manifest cases of trafficking in human beings to the prosecution authorities.

### **Paragraph 96**

*“Further, GRETA considers that the Swiss authorities should take further measures to prevent trafficking in children, in particular by:*

- *raising public awareness about the risks and different manifestations of child trafficking (including exploitation of begging, forced criminality and early, child and forced marriages);*
- *sensitising and training teachers, educational staff and child welfare and health-care professionals across the country about THB and its different forms, and ensuring that sensitisation programmes on the matter of THB are put in place in schools;*
- *mainstreaming the prevention of trafficking in the training of all staff working with unaccompanied and separated children, ensuring the best interests of the child;*
- *integrating the prevention of THB in training on online safety.”*

The Swiss authorities take note of GRETA's recommendation. However, the Swiss authorities consider that decisions on measures to be taken should be based on the conclusions of the independent report on the trafficking of children in Switzerland, in line with measure no. 12 of the 2017-2020 national action plan. This report is to provide information on the general situation, the sectors at risk and the forms of exploitation of minors, which are all factors that must be taken into account for devising effective measures. The Swiss authorities feel bound to point out in this context that not all cases of unaccompanied minors and disappearances of child asylum seekers are necessarily linked to trafficking in human beings or exploitation. The different phenomena should be properly identified and any generalisations avoided.

### **Paragraph 108**

*“GRETA considers that the Swiss authorities should adopt and strengthen legislative, administrative, educational, social, cultural or other measures to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with civil society, trade unions and the media, including by:*

- *implementing educational programmes at schools, stressing the importance of gender equality and respect for the dignity and integrity of every human being and the consequences of gender-based discrimination;*
- *highlighting the risks of trafficking and other forms of sexual and gender-based violence linked to prostitution, and strengthening awareness-raising campaigns of such risks, targeted at men and boys in particular;*

- *raising awareness of the responsibility and the important role of the media and advertising in tackling demand which leads to human trafficking;*
- *setting up programmes supporting persons who want to leave prostitution;*
- *working closely with trade unions, civil society and the private sector to raise awareness of trafficking for the purpose of labour exploitation, prevent trafficking in supply chains and strengthen corporate social responsibility, drawing on the Guiding Principles on Business and Human Rights and Recommendation CM/Rec(2016)3 on human rights and business.”*

While taking note of GRETA's recommendation, the Swiss authorities would like to make the following comments:

- Regarding educational programmes for schools, the curricula (*Lehrplan 21* for German-speaking Switzerland and the *Plan d'étude romand* for French-speaking Switzerland) already incorporate the themes mentioned by GRETA<sup>86</sup>. Consequently, the Swiss authorities consider that this part of the recommendation is already fulfilled.

- Regarding raising awareness of the media and the advertising world as to their role and responsibility in tackling demand which leads to trafficking, the Swiss authorities believe that effective implementation is problematic in a liberal democratic State. As there is media freedom and freedom of opinion, the media reflect the different opinions of society, one consequence being, for example, that the different aspects linked to prostitution can be discussed and become a subject of controversy. Ultimately, no authority can dictate to the media what their editorial content should be or the approach they should take in the processing of information.

- Regarding programmes supporting persons who want to leave prostitution, the Swiss authorities point out that this aspect is already covered in the offer of support provided by certain specialised NGOs, particularly the Au Coeur des Grottes shelter in Geneva, which actively supports victims in finding training giving them the qualifications they need for professional reintegration in Switzerland or their country of origin.

However, this recommendation has more to do with the question of the offer and does not necessarily entail discouraging demand.

- Finally, regarding collaboration between the trade unions, civil society and the private sector to raise awareness and prevent trafficking in supply chains, the Swiss authorities point out that actions are already being undertaken in this area, as the GRETA report mentions in paragraphs 105 to 107.

### Paragraph 139

*“Further, GRETA urges the Swiss authorities to take steps to ensure that all victims of trafficking are properly identified and can benefit from the assistance and protection measures contained in the Convention, in particular by:*

- *ensuring that a formalised victim identification procedure is put into place in all cantons without further delay, defining the roles and responsibilities of all stakeholders and including indicators for identifying victims of different forms of exploitation;*
- *[...]*”

The Swiss authorities take note of GRETA's recommendation and point out that several measures in the 2017-2020 national action plan will make it possible to attain this goal. Measure no. 18 provides for the production of a reference document for the uniform application of federal law instruments in the cantons. This document will specify the roles and responsibilities of the different stakeholders concerned. In addition, the revision of the list of indicators of trafficking in human beings is now complete (measure no. 3). The new document will be distributed to all the cantons in 2019 and serve as a common reference

<sup>86</sup> For the French-speaking curriculum, see *inter alia* the following resources:

<https://bdper.plandetudes.ch/ressources/?text=genres>,

<https://bdper.plandetudes.ch/ressources/?text=sexualit%C3%A9>

For Lehrplan21, see *inter alia* the following concept paper:

[https://lehrplan21.ch/sites/default/files/Grundsatzpapier\\_Sexualitaet\\_und\\_Lehrplan\\_StG\\_2011-09-23.pdf](https://lehrplan21.ch/sites/default/files/Grundsatzpapier_Sexualitaet_und_Lehrplan_StG_2011-09-23.pdf)

for identifying victims. The Swiss authorities believe that these instruments are tantamount to a formalised procedure and meet the requirements of the recommendation. On the other hand, given Switzerland's federal structure and legislative practice, designating a single body for the identification of THB victims could not be envisaged.

### **Paragraph 157**

*“Further, GRETA considers that the Swiss authorities should continue making efforts to provide a secure a sufficient number of accommodation places, offering adequate conditions and adapted to the needs of victims of THB, in all cantons. In this context, adequate funding should be provided to NGOs assisting victims of human trafficking.”*

The Swiss authorities note GRETA's recommendation and their response is as follows:

The Swiss authorities point out that the number of places available has increased in recent years and they have no knowledge of any situations in which victims could not have been taken into care because of a lack of places. Accordingly, the Swiss authorities do not see where any shortcoming would be. If GRETA was prompted to make this recommendation by a belief that access to specialised assistance for victims is not guaranteed in all cantons because there is no formalised referral mechanism (lack of round tables in 8 cantons), the Swiss authorities point out that this relates to another issue for which solutions are being sought. However, in the cantons that work with specialised structures, there are no shortcomings to be reported. There is no mention either in the GRETA report of specific problems relating to a lack of places. Where the funding of NGOs is concerned, the Swiss authorities wish to point out that federal grants are awarded each year – on top of cantonal funding – on the basis of the Order on Measures to Prevent Offences linked to Trafficking in Human Beings (RS 311.039.3). The Swiss authorities find it regrettable that this information is not included in the GRETA report and point out to GRETA that, as a result of the profits made by certain structures in recent years, the grants made to them by the Confederation have had to be reduced. Under the legislation on grants, public money may not be used to constitute financial reserves. This demonstrates that sufficient funding is available to finance specialised assistance for victims. The Swiss authorities consider, therefore, that the goals sought by this recommendation have already been attained.

### **Paragraph 170**

*“GRETA urges the Swiss authorities to improve the identification of and assistance to child victims of trafficking, in particular by:*

- *ensuring that a formalised procedure for the identification of child victims of THB is put into place in all cantons, which takes into account the special circumstances and needs of child victims, involves child specialists and ensures that the best interests of the child are the primary consideration in all proceedings relating to child victims of THB and children at risk;*
- *ensuring that relevant actors take a proactive approach and increase their outreach work to identify child victims of THB, by paying particular attention to unaccompanied and separated foreign children;*
- *providing further capacity-building to stakeholders (police, NGOs, child protection authorities, social workers) as well as guidance for the identification of child victims of THB for different purposes, including the exploitation of begging and exploitation of criminal activities.”*

The Swiss authorities note GRETA's recommendation. As mentioned in GRETA's report (paragraph 54), an independent report on child trafficking in Switzerland is being drawn up with a view to updating knowledge of the scale and characteristics of this form of trafficking in Switzerland. It will be possible to develop measures only once this information has been established. Regarding the question of a formalised identification procedure, the Swiss authorities refer to the point they made in connection with paragraph 139 of the report.



## Paragraph 182

*“In its first report, GRETA had expressed its concerns about the fact that the recovery and reflection period can be terminated prematurely if a possible victim has indicated that he or she does not want to co-operate, pursuant to Article 35, paragraph 3, of the OASA. GRETA stressed that possible victims should be allowed the full duration of the recovery and reflection period so that they have sufficient time to recover and take an informed decision on whether to co-operate. These concerns are corroborated by reports from NGOs that it is a recurring pattern that the recovery and reflection period is ended prematurely when the victim does not consent to collaborate with the authorities.”*

The Swiss authorities wish to make the following comments: when there are indications that someone might be a victim of trafficking in human beings, when they have been informed of their rights, including with regard to the recovery and reflection period, and referred to a centre providing specialised assistance but they do not regard themselves as a victim, they refuse the assistance offered and clearly express a desire to return to their country or to renew contact with the perpetrators, are the Swiss authorities entitled to hold that person against their will and impose a recovery and reflection period on them? It is a matter here of respecting the desire expressed by the person concerned and not a "sanction" for failing to cooperate. The Swiss authorities regret not having had the opportunity to discuss these cases submitted by the NGOs in detail.

## Paragraph 184

*“[...] There seems to be no practice of granting the recovery and reflection period to victims of THB for the purpose of labour exploitation.”*

This information is incorrect. If the situation is examined from the viewpoint of trafficking in human beings, a recovery and reflection period is granted in all cases, whatever the type of exploitation. On the other hand, if it does not involve trafficking in human beings and procedures are initiated only in civil law, there are no grounds to provide a recovery and reflection period.

## Paragraphs 188 and 195

*“GRETA considers that the Swiss authorities should take further steps to ensure, in compliance with their obligations under Article 13 of the Convention, that all possible foreign victims of trafficking, regardless of the forms of exploitation, are systematically offered a recovery and reflection period and all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention during this period.”*

*“GRETA considers that the Swiss authorities should continue making efforts to ensure that victims of trafficking, regardless of the form of exploitation, can fully benefit in practice from the right to obtain a renewable residence permit for the purpose of co-operating with the authorities or for their personal situation, without prejudice to the right to seek and enjoy asylum. In this context, GRETA refers to the UNHCR 2006 Guidelines on the application of the Refugee Convention to victims of trafficking.”*

The Swiss authorities take note of GRETA's recommendation but consider that they already fulfil the obligations arising under Articles 13 and 14 of the Convention. Although, notwithstanding efforts to harmonise things in the Confederation (COMPETO framework process), practices relating to the granting of a recovery period (paragraph 188) or a stay permit (paragraph 195) may vary slightly from canton to canton. This is a result of Swiss federalism and does not mean that the authorities systematically fail to actually grant recovery periods or stay permits. The Swiss authorities also wish to underline that there is no difference of treatment for different forms of exploitation. More specifically regarding trafficking for the purpose of labour exploitation, relatively few such situations have been identified in Switzerland and there have been certain cases where exploited individuals have left Swiss territory, without having been forced to in any way by the authorities and before the authorities were able to identify them as victims, but that was a result of circumstances and not of differing practice regarding that particular form of trafficking in human beings on the part of the authorities.

### Paragraph 223

*“The irrelevance of the victim’s consent to exploitation is not stated in Article 182 of the CC, but the Swiss authorities have indicated that the travaux préparatoires, published in the Federal Gazette, state that consent does not automatically preclude Article 182 from applying. This has been confirmed by the Federal Supreme Court’s case-law (see paragraph 219). Nevertheless, GRETA considers that stating explicitly in law the irrelevance of the consent of a victim to the intended exploitation could improve the implementation of anti-trafficking provisions.”*

The Swiss authorities note GRETA's recommendation but it should be pointed out that the federal court case-law mentioned in paragraph 215 of GRETA's report is a known point of reference and self-evident for Swiss prosecution authorities and courts. Numerous judgments are based on that case-law, which forms part of the prosecution authorities' basic knowledge in the area of prosecuting trafficking cases. As GRETA's report does not establish the necessity of amending the law in line with the recommendation, the Swiss authorities believe that the present legal framework already satisfies the Convention's provisions.

### Paragraph 224

*“Given that Article 4(a) of the Convention provides the minimum content of the types of exploitation included in the definition of THB, GRETA also considers that the Swiss authorities should state explicitly in the definition of trafficking in human beings in the Criminal Code the notions of forced labour or services, slavery, practices similar to slavery, and servitude as types of exploitation.”*

The Swiss authorities know GRETA's viewpoint on this question, which was already discussed in-depth with GRETA during the first evaluation round. Swiss legislation is characterised by the precise and concise language it uses. To interpret a norm and define its scope, case-law follows the *“travaux préparatoires”* in particular (see *inter alia* paragraph 217 of the report). Accordingly, the Swiss authorities feel that a revision of the Swiss Criminal Code is unnecessary and certainly not imperative to meet the Convention's requirements.

### Paragraph 228

*“GRETA considers that the Swiss authorities should adopt legislative measures to criminalise the use of services with the knowledge that the person is a victim of THB, as stipulated by Article 19 of the Convention.”*

The Swiss authorities take note of GRETA's position but nevertheless point out that the provisions of Article 19 of the Convention are optional (“Each Party shall consider adopting...”), in which case GRETA can only invite Switzerland to consider adopting such a measure and not state that the Swiss authorities should adopt it. For the remainder, the Swiss authorities' response is as follows:

It is true that Swiss criminal law does not contain any provision specifically criminalising the knowing use of services of trafficking victims. As it is difficult for prosecutors to prove that an individual benefiting from a service knew that the person providing it was a victim of trafficking in human beings (intention), this type of criminal law provision would be difficult to apply. That said, in certain circumstances, in Switzerland those benefiting from the demand side of trafficking in human beings could be convicted under certain existing criminal law provisions. Article 182 of the Criminal Code stipulates that any person who “offers”, acts as an intermediary or “purchases” may be regarded as engaging in trafficking in human beings. The condition for their incrimination is to have played a decisive role in the transaction, in other words to have taken part in the transaction to some degree. Those playing a subordinate role are punishable under general criminal law rules (complicity). Employers who knowingly employ or illegally exploit foreign labour may be punished under the law on foreigners and, depending on the circumstances, under other criminal law provisions (coercion, sequestration, taking advantage of a person in distress, encouraging prostitution, etc), independently of any involvement in trafficking in human beings.

## Paragraph 239

*“GRETA urges the Swiss authorities to ensure compliance with Article 26 of the Convention through the adoption of a provision on the non-punishment of victims of trafficking for their involvement in unlawful activities, to the extent that they were compelled to do so, and/or by developing relevant guidance. Public prosecutors should receive training on THB and be encouraged to be proactive in establishing if an accused person is a potential victim of trafficking while considering trafficking in human beings as a serious violation of human rights. While the identification procedure is on-going, potential victims of trafficking should not be punished for immigration-related offences.”*

The Swiss authorities take note of GRETA's recommendation but point out that they were not made aware of specific cases within the framework of the evaluation procedure and deplore the fact that they have not been able to respond to the allegations made at the beginning of paragraph 237 in detail. As is clear from paragraph 236, the issue is more one of identification, as a person having committed a misdemeanour or offence is sanctioned if they are not identified as a trafficking victim. As pointed out in paragraphs 233 and 234 of the report, Swiss criminal law is based on the principle that the perpetrator is at fault, and the Criminal Code already contains provisions stipulating that a person cannot be convicted if they were in a state of necessity resulting from coercion. Accordingly, a victim is not guilty if forced to commit an illegal act while being exploited. During its evaluation visit to the Swiss cantons, the GRETA delegation was able to see for itself that Swiss prosecutors are aware of the non-punishment principle and that they apply it. The reasons why the victim cannot be definitively exempted from punishment before the perpetrator is convicted have also been specified and are mentioned in paragraph 237 of GRETA's report. Finally, the Swiss authorities wish to reiterate the training and networking measures mentioned in paragraph 234 of the report, which are intended to improve detection of trafficking victims and prevent them being punished. In the light of the foregoing, the Swiss authorities believe that the aims of the recommendation have already been attained, which is why they do not envisage taking further measures.

## Paragraph 256

*“GRETA considers that the Swiss authorities should continue to take measures to ensure that THB offences for different forms of exploitation are investigated and prosecuted effectively, leading to proportionate and dissuasive sanctions, including by:*

- *improving the harmonisation and co-ordination of practices between the different cantons as regards the specialisation of cantonal prosecution services;*
- *ensuring that law enforcement agencies have sufficient human and financial resources to conduct investigations in THB cases, including then they involve the use of Internet;*
- *systematically carrying out financial investigations in order to locate, seize and confiscate the assets of the perpetrators, with a view to securing compensation of victims, as well as improving the possibility to identify the principals perpetrators (leaders) behind organised THB.”*

The Swiss authorities duly note GRETA's recommendation, but the following points should be borne in mind:

- While harmonisation of practices between the different cantons is desirable and possible through the promotion of good practices, the Confederation has no means whatsoever of laying down rules for the internal organisation of cantons. Nor is this necessary, as it is only the outcome of cantonal authority action that is decisive and not questions of structure and organisation.
- Regarding the question of human and financial resources allocated to tackling trafficking in human beings in the cantons, it should be pointed out that this also depends on the local community's needs and expectations and action against THB is not the only aspect to be taken into account. Consequently, the question of the resources allocated is greatly determined by political priorities.
- Where financial investigations are concerned, both Switzerland's legal framework (paragraph 199 of the report) and the practice of the prosecution authorities (paragraph 254 of the report) satisfy this recommendation made by GRETA.

**Paragraph 284**

*“GRETA considers that the Swiss authorities should ensure that the restructuring of the KSMM does not impede the active and close co-operation between the authorities and civil society. The authorities should continue building strategic partnerships with NGOs and trade unions, through involving them in the planning, monitoring and evaluation of anti-trafficking action, the victim identification process, the provision of assistance to victims of trafficking, and the reintegration and rehabilitation of victims of THB, including by ensuring long-term funding for anti-trafficking activities of NGOs.”*

Cooperation with civil society is not impeded by the Swiss authorities, be it strategically or operationally. The Swiss authorities are aware of the importance and great value of this cooperation for effectively combating trafficking in human beings. Within the process of reorganising the SCOTT, very close attention has been paid to this aspect, and the NGOs are involved in the new anti-trafficking platform. Consequently, the Swiss authorities consider that this recommendation has already been fulfilled.