



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

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

FIRST/SECOND EVALUATION ROUNDS

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## Preamble

As the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) and the monitoring mechanism to evaluate its implementation are relatively new, it is appropriate to set out their salient features at the beginning of the first report to each Party to the Convention.

The Convention was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005, following a series of other initiatives by the Council of Europe in the field of combating trafficking in human beings. The Convention entered into force on 1 February 2008. It is a legally binding instrument which builds on already existing international instruments. At the same time, the Convention goes beyond the minimum standards agreed upon in other international instruments and aims at strengthening the protection afforded by them.

The main added value of the Convention is its human rights perspective and focus on victim protection. The Convention clearly defines trafficking as being first and foremost a violation of human rights and an offence to the dignity and integrity of the human being; greater protection is therefore needed for all of its victims. The Convention also has a comprehensive scope of application, encompassing all forms of trafficking (whether national or transnational, linked or not linked to organised crime) and taking in all persons who are victims of trafficking (women, men or children). The forms of exploitation covered by the Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.

As trafficking in human beings is a world-wide phenomenon, one of the express purposes of the Convention is to promote international co-operation in the efforts to combat trafficking. In this context, it is noteworthy that the Convention is not restricted to Council of Europe member states; non-member states and the European Union also have the possibility of becoming Parties.

To be effective, and given the nature of the phenomenon, a strategy for combating trafficking in human beings must adopt a co-ordinated and multidisciplinary approach, incorporating prevention, protection of victims’ rights and prosecution of traffickers. The Convention contains various provisions in each of these three areas, placing obligations on States to take appropriate measures, in partnership with civil society and in co-operation with other States.

The measures provided for by the Convention in the area of prevention include awareness-raising for persons vulnerable to trafficking; economic and social initiatives to tackle the underlying causes of trafficking; actions aimed at discouraging demand; and putting in place border control measures to prevent and detect trafficking in human beings.

The Convention also provides for a series of measures to protect and promote the rights of victims. Victims of trafficking must be identified and recognised as such in order to avoid police and public authorities treating them as “irregular migrants” or criminals. Victims should be granted physical and psychological assistance and support for their reintegration into society. Further, by virtue of the Convention, victims are entitled to a minimum of 30 days to recover and escape from the influence of the traffickers and to take a decision about their possible co-operation with the authorities. A renewable residence permit should be granted if their personal situation so requires and/or if their continued presence is needed in order to co-operate in a criminal investigation. In addition, the Convention establishes the right of victims to receive compensation and provides for measures for their repatriation and return with due regard to the rights, safety and dignity of the victims.

In the area of substantive and procedural criminal law, the Convention places on Parties a series of obligations aimed at enabling the effective prosecution of traffickers and ensuring that they are punished in a proportionate and dissuasive manner. Particular attention is paid to the issue of victim and witness protection during investigation and court proceedings. Parties should also provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities.

Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations contained in it, which consists of two pillars: the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties.

GRETA is composed of 15 independent and impartial experts chosen for their recognised competence in the fields of human rights, assistance and protection of victims, and action against trafficking in human beings, or because of their professional experience in the areas covered by the Convention. The task of GRETA is to evaluate the implementation of the Convention by the Parties, following a procedure divided into rounds. At the beginning of each round, GRETA defines autonomously the provisions to be monitored and determines the most appropriate means to carry out the evaluation, being guided by the Rules of procedure for evaluating implementation of the Convention adopted at GRETA's 2nd meeting (16-19 June 2009). GRETA has decided that the duration of the first evaluation round shall be four years starting at the beginning of 2010 and finishing at the end of 2013.

In carrying out its monitoring work, GRETA has the right to avail itself of a variety of means for collecting information. As a first step, GRETA sends a detailed questionnaire to the authorities of the Party undergoing evaluation. It may also make additional requests for information. By virtue of the Convention, Parties are obliged to co-operate with GRETA in providing the requested information. Furthermore, GRETA may decide to organise hearings with various actors in the field of action against trafficking in human beings. Indeed, GRETA maintains contacts with non-governmental organisations which can provide relevant information. In addition, GRETA may decide to carry out a visit to the country concerned in order to collect additional information or to evaluate the practical implementation of the adopted measures. This visit allows for direct meetings with the relevant bodies (governmental and non-governmental) and is also an occasion for GRETA to visit facilities where protection and assistance are provided to victims of trafficking and other related structures. Furthermore, GRETA may decide to organise hearings with various actors in the field of action against trafficking in human beings.

GRETA's evaluation reports are thus the result of information gathered from a variety of sources. They contain an analysis of the situation in each Party regarding action taken to combat trafficking in human beings and suggestions concerning the way in which the country may strengthen the implementation of the Convention and deal with any problems identified. In its assessment, GRETA is not bound by the case law of judicial and quasi-judicial bodies acting in the same field, but may use them as a point of departure or reference. The reports are drawn up in a co-operative spirit and are intended to assist States in their efforts; they can offer support for the changes on which the national authorities have already embarked, and lend legitimacy to the direction of national policies. Because of its multidisciplinary and multinational composition, and as a consequence of its independent approach, GRETA provides a professional and impartial international voice in this process.

As regards the procedure for the preparation of reports, GRETA examines a draft report on each Party in plenary session. The report is sent to the governments concerned for comment. This 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 for the Party to make comments, the report and conclusions by GRETA are made public, together with any final comments made by the Party concerned. They are also sent to the Committee of the Parties. In the context of the first evaluation round, this completes GRETA's task in respect of the Party concerned, but it is only the first stage in an on-going dialogue between GRETA and the authorities.

The second pillar of the monitoring mechanism, the Committee of the Parties, is composed of the representatives in the Committee of Ministers of the Parties to the Convention and of representatives of Parties non-members of the Council of Europe. On the basis of GRETA's reports, the Committee of the Parties may adopt recommendations addressed to a Party concerning the measures to be taken to implement GRETA's conclusions.

## Executive summary

The Monegasque authorities have taken steps to make trafficking in human beings a criminal offence. Given the Principality's particular geographical situation and population size, there is no specialised structure for combating trafficking in human beings. A working group was recently set up to draw up a policy document, in the form of a circular intended to optimise co-ordination between the departments concerned in the area of detecting and caring for presumed trafficking victims. With a view to them meeting their obligations under the Convention and adopting a comprehensive approach to the fight against THB, GRETA urges the Monegasque authorities to adopt an action plan or other policy document covering the prevention of THB, training for relevant professionals, the identification and protection of trafficking victims and the prosecution of THB offences.

Noting that awareness-raising is essential for preventing THB, GRETA considers that the Monegasque authorities should develop initiatives to raise awareness among the public and the various groups considered at risk. GRETA also considers that the Monegasque authorities should take further steps to prevent trafficking for the purpose of labour exploitation, in particular by training labour inspectors and broadening their remit so that they can play an active part in preventing THB in all sectors of economic activity, including domestic work.

No victims of trafficking in human beings have been identified to date in Monaco. GRETA nevertheless notes that certain groups could be more exposed to the risk of trafficking, especially domestic workers from outside the country and persons working on yachts. Monaco has no official procedures or established indicators for identifying trafficking victims. GRETA urges the Monegasque authorities to place operational tools (such as indicators, checklists and risk assessment tools) at the disposal of all professionals likely to come into contact with potential victims of trafficking, and in particular police officers, labour inspectors and NGOs.

There are two entities in Monaco whose mission is to take action, which is different and complementary, in the event of a trafficking victim being detected: the Victims of Crime Association (AVIP) and the Department of Social Welfare and Social Services (DASO). GRETA urges the Monegasque authorities to adopt such legislative or other measures as may be necessary to provide assistance to all victims of human trafficking and help them with their physical, psychological and social recovery (in particular suitable safe accommodation, access to emergency medical care, counselling and material assistance, as well as advice and information on their rights in a language understood by the victim).

GRETA furthermore urges the Monegasque authorities to develop procedures for the identification of child victims of trafficking and their referral to assistance, determining a clear procedure (national referral mechanism) for the identification of child victims of trafficking, based on multi-agency co-operation, which is integrated in the child protection system.

In addition, GRETA urges the Monegasque authorities to provide in their internal law for a recovery and reflection period of at least 30 days to enable THB victims to recover from their exploitation and take an informed decision on co-operating with the investigative or prosecution authorities, including when victims are illegally present on the territory.

Monegasque law has no specific provisions relating to residence for victims of trafficking, and GRETA urges the Monegasque authorities to provide for the possibility of granting a residence permit to victims of trafficking in human beings if the competent authority considers that their stay is necessary owing to their personal situation and/or if it is necessary for the purpose of their co-operation with the competent authorities in connection with an investigation or criminal proceedings.

Moreover, GRETA considers that the Monegasque authorities should take steps to ensure that offences of trafficking are investigated proactively and prosecuted expeditiously, resulting in proportionate and dissuasive sanctions. In particular, the authorities should ensure that investigators, prosecutors and judges have better knowledge of the phenomenon of trafficking in human beings and greater awareness of the impact of exploitation on victims and the need to respect their human rights.

Finally, GRETA commends Monaco's participation in international co-operation, which it invites the Monegasque authorities to pursue and further develop, including by training relevant professionals, raising awareness of human trafficking, improving identification of and assistance for victims, as well as conducting investigations into trafficking cases connected with transnational organised crime.



## I. Introduction

1. Monaco deposited the instrument of ratification of the Council of Europe Convention on Action against Trafficking in Human Beings ("the Convention") on 30 November 2015. The Convention entered into force in respect of Monaco on 1 March 2016.<sup>1</sup>
2. As established in Article 36(1) of the Convention, the Group of Experts on Action against Trafficking in Human Beings ("GRETA") monitors the implementation of the Convention by the Parties. GRETA does so in conformity with the procedure laid down in Article 38 of the Convention and the Rules on the evaluation procedure of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties.
3. In accordance with Article 38 of the Convention, GRETA proceeded with the examination of the measures taken by Monaco to implement the provisions set out in the Convention. GRETA decided to join the first and second evaluation rounds of the Convention in respect of Monaco and sent a combined questionnaire to the authorities on 9 April 2018. The deadline for replying to the questionnaire was 9 September 2018. Monaco submitted its reply on 12 September 2018.
4. When preparing the present report, GRETA used the reply to the questionnaire submitted by Monaco and other information gathered by it. A visit to Monaco took place from 28 to 31 January 2019. It was carried out by a delegation composed of:
  - Mr Frédéric Kurz, First Vice-President of GRETA *ad interim*;
  - Ms Nathalie Martin, member of GRETA;
  - Ms Evgenia Giakoumopoulou, Administrator at the Secretariat of the Convention.
5. During the visit, the GRETA delegation met with representatives of the Police Department, the Department of Justice, the Department of Legal Affairs, the Department of Employment, the Ministry of Health and Social Affairs, the Ministry of Foreign Affairs and Cooperation, and the Department of Education, Youth and Sport. Further, meetings were held with prosecutors and members of the judiciary. Discussions were also held with Members of Parliament, the High Commissioner for the Protection of Rights, Liberties and Mediation, as well as the Chief Officer for Women's Rights.
6. The GRETA delegation held separate meetings with representatives of non-government organisations (NGOs), trade unions and lawyers.
7. In addition, the GRETA delegation met representatives of the Department of Social Welfare and Social Services (DASO) and visited the children's home and social housing facilities coming under DASO.
8. 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.
9. GRETA is grateful for the assistance provided before the visit by the contact person appointed by the Monegasque authorities, Ms Corinne Magail, from the Ministry of Foreign Affairs and Co-operation.

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<sup>1</sup> The Convention as such entered into force on 1 February 2008, following its 10th ratification.

10. The draft version of the present report was adopted by GRETA at its 35th meeting (8-12 July 2019) and submitted to the authorities of the Principality of Monaco for comments on 26 July 2019. The authorities' comments were received on 16 October 2019 and were taken into account by GRETA when considering and adopting the final report at its 36th meeting (18-22 November 2019). The report covers the situation up to 22 November 2019; developments since that date are not taken into account in the following analysis and conclusions.

## **II. National framework in the field of action against trafficking in human beings in Monaco**

### **1. Overview of the current situation in the area of trafficking in human beings in Monaco**

11. No victims of trafficking in human beings (THB) have been identified to date by the Monegasque authorities, who have pointed to the Principality's particular geographical situation, with a territory of 2.02 km<sup>2</sup> surrounded by France, and a high level of police surveillance. The authorities also consider that the Principality's size and population (38 300 residents, of whom 9 000 are Monegasque nationals) would make it more difficult to conceal any instances of trafficking.

12. However, GRETA notes that some 40,000 employees commute daily to Monaco from France to work in construction, domestic service, hospitals and cleaning agencies. Certain groups could be more exposed to the risk of trafficking, especially domestic workers, persons working on yachts, etc. Given the difficulty of monitoring working conditions in private households, domestic workers are particularly vulnerable, and a recent case reported to GRETA presented some indicators of THB (see paragraph 94).

13. Moreover, it was reported that some annual events in the Principality attended by visitors are a magnet for "escort girls" staying in neighbouring towns. The authorities have not identified any victims of exploitation in forced prostitution. However, the important arrival of visitors to these events could make it harder to identify potential victims of trafficking among persons engaged in prostitution, requiring a proactive approach by the police. Forced criminality is also a form of exploitation that could occur in Monaco and requires better understanding.

### **2. Overview of the legal and policy framework in the field of action against trafficking in human beings**

#### *a. Legal framework*

14. At the international level, in addition to the Council of Europe Convention on Action against Trafficking in Human Beings given effect in the Principality by Sovereign Order No. 5.803 of 11 April 2016, Monaco has ratified the United Nations Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children ("Palermo Protocol"), given effect by the Sovereign Order of 3 November 2003. Monaco has also ratified the United Nations Convention on the Rights of the Child and its Optional Protocols on the Sale of Children, Child Prostitution and Child Pornography, and on the Involvement of Children in Armed Conflict, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence ("Istanbul Convention"), the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse ("Lanzarote Convention"), and a number of other Council of Europe conventions in the field of criminal law.<sup>2</sup>

15. In Monegasque law, trafficking in human beings is criminalised by Sovereign Order No. 605 of 1 August 2006 implementing the United Nations Convention against Transnational Organised Crime, its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and its Protocol against the Smuggling of Migrants by Land, Sea and Air.

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<sup>2</sup> The European Convention on Mutual Assistance in Criminal Matters, the European Convention on Extradition, and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

16. Other laws relevant to action against THB have been passed, such as Act No. 1.344 of 26 December 2007 on higher penalties for crimes and offences against children, and Act No. 1.382 of 20 July 2011 on the prevention and punishment of specific forms of violence.

*b. National Action Plans*

17. There is currently no national action plan or other policy document for combating THB in Monaco. However, the Monegasque authorities pointed out that they have set up a working group comprising representatives from all the departments concerned by this issue and discussion is now under way with a view to drawing up a policy document, in the form of a circular intended to optimise co-ordination between the departments concerned in the area of detecting and caring for presumed trafficking victims. One objective of this policy document is to organise the assistance to be provided to trafficking victims.

### **3. Overview of the institutional framework for action against trafficking in human beings**

18. Although Monaco has no specific institutional framework for action against trafficking in human beings, the Monegasque authorities have stated that communication would be rapidly established between the different government departments concerned, in particular the Police Department, the Judicial Services Directorate and the Prosecutor's Office.

19. There are two entities in Monaco which are responsible for taking action in the event of a trafficking victim being detected, working in different and complementary ways. The Victims of Crime Association (*Association d'Aide aux Victimes d'Infractions Pénales, AVIP*), which is an association under private law pursuing the aim of assisting all victims of criminal offences, would help victims in their dealings with the administrative and judicial authorities. The Department of Social Welfare and Social Services (DASO), a state service, has far broader scope for action entailing assistance for nationals and residents who face financial or welfare problems.

20. GRETA further notes the recent establishment of the Monegasque Committee to Promote and Safeguard Women's Rights, whose remit also covers action against trafficking in human beings as part of combating gender-based violence. Article 2 of the Sovereign Order establishing the committee provides that its purpose is to "monitor and evaluate national policies and measures to promote gender equality and to prevent and combat all forms of violence and discrimination against women, as covered, in particular, by [...] the Convention on Action against Trafficking in Human Beings concluded in Warsaw on 16 May 2005.<sup>3</sup> The committee shall have the task of co-ordinating collection of relevant data, analysing them and publishing the findings. This committee shall also have the capacity to develop relations with its counterparts in other States Parties and communicate directly with them. It shall ensure follow-up on recommendations made by the international bodies responsible for ensuring implementation, by the Parties, of the conventions referred to in the first paragraph."

21. The Monegasque authorities have stated that it was not intended that the Monegasque Committee to Promote and Safeguard Women's Rights would fulfil the role of national co-ordinator for action against trafficking in human beings, given that the size of the Principality means that all the players concerned could be very quickly mobilised were a case of trafficking to be detected, including through the action plan which is in the process of being drawn up.

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<sup>3</sup> Sovereign Order No. 7.178 of 25 October 2018 establishing a committee to promote and safeguard women's rights, <https://journaldemonaco.gouv.mc/Journaux/2018/Journal-8407/Ordonnance-Souveraine-n-7.178-du-25-octobre-2018-creant-un-comite-pour-la-promotion-et-la-protection-des-droits-des-femmes> (in French).

### III. Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Monaco

#### 1. Integration of the core concepts and definitions contained in the Convention in internal law

##### a. Human rights-based approach to action against trafficking in human beings

22. Article 1(1)(b) of the Convention establishes as one of its purposes the protection of the human rights of the victims of trafficking. Further, Article 5(3) includes the obligation for Parties to promote a human rights-based approach in the development, implementation and assessment of the policies and programmes to prevent THB. The Explanatory Report on the Convention states that the main added value of the Convention is its human rights perspective and focus on victim protection. In the same vein, the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking emphasise that “the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims”.<sup>4</sup>

23. THB constitutes an offence to the dignity and fundamental freedoms of the human being and thus a grave violation of human rights. GRETA emphasises the obligations of States to respect, fulfil and protect human rights, including by ensuring compliance by non-State actors, in accordance with the duty of due diligence. A State that fails to fulfil these obligations may, for instance, be held accountable for violations of the European Convention on Human Rights and Fundamental Freedoms (the ECHR). This has been confirmed by the European Court of Human Rights in its judgment in the case of *Rantsev v. Cyprus and Russia*, where the Court concluded that THB within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the European Convention on Human Rights (which prohibits slavery, servitude and forced or compulsory labour).<sup>5</sup> The Court further concluded that Article 4 entails a positive obligation to protect victims or potential victims, as well as a procedural obligation to investigate trafficking.<sup>6</sup>

24. The Convention on Action against Trafficking in Human Beings requires States to set up a comprehensive framework for the prevention of THB, the protection of trafficked persons as victims of a serious human rights violation, and the effective investigation and prosecution of traffickers. Such protection includes steps to ensure that all victims of trafficking are properly identified. It also involves measures to empower trafficked persons by enhancing their rights to adequate protection, assistance and redress, including recovery and rehabilitation, in a participatory and non-discriminatory framework. Further, measures to prevent THB should be taken in the field of socio-economic, labour and migration policies.

25. GRETA wishes to stress the need for States to also address THB as a form of violence against women and to take account of gender-specific types of exploitation, as well as the particular situation of child victims of trafficking, in line with the relevant international legal instruments.<sup>7</sup>

<sup>4</sup> Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

<sup>5</sup> *Rantsev v. Cyprus and Russia*, application No. 25965/04, judgment of 7 January 2010, paragraph 282.

<sup>6</sup> See also *Siliadin v. France*, application No. 73316/01, judgment of 26 July 2005; *C.N. and V. v. France*, application No. 67724/09, judgment of 11 October 2012; *C.N. v. United Kingdom*, application No. 4239/08, judgment of 13 November 2012; *L.E v. Greece*, application No. 71545, judgment of 21 January 2016; *Chowdury and Others v. Greece*, application No. 21884/15, judgment of 30 March 2017.

<sup>7</sup> Such as the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the United Nations Convention on the Rights of the Child and the Optional Protocol thereto on the sale of children, child prostitution and child pornography, the United Nations Convention on the Elimination of All Forms of Discrimination against Women and the International Labour Organization (ILO) Domestic Workers Convention (No. 189).

26. According to the information supplied by the Monegasque authorities, the European Convention on Human Rights and the Convention on Action against Trafficking in Human Beings take precedence over Monegasque domestic legislation.

27. The human rights-based approach to action against THB entails transparency and accountability on the part of the State through the adoption of a national policy and action plans for combating trafficking in human beings, the co-ordination of the efforts of all relevant actors, the regular training of relevant professionals, research and data collection, and the provision of adequate funding for the implementation of all these measures. The following sections of this report examine in detail the effectiveness of the policies and measures taken by the Monegasque authorities in these fields.

*b. Definitions of "trafficking in human beings" and "victim of THB" in Monegasque law*

*i. Definition of "trafficking in human beings"*

28. In accordance with Article 4(a) of the Convention, trafficking in human beings includes three components: an action ("the recruitment, transportation, transfer, harbouring or receipt of persons"); the use of certain means ("threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person"); and the purpose of exploitation ("at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs"). In the case of children, pursuant to Article 4(c) of the Convention, it is irrelevant whether the means referred to above have been used.

29. In Monegasque law the offence of trafficking in human beings is defined in Article 8 of Sovereign Order No. 605 of 1 August 2006 as follows:

"The offence of trafficking in human beings shall consist in the recruitment, transportation, transfer, harbouring or receipt of a person:

- by means of the threat or use of force or any other forms of coercion, such as abduction, fraud, deception, abuse of power or abuse of a position of vulnerability,
- or by the giving or receiving of payments or benefits to achieve the consent of a person having control over another person,
- for the purpose of exploitation, including prostitution or any other forms of sexual exploitation as well as slavery or practices similar to slavery, forced labour or services, servitude or the removal of organs."

30. Article 8 also provides that a victim under 18 years of age is held to be a child and the offence is committed against a child by the mere fact of recruitment, transportation, transfer, harbouring or receipt, even without any of the means listed in the first subparagraph.

31. Article 8 specifies that the offence of trafficking in human beings exists even if a victim has given consent.

32. GRETA takes note that all the means, actions and forms of exploitation included in the definition of THB under Article 4(a) of the Convention are covered by the definition in Article 8 of Sovereign Order No. 605 of 1 August 2006.

33. Although the concept of abuse of vulnerability is not defined for THB, exploitation of vulnerability is criminalised by the Monegasque Criminal Code, of which Article 249-2 provides that “the act of obtaining services from a person whose vulnerability or state of dependence is apparent or known to the perpetrator for no pay, or pay that clearly does not reflect the amount of work performed” as well as “the subjection of a person whose vulnerability or state of dependence is apparent or known to the perpetrator to working or living conditions that are incompatible with human dignity”. These offences are punishable by five years’ imprisonment and double the fine laid down in Category 4 of Article 26. Committing them against more than one person, including at least one minor, or by an organised gang is an aggravating circumstance entailing up to ten years’ imprisonment.

34. The Monegasque authorities have stressed that because the list of forms of exploitation in Article 8 of Sovereign Order No. 605 is not exhaustive, forced begging and exploitation of criminal activities can be considered purposes covered by the definition of THB. However, there is no case-law in this field.

35. GRETA notes that Article 1 of Sovereign Order No. 605 may limit enforcement of Article 8 for THB when “these offences are transnational in nature and involve an organised criminal group”. While judges can construe the definition of THB in the light of the Council of Europe Convention on Action against Trafficking in Human Beings and therefore recognise cases of national THB and cases not involving organised criminal groups, GRETA notes with concern the lack of legal clarity and the arbitrary decisions that this may entail.<sup>8</sup> The Monegasque authorities have stated that they will shortly amend Sovereign Order No. 605 of 1 August 2006 so that the offence of trafficking in human beings is not restricted to transnational situations and the involvement of an organised criminal group. **GRETA wishes to receive confirmation of this amendment.**

36. For a more detailed analysis of the definition of THB and THB-related offences in terms of substantive criminal law, see paragraphs 144-148.

#### ii. Definition of “victim of THB”

37. The Convention defines “victim of THB” as “any natural person who is subjected to THB as defined in Article 4 of the Convention”. Recognition of victims of trafficking as such is essential as it gives rise to their entitlement to the broad range of protection and assistance measures set out in the Convention.

38. There is no specific definition of a victim of THB in Monegasque legislation but under the terms of Article 8 of Sovereign Order No. 605, anyone against whom the offence set out in that article is committed is a victim of trafficking in human beings. Monegasque law recognises men, women and children as victims of trafficking in human beings. The status and rights of victims of THB are treated at greater length in the sections below on measures to protect and promote the rights of victims of trafficking in human beings.

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<sup>8</sup> Given effect by Sovereign Order No. 5.803 of 11 April 2016: <https://journaldemonaco.gouv.mc/Journaux/2016/Journal-8277/Ordonnance-Souveraine-n-5.803-du-11-avril-2016-rendant-executoire-la-Convention-sur-la-lutte-contre-la-traite-des-etres-humains-conclue-a-Varsovie-le-16-mai-2005>

*c. Comprehensive approach to action against THB, co-ordination of all actors and actions, and international co-operation*

*i. Comprehensive approach and co-ordination*

39. One of the aims of the Convention is to design a comprehensive framework for the protection of, and assistance to, victims and witnesses. To be effective, any national action to combat THB must be comprehensive and multi-sectoral, and include the required multidisciplinary expertise. Article 29(2) of the Convention requires Parties to take measures to ensure the co-ordination of national policies and actions against THB, including through the setting-up of specific co-ordinating bodies. Further, the Convention refers to the need to co-operate and build strategic partnership with civil society through co-operative frameworks that can help governments fulfil their obligations under the Convention (Article 35).

40. In the absence of identified cases of THB, the Monegasque authorities have not introduced any co-ordination entity for combating trafficking. They have stressed, however, that given the size of the civil service and the ease of information-sharing among the various players that will have to take action if potential victims of trafficking are found, co-ordination could swiftly be put in place.

41. GRETA notes the recent establishment of the Committee to Promote and Safeguard Women's Rights, whose remit also covers action against THB as part of combating gender-based violence (see paragraph 20). In addition, GRETA was told of the assistance available, particularly through the Victims of Crime Association (AVIP – see paragraphs 99-101), for potential cases of THB.

42. As already mentioned in paragraph 17, the Monegasque authorities have set up a working group comprising representatives from all the departments concerned with a view to drawing up a policy document, in the form of a circular intended to optimise co-ordination between the departments concerned in the area of detecting and caring for presumed trafficking victims.

**43. With a view to meeting their obligations under the Convention and adopting a comprehensive approach to the fight against THB, GRETA urges the Monegasque authorities to adopt an action plan or other policy document covering the prevention of THB, training for relevant professionals, the identification and protection of trafficking victims and the prosecution of THB offences.**

**44. In addition, GRETA considers that the Monegasque authorities should ensure that a structure be developed for co-ordinating the actions of relevant actors in the event of a case of human trafficking, with the involvement of civil society.**

*ii. Training of relevant professionals*

45. No THB training or awareness-raising is yet provided in Monaco. However, access to training, including the field of THB, is available in France, on a voluntary basis, for various categories of professionals wishing to receive it, in particular police officers, judges and prosecutors.

46. As part of their in-service training, judges and prosecutors attend training provided by the National School for the Judiciary, in France, where they select modules of interest. GRETA was told that a number of them had attended training on the European Convention on Human Rights, as well as on cybercrime, money laundering and anti-terrorism. However, none had attended a course on THB.



47. Following the visit, the Monegasque authorities informed GRETA that the Department of Justice had organised a day-long training course at the Palais de Justice on 7 June 2019, covering the definition of THB, the indicators of all forms of THB, the difference between trafficking in human beings and the illegal smuggling of migrants and the rights of victims in three sections: the first involved a presentation of the global approach to action against trafficking through national and international source texts; a second section focused on possible criminal law responses, through the analysis of case studies highlighting the prosecution of and convictions for situations of human trafficking for the purposes of labour exploitation and sexual exploitation; a third section looked at identification of and support for victims, particularly minors. The training was given to all members of the judiciary, officials and officers who might directly deal with this crime in their work for the Ministry of Foreign Affairs and Co-operation, the Police Department, the Department of Legal Affairs and the Financial Investigations Unit (*Service d'Information et de Contrôle sur les Circuits Financiers* - SICCFIN). Representatives of the Ministry of Health and Social Affairs, including from the Labour Directorate and the Department of Social Welfare and Social Services (Children and Families Division), also participated in the training.

48. Labour inspectors are trained at the College for inspectors in Lyon, where they are introduced to the subject but not specifically trained in this issue. Following up the day's training in June 2019, it is foreseen that representatives of the Labour Directorate (DT) and the Department of Social Welfare and Social Services (DASO) will attend the training sessions shortly to be set up by the Civil Service Directorate of Human Resources and Training. In addition, representatives of the DT and DASO are asked to attend internal meetings on trafficking in human beings and, at one recent meeting in September 2019, attended the Legal Affairs Directorate's presentation of the future "Inter-services co-ordination plan for identification and support of victims of trafficking in human beings".

49. GRETA notes that, although no victim of THB has been identified in Monaco, it is essential to train the relevant professionals so that they are able to detect the signs of THB and respond as required by the Convention. **Given the potential link between lack of training and identification of victims of THB, GRETA considers that the Monegasque authorities should ensure that all the relevant professionals (police officers, judges and prosecutors, labour inspectors, social workers, child welfare professionals, medical staff, lawyers and other relevant groups) are trained in the identification and the support of THB victims (especially the definition and indicators of all forms of THB, the difference between THB and migrant smuggling, and the rights of THB victims).**

*iii. Data collection and research*

50. The human rights-based approach to anti-trafficking policies advocated by the Convention requires adequate monitoring and evaluation. An essential element is the regular availability of comprehensive statistical information on both trends in human trafficking and on the performance of the main actors in the fight against trafficking. The collation of data from different state institutions and NGOs raises concerns about data protection, especially when personal data are involved. International standards have been set for the collection, storage, transfer, compilation and dissemination of data. In order to ensure full compliance with these standards, Parties are expected to apply appropriate measures and techniques of data protection. An additional requirement for human rights-based anti-trafficking policies is the conduct of research and analysis with special attention to the rights and interests of victims. At present there is no designated authority for collecting statistics on victims of THB in Monaco.

51. The Monegasque Committee to Promote and Safeguard Women's Rights has the task of co-ordinating collection of relevant data, analysing them and publishing the findings (see paragraph 20).

52. No research has been carried out on trafficking in human beings in Monaco.

53. **GRETA considers that the Monegasque authorities ought to conduct and/or support research into THB-related issues for the purpose of providing evidence on which to base future public policy.**

## 2. Measures to prevent trafficking in human beings

54. According to Article 5 of the Convention, Parties must take co-ordinated action to prevent THB, with the involvement of relevant NGOs, other organisations and members of civil society, as appropriate. The Convention requires Parties in particular to take measures to discourage demand, strengthen border controls and ensure the integrity, security and validity of travel or identity documents (Articles 6 to 9).

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

55. The Health Ministry, supported by civil society,<sup>9</sup> has undertaken information and awareness-raising activities to combat domestic violence and gender-based violence more generally, including through poster campaigns and TV clips for the International Day for the Elimination of Violence against Women.<sup>10</sup> The organisations concerned also distribute flyers for victims of crime to inform them of their rights – in hospital for example.

56. In 2015 Monaco hosted a joint UNODC/OSCE/Interpol open conference on emerging transnational threats in the Mediterranean region.

57. While these initiatives have tackled issues relating to THB, GRETA observes that none of them relates specifically and directly to trafficking in human beings. However, the Monegasque authorities informed GRETA after the evaluation visit that an awareness campaign would be organised in Monaco on the occasion of the World Day against Trafficking in Human Beings, involving the services concerned and civil society, to raise awareness of this phenomenon among a wider public.

58. In November 2019, an exhibition of photographs on the themes of trafficking in human beings and children's rights was organised in the Principality to celebrate 30 years of the United Nations Convention on the rights of the child.<sup>11</sup> The first part of the exhibition focused in particular on the trafficking of children in certain partner countries with which Monaco co-operates (Burkina Faso, Madagascar, Mali, Senegal) and showed what those countries' governments and civil society are doing, as well as the Principality's international solidarity agencies (*Organismes de Solidarité Internationale* - OSIs), in partnership with the Monegasque Government. The exhibition was organised jointly by the Department of Education, Youth and Sport (under the authority of the Department of the Interior), the Ministry of Foreign Affairs and Co-operation, including its International Co-operation Directorate, and the Ministry of Health and Social Affairs. A leaflet, aimed at young people and their parents, was disseminated in schools in Monaco and handed out on a stand run by the International Co-operation Directorate during the awareness-raising campaign.

59. Noting that awareness-raising is essential for preventing THB, **GRETA considers that the Monegasque authorities should develop initiatives to raise awareness among the public and the various groups considered at risk of various forms of trafficking. Awareness-raising should be supported by research, and the impact of measures ought to be evaluated.**

<sup>9</sup> Femmes Leaders Mondiales Monaco, SheCanHeCan, Pink Ribbon, Action Innocence, Union des Femmes Monégasques, Zonta Club and Soroptimist Club of Monaco.

<sup>10</sup> <https://en.gouv.mc/Portail-du-Gouvernement/Policy-Practice/Social-Affairs-and-Health/News/Monaco-is-Involved-in-the-International-Day-for-the-Elimination-of-Violence-Against-Women>

<sup>11</sup> <https://lagazettedemonaco.com/une-exposition-pour-sensibiliser-les-lyceens/>

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

60. Under existing legislation in Monaco,<sup>12</sup> any foreigner holding a job must have a work permit, which is issued by the authorities and must be requested from the Employment Office prior to starting work and for each employer. Recruitment and temporary employment agencies are subject to the same rules, and the jobs held are thus actively monitored. According to the Monegasque authorities, this procedure helps to prevent trafficking for the purpose of labour exploitation by allowing recruitment screening.

61. In addition, combating concealed employment through the work of the Labour Inspectorate is a priority area of Ministry of Health and Social Affairs policy. The authorities mentioned that the number of spot checks had increased in the course of 2017 in the building trade and catering. This policy would help prevent any trafficking for the purpose of forced labour or services.

62. The Labour Inspectorate<sup>13</sup> recorded 54,303 work permits issued in 2017, counting both the public sector and the private sector. The team currently consists of two labour inspectors for small business, three health and safety inspectors, and six labour inspectors. The inspector team members are trained at the College for inspectors in Lyon. GRETA was told that THB is simply mentioned and is not covered by a special training module.

63. GRETA was told that spot checks had been stepped up in order to combat concealed work. In 2018 the Labour Inspectorate carried out 257 checks (work permits and working conditions) in industrial and commercial establishments, 72 on-site inspections and 1,119 health and safety inspections in industrial and commercial establishments. Inspections may take place after cases are reported, as was the case for hairdressing employees who were reported to be without work permits, and where an investigation was carried out. Employing someone without a permit is prohibited by Act No. 629, which governs the recruitment and dismissal of employees in the Principality,<sup>14</sup> and it is always the employer who is prosecuted. In 2017, 30 Labour Inspectorate reports concerning lack of work permits were sent to the public prosecutor and resulted in prosecutions. None of the cases reported to the Labour Inspectorate revealed indicators of trafficking.

64. Some sectors, such as the building trade and works sites, are targeted more specifically and are subject to regular inspection. In the hotel trade, employees' representatives and the Labour Inspectorate meet quarterly in health and safety committees. There is also a collective agreement for the hotel trade that makes specific reference to extra employees. The employer has to apply to the Employment Office, which will issue a one-year permit, but the number of hours worked by casual employees is not regulated, which raises concerns that employees could hold several contracts, with no limit on the number of working hours accumulated in this way.

65. It was pointed out during GRETA's evaluation visit that concerns had been raised about worker protection in Monaco's existing legislation. In the first place, dismissal without cause<sup>15</sup> is subject only to a period of notice and compensation capped at six months' pay, irrespective of length of service. This situation has been described as allowing employers to cynically buy a right of unfair dismissal, which can create a means of putting pressure on employees and increases the risk of exploitation in sectors

<sup>12</sup> Act No. 629 of 17 July 1957 regulating conditions of recruitment and dismissal in the Principality, <https://www.legimonaco.mc/305/legismclois.nsf/db3b0488a44ebcf9c12574c7002a8e84/9760b91d876938fbc125773f003817cc!OpenDocument&Highlight=0,629> (in French)

<sup>13</sup> Ordinance No. 16.675 of 18 February 2005 establishing the Department of Employment, <https://www.legimonaco.mc/305/legismclois.nsf/db3b0488a44ebcf9c12574c7002a8e84/8d27aeaac63f48e9c125773f003d21bd!OpenDocument&Highlight=0,16.675> (in French)

<sup>14</sup> Act No. 629 of 17 July 1957 regulating conditions of recruitment and dismissal in the Principality, <https://www.legimonaco.mc/305/legismclois.nsf/db3b0488a44ebcf9c12574c7002a8e84/9760b91d876938fbc125773f003817cc!OpenDocument&Highlight=0,629> (in French)

<sup>15</sup> Covered by Article 6 of Act No. 729 of 16 March 1963 concerning employment contracts, <https://www.legimonaco.mc/305/legismclois.nsf/TNC/15FDD2F4EAC2C9BEC125773F00383681!OpenDocument> (in French)

employing a large number of foreigners, such as catering. The Monegasque authorities have nevertheless pointed out that Article 13 of Act No. 729 of 16 March 1963 on employment contracts stipulates that wrongful termination of an employment contract may result in the payment of damages, separately from compensation for failing to give notice and severance pay.

66. As at 31 December 2018, there were 3,112 employers in the Principality, 2 374 of whom were domestic employers. To settle in Monaco with domestic workers for a period longer than three months, an employer must have a place of residence, provide employment contracts and copies of payslips for foreign workers and prove that he or she can provide suitable accommodation. An employer must also visit the police, who see the employee separately. However, Labour Inspectorate checks in private residences are not permitted, in keeping with the principle of the sanctity of the home, enshrined in Article 21 of the Constitution. A court order is needed to inspect an individual's home. General law applies to domestic work, meaning that the employees in this sector enjoy the same protection as other employees. Although there are no special regulations applicable to domestic work, there are rules specific to domestic staff, which adapt the general rules for employees to the nature of domestic work.<sup>16</sup> According to the authorities, authorising the Labour Inspectorate to enter the homes of private employers would be difficult to envisage, as it would be a violation of respect for a person's private life and home, which is protected by Constitution. The Labour Inspectorate could however receive reports and pass them on the Prosecutor's Office so that an investigation could be carried out.

67. Some of GRETA's interlocutors referred to accounts of foreign workers finding themselves in situations where their vulnerability was abused. This was particularly the case for Filipino workers employed on yachts without contracts or permits, whose papers were kept by their employers but who did not claim their rights or report their employers for fear of being unable to find work subsequently and losing their residence permits. It seems that the procedure also requires overtime to be certified by a bailiff, which further discourages reporting.

68. Civil society contacts pointed out that, while it was in principle difficult for an employer to conceal a worker given the size of the country, it was also hard for a worker subjected to poor working conditions to complain openly for fear of being ostracised in a labour market as small as Monaco's.

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<sup>16</sup> Article 3 paragraph 4 of Act No. 629 of 17 July 1957 regulating conditions of recruitment and dismissal in the Principality; Article 3 paragraph 2 of Act No. 822 of 23 June 1967 on weekly rest; Article 9 of Act No. 800 of 18 February 1966 regulating remuneration and working conditions in respect of official public holidays; Ordinance No. 1.388 of 11 October 1956 on annual paid leave for caretakers of residential buildings and domestic staff.

69. **GRETA considers that the Monegasque authorities should take further steps to prevent trafficking for the purpose of labour exploitation, in particular by:**

- **providing labour inspectors with training on trafficking for the purpose of labour exploitation and on victims' rights;**
- **broadening the remit of labour inspectors so that they can play an active part in preventing THB in all sectors of economic activity, including domestic work;**
- **alerting the general public and, more specifically, foreign workers to the risks of trafficking for the purpose of labour exploitation;**
- **establishing effective mechanisms allowing foreign workers, even if undocumented, to lodge complaints against employers not complying with labour regulations and to obtain effective redress without fear of having their residence permits revoked;**
- **working closely with the private sector in keeping with the Guiding Principles on Business and Human Rights.<sup>17</sup>**

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

70. GRETA was told that preventive work is undertaken regularly by the Juvenile Squad, in collaboration with members of the Public Prosecution Department, including visits to schools in order to raise awareness among young people about addiction, respect for the law and the dangers of the internet.

71. The Juvenile Squad also has tools to combat child sexual abuse material, including software to detect Monegasque internet users downloading child sexual abuse material, and the Monegasque Government has set up an online service for reporting any child sexual abuse content found on the Web.

72. Furthermore, schools in the Principality of Monaco follow the curricula of the French Ministry of Education. This means that slavery and trafficking in human beings are addressed in the teaching of history/geography and moral and civic education.

73. As regards measures to promote online safety of children, Act No. 1.334 of 12 July 2007 on education formally stipulates that steps are to be taken to ensure that children receive information on the risks of sexual exploitation and abuse, which is tailored to their stage of development, during their primary and secondary schooling, as well as on ways of protecting themselves; it is stipulated that this information must cover the risks linked to the use of new information and communication technologies. The Monegasque government also works closely with civil society bodies such as the NGO *Action Innocence Monaco* which seeks, including via prevention efforts in schools, to inform and raise awareness among parents and children with regard to the dangers linked to the Internet, to promote safe web user practice and to combat child pornography.

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<sup>17</sup>

[https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

74. The Monegasque authorities also mentioned that commemorative activities offered to teachers every year included the National Day of Remembrance of the Slave Trade, Slavery and its Abolition (10 May). This day could be used as the foundations for teaching projects on action to combat trafficking in human beings. Similarly, Universal Children's Day, on 20 November, gives rise to a number of events and activities and could also be an opportunity to discuss the issue of THB. In previous years, work had already been done around first-hand accounts, videos, performances and talks on subjects relating to children's rights, including raising awareness of internet risks. It was also stressed that voluntary organisations visited schools on these days. A campaign to raise awareness of trafficking in human beings was organised in the Principality of Monaco on 30 November 2019 to mark the 30th anniversary of the United Nations Convention on the Rights of the Child.

75. **GRETA considers that the Monegasque authorities should take steps to prevent trafficking in children, including by:**

- **alerting the public to the risks and signs of trafficking in children;**
- **providing awareness-raising for child welfare professionals to familiarise them with the phenomenon of trafficking and build their capacity to prevent it and report potential cases to the competent authorities;**
- **continuing to promote children's safety online and train relevant stakeholders about the risks of child trafficking online.**

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

76. GRETA notes that, while human trafficking for the purpose of organ removal, as defined by the Convention, and organ trafficking, as defined by Articles 4 to 8 of the Council of Europe Convention against Trafficking in Human Organs,<sup>18</sup> are two distinct crimes, they bear certain similarities and share similar root causes, such as shortage of organs to meet demand for transplantation and poor economic and other conditions that put persons in a vulnerable position. Therefore, measures to prevent organ trafficking can help prevent trafficking for the purpose of organ removal and the reverse is also true.<sup>19</sup> Among the necessary preventive measures, GRETA underlines the importance of a robust and transparent domestic system for the removal and transplantation of human organs and the need for training of health-care professionals. GRETA also stresses the importance of conducting a thorough investigation of each case where there is information or suspicion of trafficking for the purpose of organ removal, paying attention to the abuse of the vulnerability of the "donor" and ensuring that "donors" are treated as victims of trafficking in human beings.

77. Article 8 of the above-mentioned Sovereign Order No. 605 includes organ removal among the types of exploitation constituting the offence of trafficking. Furthermore, Article 249-1 of the Monegasque Criminal Code provides that "obtaining one of a person's organs for payment, in any form, is punishable by seven years' imprisonment and a fine provided for in Category 4 of Article 26. An intermediary who helps to obtain an organ for payment, or who provides an organ from the body of another person for payment, is liable to the same penalties." Committing the offence against a child is an aggravating circumstance punishable by ten to twenty years' imprisonment, and attempting to commit the offence is subject to the same penalties.

<sup>18</sup> Opened for signature in Santiago de Compostela on 25 March 2015; entry into force on 1 March 2018.

<sup>19</sup> See "Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs", Joint Council of Europe/United Nations Study (2009), in particular pages 55-56; "Trafficking in human beings for the purpose of organ removal in the OSCE region: Analysis and Findings", OSCE Occasional Paper No. 6 (2013). [Joint Council of Europe/United Nations study of trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs executive summary](#)

78. Furthermore, Act No. 1.073 of 27 June 1984 on removal of human organs for therapeutic purposes contains a number of provisions to regulate such removals, requiring compliance with conditions pertaining to consent of a person having legal capacity, the foreseeable effects of removal, and the place and circumstances in which the removal is to take place.<sup>20</sup> It should be noted that, under this law, consent can be revoked, and the removal cannot take place if the reasonably foreseeable result is the death of the donor or particularly serious damage to his or her health. The third paragraph of section 2 of this law requires consent from both father and mother, or the surviving parent, when the person from whom the organ is to be removed is a minor. Organ removal must be carried out by an institution approved by ministerial order, under the terms of Sovereign Order No. 9.477 of 9 May 1989 laying down the conditions for approval of institutions authorised to remove organs.

79. No organ removals are carried out in the Principality of Monaco, since, to date, no Monegasque health care institution has submitted an application for approval for this purpose. There are consequently no donor registries.

80. The Monegasque authorities also mentioned that no cases of trafficking for the purpose of organ removal had been brought to the notice of the judicial authorities.

81. The Principality of Monaco has not signed the Council of Europe Convention against Trafficking in Human Organs. **GRETA encourages the Monegasque authorities to sign and ratify the Council of Europe Convention against Trafficking in Human Organs, since this would help to prevent trafficking for the purpose of organ removal.**

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

82. In accordance with the Convention, measures to discourage demand for the services of victims of trafficking, especially women and children, should be understood as a positive obligation on Parties to adopt and reinforce such measures as regards THB for the purpose of any form of exploitation (see paragraph 108 of the Explanatory Report of the Convention). As stated in the Recommended Principles and Guidelines on Human Rights and Human Trafficking, strategies aimed at preventing THB shall address demand as a root cause of trafficking.<sup>21</sup>

83. Pimping is punishable under the Monegasque Criminal Code (Article 268), as is soliciting, which is criminalised under Article 421 of the Criminal Code. Prostitution as such is not an offence in the Principality of Monaco.

84. Using the services of a person known to be a victim of THB is not in itself punishable under Monegasque law. GRETA takes note of the information provided by the Monegasque authorities, according to which a discussion will be initiated as to the possibility of criminalising the use of the services from persons who are victims of THB. **GRETA would like to be kept informed of the status of this initiative.**

85. With regard to measures to discourage demand for services of victims of trafficking, the Monegasque authorities referred to the awareness-raising campaign mentioned in paragraph 58.

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<sup>20</sup> This law is rounded out by two specific pieces of legislation: Sovereign Order No. 8811 on removal of human organs for therapeutic purposes (11 February 1987) and Sovereign Order No. 9477 laying down the conditions for approval of institutions authorised to remove organs (9 May 1989).

<sup>21</sup> Principle 4 of Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf><http://www.ohchr.org/Documents/Publications/Traffickingfr.pdf>



86. **GRETA considers that the Monegasque authorities should take further legislative steps (see paragraph 150), as well as educational, social, cultural and other measures to discourage demand for services of persons trafficked for the purpose of any form of exploitation, including in domestic work (see paragraph 69), in partnership with civil society, trade unions, the media and the private sector.**

*f. Border measures to prevent trafficking (Article 7)*

87. France and Monaco form a customs union, and customs control in Monaco is carried out by French Customs, which under an agreement signed on 18 May 1963 has the same powers as in France. Monaco has also been part of European Union customs territory since 1968. Monaco is an entry point in the Schengen area.

88. According to Ordinance No. 3.153 of 19 March 1964,<sup>22</sup> which lays down the conditions governing entry and residence of foreign nationals in the Principality, “a foreign national wishing to enter the territory of the Principality, residing there for over three months or settling there permanently, must possess a valid passport or other travel document or identification card in lieu thereof, bearing the appropriate stamps, visas and authorisations permitting access to, residence in or settlement in France [...]”. Moreover, any person against whom an order banning him or her from entering French territory has been issued by the French authorities will not be allowed to enter the territory of Monaco.

89. Under an agreement signed with France,<sup>23</sup> the Principality does not issue entry visas. This agreement provides that for temporary residence of over three months or permanent residence in the Principality: “1. Nationals of a Member State of the European Union or a State Party to the Agreement establishing the European Economic Area other than France shall lodge an application for a long-stay permit with the Monegasque authorities. The latter shall forward this application to the French Consul-General in Monaco, supplying the necessary background information. 2. Nationals of other states must submit a long-stay visa application to the French Consul responsible for their area; the visa will be issued only after consultation and agreement with the Monegasque authorities.” This information is published on the government website and is available in all embassies and consulates.

90. Further, Article 13 of Sovereign Order No. 605 requires all commercial carriers, including managers, owners and operators of a means of transport, to check possession of the travel documents required for entry into the Principality. Failure to comply with this obligation is punishable by imprisonment of three months to one year and a fine.

### **3. Measures to protect and promote the rights of victims of trafficking in human beings**

*a. Identification of victims of trafficking in human beings (Article 10)*

91. Article 10 of the Convention requires Parties to adopt measures to identify victims. In order to do so, Parties must provide their competent authorities with persons who are trained and qualified in preventing and combating THB and in identifying and helping victims, including children. Identifying a trafficking victim is a process which takes time; therefore, the Convention provides for the rights of potential victims by establishing that, when the competent authorities have reasonable grounds to believe that a person has been a victim of trafficking, s/he must not be removed from the country until the identification process is completed, and must receive the assistance required by the Convention.

<sup>22</sup> Ordinance No. 3.153 of 19/03/1964 on the conditions governing entry and residence of foreign nationals in the Principality, <https://www.legimonaco.mc/305/legismclois.nsf/db3b0488a44ebcf9c12574c7002a8e84/003e05b7c107e9e4c1257782002c5ea2!OpenDocument>

<sup>23</sup> This is an agreement in the form of an exchange of letters dated 15 December 1997 amending Chapter I of the Convention on Good Neighbourliness signed between France and the Principality of Monaco on 18 May 1963



92. Monaco has no official procedures or indicators for identifying trafficking victims. The Monegasque authorities have stated that, as for any offence, the investigation of cases of human trafficking and the identification of perpetrators would start whenever relevant information is reported to the police, whether by third parties, including NGOs, or the victims themselves. The Monegasque authorities have indicated that communication would be rapidly established between various government departments for reporting any trafficking situations. They have also stated that the drawing up of a policy document (see paragraph 17) will aim at achieving proactive identification through the issuing of instructions to the services that may come into contact with potential victims.

93. GRETA was informed that the Labour Inspectorate could be contacted and have cases referred to it by anyone wishing to report abnormal working conditions and thus played a part in the system for identifying potential victims of trafficking in human beings. As pointed out in paragraphs 47, professionals who may come into contact with potential THB victims, including labour inspectors, have attended an initial day-long training course on trafficking in human beings and will attend the next training sessions laid on by the Civil Service Directorate of Human Resources and Training.

94. No cases of trafficking have been officially identified in Monaco. Nevertheless, during the evaluation visit, GRETA was informed by various interlocutors about a recent case of a woman who was working as a domestic employee for a man (both the woman and the man were foreign nationals temporarily resident in Monaco), and who apparently informed AVIP that she was being exploited. According to the information given to GRETA, indicators of labour exploitation and, according to some contacts, sexual exploitation were apparently reported. The police were swiftly alerted and made contact with the potential victim, arranging an interpreter for her with AVIP. The woman was informed of her rights and offered shelter, which she refused. Neither the Prosecutor's Office nor the police was able to clarify whether the woman was still in Monaco and it appeared that no investigation had been opened (see paragraph 161).

95. **GRETA urges the Monegasque authorities to adopt measures to ensure that all professionals likely to come into contact with potential victims of trafficking, and in particular police officers, labour inspectors and NGOs, have operational tools at their disposal (such as indicators<sup>24</sup>, checklists and risk assessment tools) for detecting victims of trafficking for various forms of exploitation, for the proactive identification of THB victims.**

*b. Assistance to victims (Article 12)*

96. The Convention requires Parties to take measures to assist victims in their physical, psychological and social recovery, taking account of the victim's safety and protection needs, in co-operation with NGOs and other organisations engaged in assistance to victims. This assistance must be provided on a consensual and informed basis, taking account of the special needs of persons in a vulnerable position, as well as children, and it must not be made conditional on the victim's willingness to act as a witness (Article 12). The need to take account of victims' needs is also referred to in the Convention's provisions concerning temporary residence permits (Article 14) and the rights of child victims of trafficking (Article 12(7)). The Convention also establishes that the assistance to victims of THB must include appropriate and secure accommodation.

97. As already mentioned in paragraph 19, there are two main structures providing assistance to victims in Monaco: the Department of Social Welfare and Social Services (DASO) and the Victims of Crime Association (AVIP).

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<sup>24</sup> GRETA refers here to the EU-funded Euro TrafGuID project to produce common guidelines and procedures for identification of victims of human trafficking. Practical tools facilitating prior identification of victims of various forms of trafficking (sexual exploitation, labour exploitation, forced begging and illegal activities) have been devised in French (available at: [www.expertisefrance.fr/eng/Fonds-documentaire/Internet/Documents2/Expertise-France/Com-projets/EuroTrafGuID/Fren](http://www.expertisefrance.fr/eng/Fonds-documentaire/Internet/Documents2/Expertise-France/Com-projets/EuroTrafGuID/Fren)). These tools could be adapted and made available to the authorities and relevant professionals in Monaco.

98. According to the authorities, DASO, which manages all government benefit payments, has a degree of budgetary flexibility that allows it to become involved, if a victim of THB is identified, in order to pay that person a one-off subsistence allowance, in addition to access to treatment. An assessment of the person's needs would be made, on a case-by-case basis, for the provision of specific assistance or services, such as food or interpretation. DASO takes victims into its care and sends them to the Princess Grace Hospital Centre (Monaco's only public hospital establishment) for emergency medical care. It provides the victims with suitable and safe accommodation and, in collaboration with the Ministry of Foreign Affairs and Co-operation, with advice and information on their rights.

99. Since its inception in 2014, following the adoption of the 2011 Specific Forms of Violence Act, AVIP has been responsible for the initial support of victims of crime, especially victims of physical and psychological violence, including conjugal.<sup>25</sup> Until 2017, AVIP operated solely through volunteers without any grants. Since September 2017, the state has provided premises for the association, together with a full-time member of staff, and has been subsidising AVIP (to the amount of 40,000 euros in 2018 and 90,000 euros in 2019). A permanent hotline was also opened in 2017.

100. AVIP provides legal support for victims of violence and works closely with the Bar Association to have cases handled speedily. Victims seen by AVIP are directed to the Bar Association headquarters for legal aid, and, conversely, victims attending the Bar Association headquarters or the law courts are informed, including through flyers, of AVIP's existence and the services it provides. AVIP can also become involved in the process of assisting victims in their dealings with the administrative and judicial authorities. The lawyers to whom GRETA spoke brought up an ethical problem raised by the professional secrecy that prevented them from reporting cases themselves, although their duty to tender advice required them to inform any potential victims of their rights.

101. Legal aid is available to all victims of crime, irrespective of nationality. AVIP also offers psychological support, support groups and family mediation. In addition, a doctor visits the premises every week to provide individual consultations, and AVIP works closely with the Princess Grace Hospital.

102. When it comes to emergency accommodation, the social welfare services (*Caisses Sociales*, the equivalent of French social security) have rented accommodation and an emergency flat. DASO also manages 21 housing units in state-owned buildings and made available for periods of between six months and two years. However, representatives of civil society stressed that the State only ensured effective provision when it was a matter of supplying emergency accommodation for Monegasque victims. According to the authorities, emergency housing is not reserved solely for Monegasque nationals, but beneficiaries must prove three years of actual residence in the Principality and possess a valid residence permit. However, exceptions have been made in cases of child protection or domestic violence. DASO is competent to grant medical cover, financial assistance, food aid and accommodation according to certain criteria, including the period of residence. Derogations in the light of the exceptional circumstances of THB victims could be decided, as was the case with the refugees taken in recently, who benefited from special assistance measures. However, given the tight rental market in Monaco, making housing arrangements permanent remains the biggest problem. Without the provision of a state-owned flat or the granting of adequate rental assistance, these individuals could not go on living in the Principality.

<sup>25</sup> Law No. 1.382 of 20/07/2011 on the prevention and punishment of specific forms of violence, <https://www.legimonaco.mc/305/legismclois.nsf/ViewTNC/BEF73D97E2775186C125790B002F3F1D!OpenDocument>

103. In addition, GRETA was told that the Social Service of the Monaco Red Cross may be called upon to provide safe accommodation in hotels in France or Monaco. The Red Cross is authorised to provide assistance to persons suffering financial hardship who have, or have had, an employment link with Monaco and are either in Monaco or neighbouring municipalities. However, the Red Cross has sometimes stepped in to assist victims of violence as well. In a potential case of trafficking the Red Cross could provide accommodation or assistance for returning to the home country. It was stressed that the court's social worker could request the Red Cross to assist persons with their return, for example. In terms of humanitarian aid, the Red Cross supports the work at the Ventimiglia camp (see paragraph 185). It was stressed that some people arriving at the camp were persons in transit rather than asylum seekers and therefore particularly vulnerable to the action of people smugglers. The Red Cross has opened an information point at Ventimiglia station, staffed by volunteers, and also gives out booklets in four languages (French, Italian, English, Arabic) to inform migrants about the structures that can help them and the services available to them in the Red Cross camp or from Caritas.

104. It should further be stressed that a new NGO, *Collectif Réfugiés d'Orient* (Orient Refugees Group), providing aid for Syrian and Iraqi refugees, has recently been set up in Monaco and has financed accommodation for families in the municipality of Beausoleil (France) and Monaco. At the time of GRETA's visit, this NGO had accommodated some 30 people.

105. GRETA takes note of the measures available for assisting persons in need and victims of violence, and in particular the policy document in preparation, whose objectives will include organising the assistance provided to THB victims. According to the authorities, this document, referred to as "Inter-services co-ordination plan for identification and support of victims of trafficking in human beings" now being finalised makes provision for material, medical and psychological support for trafficking victims.

106. **GRETA urges the Monegasque authorities to adopt such legislative or other measures as may be necessary to provide assistance to all victims of human trafficking and help them with their physical, psychological and social recovery (in particular suitable safe accommodation, access to emergency medical care, counselling and material assistance, as well as advice and information on their rights in a language understood by the victim) in accordance with Article 12 of the Convention, with the involvement of civil society.**

*c. Identification of, and assistance to, child victims of trafficking (Articles 10 and 12)*

107. The Children and Families Office of DASO has the task of child protection and parenting support for the families and children present on the territory of Monaco, including child victims of trafficking. While its purview is mainly social and educational, the Monegasque authorities informed GRETA that the Children and Families Office would also be responsible for accompanying child victims of trafficking to the Police Department to declare their situation and to the Princess Charlene Children's Home to provide them with emergency accommodation. In case a child victim of trafficking is identified, a personalised plan would be prepared, envisaging an intervention by a social worker and a child care worker and, if possible, the child's integration in the education system. Educational support and financial assistance are provided to the family if needed. However, although the child protection professionals are likely to take a child victim who has confided in them to the police, the measure of child care assistance and placement in the Children's Home cannot happen until after a decision of the Guardianship Judge once the case has been referred by the Prosecutor General.

108. Unaccompanied children found on the territory of Monaco are taken in by the police, who have their state of health checked out and try to establish their identity by all possible means in order to trace their legal guardians and understand how they have come to be unaccompanied. While these checks are being carried out, the judicial authority will place these children in the Princess Charlene Children's Home, which comes under DASO, where they will receive social and educational support among other things. The placed child is also provided with medical cover.

109. Statutory guardianship is provided for in Article 268-1 of the Code of Criminal Procedure, which empowers the Public Prosecutor or the examining judge dealing with offences committed against a minor, or against an adult lacking legal capacity, to appoint an ad hoc guardian if the child's or adult's interests are not fully protected by the child's or adult's legal guardian(s). The ad hoc guardian is responsible for protecting the minor's interests and, where appropriate, exercises on behalf of the minor the rights of the party claiming damages. This guardianship would be established for unaccompanied children identified as victims of trafficking.

110. As for measures to ensure that the identity or details allowing the identification of a child victim of trafficking are not made public, through the media or by any other means, Article 31 of the Code of Criminal Procedure states that "except where the law provides otherwise, and without prejudice to the rights of the defence, proceedings during the investigation shall be confidential. Any person participating in these proceedings shall be bound by professional secrecy under Article 308 of the Criminal Code."

111. Furthermore, child victims receive the statutory legal aid provided for by Act No. 1.378 of 18 May 2011 pertaining to legal aid (see paragraph 129), and therefore have access to a lawyer, free of charge, throughout the proceedings, including to claim compensation. Translation costs are also covered. AVIP can also cater for child victims of trafficking and give them information on what they need to do to claim their rights.

112. GRETA visited the Princess Charlene Children's Home, opened in 2012, which is designed to accommodate children put into care by the courts. Being a minor is the key factor for placement in the home, which takes place following a ruling by the prosecutor. Exceptions are possible if a child placed in the home becomes an adult while living there and requests an extension. The home possesses a total of 33 beds, on three storeys, and a team of 24 people, all of whom have a care role as regards the children taken in, including the night staff. The team includes 18 specialist child care workers. It is also supported by technical teams looking after the home's budget and logistics and a health centre with a paediatric nurse. In all, the home employs fifteen categories of professional staff, all trained in France, and works in partnership with psychologists and the Princess Grace Hospital. It has a budget of 300,000 euros, which does not include wages. The Monegasque authorities informed GRETA that, in practice, since it was the only establishment able to meet demand for emergency accommodation, mothers with children, and persons with physical and intellectual disabilities, were sometimes placed there.

113. According to the information provided by the Monegasque authorities, a person whose age is uncertain and whose situation suggests that he/she is a child, whether a victim or a perpetrator of a criminal offence, undergoes a bone X-ray in order to determine his/her age. GRETA notes that this method of age assessment does not take into account psychological, cognitive or behavioural factors. The person concerned is presumed to be and treated as a child pending the official results of these tests. Moreover, a victim of trafficking presumed to be a child comes under Monegasque child protection law, particularly in terms of food and health support. The Monegasque authorities have indicated that they are currently considering how to improve the procedures for determining the age of child victims. In Monaco, it is the Prosecutor's Office that decides whether to initiate such a procedure.

114. **GRETA urges the Monegasque authorities to develop procedures for the identification of child victims of trafficking and their referral to assistance, and in particular:**

- **to determine a clear procedure (national referral mechanism) for the identification of child victims of trafficking, based on multi-agency action, which is integrated in the child protection system and involves child care specialists, and makes the child's best interests a primary consideration in all proceedings affecting child victims of trafficking;**
- **to ensure that the relevant stakeholders (police, service providers, NGOs, child protection services and social workers) have appropriate training and guidance to identify child victims of trafficking proactively.**

115. **GRETA also invites the Monegasque authorities to review age determination procedures whilst effectively protecting the child's best interests in accordance with Article 10, paragraphs 3 and 4, of the Convention and in keeping with the Convention on the Rights of the Child and General Comment No. 6 of the Committee on the Rights of the Child.**<sup>26</sup>

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

116. Under Article 61 of the Monegasque Code of Criminal Procedure, "any authority, civil servant or public official who, in the course of their duties, learns of a crime or an offence is required to notify the public prosecutor immediately and to forward to that official any information, documents and certificates that might be of use in punishing it". Article 31 of the Code of Criminal Procedure states that "except where the law provides otherwise, and without prejudice to the rights of the defence, proceedings during the investigation and examination of the case shall be confidential."

117. Furthermore, while Monegasque law criminalises breaches of professional secrecy under Article 308 of the Criminal Code, the lifting of professional secrecy is specifically provided for in some cases by Article 308-1 bis of that code.

118. Article 308-2 of the Criminal Code stipulates punishment of "imprisonment for a period ranging from six months to three years and the fine provided for in category 4° of Article 26, of which the maximum amount may be doubled for anyone who knowingly violates or attempts to violate the right to respect for the private and family life of a living or deceased person, referred to in Article 22 of the Civil Code, by engaging, without that person's consent, in one of the following acts: listening to, recording or transmitting, by any means whatsoever, words spoken by the person in a private place; recording or transmitting an image of them despite them being in a private place. However, consent shall be presumed where such acts have been committed at a gathering and with the full knowledge of the person concerned. Confiscation of the material used and documents or recordings obtained to commit the offence shall be ordered".

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<sup>26</sup> [General Comment No. 6 \(2005\) on 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)*

119. As victims of trafficking are extremely vulnerable after the trauma they have experienced, Article 13 of the Convention introduces the obligation for Parties to provide in their internal law for a recovery and reflection period of at least 30 days. The recovery and reflection period, in itself, is not conditional on co-operation with the investigative or prosecution authorities and should not be confused with the issue of a residence permit under Article 14(1) of the Convention. Pursuant to the Convention, the recovery and reflection period should be granted when there are reasonable grounds to believe that the person concerned is a victim of trafficking, i.e. before the identification procedure has been completed. During this period, Parties must authorise the person concerned to stay on their territory, and expulsion orders cannot be enforced.

120. Monegasque law does not provide for a recovery and reflection period. The Monegasque authorities have stated that they are currently holding discussions on the recovery and reflection period between the different departments concerned.

**121. GRETA urges the Monegasque authorities to provide in their internal law for a recovery and reflection period for victims of trafficking pursuant to Article 13 of the Convention and to ensure that no person can be removed from the territory once an identification procedure has started.**

*f. Residence permit (Article 14)*

122. Article 14(1) of the Convention provides for two bases upon which to issue renewable residence permits to victims of trafficking: on the basis of their personal situation and/or their co-operation with the competent authorities in the investigation or criminal proceedings.

123. Monegasque law has no specific provisions relating to residence for victims of trafficking. In general, Ordinance No. 3.153 of 19 March 1964 lays down the conditions governing entry to and residence in Monaco for foreign nationals wishing to reside there for over three months or to settle there permanently. Applications must be lodged with the Police Department, which is responsible for issuing residence permits. The Monegasque authorities have stated that they are currently holding discussions on residence permits for trafficking victims between the different departments concerned.

124. It should be noted that the remit of the High Commissioner for the Protection of Rights, Liberties and for Mediation includes the processing of residence applications from foreign nationals. The Office of the High Commissioner can make recommendations to the Monegasque authorities, particularly for persons present in Monaco whose residence permits are due to expire but whose return would constitute a risk in terms of their human rights. The High Commissioner Cases cannot take up cases *ex officio*; they must be referred by the parties concerned. It has been pointed out that the Office of the High Commissioner is in close contact with AVIP to ensure referral of cases that could require action by the High Commissioner.

125. As Monaco is a party to the 1951 Geneva Convention, the Principality is competent to consider asylum applications. Applications must be made to the Minister of State (Head of Government), who, in accordance with an exchange of letters dating from 1955, consults the French Office for the Protection of Refugees and Stateless Persons (OFPRA). In the light of the advisory opinion of OFPRA, a decision is then taken on the asylum application by the Minister of State.<sup>27</sup>

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<sup>27</sup> GRETA was informed that some forty Syrian and Iraqi refugees had recently been supported in Monaco by an association called the Collectif Réfugiés d'Orient. This organisation, which provides assistance to Christians from the Middle East and operates through private donations, has arranged reception and accommodation in Monaco and the town of Beausoleil for families.

126. **GRETA urges the Monegasque authorities to make provision in internal law for granting of a residence permit to victims of trafficking in human beings if the competent authority considers that their stay is necessary owing to their personal situation and/or if it is necessary for the purpose of their co-operation with the competent authorities in connection with an investigation or criminal proceedings.**

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

127. Article 15 of the Convention establishes the obligation for Parties to provide in their internal law for the right of victims of trafficking to legal assistance and free legal aid. Parties must also provide for the right of victims of trafficking to compensation from the perpetrators, as well as adopt legislative or other measures to guarantee compensation for victims from the State. A human rights-based approach to action against THB entails the effective prosecution of traffickers, putting the emphasis on the right to effective remedy for the victim. Further, Article 15(1) of the Convention establishes that victims of trafficking must have access to information on relevant judicial and administrative proceedings in a language which they can understand.

128. The Victims of Crime Association (AVIP), recognised by Ministerial Decree No. 2014-660 of 20 November 2014, caters for victims of crime, including potential victims of trafficking in human beings, and gives them information on what they need to do to claim their rights.

129. Monegasque law provides for access to legal assistance and free legal aid during investigation and criminal proceedings in Act No. 1.378 of 18 May 2011 pertaining to legal aid and compensation for lawyers, section 1 of which provides, in particular, that "the purpose of legal aid shall be to allow individuals with insufficient resources to exercise their rights in court [...] It shall apply in all legal matters [...]". Under section 10 of this law, legal aid shall "entitle the recipient to the assistance of a counsel [avocat-défenseur], lawyer or junior lawyer, as well as that of any law official, appointed in turn by the Legal Aid Office. It shall cover amounts owed to the Treasury for stamp duty, registration fees and registry fees as well as fees for expert reports, translation/interpreting and insertion, witness fees and generally all legal fees necessitated by the proceedings."

130. Applications for legal aid must be sent to the General Court Registry on a plain sheet of paper. Legal aid is granted to persons whose income falls below a ceiling set by sovereign order and adjusted, where applicable, for dependents (section 2). Here Article 1 of Sovereign Order No. 3.387 of 3 August 2011 specifying terms of eligibility for legal aid provides that, for this ceiling, "the annual income of persons applying for legal aid [...] shall be 20,000 euros"<sup>28</sup>.

131. It should further be noted that in criminal cases legal aid can be granted only to the party claiming damages. However, an accused or remanded person may request a court-appointed lawyer in accordance with Articles 167 and 399 of the Code of Criminal Procedure.

132. Victims of an offence, whatever its nature, derive their right to claim damages from the first paragraph of Article 2 of the Code of Criminal Procedure, which provides that a "claim for compensation for damage caused directly by an act constituting an offence may be brought by anybody having personally incurred it", although it is the following article that makes provision for the victim to exercise his or her rights through a recognised association. A civil claim for damages, admissible "equally for all categories of damage, whether pecuniary, personal or non-pecuniary" (Article 2 of the Code of Criminal Procedure) can be brought at the same time and before the same judges as the criminal proceedings, in accordance with Article 3 of the Code of Criminal Procedure.

<sup>28</sup> Calculation of applicants' income includes wages (other than wages from work for a duration of under three months in the reference year), rental income, financial income, retirement and additional pensions, maintenance allowances, contributory shares and compensatory benefits, disability pensions or allowances, and pensions for accidents at work.

133. Article 73 of the Monegasque Code of Criminal Procedure allows a victim to sue for damages in the competent court. The third paragraph of Article 75 of the Code provides that, for criminal offences or more minor infringements, "the plaintiff shall be deemed to be the party claiming damages solely by virtue of the summons" to the perpetrator to appear before the competent court. In this type of case, formal expression of an intent to claim damages is therefore not required.

134. In addition to a claim for damages according to strictly specified procedures and usually following an expression of intent, two other conditions must be met if the party claiming damages is to be compensated: firstly, conviction of the perpetrator and, secondly, the existence of real and direct harm.<sup>29</sup>

135. A court dealing with trafficking-related offences has the option of ordering confiscation of property and capital of illicit origin, as well as confiscation of movable and immovable property bought with these funds.<sup>30</sup> The same applies to penalties incurred by legal persons, which include confiscation of things used or intended for use in committing the offence, or things that are the product of the offence.<sup>31</sup> Lastly, Article 16 of Sovereign Order No. 605, on confiscation, states that "if property and capital of illicit origin has been intermingled with property acquired from legitimate sources, confiscation shall be ordered up to the value of the intermingled proceeds assessed by the court dealing with the case". The authorities informed GRETA that, as noted by the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval)<sup>32</sup>, Article 32 of the Criminal Code makes certain provisions for confiscation in favour of the injured parties.<sup>33</sup>

136. A victim of an offence can apply to the Monegasque courts for compensation, including after having returned to his or her country of origin, through representation by a counsel (*avocat-défenseur*), on condition, firstly, that the said courts have a ground of jurisdiction, namely the place where the offence was committed (even if only one of the ingredients of the offence was committed in Monaco), the third party's nationality, or the victim's nationality, and, secondly, that there is compliance with Article 76 of the Code of Criminal Procedure, which states that "a party claiming damages who does not live in the Principality is required to have an address for service there by a deed executed at the General Court Registry". According to the authorities, failure by a party claiming damages to declare an address in the Principality in compliance with Article 76 of the Code of Criminal Procedure does not make the claim inadmissible but merely prevents the claimant from contesting the failure to serve them with acts with which they should have been served under the law<sup>34</sup>. However, while the victim must effectively declare an address in the Principality while not living there, they are not necessarily obliged to return to Monegasque territory but may instead be represented by a lawyer, even though the Public Prosecution Department may ask to interview them, where necessary by videoconference.

137. The authorities have stated that there is no mechanism in Monaco for the compensation of victims by the State in the event of the perpetrators failing to pay the compensation due.

<sup>29</sup> Apart from the exception in Article 392 of the Code of Criminal Procedure, whereby "in the event of a dismissal (i.e. an acquittal), the party claiming damages may, for the same acts, claim compensation for injury arising out of an offence by the defendant other than that cited in the charge or founded on a provision of civil law", this action being brought before the same court that heard the criminal case.

<sup>30</sup> Article 12 of the Criminal Code provides that: "Confiscation either of the *corpus delicti* if owned by the convicted person or of the proceeds of the offence or those used or intended for use in committing it, shall be a common penalty for summary and indictable offences." Article 32 of the code adds, "Special confiscation, restitution, compensation payments and damages for injured parties if they ask for them, shall be common to summary and indictable offences; if not prescribed by law, they shall be assessed at the discretion of the courts."

<sup>31</sup> Article 29-4 of the Criminal Code.

<sup>32</sup> Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval), 4th round evaluation report, Anti-Money Laundering and Combating the Financing of Terrorism, Monaco, 13 September 2013, MONEYVAL(2013)2, no. 236, p. 75.

<sup>33</sup> "Special confiscation, restitution, compensation payments and damages for injured parties if they ask for them, shall be common to summary and indictable offences; if not prescribed by law, they shall be assessed at the discretion of the courts."

<sup>34</sup> Second paragraph of Article 76 of the Code of Criminal Procedure; Court of Review, 2 March 1994, I. alias K. v./ Ministère Public, Société Générale, Direction des Alpes Maritimes de la Poste, Société des Paiements Pass-Groupe Carrefour.



138. Since no cases of victims of trafficking have been identified, the question of compensation has not yet come up in Monaco.

**139. GRETA considers that the Monegasque authorities should adopt measures to guarantee compensation for victims of trafficking, including compensation from the State when compensation cannot be secured from the perpetrator.**

**140. Furthermore, GRETA considers that the Monegasque authorities should ensure that victims of trafficking are systematically informed, in a language that they understand, of their right to claim compensation from the perpetrator and of the procedures to be followed.**

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

141. Article 16 of the Convention requires Parties to establish repatriation programmes which aim at avoiding re-victimisation and involve relevant national or international institutions and NGOs, as well as to make efforts to favour the reintegration of victims into the society of the State of return. Parties must also make available to victims of trafficking, contact information or structures that can assist them in the country of return, such as law enforcement offices, NGOs, legal professionals and social welfare agencies. The return of victims of trafficking must preferably be voluntary and needs to be carried out with due regard for the rights, safety and dignity of the person and for the status of any legal proceedings related to the fact that the person is a victim of THB.

142. Monaco has no framework for the repatriation of victims of trafficking that specifies the different authorities competent for organising returns in collaboration with the authorities of the country of origin and the procedures for those returns. The Monegasque authorities have stated that they are currently holding discussions between the different departments concerned on a specific framework for the return of trafficking victims to their country of origin.

**143. GRETA considers that the Monegasque authorities should provide for a specific framework for the return of victims of trafficking to their country of origin, which should preferably be voluntary and needs to be carried out with due regard for the victims' safety and dignity, *inter alia*, through an assessment of the risks they face if they return to their country, while also respecting the *non-refoulement* principle, in accordance with Article 40(4) of the Convention and taking account of the United Nations guidelines for the application of the Convention relating to the status of refugees<sup>35</sup>.**

## **4. Measures concerning substantive criminal law, investigation prosecution and procedural law**

*a. Substantive criminal law (Articles 18, 23, 24 and 25)*

144. Pursuant to Article 18 of the Convention, Parties have the obligation to establish THB as a criminal offence when committed intentionally. Further, the Convention requires Parties to consider taking measures to criminalise the use of services which are the object of exploitation, with the knowledge that the person is a victim of THB (Article 19). In addition, forging travel or identity documents, removing, concealing or destroying them, as well as procuring or providing them, must be established as criminal offences, when committed intentionally and for the purpose of enabling THB (Article 20).

<sup>35</sup> [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.

145. As already stated in paragraph 29, in Monegasque law, trafficking in human beings is established as a criminal offence by Article 8 of Sovereign Order No. 605 of 1 August 2006. Sanctions for the offence of trafficking are provided for in Article 9, whereby "anyone committing or attempting to commit the offence of trafficking in human beings defined in the previous article shall be punished by five to ten years' imprisonment and the fine provided for in Category 4 of Article 26 of the Criminal Code<sup>36</sup>, the maximum amount of which can be increased tenfold".

146. The authorities have stated that previous convictions acquired abroad are regarded by the Monegasque courts as a criminal record and taken into account in sentencing and it is the Monegasque judicial authorities' practice to routinely request information from their counterparts abroad on the criminal status of persons involved in criminal proceedings in Monaco.

147. Retaining, removing, concealing, damaging or destroying a travel or identity document of another person intentionally and for the purpose of enabling the trafficking in human beings does not constitute a specific offence in Monegasque internal law. The Monegasque authorities have nevertheless pointed out that ordinary law would apply. Under Article 97 of the Monegasque Criminal Code, anyone fabricating, falsifying or altering passports, certificates, record books, cards, slips or receipts, passes or other documents issued by the authorities for the purpose of establishing an identity or capacity, recognising a right or granting an authorisation will be punished by one to five years' imprisonment and liable for payment of a fine. The same applies to anyone making use of fabricated, falsified or altered documents, and attempted use is also punishable in the same way as the completed offence.

148. The authorities informed GRETA that the aggravating circumstances provided for in Article 24 of the Convention are applicable to offences related to trafficking in human beings. However, there were no such aggravating circumstances that were directly applicable to the offence of trafficking in human beings itself. In their comments on the draft report, the Monegasque authorities mentioned their intention to initiate discussion on the possibility of incorporating into Monegasque law the aggravating circumstances provided for in Article 24 of the Convention which would be applicable to the offence of trafficking in human beings. **GRETA urges the Monegasque authorities to ensure that all the aggravating circumstances included in the Convention are duly taken into account.**

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

149. The Convention requires Parties to consider taking measures to criminalise the use of services which are the object of exploitation, with the knowledge that the person is a victim of THB (Article 19). This provision targets the client whether of a victim of trafficking for sexual exploitation or of a victim of forced labour or services, slavery or practices similar to slavery, servitude or organ removal.<sup>37</sup>

150. As noted in paragraph 84, use of the services of a person known to be a victim of THB is not punishable under Monegasque law. According to the Monegasque authorities, the use of services of a THB victim could however fall within the scope of Article 42 paragraph 2 of the Criminal Code, which criminalises complicity in crimes or misdemeanours, if the accomplice has "knowingly aided or abetted the perpetrator or perpetrators of the act in the actions preparing for or facilitating the act, or in actions to complete it". GRETA takes note of the information provided by the Monegasque authorities, according to which a discussion will be initiated as to the possibility of criminalising the use of the services from persons who are victims of THB. **GRETA invites the Monegasque authorities to adopt such legislative measures as may be necessary to establish as a criminal offence the use of services of a person known to be a victim of THB, whatever the form of exploitation, as provided for in Article 19 of the Convention.**

<sup>36</sup> From 18,000 to 90,000 euros.

<sup>37</sup> Explanatory report of the Convention, paragraph 231.

*c. Corporate responsibility (Article 22)*

151. In Monegasque law, a legal person can be held liable for a criminal offence established in accordance with the Convention under Article 4-4 of the Criminal Code, which provides that a legal person shall be criminally liable, as perpetrator or accomplice, for any offence committed for its benefit by one of its organs or representatives.

152. In such a case, action would be taken against the legal person in the person of its legal representative, which does not preclude the liability, as joint principals or accessories, of the persons representing it at the time of the offence. In this case, if there is a conflict of interests, these persons can apply to the president of the court of first instance for appointment of an ad hoc representative for the legal person.

153. As for corporate responsibility when legal persons are involved in trafficking for the purpose of forced labour or services throughout the supply chain, including through subcontractors, the Monegasque authorities added that it followed from the above Article 4-4 of the Criminal Code that a legal person could be held liable as perpetrator or accomplice only if one of its organs or representatives had committed, or aided and abetted, THB, including for the purpose of forced labour or services. Consequently, a legal person will be held liable as an accomplice wherever its organs or representatives have themselves, for its benefit, aided and abetted a third party, such as a subcontractor, by giving that party instructions to commit THB.

154. **GRETA invites the Monegasque authorities to ensure that any suspected offence of THB committed by a legal person is investigated and, as appropriate, prosecuted, leading to effective, proportionate and dissuasive sanctions or measures.**

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

155. Pursuant to Article 26 of the Convention, Parties must provide for the possibility of not imposing penalties on victims of trafficking for their involvement in unlawful activities, to the extent that they have been compelled to do so.

156. Among the circumstances precluding criminal liability in Monegasque law is that of acting under compulsion, under the exemption from liability clause in Article 44 of the Criminal Code which states that "there is no crime or misdemeanour if the perpetrator was in a state of insanity at the time of the act or if they were forced into it and unable to resist." It seems that there have been no precedents in this field so far.

157. GRETA notes that Article 44 of the Criminal Code places the burden of proof on the victim and is not the non-punishment clause that ought to apply automatically to any victim of trafficking, as required by Article 26 of the Convention. GRETA consequently notes with concern that the criterion of compulsion might not cover all THB situations and would make it hard to enforce the non-punishment principle for a certain number of victims having been involved in unlawful activities because compelled by traffickers. According to the Monegasque authorities, the Judicial Services Directorate envisages sending a general policy instruction to the Prosecutor's Office stating that Article 44 of the Criminal Code must be applied, under the principle of the hierarchy of standards,<sup>38</sup> in a manner compatible with the provisions of Article 26 of the Convention.

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<sup>38</sup> Recognised by the Principality as an essential guarantee of the rule of law when ratifying the Convention for the protection of human rights and fundamental freedoms (see Appendix to Sovereign Order No. 408 of 15 February 2006 giving effect to the Convention for the protection of human rights and fundamental freedoms, opened for signature on 4 November 1950 and as amended by Protocol No. 11).

158. **GRETA considers that the Monegasque authorities the Monegasque authorities should take further steps to guarantee the principle of not imposing penalties on victims of trafficking who have committed offences, including administrative ones, to the extent that they have been compelled to do so, be it through the adoption of specific legal provisions and/or the elaboration of guidelines for police officers, prosecutors and judges.** Attention should here be drawn to the recommendations on non-punishment for legislators and prosecutors contained in the paper published by the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings in consultation with the Alliance against Trafficking in Persons Expert Co-ordination Team<sup>39</sup>.

*e. Investigation, prosecution and procedural law (Articles 1, 27 and 29)*

159. One of the purposes of the Convention is to ensure the effective investigation and prosecution of THB (Article 1(1)(b)). In this context, Parties are required to co-operate with each other regarding investigations and/or criminal proceedings related to THB (Article 32). Further, the Convention establishes that the investigation or prosecution of THB offences must not be dependent on victims' reports, and that associations or NGOs aimed at fighting THB or protecting human rights must be able to assist and support victims during criminal proceedings, in accordance with the conditions established in the internal law and with the victim's consent (Article 27).

160. In Monegasque internal law a complaint from a victim can trigger court proceedings but is not required for prosecution of cases of trafficking in human beings. Thus any finding or report can be used to initiate proceedings. Once begun, proceedings can also be continued even if the victim withdraws the complaint.<sup>40</sup>

161. Although no victims have been identified in Monaco and no investigations have been started, facts brought to GRETA's attention during the evaluation visit have nevertheless raised concerns about effective triggering of criminal proceedings in potential trafficking cases. Despite indicators prompting action by AVIP and the police to provide assistance to a potential victim of trafficking (see paragraph 94), no further action seems to have been taken for that case following that person's refusal of the secure accommodation offered by the authorities.

162. Concerning the use of special investigation techniques, Article 106-1 of the Code of Criminal Procedure allows an examining judge, when the investigation so requires, to order interception, recording and transcription of telecommunications and electronic correspondence for the offence of trafficking, including when not connected with organised crime, as provided for in Article 8 of Sovereign Order No. 605, inasmuch as it is an offence punishable by more than one year's imprisonment. If a crime is transnational in nature and involves an organised criminal group, Article 20 of Sovereign Order No. 605 provides that, except where a bilateral convention applies, controlled deliveries and other special investigation techniques such as electronic and other forms of surveillance, and undercover operations requested by a State Party to the United Nations Convention against Transnational Organised Crime shall be authorised, where it deems appropriate, by the competent Monegasque judicial authority. Furthermore, in Articles 106-12 to 106-23, the Code of Criminal Procedure provides for use of sound recording and image capture of certain places and vehicles, and of covert investigations, for a list of offences including those falling within the scope of organised crime and those constituting grievous bodily harm to children, sexual exploitation of children, pimping, drug trafficking and terrorism.

<sup>39</sup> <https://www.osce.org/secretariat/101002?download=true>

<sup>40</sup> Articles 1 and 69 of the Code of Criminal Procedure.

163. As for trafficking offences committed online, the Monegasque authorities have pointed to Article 294-4 of the Criminal Code, which makes operators and service providers operating telecommunications and electronic communications networks and services responsible for taking steps to prohibit public access to images or representations of abuse of minors if these images or representations are pornographic.

164. Monegasque law criminalises money laundering of property, capital and income of illicit origin, as well as the proceeds of offences punishable by a prison sentence of more than one year. In this case precautionary attachment may be ordered. The Code of Criminal Procedure provides for two types of seizure of funds: firstly, ordinary seizure, whatever the offence being prosecuted, which can be used for freezing of an account, ordered by the examining judge<sup>41</sup>; secondly, special seizure in the case of money laundering, corruption and influence-peddling, ordered by the court or examining judge in a reasoned decision after consulting the Public Prosecutor<sup>42</sup>. In addition, Article 16 of Sovereign Order No. 605 provides for confiscation of movable and immovable property and capital of illicit origin in connection with offences of trafficking if the latter is transnational in nature and involves an organised criminal group. Other seizures may be carried out for international co-operation.<sup>43</sup> Once the first article of Sovereign Order No. 605 has been amended (see paragraph 35), Article 16 of that Order will make it possible to confiscate property and capital of illicit origin in connection with THB offences in all cases, including where they are not transnational or do not involve an organised criminal group.

165. Further, Monegasque internal law permits some associations that provide assistance or support for victims to take part in court proceedings. Article 2-1 of the Code of Criminal Procedure allows any association recognised at the material time and having the official aim of combating violence to exercise the rights of the party claiming damages, with the victim's consent, but only for certain serious offences, which do not, however, include trafficking in human beings. AVIP plays this role in the Principality of Monaco by working to cater for victims of crime and give them information on what they need to do to claim their rights (see paragraphs 100-101). It provides its services free of charge on a confidential basis.

166. GRETA also notes with concern the situation on foreign-registered yachts and other vessels, since French Customs is the only authority empowered to board them under the customs union. The Monegasque marine police have no investigatory powers and would have to refer any reported cases to the Criminal Investigation Division, and a warrant would have to be obtained from the Public Prosecution Department to undertake an investigation on a vessel, which occurs very rarely and only in narcotics cases.

167. With respect to investigations concerning possession of child sexual abuse images, the police said that they used software to detect individuals downloading this type of content and that a number of judicial investigations had been opened in the past and had led to arrests. The police have Child Protection System software which makes it possible to identify exchanges of "marked" pornographic contents on the main file-sharing applications (P2P). Article 249-2 of the Criminal Code punishes the act of obtaining services from a person whose vulnerability is known to the perpetrator for no or poor pay, or work performed in unacceptable conditions. Committing this offence against a minor is an aggravating circumstance. This offence could be applied on condition of being able to establish where the crime was committed or to identify the victim. The police services of the relevant jurisdiction would then be informed via international police co-operation channels so that they can trace the victim and the presumed perpetrator. Accordingly, domestic law makes it possible to prosecute the livestreaming of sexual abuse of children if the constituent elements of the crime are present. However, none of the cases had been approached in terms of trafficking.

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<sup>41</sup> Article 104 of the Code of Criminal Procedure; Court of Appeal, 24 April 2002, A. v./ Ministère public.

<sup>42</sup> Article 596-1 of the Code of Criminal Procedure.

<sup>43</sup> Sovereign Order No. 15.457 of 9 August 2002 on international co-operation for seizure and confiscation to combat money laundering.

168. GRETA was told about a planned amendment to the Code of Criminal Procedure to provide for the possibility of opening preliminary investigations.

169. **GRETA considers that the Monegasque authorities should take steps to ensure that offences of trafficking are investigated proactively and prosecuted expeditiously, resulting in proportionate and dissuasive sanctions, in particular by:**

- **ensuring that investigators, prosecutors and judges have better knowledge of the phenomenon of trafficking in human beings and are made aware of the impact of exploitation on victims and the need to respect their human rights;**
- **stepping up proactive investigations into potential cases of trafficking in human beings;**
- **ensuring that special investigation techniques are also applied in cases of trafficking which do not have a transnational element;**
- **where it is necessary to use controlled deliveries in human trafficking cases, taking all steps to minimise the risk for the health or life of victims;**
- **providing for the confiscation of movable and immovable property and capital of illicit origin in connection with offences of trafficking when the latter is not transnational in nature and does not involve an organised criminal group.**

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

170. By virtue of Article 28 of the Convention, Parties must take measures to provide effective and appropriate protection from potential retaliation or intimidation, in particular during and after the investigation and prosecution of perpetrators. This protection can be of various types (including physical, relocation, identity change) and is to be provided to victims of trafficking, to those who report it or otherwise co-operate with the investigating or prosecuting authorities, to witnesses who give testimony and, when necessary, to members of the families of those listed above. Further, Article 30 of the Convention includes a provision requiring Parties to take measures to protect victims' private life and identity and to provide for their safety and protection from intimidation in the course of judicial proceedings, including special protection measures for child victims of THB.

171. Under Article 37-1 of the Code of Criminal Procedure and Article 24-1 of the Civil Code, Monegasque law protects victims through "protection orders", whereby, for victims of serious offences including trafficking victims, Monegasque judges and prosecutors can order emergency accommodation for the victim and issue barring orders for perpetrators. Prosecutors can thus prohibit perpetrators, for a limited period, from appearing in certain places connected with victims, witnesses or NGOs providing victim support.

172. In addition, "anonymous testimony" has been added to the body of Monegasque law by Act No. 1.394 of 9 October 2012 reforming the Criminal Code and Code of Criminal Procedure in the field of corruption and special investigative techniques. This measure, governed by Articles 147-1 to 147-6 of the Code of Criminal Procedure, may contribute to encouraging victims and witnesses to participate in criminal proceedings.

173. Anonymous testimony can be used as early as the investigation stage if the judge believes that the examination is likely seriously to endanger the life or physical safety of the witness or his/her family or friends. Article 147-2 of the Code of Criminal Procedure states: "The examining judge shall conduct the examination of the witness taking all necessary steps to keep the latter's identity secret. To this end, he or she may use an electronic communications system." The rights of the defence are also secured under the same article, which provides that: "The Public Prosecution Department, the accused, the party claiming damages and their lawyers duly given at least eight days' notice, except in an urgent case justified by an order, may submit to the examining judge, before and during examination of the witness, the questions that they wish to have asked. These questions shall be dismissed if they are likely to result in disclosure of the witness's identity."

174. Lastly, Article 147-4 of the Code of Criminal Procedure provides for remote examination, while Article 147-5 of the Criminal Code criminalises revelation of an anonymous witness's identity or address<sup>44</sup>, and Article 292 of the Code of Criminal Procedure specifies the circumstances in which a judge in criminal cases can hold proceedings *in camera*.

**175. GRETA invites the Monegasque authorities to ensure that all the protection measures for victims of crime are in fact available to victims of trafficking, witnesses and their legal representatives in order to prevent retaliation or intimidation during investigation as well as during and after court proceedings.**

*g. Jurisdiction (Article 31)*

176. The jurisdiction of the Principality of Monaco is established by Articles 5 to 9 and Article 21 of the Code of Criminal Procedure, which provide for subject-matter jurisdiction and active and passive nationality jurisdiction. Thus, the criminal court can deal with an offence only if there is at least one connecting factor, namely that the offence has been committed on the Principality's territory or that the perpetrator or victim is a Monegasque national. In the latter case, if the offence has been committed abroad, the Monegasque court's jurisdiction is subject to this offence also being an offence in the country where it was committed. Proceedings would then be instituted only at the request of the Public Prosecution Department and only following a complaint by the injured party or an official complaint to the Monegasque authority from the authority of the country where the offence had been committed.

177. Furthermore, the Monegasque courts have jurisdiction to prosecute and try a foreign joint principal or accessory for a crime committed outside the Principality's territory by a Monegasque if the latter is prosecuted or has been convicted in the Principality for the said crime. They further have jurisdiction to prosecute and try the following: anyone who, on the Principality's territory, has aided and abetted a crime or offence committed abroad if complicity is provided for in both Monegasque law and the law abroad, provided that a final decision of a foreign court has found the act in issue to have been committed; anyone who, outside the Principality's territory, has been guilty of acts defined as crimes and offences and constituting torture within the meaning of Article 1 of the United National Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and anyone who, outside the Principality's territory, has committed against minors, as principal, joint principal or accessory, an act punishable by law under Articles 249-1, 249-2, 261, 262, 263 and 265, paragraph 1, subparagraphs 1, 2 and 4, Article 269, paragraph 1, subparagraph 1, and paragraph 2, and Articles 269-1, 273, 294-3, 294-4, 294-5, 294-6, 294-7, 294-8 and 335, paragraph 1, of the Criminal Code, if that person is found to be in the Principality.

<sup>44</sup>

Punishable by a maximum prison sentence of five years and a fine of 18,000 to 90,000 euros.

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

178. The Convention requires Parties to co-operate with each other "to the widest extent possible" in order to prevent and combat THB, protect and assist victims, and investigate related criminal offences (Article 32).

179. In the field of international judicial co-operation the Monegasque authorities use, as the legal basis for mutual legal assistance, multilateral instruments such as the United Nations Convention against Transnational Organised Crime and its "Palermo Protocol", the European Convention on Mutual Assistance in Criminal Matters, the European Convention on Extradition and its two additional protocols, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime as well as bilateral treaties on mutual assistance in criminal matters with Australia and Germany and extradition treaties with those two states and the United States and Liberia.

180. Furthermore, Article 23 of Sovereign Order No. 605 states that in the absence of bilateral or multilateral agreements providing for direct co-operation between their law enforcement authorities, the Principality and any State Party to the United Nations Convention against Transnational Organised Crime can agree to establish co-operation concerning the offence of trafficking when the latter is transnational in nature and organised by a criminal group.

181. The competent Monegasque authorities can also forward information unsolicited to the authorities of another country. This is done by the Department of Justice, in its capacity as the central authority, at the instance of the Public Prosecution Department.

182. In addition, Article 21 of Sovereign Order No. 605 makes provision for the public prosecutor to transfer proceedings relating to prosecution of a trafficking offence that is transnational in nature and involves an organised criminal group to the judicial authority of another State Party to the United Nations Convention against Transnational Organised Crime "with a view to centralising the prosecution in the interests of the proper administration of justice".

183. The authorities also told GRETA that if an act of trafficking were to be reported on Monegasque territory, mutual legal assistance and police co-operation would be put in place bilaterally with France or multilaterally through Interpol and Europol, of which Monaco is a member.

184. Further, use of joint investigation teams was added to the Code of Criminal Procedure in 2012 in Articles 596-2 to 596-5.

185. The Monegasque Red Cross acquired an "international humanitarian section" in 2007 to develop and support programmes in partnership with other national Red Cross and Red Crescent societies. Projects are thus being run in Burkina Faso, Mali, Niger, Côte d'Ivoire, Armenia and Burundi, as well as Italy, where the Monegasque Red Cross has been co-operating on the Ventimiglia camp since 2015.<sup>45</sup>

186. Monaco contributes financially to OSCE and UNODC action to combat trafficking in human beings along migration routes. Lastly, more broadly, the work of the Monaco's co-operation and development agency and its programmes, including its flagship programme for street children, helps to prevent the risk of trafficking by promoting health and education, delivering an awareness message and facilitating entry into employment for young adults in their countries of origin.

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<sup>45</sup>

<https://www.croix-rouge.mc/la-croix-rouge-aupres-des-demandeurs-d-asile-vintimille/> (in French)



187. **GRETA commends the efforts made and invites the Monegasque authorities to continue developing international co-operation with a view to training relevant professionals, raising awareness of human trafficking, improving identification of victims and providing them with the necessary accommodation and assistance, as well as conducting investigations into trafficking cases connected with transnational organised crime.**

## **IV. Concluding remarks**

188. GRETA commends the measures taken by the Monegasque authorities to combat trafficking in human beings, with the adoption of legislative provisions and the recent setting-up of a working group comprising representatives from all the departments concerned by the problem of trafficking in order to draw up a policy document.

189. While welcoming the measures taken so far, GRETA considers that several major challenges still need to be addressed, through legislative measures, public policies and practical provisions, in order to meet the requirements of the Convention's human rights-based and victim-centred approach (see paragraphs 22-25).

190. The Convention requires Parties to ensure that the fight against trafficking is comprehensive in nature. GRETA underlines the need to adopt an action plan or other policy document covering the prevention of trafficking in human beings, training for relevant professionals, the identification and protection of trafficking victims and the prosecution of trafficking offences. In addition, GRETA considers that the Monegasque authorities should ensure that a structure be developed for co-ordinating the actions of relevant actors in the event of a case of human trafficking, with the involvement of civil society.

191. In terms of prevention, more attention should be paid to trafficking for labour exploitation; accordingly, there is a need to provide labour inspectors with training on trafficking for the purpose of labour exploitation and on victims' rights, and to alert the general public and, more specifically, foreign workers to the risks of trafficking for the purpose of labour exploitation.

192. It is the responsibility of the authorities to ensure that all victims of trafficking are duly identified and can benefit from the assistance and protection measures provided for in the Convention. It is imperative to draw up a procedure for the identification of child victims of trafficking, based on multi-agency action and integrated in the child protection system.

193. In addition, domestic legislation should guarantee the right of presumed trafficking victims to a recovery and reflection period of at least 30 days, and provision for granting a residence permit to victims of trafficking in human beings if the competent authority considers that their stay is necessary because of their personal situation and/or if it is necessary for the purpose of their co-operation with the competent authorities in connection with an investigation or criminal proceedings.

194. All professionals likely to come into contact with potential victims of trafficking, including members of the law enforcement authorities, prosecutors, judges, labour inspectors, lawyers, officers of the asylum authorities, social workers, child protection professionals and medical and educational staff, must be kept regularly informed and undergo training on trafficking, especially on the fact that they are required to apply a human rights-based approach to action against trafficking, based on the Convention and on the case law of the European Court of Human Rights.

195. GRETA calls on the Monegasque authorities to keep it regularly informed of any new developments regarding the implementation of the Convention, particularly in the legislative and public policies sphere, and of the work of the round table on trafficking in human beings.

## **Appendix I: List of GRETA's proposals**

### **Comprehensive approach and co-ordination**

1. With a view to meeting their obligations under the Convention and adopting a comprehensive approach to the fight against THB, GRETA urges the Monegasque authorities to adopt an action plan or other policy document covering the prevention of THB, training for relevant professionals, the identification and protection of trafficking victims and the prosecution of THB offences.
2. In addition, GRETA considers that the Monegasque authorities should ensure that a structure be developed for co-ordinating the actions of relevant actors in the event of a case of human trafficking, with the involvement of civil society.

### **Training of relevant professionals**

3. Given the potential link between lack of training and identification of victims of THB, GRETA considers that the Monegasque authorities should ensure that all the relevant professionals (police officers, judges and prosecutors, labour inspectors, social workers, child welfare professionals, medical staff, lawyers and other relevant groups) are trained in the identification and the support of THB victims (especially the definition and indicators of all forms of THB, the difference between THB and migrant smuggling, and the rights of THB victims).

### **Data collection and research**

4. GRETA considers that the Monegasque authorities ought to conduct and/or support research into THB-related issues for the purpose of providing evidence on which to base future public policy.

### **Measures to raise awareness (Article 5)**

5. GRETA considers that the Monegasque authorities should develop initiatives to raise awareness among the public and the various groups considered at risk of various forms of trafficking. Awareness-raising should be supported by research, and the impact of measures ought to be evaluated.

### **Measures to prevent trafficking for the purpose of labour exploitation (Article 5)**

6. GRETA considers that the Monegasque authorities should take further steps to prevent trafficking for the purpose of labour exploitation, in particular by:
  - providing labour inspectors with training on trafficking for the purpose of labour exploitation and on victims' rights;
  - broadening the remit of labour inspectors so that they can play an active part in preventing THB in all sectors of economic activity, including domestic work;
  - alerting the general public and, more specifically, foreign workers to the risks of trafficking for the purpose of labour exploitation;

- establishing effective mechanisms allowing foreign workers, even if undocumented, to lodge complaints against employers not complying with labour regulations and to obtain effective redress without fear of having their residence permits revoked;
- working closely with the private sector in keeping with the Guiding Principles on Business and Human Rights

### **Measures to prevent trafficking of children (Article 5)**

7. GRETA considers that the Monegasque authorities should take steps to prevent trafficking in children, including by:

- alerting the public to the risks and signs of trafficking in children;
- providing awareness-raising for child welfare professionals to familiarise them with the phenomenon of trafficking and build their capacity to prevent it and report potential cases to the competent authorities;
- continuing to promote children's safety online and train relevant stakeholders about the risks of child trafficking online.

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

8. GRETA encourages the Monegasque authorities to sign and ratify the Council of Europe Convention against Trafficking in Human Organs, since this would help to prevent trafficking for the purpose of organ removal.

### **Measures to discourage demand (Article 6)**

9. GRETA considers that the Monegasque authorities should take further legislative steps (see paragraph 150), as well as educational, social, cultural and other measures to discourage demand for services of persons trafficked for the purpose of any form of exploitation, including in domestic work (see paragraph 69), in partnership with civil society, trade unions, the media and the private sector.

### **Identification of victims of trafficking in human beings (Article 10)**

10. GRETA urges the Monegasque authorities to adopt measures to ensure that all professionals likely to come into contact with potential victims of trafficking, and in particular police officers, labour inspectors and NGOs, have operational tools at their disposal (such as indicators, checklists and risk assessment tools) for detecting victims of trafficking for various forms of exploitation, for the proactive identification of THB victims.

### **Assistance to victims (Article 12)**

11. GRETA urges the Monegasque authorities to adopt such legislative or other measures as may be necessary to provide assistance to all victims of human trafficking and help them with their physical, psychological and social recovery (in particular suitable safe accommodation, access to emergency medical care, counselling and material assistance, as well as advice and information on their rights in a language understood by the victim) in accordance with Article 12 of the Convention, with the involvement of civil society.

## **Identification of, and assistance to, child victims of trafficking (Articles 10 and 12)**

12. GRETA urges the Monegasque authorities to develop procedures for the identification of child victims of trafficking and their referral to assistance, and in particular:

- to determine a clear procedure (national referral mechanism) for the identification of child victims of trafficking, based on multi-agency action, which is integrated in the child protection system and involves child care specialists, and makes the child's best interests a primary consideration in all proceedings affecting child victims of trafficking;
- to ensure that the relevant stakeholders (police, service providers, NGOs, child protection services and social workers) have appropriate training and guidance to identify child victims of trafficking proactively.

13. GRETA also invites the Monegasque authorities to review age determination procedures whilst effectively protecting the child's best interests in accordance with Article 10, paragraphs 3 and 4, of the Convention and in keeping with the Convention on the Rights of the Child and General Comment No. 6 of the Committee on the Rights of the Child.

## **Recovery and reflection period (Article 13)**

14. GRETA urges the Monegasque authorities to make provision in internal law for granting of a residence permit to victims of trafficking in human beings if the competent authority considers that their stay is necessary owing to their personal situation and/or if it is necessary for the purpose of their cooperation with the competent authorities in connection with an investigation or criminal proceedings.

## **Residence permits (Article 14)**

15. GRETA urges the Monegasque authorities to make provision in internal law for granting of a residence permit to victims of trafficking in human beings if the competent authority considers that their stay is necessary owing to their personal situation and/or if it is necessary for the purpose of their cooperation with the competent authorities in connection with an investigation or criminal proceedings.

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

16. GRETA considers that the Monegasque authorities should adopt measures to guarantee compensation for victims of trafficking, including compensation from the State when compensation cannot be secured from the perpetrator.

17. Furthermore, GRETA considers that the Monegasque authorities should ensure that victims of trafficking are systematically informed, in a language that they understand, of their right to claim compensation from the perpetrator and of the procedures to be followed.

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

18. GRETA considers that the Monegasque authorities should provide for a specific framework for the return of victims of trafficking to their country of origin, which should preferably be voluntary and needs to be carried out with due regard for the victims' safety and dignity, *inter alia*, through an assessment of the risks they face if they return to their country, while also respecting the *non-refoulement* principle, in accordance with Article 40(4) of the Convention and taking account of the United Nations guidelines for the application of the Convention relating to the status of refugees.

**Substantive criminal law (Articles 18, 23, 24 and 25)**

19. GRETA urges the Monegasque authorities to ensure that all the aggravating circumstances included in the Convention are duly taken into account.

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

20. GRETA invites the Monegasque authorities to adopt such legislative measures as may be necessary to establish as a criminal offence the use of services of a person known to be a victim of THB, whatever the form of exploitation, as provided for in Article 19 of the Convention.

**Corporate responsibility (Article 22)**

21. GRETA invites the Monegasque authorities to ensure that any suspected offence of THB committed by a legal person is investigated and, as appropriate, prosecuted, leading to effective, proportionate and dissuasive sanctions or measures.

**Non-punishment of victims of trafficking in human beings (Article 26)**

22. GRETA considers that the Monegasque authorities should take further steps to guarantee the principle of not imposing penalties on victims of trafficking who have committed offences, including administrative ones, to the extent that they have been compelled to do so, be it through the adoption of specific legal provisions and/or the elaboration of guidelines for police officers, prosecutors and judges.

**Investigation, prosecution and procedural law (Articles 1, 27 and 29)**

23. GRETA considers that the Monegasque authorities should take steps to ensure that offences of trafficking are investigated proactively and prosecuted expeditiously, resulting in proportionate and dissuasive sanctions, in particular by:

- ensuring that investigators, prosecutors and judges have better knowledge of the phenomenon of trafficking in human beings and are made aware of the impact of exploitation on victims and the need to respect their human rights;
- stepping up proactive investigations into potential cases of trafficking in human beings;
- ensuring that special investigation techniques are also applied in cases of trafficking which do not have a transnational element;
- where it is necessary to use controlled deliveries in human trafficking cases, taking all steps to minimise the risk for the health or life of victims;
- providing for the confiscation of movable and immovable property and capital of illicit origin in connection with offences of trafficking when the latter is not transnational in nature and does not involve an organised criminal group.

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

24. GRETA invites the Monegasque authorities to ensure that all the protection measures for victims of crime are in fact available to victims of trafficking, witnesses and their legal representatives in order to prevent retaliation or intimidation during investigation as well as during and after court proceedings.

**International co-operation (Article 32)**

25. GRETA commends the efforts made and invites the Monegasque authorities to continue developing international co-operation with a view to training relevant professionals, raising awareness of human trafficking, improving identification of victims and providing them with the necessary accommodation and assistance, as well as conducting investigations into trafficking cases connected with transnational organised crime.

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

### **Public bodies**

- Department of Justice
- Secretariat General of the Government
  - o Department of Legal Affairs
  
- Ministry of the Interior
  - o Department of Education, Youth and Sport
  - o Police Department
    - Administrative Police Division – Juvenile Squad
    - Criminal Investigation Division
    - Administration and Training Division
    - Marine and Airport police
  
- Ministry of Health and Social Affairs
  - o Department of Employment
  - o Department of Social Welfare and Social Services (DASO)
  
- Ministry of Foreign Affairs and Co-operation
- Parliament
- High Commissioner for the Protection of Rights, Liberties and Mediation
- Committee for the Protection and Promotion of Women’s Rights

### **Civil society organisations**

- Victims of Crime Association (Association d’Aide aux Victimes d’Infractions Pénales, AVIP)
- Association “She Can He Can”
- Monaco Red Cross
- Monaco Trade Unions

## **Government's comments**

GRETA engaged in a dialogue with the Monegasque 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 Monegasque authorities on 9 December 2019 and invited them to submit any final comments. The Monegasque authorities indicated that they did not see the need to submit any comments to the final GRETA report.