Committee of the Parties
to the Council of Europe Convention
on Action against Trafficking in Human Beings

COUNCIL OF EUROPE
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Report submitted by the authorities of the Czech Republic on measures taken to comply with Committee of the Parties Recommendation CP/Rec(2020)01 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings

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List of GRETA's proposals concerning the implementation of the Convention by the Czech Republic – comments by the Czech Republic

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Definition of "trafficking in human beings"

1. GRETA considers that stating explicitly the irrelevance of the consent of a victim of trafficking to the intended exploitation could improve the implementation of the anti-trafficking provisions.

We do not anticipate any changes in the Criminal Code of the Czech Republic in this respect as we consider its current provisions sufficient and in compliance with the Article 4 of the Convention.

Comprehensive approach and co-ordination

2. GRETA considers that the Czech authorities should examine the possibility of designating as a National Rapporteur a separate organisational entity or another independent mechanism for monitoring the anti-trafficking activities of state institutions.

The issue of appointing a new National Rapporteur was raised at the meeting of the Interdepartmental Coordination Group on Combating Trafficking in Human Beings and none of the stakeholders proposed to change the current settings. No such demand was noted from the main NGO partners either. The role of the National Reporter is thus fulfilled by the Ministry of the Interior.

3. GRETA invites the Czech authorities to introduce a periodic independent evaluation of the national anti-trafficking strategy as a tool for assessing the impact of the activities and planning future policies and measures to combat THB, and to consider establishing an independent National Rapporteur or designating another existing independent mechanism for monitoring the anti-trafficking activities of State institutions (see Article 29, paragraph 4, of the Convention and paragraph 298 of the Explanatory Report).

The implementation of the tasks is discussed at the meetings of the Interdepartmental Coordination Group on Combating Trafficking in Human Beings. The evaluation of the National Strategy is always part of the strategy for the next period which is submitted to the Government for approval. The current National Strategy for Combating Trafficking in Human Beings in the Czech Republic covers the period 2020 to 2023.

4. GRETA considers that the Czech authorities should take further steps to ensure that national action to combat THB is comprehensive, and in particular to:

- strengthen action to prevent and combat THB for the purpose of labour exploitation by involving labour inspectors, trade unions, employment agencies, businesses and civil society in a joint platform and improving the identification of, and assistance to, victims of THB for the purpose of labour exploitation;
- address the vulnerability to trafficking of persons or groups affected by unfavourable social and economic conditions, in particular the Roma community;
- review the regulatory systems concerning migrant domestic and home care workers and ensure that inspections can take place in private households with a view to preventing abuse of domestic workers and detecting cases of human trafficking;

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

Representatives of the Labour Inspectorate, trade unions, civil society, relevant ministries and employers participate in the activities of the Interdepartmental Body for Combating Illegal Employment, an advisory body established by Government resolution, which discusses legislative and executive measures in this area and regularly informs the Government of its activities. We also note that representatives of the Labour Inspectorate are members of the Ministry of the Interior's Interdepartmental Group for Combating Trafficking in Human Beings.

Foreign domestic workers are in no way exempted from the Labour Code or other labour legislation in terms of their status and any such employee is therefore fully protected in terms of remuneration, OSH, termination of employment, etc.

However, control at the workplace appears to be a major problem. Access by the public authorities to a dwelling is, of course, a very sensitive matter which invariably interferes with the right to privacy of the persons living there, who may not even have a direct link to the reasons for which such control is exercised.

In the Czech Republic, the right to privacy and the inviolability of the home are protected at constitutional level and strict conditions are laid down for any exceptions (Article 12(3) of the Charter of Fundamental Rights; Section 7 of Act No. 255/2012 Coll., the Inspection Code). The inspector is entitled to enter a dwelling only if the dwelling is used for business or other economic activity or if the inspection is intended to remove doubts as to whether the dwelling is used for such purposes and if the purpose of the inspection cannot be achieved otherwise. Thus, in practice, the existing legislation does not allow the labour inspection authorities access to a dwelling (workplace in someone else's home) without the consent of its owner.

In order to address the issue of responsible business conduct, whose parts are also corporate social responsibility and preventing trafficking in supply chains, the Czech Republic has adhered to the OECD Guidelines for Multinational Enterprises. The Guidelines contain non-binding principles and recommendations on areas of human rights, environment, employment rights, etc. The issue of trafficking in supply chains is addressed in the Guidelines in chapter focusing on human rights and avoid infringing on the human rights of others. The enterprises should promote the principles and recommendations contained in the Guidelines also among their business partners and in the supply chains in which they are involved.

The promotion and implementation of the Guidelines is ensured by the National Contact Point for the Implementation of the OECD Guidelines for Multinational Enterprises (hereinafter "the National Contact Point" or "NCP"). The Czech Republic NCP has quadripartite structure, which is composed of state representatives (ministries, Czech national Bank), employers (the Confederation of Industry - Czech representatives in BIAC), employees (the Bohemian—Moravian Confederation of Trade Unions - Czech representatives in TUAC) and the non-profit sector (Frank Bold - Czech representatives in OECD Watch). This structure secures strong involvement of all relevant stakeholders in activities of NCP and cooperation between them.

The tasks of the NCPs include among others promotion of the Guidelines towards the public, especially among the enterprises with multinational business to which the recommendations contained in the Guidelines are addressed. Therefore, the NCP is helping to strengthen the position of corporate social responsibility as a very basis of the nowadays economic environment.

Training of relevant professionals

5. GRETA considers that the Czech authorities should take further steps to provide periodic training on THB and the rights of victims to all relevant professionals (including police officers, immigration and asylum officials, prosecutors, judges, social workers, labour inspectors, tax inspectors, child protection authorities, consular officials, health-care professionals). The training should be mainstreamed into the regular training curriculum of relevant professionals, at all levels, involve multi-disciplinary expertise, and be implemented systematically across the country. Future training programmes should be designed with a view to improving the knowledge and skills of relevant professionals which enable them to identify victims of trafficking for all forms of exploitation and assist and protect them, to ensure effective access to compensation for victims, to enable effective investigations and to secure convictions of traffickers.

According to Act No.6/2002 Coll., on Courts and Judges, as amended, every judge must take care, through continuous education, to deepen his or her professional legal and other knowledge necessary for the proper performance of his or her duties. For this purpose, in addition to an independent studying, he or she should take advantage of educational events organised by the Judicial Academy, courts and universities, as appropriate.

Within the framework of educational events organized mainly by the Judicial Academy of the Czech Republic, the issue of human trafficking is regularly addressed, and it is beneficial that not only representatives of individual law enforcement agencies participate as lecturers in these interdisciplinary seminars, but also experts from non-governmental non-profit organisations concerned with this issue and experts from abroad. Of course, further expansion of educational activities primarily aimed at judges can always be considered, e.g., by including the topic of human trafficking in the programme of regular training sessions organised by the supreme courts or individual regional courts for judges of these courts and the district (circuit) courts that subordinate to them, i.e., courts located within their jurisdiction. A separate document with the Judicial Academy's training activities for the years 2021 and 2022 on combating trafficking in human beings intended especially for judges and public prosecutors is attached for illustrative purposes.

Labour inspectors take part in training courses aimed at labour exploitation and trafficking in human beings. These courses are organised by Ministry of Interior. For example, in 2022, a seminar on this issue was held in early spring, attended by 39 labour inspectors. They were provided with information by representatives of the Ministry of Interior, the Police of the Czech Republic, and the non-profit organisation La Strada. Another seminar was organized at the end of May 2022. The long-term cooperation of the labour inspection authorities with non-profit organisations, social partners and interest groupings has a positive impact on training. Representatives of the State Labour Inspection Office and the Regional Labour Inspectorate regularly participate in working meetings, round tables, expert discussions and conferences where foreign employment and labour law issues are among the main discussed topics. In addition, selected English-speaking methodologists-inspectors of the State Labour Inspection Office also participate in training courses and so-called training of trainers organised by various European and international bodies and organisations.

Visa Department of the Ministry of Foreign Affairs of the Czech Republic provides periodic training on THB and the rights of victims to all consular officials within the framework of a regular training for all employees assigned for postings abroad with a consular agenda, e.g. consular officials, head of consular sections of embassies and other diplomatic employees with consular tasks. Trainings are organized several times a year in cooperation with the Criminal Prevention Department of the Ministry of Interior and International Organisation for Migration. The training focuses on legal grounds for combatting the THB, trends and THB cases in general and in the Czech Republic specifically. The training also focuses on how to recognize THB, category of people who are vulnerable to THB, and possibilities for the victims of THB within the Program of support and protection of victims of THB in the Ministry of Interior. Trainees also receive contacts to relevant authorities as well as NGO agencies to practically cooperate in cases of THB when identified abroad. Online training program on THB is also under preparation in the Visa Departments of the Ministry.

The Visa Department is also considering preparation of brochures intended to be handed over to vulnerable groups of migrant workers with their entry visas at the Czech Embassies and Consulates.

The Ministry of Foreign Affairs also analyses situation regarding THB abroad through the network of Czech Embassies and Consulates General and annually contributes to the National Report on Human Trafficking processed by the Ministry of Interior of the Czech Republic.

Specialists from the National Centre against Organized Crime annually participate in lecturing activities focusing on human trafficking during the training of police officers in the specialisation course of the National Centre against Drug Abuse, lectures on cyberbullying are held by police preventive officers at primary and secondary schools, child abuse, etc.

Other planned and implemented training activities aimed at police officers, immigration workers, or employees of migration centres are mentioned in the National Strategy for Combating Trafficking in Human Beings in the Czech Republic for the period 2020–2023 as task number 2.2. They are currently in progress.

Data collection and research

6. For the purpose of preparing, monitoring and evaluating anti-trafficking policies, GRETA urges the Czech authorities to develop and maintain a comprehensive and coherent statistical system on trafficking in human beings, by compiling reliable statistical data on measures to protect and promote the rights of victims, as well as on the investigation, prosecution and adjudication of human trafficking cases. Statistics regarding victims should be collected from all main actors and allow disaggregation concerning sex, age, type of exploitation, country of origin and/or destination. This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection, including when NGOs working with victims of trafficking are asked to provide information for the national database.

Improving the data collection in the area of trafficking in human beings is a priority set out in the National Strategy for Combating Trafficking in Human Beings in the Czech Republic for the period 2020–2023. This improvement should also reflect the requirement to disaggregate data by type of exploitation, gender, age, country of origin of the victim and country where the exploitation occurred. Discussions are currently underway between the Ministry of Interior and the Ministry of Justice on the specific design. The completion of such a statistical system is anticipated in 2023.

7. GRETA considers that the Czech authorities should conduct and support further research on THB as an important source of information for the evaluation and planning of policy measures. Areas where research could be carried out include trafficking for the purpose of forced marriage and child trafficking, including live streaming of trafficking for the purpose of sexual exploitation of children.

Focusing on research activities in the area of combating trafficking in human beings is mentioned in the National Strategy for Combating Trafficking in Human Beings in the Czech Republic for the period 2020–2023 as one of the recommendations on which the Czech Republic will respond in the coming period. In this respect, we will consider an inclusion of this topic in the medium-term plan of the Institute for Criminology and Social Prevention, the implementation of which will begin in 2024.

In accordance with the Strategy, the Ministry of Interior has opened a tender for a study on child trafficking in the Czech Republic. The study should contain an analysis of criminal cases of trafficking in human beings with a focus on children. It will map the situation in the area of child trafficking in the Czech Republic, including the evaluation of a possible sexual exploitation of children in tourism. Based

on this study, educational material for an early identification and provision of assistance to child victims of human trafficking should be created and it should indicate possible prevention projects.

International co-operation

8. GRETA welcomes the involvement of the Czech Republic in international co-operation in the area of combating THB and invites the Czech authorities to continue international co-operation on action against THB, including the investigation of transnational THB cases, and to explore further possibilities for co-operation with governmental and non-governmental actors in countries of origin, destination and transit, with a view to providing assistance to, and safe referral for, victims of trafficking and preventing THB.

Everything relevant to international cooperation has already been described in the GRETA report on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings in the Czech Republic on pages 29 and 30. In this respect, we can highlight that the Police of the Czech Republic, through the Department of Trafficking in Human Beings and Illegal Migration of the National Bureau for Combating Organized Crime (NCOZ), is involved in the EMPACT project (European Multidisciplinary Platform against Criminal Threats) on the issue of the crime of trafficking in human beings. Within the framework of this platform, joint actions of European countries are implemented to fulfil priorities in the fight against serious international and organised crime. The aim is to create a network for the exchange of information, to contribute to the Europol database, to facilitate joint investigations of cases, to ensure strategic meetings and to organise joint security actions.

In the context of the above, so-called "Action Days" are planned, which are control actions performed on a specific date on the territory of the Member States in compliance with set priorities and reflecting a multidisciplinary approach.

Europol has an operations centre made of Member States´ liaison officers and the data collected therein are sent to Siena (with the involvement of the Europol national unit) under the EMPACT/Action day designation. The Operations Centre at Europol is designed as a technical support which ensures rapid exchange of information over secure communication channels, enables direct access to international and national databases, liaison officers can communicate through it with Member States, there is an access to the internet, TV news, etc.

Additionally, the investigation of specific cases with an international element involves the use of Joint Investigation Teams (JITs), the benefits of which should lie in the rapid and expeditious transfer of information and documents within the case under investigation. The establishment and functioning of JITs is clearly regulated in Law No. 104/2013, on International Judicial Cooperation in Criminal Matters. The JIT is used if there are legal grounds, the criminal proceedings have the potential for a longer duration, an increased need for requests for legal assistance is anticipated and if the supervising prosecutor agrees. NCOZ is also in direct contact with the national representation at Eurojust.

Measures to raise awareness

9. GRETA welcomes the attention given to preventing THB through information and raising awareness, focusing on vulnerable groups, and invites the Czech authorities to continue their efforts. Greater attention should be paid to informing the public about the risks of recruitment through social media and the Internet. Future awareness-raising activities should be designed in the light of impact assessment of previous measures, focusing on the needs identified.

A large part of the activities aimed at prevention are carried out by non-governmental non-profit organisations with financial support from the state and international donors. Specific activities are listed

directly in the GRETA report on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings in the Czech Republic on pages 31 to 33.

Moreover, it can be stated that the tasks set out in the National Strategy for Combating Trafficking in Human Beings in the Czech Republic for the period 2016–2019 aimed at prevention by raising awareness of the issue of trafficking in human beings have been fulfilled. Specifically, within the framework of the Programme for Support and Protection of Victims of Trafficking in Human Beings, prevention campaigns carried out by the non-profit sector were supported. Workshops were held at schools, prevention and educational videos in Czech and English were created to raise awareness among young people about various forms of trafficking in human beings and a short comics was created illustrating the risks of working abroad using the example of domestic work as an au pair, field trips were carried out, posters with the SOS line were placed in strategic locations (near bus and train stations, in underpasses connecting stations and shopping centres, etc.).

Measures to discourage demand

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

- raising awareness of the important role of the media and advertising in tackling demand which leads to human trafficking;
- promoting awareness among businesses, strengthening corporate social responsibility and preventing trafficking in supply chains;
- implementing educational programmes at schools that stress the importance of gender equality and respect for the dignity and integrity of every human being and the consequences of gender-based discrimination.

CSR was addressed in our answer to the recommendation n. 4.

The Framework Educational Programmes setting the general framework for education deal with gender issues. Gender issues are part of the Human and Society educational area and are listed as a key competence in the target focus of this educational area which are reflected in the Framework Educational Programmes aimed at Primary Education. Educational field called Education for Citizenship focuses on the creation of qualities related to pupils' orientation in social reality. Here, particular emphasis can be placed on learning related to natural and social differences between people, equality and inequality, the equal status of men and women, human solidarity.

The consideration of gender issues is also included in the assessment of textbooks in the context of the application for the approval clause from the Ministry of Education. This is done by means of the Manual for the Assessment of the Gender Correctness of Textbooks, which the Ministry of Education, Youth and Sport sends to reviewers with each textbook assessment. This ensures its systematic use in the review process.

Economic, social and other initiatives for groups vulnerable to THB

11. GRETA considers that the Czech authorities should continue strengthening prevention of THB through targeted social and economic empowerment measures for groups and persons vulnerable to THB, in particular the Roma community and migrant workers.

Currently, measures to support the Roma community are being taken in accordance with the Strategy for Equality, Inclusion and Participation of Roma for the period 2021–2030. This improves the basic aspects of Roma life that can gradually eliminate trafficking in human beings by creating conditions for an improved quality of life. Measures relate particularly to the employment, housing, health care and education.

The Ministry of Interior also cooperates with important local government actors in regions with a higher occurrence of socially excluded localities. The National Strategy for Combating Trafficking in Human Beings for the period 2020–2023 also foresees measures aimed at supporting these socially excluded localities with a view to organise roundtables with stakeholders in the affected regions, including social workers, police and local government representatives.

A leafleft describing workers´ rights has been produced aiming particularly at Ukrainian community in the Czech Republic. A general leafleft for all foreign nationals who wish to work in the Czech Republic is currently being prepared by the Ministry of Labour and Social Affairs, Ministry of Interior and other relevant institutions. Both documents focus on risks of the THB.

Border measures to prevent THB and measures to enable legal migration

12. GRETA invites the Czech authorities to continue making efforts to detect and prevent THB through border control measures, in particular by:

- strengthening the capacity of all competent law enforcement bodies to detect indicators of THB and ensure prompt and effective access to assistance and protection;
- providing information to foreign nationals arriving irregularly or seeking asylum, in a language that they can understand, about the risks of THB, their rights and the availability of legal assistance, counselling and other services. In this context, GRETA refers to the United Nations Office of the High Commissioner for Human Rights (OHCHR) 2014 Recommended Principles and Guidelines on Human Rights at International Borders and the OHCHR Report on the situation of migrants in transit (2016).

According to Section 8 of Act No. 45/2013 Coll., on Victims of Crime, the police or the public prosecutor who comes into first contact with a victim of crime is obliged to inform him/ her, even without a request, about his/her rights. As part of this instruction, the police shall share with the victim the contacts of bodies providing professional assistance; inform the victim about the conditions under which he/she may claim financial assistance, as well as provide the victim with other information pursuant to the aforementioned Act. If the victim decides to participate in the Programme for the Protection and Support of Victims of Trafficking in Human Beings, he or she receives additional benefits (asylum accommodation, clothing, food, etc.).

Employees of asylum and migration policy department of the Ministry of Interior who deal with foreign nationals (those who are obliged to leave the Czech Republic, foreign nationals covered by the Dublin Regulation and foreign nationals applying for an international protection) are trained in the identification of possible victims of human trafficking. The training takes place within the framework of internal educational activities. In addition they are also trained in EASO's training programs, which also focus on identifying potential victims of trafficking in human beings among applicants for international protection.

Foreign nationals who apply for visa are also informed by consular staff about risks of THB with reference to the relevant information sources. Consular workers attend regular trainings on THB as elaborated above.

Identification of victims of trafficking in human beings

13. GRETA urges the Czech authorities to take steps to improve the identification of victims of THB, and in particular to:

- put in place a formalised victim identification procedure which defines the roles and responsibilities of all relevant stakeholders, promotes a multi-agency approach by involving specialised NGOs, labour inspectors, social workers, child protection specialists and healthcare staff, and includes indicators and guidance for identifying victims of different forms of exploitation;
- disconnect the identification of victims of human trafficking from the initiation of criminal proceedings for THB;
- develop multi-agency training on the identification of victims and ensure that there is a regular exchange of information;
- take steps to strengthen the proactive identification of victims of THB for the purpose of labour exploitation, by reinforcing the capacity and training of labour inspectors and involving trade unions and other relevant actors;
- separate immigration enforcement functions from labour inspectorate roles and ensure that labour inspectors prioritise the detection of persons working in irregular situations who are vulnerable to THB;
- pay increased attention to the proactive detection of victims of trafficking amongst asylum seekers and persons placed in administrative detention pending removal, allowing sufficient time to gather necessary information and taking into account their traumatic experience. In this context, training, guidance and indications on the identification of victims of THB and their rights should be provided to staff working in asylum and immigration detention centres, in co-operation with civil society and lawyers;
- ensure that the identification of child victims of THB takes into account the special circumstances and needs of child victims, involves child specialists and ensures that the best interests of the child are a primary consideration in all proceedings relating to child victims of THB and children at risk;
- strengthen the identification of victims of THB among unaccompanied children and take steps to address the problem of unaccompanied children disappearing by providing suitable safe accommodation and adequately trained supervisors or foster parents;
- reconsider the application of the Dublin Procedure to presumed victims of THB;
- strengthen efforts to identify victims of THB for the purpose of criminal activities.

In 2021, the Police of the Czech Republic issued a Methodology on Identifying Victims of Crime. This methodology is a general document, and it serves as a guide to the police. It concerns the process of identifying victims in general and concentrates on particularities of particularly vulnerable victims, including victims of trafficking in human being. This methodology is now being further developed into a detailed guide covering the identification of all types of victims of crime. It will build on current structure of the methodology which focuses on identification both from a psychological and legal point of view. As part of the crime prevention strategies, the police will be trained in using this methodology which should help them better identify victims of crime.

The identification of victims of trafficking is carried out by NGOs in addition to the police and other bodies trained to do so (e.g. labour inspectors, consular officers, asylum and migration policy officers...). According to Section 368(3) of the Criminal Code, a person providing assistance to victims of crime is not required to report the offence of trafficking in human beings under Section 168(2).

There are representatives of the state, the police, NGOs or intergovernmental organizations at the trainings organized for entities which may come into contact with victims of human trafficking. Therefore, the group of participating institutions and organizations is quite diverse reflecting the need for multi-agency training on the identification of victims.

Training courses for labour inspectors are currently underway, with the participation of the Ministry of Interior, the National Bureau for Combatting Organised Crime and NGOs. As mentioned above, training for consuls travelling to embassies abroad is still organised, again provided by the Ministry of Interior and IOM.

Representatives of the Labour Inspectorate, trade unions and employers participate in the activities of the Interdepartmental Body for Combating Illegal Employment, an advisory body established by Government resolution, which discusses legislative and executive measures in this area and regularly informs the Government of its activities. We also note that representatives of the Labour Inspectorate are now members of the Ministry of the Interior's Interdepartmental Group for Combating Trafficking in Human Beings.

Recent changes in the Employment Act have introduced user´s coresponsibility in cases of employment intermediation. User entities have to ensure that the agreement on a temporary assignment of an agency worker shall contain information on the working and wage or salary conditions of the user's employee who performs or would perform the same work as the temporary worker, taking into account the qualifications and length of professional experience. Breaching this requirement results in the penalty of the user.

With regard to the identification of victims of trafficking in human beings, we note that, on the basis of Article 14(2) of Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (hereinafter referred to as the Sanctions Directive), the labour inspection authorities regularly plan, on the basis of a risk assessment, inspections in sectors of activity in which the employment of illegally staying third-country nationals is concentrated. In addition, the labour inspectorate focuses on risk sectors identified on the basis of the findings of inspections in previous years.

The labour inspection authorities also cooperate closely with the law enforcement authorities, which inform them of suspected offences under Article 8(1) of Act No 141/1961 Coll., the Code of Criminal Procedure. The labour inspection authorities also cooperate with the Police of the Czech Republic on EUROPOL's pan-European action days on labour exploitation.

Regarding the proactive detection of victims, the police is involved both when an irregular foreign national is interviewed and during the administrative procedure, which is conducted with the person concerned usually in his/her native language. A similar interview and process is conducted with foreign nationals who come to the Reception Centre and apply for an asylum in the Czech Republic.

Regarding the detention facilities for foreign nationals and asylum facilities, the staff of the Administration of Refugee Facilities (SUZ) and the staff of the asylum and migration department of the Ministry of Interior are in contact with foreign nationals during asylum proceedings and during consultations regarding possible voluntary returns. They are regularly consulted and assisted by SUZ social workers. A foreign national may request contact with the police at any time and is then consulted again by the unit same unit which was previously involved in the interviewing and administrative procedure, or in urgent cases by police officers serving in the SUZ as a guard and protection force.

This topic is also given due attention in the training. One of the most recent training sessions on trafficking issues was conducted using study materials from the TRIPS project (TRIPS project publishes a toolbox and report on the integration of trafficked refugees), which is available to the Ministry of

Interior. These are namely the National Summary Report - Czech Republic, TRIPS Project Handbook - Identifying the Specific Needs of Trafficked Holders of International Protection. Additionally, both the asylum and migration policy department and SUZ participated in the final conference of the TRIPS project on 1 December 2021. In addition to legal and methodological information, the Handbook contains links to other materials on the topic that can be used by the Ministry of Interior if necessary, including during international protection proceedings. Although the project is aimed at international protection holders, the procedures apply fully to the international protection procedure phase as well which is reflected in a related study material.

The Czech Republic has long been providing above-standard quality and highly professional services to unaccompanied minors. It also deals intensively with the issue of victims of child trafficking. The issue is addressed also by the Interdepartmental Coordination Group for Combatting Human Trafficking, which brings together experts dealing with human trafficking from both state and non-profit organizations. To improve the early identification of victims, seminars and workshops for staff at individual facilities working with unaccompanied minors are held by experts from state and non-profit organizations. At the same time, workshops for unaccompanied minors are organized, focusing mainly on prevention and early recognition of risks.

The Ministry of Education, Youth and Sports provides the services of professional specialists in the field of psychology, special pedagogy and etopedics in organizations under the ministry's umbrella, who ensure an individual approach and respect the individual needs of children. The best interests of the child are anchored in the Act on the Social and Legal Protection of the Child and are implemented in all proceedings conducted with child victims. In facilities for the performance of institutional and protective education, all activities performed by staff have to be in compliance with the Act on the Performance of Institutional and Protective Education and with the Standards of Quality of Child Care in School Facilities for the Performance of Institutional and Protective Education and Preventive Educational Care. There are specialized procedures for the investigation of child victims which are based on cooperation of various experts from schools, NGOs and state authorities. High level of quality of experts' work and respect for the rights and interests of the child are supervised by the Ombudsman.

An expert from the Offices for the Legal and Social Protection of Children or a qualified educator has to be present during any communication between the (possible) child victim of the THB and the police. This rule stems from the police´s Methodology on Identifying of Victims of Crimes. The police can consult its intended steps also with a child psychologist.

Currently, procurement for educational material for early identification and provision of assistance to child victims of trafficking in human beings for persons working with children is in process. The educational material will be focused on teachers, educators and social workers.

Seminars, workshops and other educational activities prepared by NGOs are part of training activities aimed at the staff in the Facility for Children-foreigners (a facility for unaccompanied minors). The topics related to the issue of the THB are also an important part of educational and socializing activities provided to foreign children. During the daily work with children, the staff sometimes detects indicators of the THB. Such information is immediately forwarded to Police for further investigation and other services are provided to the minor in hand according to his/her needs.

We have a very low record of Dublin cases related to trafficking. Generally speaking, we take into account the individual situation of a person, the circumstances and the seriousness of the case and also the Member State to which the person should be transferred. We also find out what kind of care such a person would be provided with, if any, in the event of a transfer. We do not have a methodology due to the small number of cases, but we do use the guidance materials available for international protection proceedings.

Further strengthening efforts to identify victims of trafficking in human beings for the purpose of criminal activities is part of all relevant trainings.

Assistance to victims

14. GRETA urges the Czech authorities not to link the assistance provided to victims of THB to the carrying out of criminal investigations into THB.

A victim of human trafficking can contact the police or a specialised NGO that provides assistance to victims. The assistance provided to the victims is covered from several resources. In addition to the Programme for the Support and Protection of Victims of Human Trafficking, which has its own rules, the activities of non-profit organizations are also covered by the resources of other ministries such as the Ministry of Labour and Social Affairs or the Ministry of Justice.

The assistance provided to the victims within the Programme for the Support and Protection of Victims of Human Trafficking remains conditional upon the cooperation of the victim with the police in investigation of the crime in hand. The issue has been recently discussed within the Interdepartmental Group for Combating Trafficking in Human Beings which confirmed this procedure should remain unchanged in order to efficiently combat the trafficking in human beings through investigation of the committed crimes which can ultimately help to identify other victims of the same offender. Moreover, the Act No. 45/2013 Coll., on Victims of Crime includes a fundamental principle in section 3 par. 1 that every person believing to be a victim of a committed crime must be considered a victim if the contrary does not become evident or if it is not clearly a case of misuse of the standing of the victim. That includes also the potential victims of the human trafficking.

15. GRETA considers that the Czech authorities should take additional measures to ensure adequate assistance to victims of trafficking, and in particular to:

- guarantee access to public health care for victims of trafficking;
- facilitate the social inclusion of victims of trafficking into society and prevent re-trafficking, by providing them with long-term assistance, including vocational training and access to the labour market;
- provide specialised assistance for child victims of trafficking which takes into account their specific circumstances and the best interests of the child;
- ensure the continuity of funding for services delivered by specialised NGOs;
- ensure that the training provided to staff of the local Offices for the Legal and Social Protection of Children includes the Council of Europe Convention on Action against Trafficking in Human Beings.

The Czech Republic provides each victim of trafficking with specialized care to the extent proportionate to his or her individual needs. Experts on psychology, psychotherapy and special education work in facilities focused on child care. Other services and care of external experts are arranged according to the current state of the client. The care and services are covered by the client's health insurance.

The Ministry of Interior intends to continue funding the Programme for the Support and Protection of Victims of Human Trafficking. The Czech Republic has allocated extra 4 million crowns ready to be spent till the end of this year partly on prevention activities (1 million crowns) and partly on Programme for Support and Protection of Victims of Trafficking in Human Beings (3 millions crowns) in order to deal with consequences of the war in Ukraine and a subsequent arrival of high number of refugees to the Czech Republic which increases the risk of trafficking in human beings.

Victims of the crime of trafficking in human beings under Section 168 of the Criminal Code enjoy increased protection in criminal proceedings, regardless of their personal circumstances or other factors that may make them particularly vulnerable in a particular case (i.e. ad hoc) because regardless of their age (i.e. 45/2013 Coll., regardless of whether the victim is a child within the meaning of Section 168(1) of the Criminal Code or an adult within the meaning of Section 168(2) of the Criminal Code), these victims fall within the scope of Section 2(4)(c) of Act No. 45/2013 Coll., on Victims of Crime, as amended, to the privileged group of so-called particularly vulnerable victims. This fact alone guarantees this group of victims increased legal comfort in ensuring the protection of their needs and legitimate interests directly by law. To strengthen the protection of so-called particularly vulnerable victims, who are usually more at risk of secondary victimisation and may be more exposed to negative influences due to which they require special consideration and treatment in practice, the Czech legislation reflects Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum rules on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

We can mention, among other things, some special measures that are directly granted by law to particularly vulnerable victims - the right to free professional assistance (in the form of psychological counselling, social counselling, legal assistance, provision of legal information and restorative programmes - see Section 4 of Act No. 45/2013 Coll.), the right to be prevented from contact with the perpetrator (see Section 17(2) of the cited Act No. 45/2013 Coll.), the right to be questioned or to give explanations during the pre-trial phase by a person of the same or opposite sex (see Section 19(1) of the cited Act No. 45/2013 Coll.), the right to have an interpreter of the same or opposite sex present (if their testimony needs to be interpreted - see Section 19(2) of the cited Act No. 45/2013 Coll.), the right to have their interrogation carried out in a particularly sensitive manner, taking into account the circumstances that make the victim particularly vulnerable (see Section 20(1) of the cited Act No. 45/2013 Coll.), the right to have their interrogation carried out at the pre-trial stage by a person trained for this purpose, moreover, in premises adapted or adapted for this purpose (see Section 20(2) of the cited Act No. 45/2013 Coll. 45/2013 Coll.), the right to a full interrogation so that it does not have to be repeated at a later stage (see Article 20(3) of Act No. 45/2013 Coll.) and, in the case of a repeated interrogation, the right to have it carried out by the same person (see Article 20(3) of Act No. 45/2013 Coll.) or the right to have appropriate measures taken to prevent direct visual contact with the perpetrator during individual acts of the criminal proceedings (see Article 20(4) of Act No. 45/2013 Coll.).

Recovery and reflection period

16. GRETA urges the Czech authorities to ensure that the recovery and reflection period is applied to all presumed foreign victims of THB, regardless of whether they agree to be included in the Programme for Support and Protection of Victims of THB, including those to whom the Dublin Regulation is applicable.

Recovery and reflection period required by international documents is granted to all foreign nationals who have become victims of human trafficking, regardless of whether they wish to be included in the Programme or not. According to § 42e of Act no. 326/1999 Coll., on the Residence of Foreign Nationals in the Czech Republic and amending certain Acts, the presumed victims of the crime of trafficking in human beings (§ 168 of the Criminal Code) have a period of one month to decide whether to cooperate with law enforcement authorities. If they decide to cooperate with them in criminal proceeding and do not cooperate with the suspect of committing the crime, the Department of Asylum and Migration Policy of the Ministry of the Interior decides whether the long-term residence permit for the purpose of protection will be granted.

Residence permits

17. GRETA invites the Czech authorities to consider granting temporary residence permits to victims of THB on the basis of their personal situation, in addition to the residence permit on the basis of the victim's co-operation in the investigation or criminal proceedings.

Granting long-term residence for protection solely based on the foreigner's self-identification as a victim of trafficking in human beings is impossible under the current legislation. Such self-identification is unreviewable by the competent administrative authority and its admission as a ground for granting residence creates an unprecedented risk of abuse.

Identification of a likely victim of trafficking in human beings is possible, in terms of the diction of the criminal law provisions, Act No.40/2009 Coll. and Act No.141/1961 Coll., only through a law enforcement agency provided that the agency finds reasonable suspicion of the commission of the crime of trafficking in human beings. Only such identification (through a law enforcement authority) meets the requirements of reviewability and provides the competent administrative authority responsible for granting long-term residence for protection with an objective guarantee of the justification for granting such residence.

The determination of whether any offence has been committed is a matter for the sole discretion of the court. In this context, it is logically possible to speak of a victim of crime only after the court has found that crime has been committed. Until then, it is only possible to speak of a probable victim of crime based on a reasonable suspicion that a crime has been committed. Such reasonable suspicion can only be established by the law enforcement authority as already stated above.

18. GRETA considers that the Czech authorities should review the application of the system for granting residence permits to victims of trafficking with a view to ensuring that the victim-centred approach which underpins the Convention is fully applied. The authorities should make further efforts to ensure that victims of trafficking can fully benefit in practice from the right to obtain a renewable residence permit, without prejudice to the right to seek and enjoy asylum. In this context, GRETA refers to the UNHCR 2006 Guidelines on the application of the Convention relating to the Status of Refugees and its additional protocol to victims of trafficking.

The current practice of allowing foreign nationals who declare that they have been victims of trafficking in human beings to stay in the Czech Republic, is based on the current wording of the provisions of §42e of Act No.326/1999 Coll. In this context, a residence permit for protection in the territory is possible only if such a foreign national acts as a witness in criminal proceedings. This procedure is also in line with the relevant standards of EU legislation. A necessary condition is that the competent law enforcement authority finds that there is a reasonable suspicion of the commission of the crime of trafficking in human beings under the provisions of §168 of Act No 40/2009 Coll. In such a case, the law enforcement authority offers the foreign national concerned cooperation in the criminal proceedings and the foreign national is informed by the law enforcement authority of the right to apply for a long-term residence permit for protection in the territory under the provisions of §42e of Act No 326/1999 Coll. and of the conditions of such residence. The foreign national is given a period of one month to decide whether to cooperate with the law enforcement authority. This period starts to run from the moment when the foreign national was informed about such option. If the foreign national decides to accept the offered cooperation in the criminal proceedings, the Ministry of Interior is provided by the law concerned enforcement authority with a certificate from the competent law enforcement authority stating that the foreign national concerned cooperates in the specific criminal proceedings, has been duly instructed and is not in contact with the criminal environment. This certificate is a necessary condition for granting long-term residence for protection in the territory according to the provisions of Section 42e of Act No. 326/1999 Coll.

During the recovery period (60 days) and the reflection period (which is 30 days), foreign nationals who identify themselves as victims of trafficking in human beings are given the opportunity to remain in the Czech Republic within the framework of care provided to these foreign nationals by specialised

cooperating NGOs. The purpose of such a stay is to enable the recovery of the foreign national, to allow an examination of whether it is possible to establish a reasonable suspicion of a crime and, if necessary, to establish cooperation between the law enforcement agency and the foreign national concerned.

Compensation and legal redress

19. GRETA urges the Czech authorities to adopt measures to facilitate access to compensation for victims of trafficking, and in particular to:

- review the criminal and civil procedures regarding compensation, with a view to improving their effectiveness
- ensure that victims of trafficking are systematically informed, in a language that they can understand, of the right to seek compensation in criminal and civil proceedings, and the procedures to be followed.
- enable victims of trafficking to exercise their right to compensation, by building the capacity of legal practitioners to support victims to claim compensation;
- include victim compensation in training programmes for law enforcement officials, prosecutors and judges;
- ensure that all persons trafficked in, to or from the Czech Republic, regardless of nationality and residential status, are eligible for financial assistance from the State.

The victim of the crime in question has the rights conferred under the conditions set out in Act No. 59/2017 Coll, as amended. The victim can request, through the Ministry of Justice, satisfaction of his/her claim for compensation for damage or non-pecuniary harm caused by the criminal offence from the funds which are the proceeds of the property sanctions imposed on the perpetrator of the crime of trafficking in human beings in the criminal case in question about which the victim is obligatorily informed by the law enforcement authorities (in an appropriate, comprehensible and proportionate manner), as set out below (see Section 46 of the Code of Criminal Procedure).

Under the conditions set out in § 23 et seq. Act No. 45/2013 Coll., on Victims of Crime, as amended, a victim of the crime of trafficking in human beings (if he or she has been harmed by the crime, has suffered serious bodily injury or is a surviving relative of a victim who has died because of the crime) has the right to apply for financial assistance from the state to help him or her quickly overcome his or her deteriorated social situation, which is often the result of victimisation. This right is granted not only to victims of the crime of trafficking in human beings who are citizens of the Czech Republic but also, under the conditions of Section 23(2) of Act No 45/2013 Coll., to foreign nationals - in particular, foreign nationals who are permanent residents or lawfully staying on the territory of another Member State of the European Union if they have been victims of a crime in the Czech Republic, foreign nationals who have been victimised in the Czech Republic and have applied for international protection or other nationals under the conditions and to the extent provided for in an international treaty to which the Czech Republic is bound.

As for the civil proceedings themselves, we do not register any special regulation or prepare a proposal for such a regulation, the compensation proceedings will therefore proceed according to the basic rules of tort law and civil process which we consider sufficient.

In view of the above, the necessary basic legal mechanisms for ensuring the satisfaction of financial claims of victims of the crime of trafficking in human beings have been properly set up by domestic legislation in the past.

Nevertheless, the amendment of the law No. 178/2018 Coll. has enabled victims to a greater extent than under the previous legislation the possibility to satisfy their claim via the law No. 59/2017 Coll., on Use of Pecuniary Means from Property Criminal Sanctions imposed in the Criminal Proceedings and on amendment to certain Acts. It has been made possible to use in favour of the victims not only the property sanctions imposed in the main trial or public session, but also the sanctions imposed by a criminal order. Amendment to this law No. 59/2017 Coll. nowadays awaits its second reading in the Chamber of Deputies of the Parliament. The amendment modifies the beginning of a time limit for filing the request by the victim for satisfaction of his or her property claim. The period will no longer be calculated from the legal effect of the judgment of conviction (or the criminal order), but from the legal effect of all relevant verdicts – verdict on guilt, verdict on property criminal sanction and verdict on the victim's property claim which are more favourable for the victim. The amendment specifically stipulates that the decision imposing a property penalty shall include instruction for the victim on the possibility of seeking satisfaction of his or her property claim via this Act (No. 59/2017 Coll.).

Legal consultation is provided to the victims of a crime (including particularly vulnerable victims covering also a category of victims of trafficking in human beings) under the Victims of Crime Act by entities registered in the register of providers of assistance to victims of a crime (non-governmental non-profit organisations and advocates) and, in particular, by the Probation and Mediation Service. Victims can contact these providers in the context of ongoing criminal proceedings, and outside them, e.g., if they feel they are a victim of a crime and are considering filing a criminal complaint.

Each of the 74 centres of the Probation and Mediation Service across the Czech Republic provides legal consultation to victims of crime, including the possibility of seeking compensation in criminal proceedings, civil proceedings or the possibility of seeking financial assistance under the Victims of Crime Act, psychosocial support and it further offers mediation and restorative programmes, and mediation of follow-up services for victims. The services provided to victims in the centres are complemented by 29 counselling centres for victims, which are funded from 2% of the funds from property penalties imposed in criminal proceedings under Act No. 59/2017 Coll. These counselling centres build on the work of the counselling centres for victims that operated in the Probation and Mediation Service centres between 2013 and 2020 under projects funded by the European Social Fund Why me? and Why me II?.

The Probation and Mediation Service provides basic information about its activities and victims' rights on the pmscr.cz website in English. In the case of cooperation with a victim who does not speak Czech, the probation officer uses the services of interpreters whose services are paid for by the Probation and Mediation Service.

The police plays an equally important role in the case of compensation. According to Section 8 of Act No. 45/2013 Coll., on Victims of Crime, the police or public prosecutor who comes into the first contact with the victim of crime must inform the victim, even without a request, of his or her rights. As part of this instruction, the police shall provide the victim with contacts of entities providing professional assistance; it shall inform the victim of the conditions under which he or she may claim financial assistance, as well as other information according to the aforementioned Act. If the victim decides to participate in the Programme for the Protection and Support of Victims of Trafficking in Human Beings, he/she receives additional benefits (shelter, clothing, food, etc.).

For the sake of completeness, we present the procedural circumstances of representation in criminal proceedings. Victims of trafficking in human beings belong to the category of so-called particularly vulnerable victims (Section 2(4)(c) of Act No. 45/2013 Coll., on Victims of Crime). This victim can be represented by a so-called agent during criminal proceedings (Section 50 et seq. of the Criminal Procedure Code). This service is automatically free of charge for victims under the age of 18 years old and particularly vulnerable victims (Section 51a(2) of the Code of Criminal Procedure).

In connection with this recommendation, we attach the ruling of the Constitutional Court of 7 March 2022, Case No. IV ÚS 2620/21 "Procedural aspects of compensation for non-pecuniary damage in

adhesion proceedings" for more detailed information and explanation of the issue from the perspective of national legislation.

Regarding the training of staff, we refer to our answer within the recommendation number 5.

20. GRETA invites the Czech authorities to collect statistical information concerning compensation awarded by courts to victims of THB in criminal and civil proceedings.

Regarding the statistics for civil proceedings, it is not yet possible to distinguish compensation according to the crimes committed. This data will already be available from 2022 onwards.

Regarding the criminal proceedings, judicial statistics do not monitor damages or compensation for victims of crime at all, because by the nature of criminal proceedings they are primarily focused on the perpetrators of the crime, not on the victims. During 2023, the issue will be discussed with a view to implement limited collection of data about victims in criminal proceedings.

21. GRETA considers that the Czech authorities should continue taking steps to:

- ensure that the return of victims of THB is conducted with due regard for the rights, safety and dignity of the victim, is preferably voluntary and complies with the obligation of nonrefoulement. This includes informing victims about existing support programmes, and protecting them from re-victimisation and re-trafficking;
- ensure the best interests of the child are effectively respected, protected and fulfilled, inter alia, through an assessment of risks and safety carried out, prior to any removal measure, by specialised bodies in co-operation with the competent contacts in the country of origin, especially for unaccompanied children;
- develop co-operation with countries of origin of victims with a view to ensuring that risks are correctly assessed, and that trafficking victims can return in safety and effectively reintegrate.

The Czech Republic has implemented voluntary return programs both on governmental level (Ministry of Interior) and intergovernmental level (IOM). The principle of non-refoulement is followed in all cases including the victims of trafficking in human beings. If the return of the victim of trafficking in human beings is necessary, the general practice is applied, i. e. it is assessed whether the return is in line with international obligations and whether the general safeguards are met.

The police always cooperates with the Office for the Legal and Social Protection of Children (OSPOD) in cases of child trafficking. In cases of foreign children, the Office for the International Legal Protection of Children is involved and works in an interdisciplinary team of lawyers, psychologists and other experts. It cooperates with children, parents, social workers of social and legal protection bodies, courts, authorities and other organisations in the Czech Republic and abroad and with other experts.

A methodological guide to the operation of the Programme for the Support and Protection of Victims of Trafficking in Human Beings is currently being finalised which expands the possibilities of ensuring voluntary return through non-governmental non-profit organisations that have the victim in their care or cooperate with the Ministry of the Interior or the IOM in the framework of voluntary return. The methodological guidance will significantly improve the support provided to victims (e.g. provision of legal services even after departure to the country of origin or after a final judgment has been issued, when the victim is referred to civil proceedings for compensation).

Cooperation with countries of origin is mainly on the level of NGOs providing care to victims and the IOM which provides voluntary returns and other necessary services through its network of offices.

Substantive criminal law

22. GRETA urges the Czech authorities to ensure that trafficking in children is regarded as an aggravating circumstance in the determination of the penalty for trafficking in human beings.

In the case of the offence of trafficking in human beings pursuant to Section 168 of the Criminal Code, the protection of a child (i.e., a person under 18 years of age within the meaning of Section 126 of the Criminal Code) is embodied in a basic separate fact of the offence contained in paragraph 1 while paragraph 2 constitutes a second basic separate fact of this offence which generally applies to the protection of persons over 18 years of age. Since the provisions of Section 168(1) of the Criminal Code, unlike Section 168(2) of the Criminal Code, do not require the use of violence, threat of violence or other serious harm or deceit or abuse of the child's mistake, distress or dependence on the part of the offender to fulfil the statutory elements of this offence in the case of child victims, it can be stated that the protection of victims from amongst persons under the age of 18 is much broader and more consistent as it also applies to cases of the offender's actions aimed at one of the activities described under letters (a) to (e) of Section 168(1) of the Criminal Code, which, for example, due to the absence of use of violence, deceit, abuse of distress or dependence, could not be classified under these elements of the offence in the case of a victim from amongst individuals over 18 years of age (i.e., such conduct carried out by the offender against an adult victim could possibly be punished under other elements of some of the offences exhaustively listed in the special part of the Criminal Code, or under the norms of administrative law as a misdemeanour or other administrative tort).

It is therefore clear from the above that the protection of victims under the age of 18 is much broader and more consistent in the case of this offence than in the case of victims over the age of 18, as it protects child victims from any (not only violent, deceitful, etc.) means of influencing or eliminating their free decision-making by the offender.

From the point of view of the fulfilment of the statutory elements of the offence of trafficking in human beings according to Section 168(1) of the Criminal Code, the decisive moment for determining the age of the victim is the moment of the commission of the offence, not the time when the individual acts of the criminal proceedings are carried out. The victim's attainment of the age of majority, which occurred only after the commission of the offence, is therefore of no legal significance in terms of the increased protection of this group of victims (guaranteed by the provisions of Section 168(1) of the Criminal Code).

In the case of the more serious forms of the offender's conduct constituting the fulfilment of one of the statutory qualified elements of the offence of trafficking in human beings according to Sections 168(3), 168(4) or 168(5) of the Criminal Code, which is automatically associated with the threat of the imposition of a more severe sanction on the offender; from the point of view of the criminality of the offence, it is not decisive whether the offender committed the conduct in question against a child or against a person over 18 years of age. Circumstances conditioning the application of a higher statutory limit of punishment include the commission of the offence by an organised group, putting the victim in danger of a serious bodily harm or death, the commission of the offence with the intention of obtaining a substantial benefit for oneself or others (i.e., at least CZK 1,000,000 within the meaning of Section 138(1)(d), (2) of the Criminal Code), or possibly a large-scale benefit (i.e. at least CZK 10,000,000 within the meaning of Section 138(1)(e)(2) of the Criminal Code), the commission of the offence with the intention of using the victim for prostitution, causing the victim serious bodily injury or death, or commission of the offence in connection with an organised group operating in several states.

Even in relation to these qualified elements listed in Section 168(3), Section 168(4) and Section 168(5) of the Criminal Code, it holds that the protection of child victims is significantly broader and more consistent than the protection of adults against various forms of trafficking in human beings, since in the case of child victims, it is generally not necessary for their fulfilment that the offender commits the act in

question by using violence, threat of violence or other serious harm or deceit, or by taking advantage of the child's mistake, distress or dependence. If, however, the perpetrator of the offence of trafficking in human beings committed against a person under 18 years of age (i.e. a child) commits an act that fulfils any of the statutory elements of the basic facts of the offence within the meaning of Section 168(1) or the qualified facts of the offence within the meaning of Sections 168(3), 168(4) or 168(5) of the Criminal Code with the use of violence, threat of violence or other serious harm or deceit, or the abuse of the child's mistake, distress or dependence, it is entirely appropriate to assess this fact, which in itself is not a condition for criminality of the offender's conduct in this category of victims, as an aggravating circumstance within the meaning of Section 42 of the Criminal Code. It will be determined by the specific circumstances and manner of the commission of the offence (which illustrate the harmfulness of the offender's conduct to society and the degree of danger of his/her person) and as such the court will take it into account, pursuant to Section 39(3) of the Criminal Code, in its deliberations on determining the appropriate type and length of the sentence to be imposed. In general terms, this includes, for example, the application of the provisions of Section 42(d) of the Criminal Code, according to which the court takes into account as an aggravating circumstance the fact that the offender committed the offence by taking advantage of someone's (meaning in relation to the victim) distress, hardship, vulnerability, dependence or subordination, or the application of the provisions of Section 42(h) of the Criminal Code, if the child is a person close to the offender (see Section 125 of the Criminal Code) or if the child is sick, disabled or incapacitated, whereby the offender's conduct would endanger the child's life or health, or cause damage, bodily harm or other harm to the child, or enrich himself or herself unjustifiably at the child's expense.

In the case of the offender's conduct fulfilling the statutory elements of the basic separate facts of the offence of trafficking in human beings pursuant to Section 168(1) of the Criminal Code, as well as any of the qualified facts of the offence under Section 168(3), 168(4) or 168(5) of the Criminal Code, which the offender committed against a child, it is not possible for the court to generally (i.e. without further consideration) – in the light of the principle of the prohibition of double imputation expressed in Section 39(5) of the Criminal Code, which is still in force – take account of this circumstance as an aggravating circumstance in its deliberations on the type and length of the sentence, since it in itself constitutes a circumstance constituting a statutory element of the offence in question. However, the specific age of the child victim may be relevant in assessing the severity of the offender's conduct if the offender commits the act against a child of a very young age (e.g. a preschool or lower school age child). Generally speaking, the lower the age of the child victim (compared to the legal age of majority), the more likely the court will be able to assess the circumstance as possibly aggravating in a particular case. In this respect, it can be concluded that the more intensely the particular statutory element (i.e. the victim's minority) is fulfilled, the more room is opened for the competent court to punish the offender more severely within the statutory limit of punishment.

In view of the above, it can be concluded that the current Czech legislation provides the Czech courts with adequate means of substantive criminal law to allow for stricter punishment of offenders of the crime of trafficking in human beings within the meaning of Section 168 of the Criminal Code perpetrated against children than in cases where this offence is committed against adult victims, and therefore there is currently no need to take any major steps in this direction to make any legislative changes to the current form of the provisions of Section 168 of the Criminal Code.

For better understanding of the above mentioned issue, we attach a document with observations by Supreme Public Prosecutor's Office regarding issues of punishment of offenders of criminal offences of trafficking in human beings pursuant to Section 168 of the Criminal Code.

23. GRETA invites the Czech authorities to consider introducing a legal provision criminalising the use of services which are the object of exploitation as referred to in Article 4 of the Convention, with the knowledge that the person is a victim of THB

We do not anticipate any changes in this area in the near future as we consider the current legislation sufficient - according to the Article 168 par. 1 and par. 2 of the CC, criminally punishable is also a person profiting from the services provided by a trafficking person.

24. GRETA considers that the Czech authorities should examine the reasons why no legal entities have been prosecuted and punished for trafficking-related acts and, in the light of their findings, take measures to ensure that the criminal liability of legal entities can be acted upon in practice.

The National Bureau for Combating Organized Crime is intensively dealing with this issue in its criminal proceedings, evaluating and examining whether the conditions for prosecuting legal persons are met but it has not been established that these conditions have been met in any of the cases of trafficking in human beings prosecuted by the police so far.

Non-punishment of victims of trafficking in human beings

25. GRETA urges the Czech authorities to take measures to ensure compliance with the provision on the non-punishment of victims of THB for their involvement in unlawful activities, to the extent that they were compelled to do so, in pursuance to Article 26 of the Convention. Such measures should include the adoption of a specific legal provision and/or the development of guidance for law enforcement officials and prosecutors on the scope of the non-punishment provision, including with regard to criminal offences.

There have been no legal changes regarding an introduction of a specific legal provision for non-punishment principle. However, the Czech law provides for possibilities of not imposing penalties on victims of trafficking. Particularly relevant is section 28 of the Czech Criminal Code providing for extreme necessity as one of the conditions precluding illegality of an act. Another possibility is foreseen in sections 46-48 of the CC which provide for the waiver of punishment. The article 26 of the Convention states that the state parties shall provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities to the extent that they have been compelled to do so, which means that the convention requires the possibility of not imposing penalty, it does not require that that the victim must always remain unpunished even in the described situation. Therefore, the Czech Republic fulfilled the requirements when providing in the wording of the convention "for the possibility of not imposing penalties" and is compliant with the article 26.

Investigation, prosecution and procedural law

26. GRETA considers that the Czech authorities should continue to take steps to ensure that THB cases are investigated proactively, prosecuted successfully, and lead to effective, proportionate and dissuasive sanctions, including by:

- identifying gaps in the investigation and prosecution of cases of THB for different purposes of exploitation;
- providing law enforcement authorities with the necessary guidance and tools to detect and investigate THB cases for different purposes of exploitation;
- sensitising judges to the rights of victims of THB and developing further their specialised knowledge, experience and competence to deal with cases of THB and apply the provisions criminalising THB;
- systematically carrying out financial investigations into cases of THB in order to effectively locate, seize and confiscate criminal assets and enable compensation of the victims.

With regard to the gaps in the investigation and fight against crimes of trafficking in human beings, we would like to point out that victims of trafficking in human beings belong to the category of so-called

particularly vulnerable victims. Nevertheless, the police very often finds itself in a situation in which a potential victim who has been identified by a police or an NGO does not feel like a victim even though he or she otherwise shows signs of trafficking in human beings. The person in hand then refuses to support criminal proceedings. Such victim has been under the influence of suspects for so long that he or she has already accepted his or her role and is reconciled with it, refusing to change anything. On the contrary, in some instatnces, such persons defend the exploiters stating that they have helped them in their plight and therefore cannot testify against them.

The tools for investigating crimes related to human trafficking are sufficient in their current form, according to the police and the public prosecutor's office. This also applies to the legislation on trafficking in human beings. In this respect, the police works in compliance with the legislation of the Czech Republic, namely within the criminal proceedings framework, i.e. according to the Act. No. 40/2009 Coll., Criminal Code and Act. No. 141/1961 Coll., on Criminal Procedure (Code of Criminal Procedure). The Police further works in compliance with international agreements on police cooperation whose list is available on the intranet of the Police Presidium of the Czech Republic. Another possibility is to consult the Department of International Cooperation and the European Union of the Ministry of Interior. Alternatively, the police also consults the website of the Ministry of Foreign Affairs where all existing and valid international treaties are published. The police further cooperates with Europol within which the Joint Investigation Teams coordinated by Eurojust carry out their tasks.

As part of its activities, the Prosecutor General's Office monitors foreign documents, studies and analyses, especially those produced by the Council of Europe, the EU and the UNODC. These materials are then published on the Extranet of the Public Prosecutor's Office and thus available to all prosecutors and experts on trafficking in human beings. The Office also monitors the case-law of the ECtHR.

The issue of human trafficking is regularly part of curriculum of trainings organized mainly by the Judicial Academy. More information about the educational activities of the Judicial Academy can be found in the attached document and further details are also mentioned in the comment on the recommendation n. 5.

Protection of victims and witnesses

27. GRETA considers that the Czech authorities should make full use of the available measures to protect victims and witnesses of THB, including children, and to prevent intimidation during the investigation, as well as during and after court proceedings.

The protection of victims, including minors, is implemented in accordance with the law, in particular the Act on Victims of Crime and the Act on Special Protection of Witnesses and Other Persons in Connection with Criminal Proceedings. The tools mentioned therein are fully used by law enforcement authorities and other interested bodies.

Equally important is the Programme for the Support and Protection of Victims of Trafficking in Human Beings which in practical terms provides victims with a safe asylum accommodation and immediate separation from the criminal environment. For example, in 2020, 13 probable victims of human trafficking from abroad and from the Czech Republic, including a minor, benefited from the program. A total of 273 probable victims of human trafficking were included in the Programme from 2003 to 2020.