



# **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 Belarus**

First evaluation round

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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. Another important source of information is civil society and, 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 relevant government for comments, which are taken into account by GRETA when establishing its final report. 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, together with eventual comments made by the national authorities, are made public and 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 Belarusian authorities have taken a number of important steps to develop the legal, policy and institutional framework for action against trafficking in human beings. The national legal framework in this field has evolved over the years in the light of the country's international commitments and a dedicated law on combating trafficking in human beings was adopted in 2012, followed by the adoption of decrees governing the identification of victims of trafficking and the provision of medical services and legal assistance to them.

The institutional framework for action against human trafficking has also evolved. The Ministry of the Interior is responsible for the co-ordination of national anti-trafficking efforts and its Main Department for Drug Control and Combating Trafficking in Human Beings, with divisions across the country, is specialised in detecting and preventing human trafficking and related offences. The Investigative Committee has specialised investigators for cases of human trafficking and child pornography. Further, multi-disciplinary groups have been set up in the country's six regions to strengthen the co-ordination of anti-trafficking action and the exchange of information at regional level.

The International Training Centre on Migration and Combating Trafficking in Human Beings, which is part of the Academy of the Ministry of the Interior, provides training to a variety of professionals from Belarus and other countries, as well as international organisations.

The number of identified victims of human trafficking has dropped over the years (from 998 in 2006, to 184 in 2016, according to the date provided by the Ministry of the Interior). The great majority of the victims are women and girls exploited in prostitution abroad or within the country. Statistical data on victims of trafficking is also collected by the IOM Office in Belarus and it suggests that the numbers are considerably higher, with the majority being men subjected to labour exploitation in the Russian Federation.

GRETA urges the Belarusian authorities to ensure that national anti-trafficking action is comprehensive, in particular by strengthening measures to combat trafficking for the purpose of labour exploitation and internal trafficking, as well as to address the particular vulnerability to trafficking of children and persons from groups affected by unfavourable social and economic conditions.

Moreover, GRETA considers that the Belarusian authorities should consolidate the co-ordination of anti-trafficking activities by ensuring regular exchange of information between all public bodies involved and increasing the involvement of specialised civil society organisations in the planning, drafting, implementation and evaluation of national anti-trafficking policies.

Belarus has been active at the level of the United Nations in the area of combating human trafficking. Further, Belarusian law enforcement agencies have co-operated with their counterparts in a number of countries in the investigation of human trafficking cases. GRETA welcomes the efforts of the Belarusian authorities to develop international co-operation in the field of action against human trafficking and invites them to continue these efforts.

GRETA also welcomes the efforts made in Belarus to raise general public awareness of the risks of trafficking and exploitation in the context of seeking employment abroad. While a number of measures have been taken to promote employment, support families with children, protect children from violence and combat violence against women, GRETA considers that the authorities should strengthen prevention through social and economic empowerment measures for groups vulnerable to human trafficking. Efforts should also be made to discourage demand for the services of trafficked persons concerning all forms of exploitation. In this context, GRETA invites the Belarusian authorities to consider establishing as a criminal offence the use of services of persons with the knowledge that they are victims of trafficking.

A new regulation on the identification of victims of human trafficking was adopted in 2015, enabling a variety of actors to initiate the identification of presumed victims, while leaving the formal identification exclusively to the law enforcement authorities. GRETA notes that, as a result, victim identification is closely linked to establishing the commission of a criminal offence of trafficking or a related offence. GRETA urges the Belarusian authorities to ensure that, in practice, the identification of victims of trafficking is independent from the criminal investigation, and to promote a multi-agency involvement in the decision-making process. Furthermore, GRETA stresses the need for introducing a procedure for the identification of child victims of trafficking, which takes into account their special circumstances and needs, and involving child specialists.

The provision of assistance to adult victims of trafficking is provided by territorial centres for the provision of social services, while child victims are assisted by socio-pedagogical centres for social protection. In addition, NGOs and other actors may also provide accommodation and assistance to victims of trafficking and can apply for state funding. GRETA considers that the Belarusian authorities should enhance their efforts to provide assistance to victims of trafficking, ensuring that it is adapted to the specific needs of victims of trafficking and supporting their reintegration.

There is no provision in Belarusian law establishing a recovery and reflection period as provided for in Article 13 of the Convention and GRETA urges the authorities to ensure that such a period is specifically defined in law and that possible victims of trafficking are systematically informed of and are effectively granted a recovery and reflection period. Further, GRETA considers that the Belarusian authorities should take additional steps to ensure that victims of trafficking can effectively benefit from the right to obtain a residence permit, as specified in Article 14 of the Convention.

While some victims of trafficking have received compensation from the perpetrators by filing a civil claim in the context of criminal proceedings, no statistics are available on this point. There is currently no provision in Belarus for State compensation to victims of violent crimes, including victims of human trafficking. GRETA urges the authorities to set up a State compensation scheme accessible to victims of trafficking and recommends that additional measures be taken to facilitate access to compensation for victims of trafficking by systematically informing them of the right to seek compensation and the procedures to be followed, and by ensuring their effective access to legal aid.

Belarusian legislation contains no provisions regulating the return and repatriation of foreign citizens identified as victims of trafficking. GRETA therefore urges the authorities to take steps to ensure that the return of victims of trafficking is conducted with due regard for the rights, safety and dignity of the person and the status of any related legal proceedings, and is preferably voluntary.

Moreover, GRETA urges the authorities to take additional measures to ensure compliance with the principle of non-punishment of victims of trafficking 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 police officers and prosecutors on the scope of the non-punishment provision, including with regard to criminal offences.

GRETA also considers that the Belarusian authorities should take further measures to ensure that human trafficking offences are prosecuted and such lead to effective, proportionate and dissuasive sanctions. In this context, GRETA notes the need for reviewing the existing legal provisions and court cases on trafficking and related offences, to carry out proactive investigations into alleged cases of trafficking for the purpose of labour exploitation, and the continue building the capacity and specialisation of investigators, prosecutors and judges to deal with trafficking cases.

Finally, GRETA considers that the Belarusian authorities should make full use of the available measures to protect victims of trafficking, including children, and to prevent their intimidation during the investigation and during and after the court proceedings.



## I. Introduction

1. Belarus deposited the instrument of accession to the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) on 26 November 2013. The Convention entered into force for Belarus on 1 March 2014.<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 Belarus to implement the provisions set out in the Convention. The “Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties - first evaluation round” was sent to Belarus on 1 October 2015. The deadline for replying to the questionnaire was 1 February 2016. Belarus submitted its reply on 3 February 2016.

4. In preparation of the present report, GRETA used the reply to the questionnaire by Belarus, other information collected by GRETA and information received from civil society. An evaluation visit to Belarus took place from 18 to 22 April 2016, carried out by the following delegation:

- Ms Kateryna Levchenko, member of GRETA;
- Mr Helmut Sax, member of GRETA;
- Ms Petya Nestorova, Executive Secretary of the Council of Europe Convention on Action against Trafficking in Human Beings;
- Mr David Dolidze, Administrator at the Secretariat of the Convention on Action against Trafficking in Human Beings.

5. During the visit, the GRETA delegation met the Minister of the Interior, Mr Igor Shunevich, and officials from the Ministry of the Interior, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Labour and Social Protection, the Ministry of Education, the Ministry of Health, the General Prosecutor’s Office, the Investigative Committee, and the State Border Committee. Further, the GRETA delegation met members of the regional multi-disciplinary groups for preventing and combating trafficking in human beings and reintegrating victims in Brest and Mogilev, which include representatives of the regional authorities, social and health protection departments, law enforcement agencies and civil society organisations. The delegation also visited the International Training Centre on Migration and Combating Trafficking in Human Beings of the Academy of the Ministry of the Interior. GRETA appreciates the atmosphere of openness and co-operation in which these meetings took place.

6. The GRETA delegation held separate meetings with representatives of non-governmental organisations (NGOs)<sup>2</sup> and the Belarusian Red Cross Society, lawyers and officials from the local offices of the International Organization for Migration (IOM), the United Nations Development Programme (UNDP) and the United Nations High Commissioner for Refugees (UNHCR). GRETA is grateful for the information provided by them.

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

<sup>2</sup> In Belarus, NGOs are referred to as “public associations”.

7. In the context of the evaluation visit, the GRETA delegation visited the specialised shelter for victims of human trafficking run by the IOM. It also visited crisis rooms operated by the centres for social services in Brest, Minsk and Mogilev, which can accommodate victims of human trafficking. Further, it visited the socio-pedagogical centre with a shelter of Leninsky District of Minsk, as well as the SOS Children's Village in Mogilev, which accommodates women and children victims of domestic violence and child victims of human trafficking.

8. GRETA is grateful for the assistance provided by the contact person appointed by the Belarusian authorities, Ms Dzyana Kankalovich, Senior Inspector at the International Law Unit of the Department for International Co-operation of the Ministry of the Interior.

9. The draft version of the present report was adopted by GRETA at its 27th meeting (28 November - 2 December 2016) and was submitted to the Belarusian authorities for comments on 21 December 2016. The authorities' comments were received on 21 February 2017 and were taken into account by GRETA when drawing up its final evaluation report, which was adopted at GRETA's 28th meeting (27-31 March 2017).

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

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

10. According to statistical information provided by the Ministry of the Interior, the number of identified victims of trafficking in human beings (THB) was 209 in 2012 (163 women, 45 children and one man), 149 in 2013 (134 women, 14 children and one man), 97 in 2014 (69 women, 12 children and 16 men), 121 in 2015 (107 women, 13 children and one man) and 184 in 2016 (96 women, 17 men, 64 girls and 7 boys). The great majority of the identified victims were women and girls trafficked for the purpose of sexual exploitation, the main countries of destination being the Russian Federation and Turkey. There is a growing trend of internal trafficking for the purpose of sexual exploitation: thus in 2015, 77 women and girls were trafficked within Belarus and in 2016 there were 122 victims (including 70 children) of internal trafficking. As regards foreign victims trafficked to Belarus, one Ukrainian citizen was identified in 2013 and 16 Vietnamese men in 2014.

11. The IOM Office in Belarus also collects data on victims of THB who have been detected and assisted by IOM and NGOs. GRETA notes that the IOM figures are considerably higher than those quoted in paragraph 10, referring to 353 victims in 2013, 215 in 2014 and 263 in 2015 (see also paragraph 69). Further, GRETA notes that there has been a decrease in the number of identified victims of THB over the years (2006 was a peak year, with 998 identified victims who were trafficked abroad through so-called "modelling agencies"). There are reports about cases of trafficking of Belarusian men and women for the purpose of labour exploitation and of children for the purpose of forced begging, but there is no official data to support these reports. The Belarusian authorities have stated that in 2016, 20 Belarusian citizens (17 men and 3 women) illegally employed in the Russian Federation were detected, but they were not considered to be victims of trafficking or slavery. In 2016, there were two identified cases of children (a girl and a boy) involved in begging, but they were treated as offences of involvement of children in anti-social acts rather than human trafficking cases. Further, concerns have been expressed about the vulnerability to human trafficking of many Ukrainian citizens who have migrated to Belarus (some 160 000 in the last two years), because of their difficult socio-economic situation and lack of employment opportunities. Another trend reported by the Belarusian authorities concerns the recruitment and exploitation of children for producing child sexual abuse images/child pornography.

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

#### **a. Legal framework**

12. At the international level, in addition to the Council of Europe Convention on Action against Trafficking in Human Beings, Belarus is Party to the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (both ratified in 2003). Belarus is also Party to the UN Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (ratified, respectively, in 1990 and 2002), the Convention on the Elimination of All Forms of Discrimination against Women (ratified in 1981), as well as relevant conventions elaborated under the International Labour Organization (ILO).<sup>3</sup> Further, Belarus is Party to the Commonwealth of Independent States' (CIS) Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Affairs and is bound by relevant agreements<sup>4</sup> concluded among competent ministries of the CIS Member States.

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<sup>3</sup> Convention concerning Forced or Compulsory Labour, 1930 (№ 29), Convention concerning the Abolition of Forced Labour, 1957 (№ 105) and Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (№ 182).

13. Belarus introduced trafficking in human beings as a separate offence in 1999. At present, THB is criminalised in Article 181 of the Criminal Code (CC). Furthermore, Belarus adopted on 7 January 2012 the Law "On combating trafficking in human beings", which was amended in 2014 following accession to the Council of Europe Anti-Trafficking Convention. Other legislation relevant to action against THB includes the laws "On the Rights of the Child" (adopted in 1993), "On the legal status of foreign citizens and stateless persons in the Republic of Belarus" (adopted in 2010), "On external labour migration" (adopted in 2010), "On social services" (adopted in 2000), and "On the state minimum social standards".

14. As regards secondary legislation, of particular relevance is Decree № 485 "On approval of the regulations on identification of victims of trafficking in human beings, completing the identification form for possible victims of trafficking in human beings and related offences, and the handling of information contained therein", adopted on 11 June 2015 and in force since 22 June 2015. It establishes a National Referral Mechanism, defines the competences of public bodies, international and NGOs, the co-ordination between them and the responsibilities in the process of identification of victims of THB. Other relevant legal acts include:

- Decree of the Ministry of Health № 41 of 28 April 2012 "On the establishment of a list of medical services provided by public health organisations, including inpatient treatment, to victims of human trafficking, regardless of their place of permanent residence".
- Decree of the Council of Ministers № 427 of 8 May 2012 "On the order of establishing and publishing a list of organisations involved in combating trafficking in human beings";
- Decree of the Council of Ministers № 122 of 6 February 2012 "On the procedure for reimbursement of salaries of lawyers providing legal assistance to victims of trafficking and victims of acts of terrorism";
- Decree of the Ministry of Justice № 84 of 2 April 2012 "On establishment of a calculation certificate for lawyers providing legal assistance to victims of trafficking in human beings and persons affected by acts of terrorism at the expense of the republican budget".<sup>5</sup>

#### b. National Action Plans

15. Belarus has so far adopted and implemented three national action plans to combat THB, covering respectively the periods 2002-2007, 2008-2010 and 2011-2013. In 2013 it was decided to combine several state programmes - concerning the fight against trafficking in human beings, illegal migration, corruption and organised crime - in a single Programme on Combating Crime and Corruption, covering the period 2013-2015. As far as anti-trafficking action is concerned, this programme envisaged measures to improve the anti-trafficking legislation, train relevant professionals, strengthen data collection and reporting, and improve national co-ordination and international co-operation. In addition, the National Action Plan on Gender Equality (2011-2015) and the National Action Plan on Children Rights (2012-2016) are relevant to combating THB. Annual reports on the implementation of the measures of the National Action Plan on Gender Equality were submitted to the Government and the final results of its implementation were presented on 18 November 2015 at an enlarged meeting of the National Council on Gender Policy of the Council of Ministers in the Council of the Republic (upper house) of the Parliament of Belarus.

<sup>4</sup> Agreement on co-operation between the Ministries of the Interior on combating trafficking in human beings (St. Petersburg, 17 September 2010); Agreement on co-operation in the fight against trafficking in human beings, human organs and tissues (Moscow, 25 November 2005); Agreement on co-operation in the fight against illegal immigration (Moscow, 6 March 1998); Agreement on co-operation in the return of children to their countries of residence (Chisinau, 7 October 2002).

<sup>5</sup> The full list of laws and normative acts relevant to action against THB in Belarus is contained on pages 8-10 of the Reply from Belarus to the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties, available at: <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680630bf6>

16. The Law "On combating trafficking in human beings" provides that the Council of Ministers develops a national programme for combating THB, which is signed by the President. During the evaluation visit in April 2016 representatives of the Ministry of the Interior informed GRETA that a draft National Action Plan against Crime and Corruption had been submitted to the Office of the President for signature. This plan was said to include measures to prevent THB and related offences through disseminating information to the general public and target groups about trafficking for different forms of exploitation, to ensure state funding of assistance and protection measures for victims of THB, to increase the qualification of professionals involved in the action against THB, to improve the investigation of THB and related offences, and to maintain the engagement in international co-operation in the field of action against THB. The IOM Office in Belarus was involved in the drafting of the new plan, but specialised NGOs were reportedly not asked for input. In their comments on the draft GRETA report, the authorities have indicated that a draft State Programme on Combating Crime and Corruption for 2017-2019, containing measures to combat human trafficking and related offences, was in the process of adoption. **GRETA would like to be kept informed of the adoption of this State programme and to receive a copy of it in due course.**

17. The responsibility for the implementation of the planned activities on combating THB is shared between the Ministry of the Interior, the State Security Committee, the State Border Committee, the Prosecutor General's Office, the Investigative Committee, the Ministry of Foreign Affairs, the Ministry of Education, the Ministry of Health and the Ministry of Labour and Social Protection. **GRETA considers that the Belarusian authorities should introduce an independent evaluation of the implementation of the anti-trafficking activities included in the State Programme on Combating Crime and Corruption or any other national action plans, as a tool for assessing the impact of the activities and for planning future policies and measures to combat THB.**

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

#### **a. Ministry of the Interior and the State Border Committee**

18. The Ministry of the Interior and its structural units have primary responsibility for combating THB in Belarus. Pursuant to Article 12, paragraph 2, of the Law "On combating trafficking in human beings", the Ministry of the Interior is responsible for the co-ordination of the relevant public authorities and other organisations in combating THB. The Ministry of the Interior collects information from all stakeholders, including NGOs, maintains a database with statistical information on victim identification and assistance, conducts surveys, informs the general public about THB, and engages in international co-operation. Information, reports and analyses of national and international legislation related to THB are placed on the website of the Ministry of the Interior.<sup>6</sup>

19. Pursuant to Article 26 of the Law "On combating trafficking in human beings", the Minister of the Interior fulfils the function of National Rapporteur for combating THB (see also paragraph 55). The role of the National Rapporteur is defined in the law as studying and analysing the application of anti-trafficking legislation, providing information to other countries and international organisations, engaging in international co-operation, and submitting to the Council of Ministers an annual report on the effectiveness of the anti-trafficking measures taken with recommendations for legislative amendments.

20. The Main Department for Drug Control and Combating Trafficking in Human Beings of the Ministry of the Interior is the lead law enforcement agency on action against THB. It has divisions at regional, city and district levels. Overall, there are 69 police officers directly involved in combating and investigating THB and related offences.

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<sup>6</sup> [www.mvd.gov.by](http://www.mvd.gov.by)

21. The Ministry of the Interior is also in charge of co-ordinating the identification of victims of THB and their referral for assistance, protection and rehabilitation. It therefore co-ordinates the activities of the Ministry of Labour and Social Protection, the Ministry of Education, the Ministry of Health, the Ministry of Foreign Affairs and competent NGOs (see also paragraph 53).

22. Pursuant to the law "On the frontier service authorities of the Republic of Belarus", the border service authorities (led by the State Border Committee) implement the state border policy, ensure the border security of Belarus and perform law enforcement functions. In particular, they are authorised to carry out investigative and search activities to prevent, detect and suppress crimes related to THB, as well as identify persons preparing, committing or having committed these offences.

b. Investigative Committee and Prosecutor General's Office

23. Since its setting up in 2012, the Investigative Committee has had primary responsibility for the preliminary investigation of THB and related crimes. In addition, the Investigative Committee is among the authorities involved in the co-ordination of anti-trafficking activities (see paragraph 53) and the identification of victims of THB. The Investigative Committee has two specialised investigators for cases of THB and child pornography in each of the country's six regions, and three specialised investigators in the city of Minsk. In their comments on the draft GRETA report, the authorities had indicated that on 1 January 2016 a division for the investigation of crimes against information security and drug trafficking was set up within Minsk City Investigative Department, with the competence of investigating cases of child pornography on the Internet. As of 1 September 2016 similar divisions have been set up at all Investigative Committee departments in the six regions of Belarus. These structures have competence to investigate child trafficking cases committed through the Internet.

24. The Prosecutor General's Office is responsible for the co-ordination of law enforcement activities, including in the field of action against THB, and leads this work through the National Co-ordination Meeting on Combating Crime and Corruption (see paragraph 53). The Prosecutor General's Office performs the overall supervision of the investigation of all criminal offences, but is not systematically involved cases of THB and there are no prosecutors specialised to deal specifically or exclusively with human trafficking cases. A prosecutor may repeal the decision of an investigator not to recognise a person as a victim of THB and request the case to be re-examined. A prosecutor may also suspend the activities of organisations involved in THB and apply to the Supreme Court for recognising such organisations as involved in THB with a view to prohibiting their activities in Belarus. In addition, the Prosecutor's Office is one of the main actors in the identification of victims of THB.

c. Ministries responsible for social protection and rehabilitation of victims of trafficking

25. The Ministry of Labour and Social Protection is responsible for providing assistance to adult victims of THB and for the collection of information concerning victims' rehabilitation. As of 1 January 2017, there are 146 regional centres for social services for the population and two city centres for social services for families and children (in Minsk and Gomel), functioning under the respective committees on labour, employment and social protection of the regional and city authorities. These centres operate a total of 124 crisis rooms where identified and possible victims of human trafficking can be accommodated (see paragraph 130).

26. The Ministry of Education provides assistance to child victims of trafficking aged between 3 and 18 years, who can be assisted in 138 socio-education centres, 106 of which have within their structure children's social shelters (see paragraph 131).

27. The Ministry of Health is responsible for the assistance and rehabilitation of child victims under the age of 3, which can be provided in 10 children's homes around the country (see paragraph 131).

d. Regional multi-disciplinary groups

28. Upon the initiative of the Belarusian Red Cross Society, multi-disciplinary groups have been set up since 2011 in the country's six regions (Brest, Gomel, Grodno, Minsk, Mogilev and Vitebsk) as well as in Minsk municipality with a view to strengthen co-ordination of anti-trafficking action and exchange of information at regional level. Members of these groups are the regional authorities, regional representatives of governmental agencies involved in anti-trafficking activities, representatives of the Prosecutor's Office and regional courts, the regional Bar Association, specialised NGOs and IOM representatives. The regional multi-disciplinary groups were established on the basis of memoranda on co-operation signed by their members.

e. NGOs, other members of civil society and international organisations

29. Civil society has played a key role in action against THB in Belarus. The International Public Association (PA) "Gender Perspectives", which is part of La Strada International's network, is involved in advocacy and research, prevention of THB and domestic violence, provision of assistance to victims, and operating a telephone hotline for safe migration and anti-trafficking covering three of the country's regions (Gomel, Minsk and Mogilev) and Minsk municipality, and a hotline for victims of domestic violence. The PA "Business Women Club" is active in the areas of prevention of THB and domestic violence and providing assistance to victims; it runs a telephone hotline for safe migration and anti-trafficking in the other three regions (Brest, Grodno and Vitebsk). The PA "Business Women Club Southwest" is involved in prevention of THB and domestic violence and assistance to victims of gender-based and sexual violence. The Borisov Women's Social Public Association "Province" and the PA "Belarusian Association of Young Christian Women" are also engaged in the prevention of THB and domestic violence and assisting victims. The PA "Children are Not for Violence", which is a member of ECPAT, implements projects on the protection of children from all forms of violence.

30. The Belarusian Red Cross Society conducts preventive and educational work, participates in solving problems related to migration, natural, technological and humanitarian disasters, and runs assistance projects for vulnerable groups, including victims of THB. As already mentioned (see paragraph 28), the setting up of the regional multi-disciplinary groups took place upon the initiative of the Belarusian Red Cross Society.

31. The IOM Office in Minsk has been active in the field of combating THB in Belarus since 2002 and has long-running co-operation with public bodies, specialised NGOs and other international organisations active in the anti-trafficking area. The work of IOM Belarus is based on four components: protection and reintegration of victims of trafficking; prevention and advocacy through increasing awareness among at-risk groups; criminalisation of THB and prosecution of traffickers; and partnership. The only specialised shelter for victims of THB in Belarus is operated by IOM.

32. None of the above-mentioned NGOs or the IOM Office in Minsk are represented in the national co-ordinating structures (see paragraph 53). However, they are represented in the regional multi-disciplinary groups and are also involved in the Co-ordinating Council of the international technical assistance project entitled "Strengthening the capacity of the Republic of Belarus in the field of combating trafficking in human beings", operated by IOM (see paragraph 54).

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

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

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

33. 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>7</sup>

34. 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<sup>8</sup> (which prohibits slavery, servitude and forced or compulsory labour). 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>9</sup>

35. 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 secure 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.

36. 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>10</sup>

<sup>7</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>8</sup> *Rantsev v. Cyprus and Russia*, application No. 25965/04, judgment of 7 January 2010, ECHR 2010, paragraph 282.

<sup>9</sup> See also *Siliadin v. France*, application No. 73316/01, judgment of 26 July 2005, ECHR 2005 VII; *C.N. and V. v. France*, application No. 67724/09, judgment of 11 October 2012, and *C.N. v. United Kingdom*, application No. 4239/08, judgment of 13 November 2012.

<sup>10</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, and the United Nations Convention on the Elimination of All Forms of Discrimination against Women.



37. The Belarusian authorities have indicated that trafficking in human beings is considered as a violation of human rights and not only as a criminal offence in Belarus. They have referred to the Constitution of the Republic of Belarus, international treaties on combating trafficking in human beings that entered into force for Belarus and are part of national law, the Law "On combating trafficking in human beings" and other relevant legal acts. The Constitution of Belarus guarantees personal freedom, inviolability and dignity (Article 25) and prohibits forced labour (Article 41). As per Article 59 of the Constitution, State bodies, officials and other persons entrusted to exercise state functions shall take the necessary measures to implement and protect the rights and freedoms of individuals. Under Article 60 of the Constitution, everyone is guaranteed the protection of rights and freedoms by a competent, independent and impartial court. Further, Article 61 of the Constitution states that everyone is entitled, in accordance with the international instruments ratified by Belarus, to appeal to international organisations to protect their rights and freedoms, if all available domestic remedies have been exhausted.

38. The Belarusian authorities have stressed that the Law "On combating trafficking in human beings" has as objectives to protect the individual and society from THB and related crimes, and to protect and rehabilitate victims of THB. Article 4 of this Law states that the fight against human trafficking in Belarus is based, *inter alia*, on the principles of protection of the rights of trafficked persons, non-discrimination and ensuring their safety and protection. Further, Article 29, paragraph 3, subparagraph 3.1, of the Law provides that funds raised from the sale of confiscated property of traffickers are to be used to compensate victims of trafficking. The Belarusian authorities have also referred to Decree № 485 of 11 June 2015 "On approval of the regulations on identification of victims of trafficking in human beings, completing the identification form for possible victims of trafficking in human beings and related offences, and the handling of information contained therein", which entitles victims of THB to protection and rehabilitation regardless of their participation in criminal proceedings.

39. 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 Belarusian authorities in these fields.

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

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

40. 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.

41. In Belarus, THB is criminalised under Article 181 of the CC, entitled “Trafficking in Human Beings”, as follows:

“1. The recruitment, transportation, transfer, harbouring or receipt of a person for purposes of exploitation, by means of deception, or abuse of trust, or the use of force not dangerous for the life or health of the victim, or by threat of the use of force, shall be punished with imprisonment for a term of three to seven years with confiscation of property.

2. The same actions committed:

- 1) against two or more persons;
- 2) with violence dangerous for the life or health of the victim, or the threat of such violence;
- 3) for mercenary motives;
- 4) by a group of persons by prior conspiracy;
- 5) by a person using his official authority;
- 6) by a person who has previously committed offences under this Article, Articles 171, 171-1, 181-1, 187, parts 2 and 3 of Article 343-1 of this Code;
- 7) against a pregnant woman, with prior knowledge that she is pregnant;
- 8) with taking persons out of the country;
- 9) against a child aged between 14 and 18 (“*несовершеннолетнего*”), with prior knowledge that he/she is a child, and irrespective of whether any of the means set forth in paragraph 1 of this article have been used,

shall be punished with imprisonment for a term of seven to twelve years with confiscation of property.

3. The actions envisaged in parts 1 or 2 of this article, committed by an organised group, or against a child under 14 of age (“*малолетнего*”) with prior knowledge of that person’s age, or causing by negligence the death of the victim, or the infliction of serious bodily injury, or infection with AIDS, or other grave consequences, shall be punished with imprisonment for a term of twelve to fifteen years with confiscation of property.

Note. Exploitation in this article and Articles 181-1,<sup>11</sup> 182<sup>12</sup> and 187<sup>13</sup> of the Code refers to the unlawful coercion of a person to work or provide services (including sexual acts, surrogacy, the removal of a human organ and/or tissues) if he/she for reasons beyond his/her control cannot refuse to perform the work (services), including slavery or practices similar to slavery.”<sup>14</sup>

<sup>11</sup> Article 181<sup>1</sup>: “Use of slave labour”.

<sup>12</sup> Article 182: “Abduction”.

<sup>13</sup> Article 187: “Illegal actions for providing employment abroad”.

<sup>14</sup> Non-official translation.

42. The definition of THB in Article 181 of the CC contains the three components of the definition of THB under the Convention: action, means and purpose. As regards the actions leading to the exploitation of the victim, Article 181 of the CC refers to all five actions contained in the definition of THB in the Convention. However, GRETA notes that the means mentioned in Article 181 do not expressly mention abduction, fraud and the abuse of a position of vulnerability. Abduction is criminalised separately under Article 182 of the CC, which includes as aggravating circumstances abduction committed for the purpose of exploitation and for the purpose of the removal of organs or tissues for transplantation, and Article 182 is considered as related to THB. The authorities have stated that “fraud” (“мошеництва”) is criminalised separately under Article 209 of the CC as “the acquisition of property or right to property by deception or abuse of trust”. According to the authorities, “fraud” is already covered through the means “deception” and “abuse of trust”, which are part of Article 181 of the CC, and adding “fraud” to Article 181 of the CC would not be possible as the definition of “fraud” in the Belarusian CC relates to property and not to persons. As regards the term “abuse of a position of vulnerability”, the authorities have referred to the explanatory note to Article 181 of the CC, which contains the wording “who for reasons beyond his/her control cannot refuse to perform the work or services” as well as Article 64, paragraph 1, subparagraphs 2 and 6, of the CC, according to which committing a crime against a person who is in a helpless state or in material, professional or other dependence of the perpetrator can be considered as an aggravating circumstance. **Nonetheless, in order to be fully consistent with the definition of THB in the Convention, GRETA considers that the Belarusian authorities should include “abuse of a position of vulnerability” as one of the means for committing trafficking in human beings.**

43. The forms of exploitation are defined in the note to Article 181 of the CC, which constitutes an integral part of the CC. GRETA notes that while the concepts used in it do not fully correspond to those in the Convention, they appear to cover the minimum list of purposes of exploitation provided for in the Convention. In addition, Belarusian legislation includes surrogacy as a separate form of exploitation. The list of forms of exploitation covered by Belarusian legislation is open-ended as is the case in the Convention. According to the authorities, while begging as such is not criminalised, the involvement of a child in begging is an offence under Article 173 of the CC (“involving children in anti-social acts”). Further, the authorities have stated that persuading a person to commit a criminal offence is an offence under Article 16 of the CC and if THB was committed for the purpose of forcing a person to commit criminal acts, there may be a cumulative application of several provisions of the CC.

44. As required by the Convention, trafficking in children is considered as an aggravating circumstance. However, GRETA notes that Article 181, paragraph 2, sub-paragraph 9, and Article 181, paragraph 3, of the CC refer to trafficking of a child “with prior knowledge that the person is a child”. In such a case, in order to establish a trafficking offence, only two of the above elements, i.e. an action and a purpose of exploitation, need to be established, irrespective of the means used. GRETA notes that the qualification “with prior knowledge” would require proving that the trafficker knew the age of the victim and hence the application of the aggravating circumstance of child trafficking appears to be more restricted than the one provided for by the Convention. In their comments on GRETA’s draft report, the Belarusian authorities have stated that a person can be charged under Article 181, paragraph 2, sub-paragraph 9, or Article 181, paragraph 3, of the CC only if there is proof of the alleged perpetrator’s awareness of the fact that the victim was a child, in accordance with the general principles of the national criminal law. Nonetheless, GRETA notes that Article 24 of the Convention does not refer to “prior knowledge that the person is a child” in order to establish as an aggravating circumstance the commission of a trafficking offence against a child and expresses concern about the implications of this provision of the Belarusian Criminal Code for the best interests of the child. **GRETA urges the Belarusian authorities to take legislative measures to fully align the definition of THB with the provisions of the Convention as regards trafficking in children by removing the requirement of “prior knowledge that the person is a child”.**

45. GRETA notes that Section 181 of the CC does not specifically state the irrelevance of the victim's consent to the intended exploitation. On the other hand, Article 1 of the Law "On combating trafficking in human beings" provides that the person's consent to the intended exploitation is irrelevant in case of use of any of the means. The Belarusian authorities have stressed that the consent of a victim of human trafficking to his/her exploitation is not considered as grounds eliminating or mitigating the criminal liability of the traffickers. However, GRETA refers to the report drawn up by IOM on compliance of Belarusian legislation on combating human trafficking with international and regional law, which notes that the initial consent of victims of trafficking to perform a certain job or service, particularly victims of sexual exploitation, for a long time hindered proper identification of victims and is used by traffickers for manipulating the victims.<sup>15</sup> It is noteworthy that the regulations on the procedure of identification of victims of trafficking do not specify that the consent of victims shall not be taken into account. GRETA stresses that setting out this pivotal principle in law and regulations could facilitate its use by investigators, prosecutors and judges when dealing with cases of human trafficking and help obtaining a more consistent approach. Consent is an important factor at different stages of human trafficking cases, for instance: if victims refuse to self-identify as they consider that they consented to exploitation; when taking a decision on whether to investigate and prosecute a case as THB where the victim apparently consented to exploitation; when deciding on the penalty for offenders where there are assertions of consent.<sup>16</sup> **GRETA therefore invites the Belarusian authorities to specify in the Criminal Code and the regulations on the identification of victims of trafficking the irrelevance of victim's consent to the intended exploitation when any of the means are used with a view to ensuring the effective application of this principle in practice.**

46. For further analysis of the definition of THB and related offences from a substantive criminal law perspective, see paragraphs 168-174.

*ii. Definition of "victim of THB"*

47. 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.

48. Article 1 of the Law "On combating trafficking in human beings" defines a victim of trafficking as "a citizen of the Republic of Belarus, an alien or a stateless person, in respect of whom trafficking in human beings or related offences<sup>17</sup> were committed". This definition is also applicable to the regulations on the procedure of identification of victims of trafficking. For a person to receive assistance as a victim of THB, it is not necessary to start a criminal investigation and NGOs can initiate the identification of victims of THB independently of the police and refer them for assistance in the shelter run by IOM.

49. Pursuant to Article 49 of the Criminal Procedure Code (CPC), an "injured party" is a natural person who suffered physical, material or moral damage as the result of a socially dangerous act prohibited by criminal legislation, and was recognised as such by the body conducting criminal proceedings. The CPC provides "injured parties" with specific rights and protection measures, which are described in paragraph 196.

50. The question of the definition of victim of THB will be further discussed in the sections of this report dealing with the identification of victims and the assistance measures provided to them, along with the related proposals made by GRETA.

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<sup>15</sup> IOM, *Legislation on Combating Trafficking in Human Beings in Belarus: compliance with International and Regional Law*, Minsk, 2016, pp. 33-34.

<sup>16</sup> See UNODC Issue Paper, *The Role of Consent in the Trafficking in Persons Protocol*, United Nations, Vienna, 2014, available at: [www.unodc.org/documents/human-trafficking/2014/UNODC\\_2014\\_Issue\\_Paper\\_Consent.pdf](http://www.unodc.org/documents/human-trafficking/2014/UNODC_2014_Issue_Paper_Consent.pdf)

<sup>17</sup> The following provisions of the CC are considered as related to trafficking in human beings: Articles 181-1 "The use of slave labour", 182 "Kidnapping", 187 "Illegal actions aimed at the employment of nationals abroad" and 343-1 "Production and distribution of pornographic materials or items of a pornographic nature depicting a minor".

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

*i. Comprehensive approach and co-ordination*

51. 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-sectorial, and take on board 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).

52. The Belarusian authorities have taken steps to develop the legal and policy framework for action against human trafficking, which is intended to cover all victims of THB subjected to different types of exploitation, both transnationally and nationally, whether or not connected with organised crime. The fight against THB has been high on the country's political agenda. The Programme on Combating Crime and Corruption for 2013-2015 (see paragraph 15) included measures to prevent THB, assist victims and prosecute traffickers. Their implementation was funded through the budgetary allocation of the Ministry of the Interior and its subordinate bodies.

53. As noted in paragraph 21, the Ministry of the Interior is responsible for the overall co-ordination of anti-trafficking action, in accordance with paragraph 36 of Decree № 485 of the Council of Ministers approving the regulations on the identification of victims of THB. The co-ordination of activities regarding the identification and assistance of victims of THB is led by the Ministry of the Interior and involves participation of the Ministry of Health, the Ministry of Foreign Affairs and specialised NGOs. On the other hand, the Prosecutor General's Office is responsible for the co-ordination of activities in the law enforcement area through the National Co-ordination Meeting on Combating Crime and Corruption, which takes place once every six months and includes participants from the Ministry of the Interior, the State Security Committee, the State Border Committee and the Investigative Committee. This national co-ordination structure is replicated by similar structures at regional and district levels, which meet more frequently. NGOs specialised in action against THB are not represented at the National Co-ordination Meeting on Combating Crime and Corruption. GRETA notes that no systematic exchange of information takes place between the two co-ordination mechanisms led respectively by the Prosecution General's Office and the Ministry of the Interior. As regards co-ordination between the national level and the regions, representatives of the multi-disciplinary teams regretted that lack of information exchange with the state-level co-ordination bodies.

54. The IOM-led Co-ordinating Council set up under the international technical assistance project entitled "Strengthening the capacity of the Republic of Belarus in the field of combating trafficking in human beings" provides a unique forum for bringing together representatives of public agencies and specialised NGOs to discuss issues relating to THB. The IOM Co-ordinating Council is the only platform where specialised NGOs enjoy full membership.

55. As noted in paragraph 19, the Minister of the Interior fulfils the function of National Rapporteur. In GRETA's view, the key features of National Rapporteurs' mechanisms in the sense of Article 29, paragraph 4, of the Convention<sup>18</sup> should be the ability to critically monitor the efforts and effectiveness of all state institutions, including national co-ordinators, and to that end maintain a constant exchange with civil society, the research community and other relevant stakeholders. The human rights-based approach to anti-trafficking policies advocated by the Convention requires adequate monitoring and evaluation. A structural separation between monitoring and executive functions enables an objective evaluation of the implementation of anti-human trafficking legislation, policy and activities, identification of lacunae and shortcomings, and the formulation of comprehensive legal and policy recommendations.<sup>19</sup> **GRETA invites the Belarusian authorities to 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.**

56. Although trafficking for the purpose of labour exploitation has been on the rise in recent years, in particular of Belarusian men and women to the Russian Federation, action against this form of human trafficking remains insufficient. GRETA notes that no significant measures to prevent and combat THB for the purpose of labour exploitation were included in the National Programme on Combating Crime and Corruption 2013-2015 and the number of identified victims of THB for the purpose to labour exploitation remains very low. According to representatives of the police, the Investigative Committee and the Prosecutor's Office, detecting cases of THB for labour exploitation is particularly complex (see paragraph 191).

57. Particular attention is paid to combating sexual abuse of children which involves the production and distribution of abusive images/child pornography on the Internet. The Belarusian authorities have referred to the work done by health-care providers to identify children at risk of abuse and to transmit the information to relevant education departments and internal affairs departments.

58. **GRETA considers that the Belarusian authorities should consolidate the co-ordination of anti-trafficking activities at the national level by ensuring regular exchange of information between all public bodies involved in prevention of THB, identification and assistance to victims, and prosecution of traffickers. GRETA considers that the establishment of the post of National Co-ordinator on action against THB, supported by a dedicated office, would significantly strengthen co-ordination.**

59. **GRETA also considers that the authorities should further develop co-ordination between public bodies and civil society actors engaged in anti-trafficking action, and increase involvement of specialised NGOs and other relevant civil society actors in the planning, drafting, implementing and evaluating of national anti-trafficking policies.**

60. **Moreover, GRETA urges the Belarusian authorities to take further steps to ensure that national action to combat THB is comprehensive, and in particular to:**

- **strengthen action to combat THB for the purpose of labour exploitation by introducing measures to prevent this form of trafficking, by involving all relevant actors (labour inspectors, trade unions, employment agencies, businesses and civil society), and improving the identification of and assistance to victims of THB for the purpose of labour exploitation;**
- **address the particular vulnerability to trafficking of children and persons from groups affected by unfavourable social and economic conditions;**
- **take steps to address internal trafficking.**

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<sup>18</sup> "Each Party shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements."

<sup>19</sup> In this context, see also the Summary report on the Consultative Meeting on Strengthening Partnerships with National Rapporteurs on Trafficking in Persons and Equivalent Mechanisms organised by the UN Special Rapporteur on trafficking in persons, especially in women and children, in Berlin, 23-24 May 2013.

*ii. Training of relevant professionals*

61. The Academy of the Ministry of the Interior is a higher education establishment providing legal and practical training to officials from the Ministry of the Interior, the Ministry of Defence, the State Border Committee, the Investigative Committee, the Department of Financial Investigation of the State Control Committee and the State Committee of Forensic Examinations. The International Training Centre on Migration and Combating Trafficking in Human Beings was established on 19 July 2007, with the assistance of IOM, as part of the Academy of the Ministry of the Interior. It organises training courses for a variety of professionals (law enforcement officers, legal professionals, labour inspectors, social workers, NGOs) related to the fight against human trafficking, with participants from Belarus, other countries and international organisations. The training courses currently offered by the Training Centre include “Combating trafficking in human beings: system analysis, international co-operation and ways to improve law enforcement practice”, “Best practices of combating trafficking in human beings”, “Combating child pornography on the Internet”, “Labour migration” and “Social and psychological assistance to victims of trafficking”. As of 2005, the Academy of the Ministry of the Interior is also training criminal police specialists on combating trafficking in human beings. Most of the training activities are organised in the framework of the international technical assistance project entitled “Strengthening the national capacity of Belarus in the sphere of combating human trafficking”, implemented jointly by the IOM Office in Minsk and the Ministry of the Interior. During the period from 2014 until the end of 2016, the Training Centre hosted some 30 training sessions, workshops and seminars on the above subjects.

62. GRETA was informed that a training project financed by the Office of the High Commissioner for Human Rights (OHCHR) which started on 23 February 2015 envisages THB training for law enforcement officials, including from other countries of the region, to be organised at the Training Centre of the Academy of the Ministry of the Interior. Another project on migration and border management funded by the European Union (EU) and implemented by the IOM, the UNDP and the UNHCR also includes a training component.

63. Officials from the labour, employment and social protection authorities and territorial social service centres are trained on prevention of THB and rehabilitation of victims of human trafficking at the Republican Institute for Training and Retraining of Employees of the Ministry of Labour and Social Protection. They also take part in training organised at the Training Centre of the Academy of the Ministry of the Interior as well as training activities provided by IOM.

64. Further, the Belarusian authorities have indicated that managerial staff of educational institutions receive training on “Combating trafficking in human beings”, “The socio-economic and labour protection of workers' rights through collective bargaining” and “Migration legislation of the Republic of Belarus, employment of citizens of the Republic of Belarus abroad and combating trafficking in human beings”.

**65. GRETA welcomes the setting up of the International Training Centre on Migration and Combating Trafficking in Human Beings and invites the Belarusian authorities to use this training platform to disseminate information about legislative changes, new trends and the application of the new National Referral Mechanism.**

*iii. Data collection and research*

66. 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.

67. As already mentioned, the Minister of the Interior in his capacity as National Rapporteur collects data related to THB for the purposes of reporting to the Government and informing international organisations. This includes statistical information on victim identification and assistance collected from stakeholders, including specialised NGOs, which is published on the Ministry's website.<sup>20</sup> Data collected by the Ministry of the Interior contains two main components: a) information on combating human trafficking and related crimes by law enforcement bodies, including the number of trafficking victims identified as part of criminal proceedings; and b) the number of victims of trafficking or related offences identified by law enforcement agencies (both in criminal proceeding and before the prosecution is started) and other state bodies, public associations (NGOs), and international and foreign organisations. Both sets of data are disaggregated by sex, age, form of exploitation and country of exploitation.

68. The collection of statistical information on the rehabilitation of victims of THB provided by labour, employment and social protection bodies is the task of the Ministry of Labour and Social Protection and is done by means of quarterly reporting from territorial centres of social service. These reports include information on the number of citizens registered in these centres, the number of persons assisted by the telephone hotline service and the number of people who received assistance in crisis rooms, including victims of THB. The data is used for the preparation of reports to the Council of Ministers on the implementation of government programmes and national plans.

69. As noted in paragraph 11, since 2002 the IOM Office in Belarus has been collecting data on victims of THB who have been identified and assisted by IOM and specialised NGOs. The data is disaggregated according to sex, age, form of exploitation, country of origin and country of destination. The IOM Office also maintains statistical information about the types of assistance provided to victims of THB, including social reintegration (vocational training, employment). GRETA notes that the IOM figures are considerably higher than those provided by the Ministry of the Interior (see paragraph 13): thus in 2013, IOM reported 353 victims against 149 reported by the Ministry of the Interior; in 2014, the figures were respectively 215 and 97, and in 2015, respectively 263 and 121. It is noteworthy that the IOM figures are dominated by victims of THB who were exploited in the Russian Federation (318 in 2013, 118 in 2014, and 185 in 2015) and the majority of them are male. The vast majority of the victims have been referred to IOM by NGOs. In the second place, victims have been referred by law enforcement agencies and in rare cases by embassies and international organisations.

70. Statistical data regarding investigations and prosecutions is collected under several articles of the CC which are considered as related to THB: in addition to Article 181, Articles 181<sup>1</sup> (using slave labour), Article 182 (abduction), Article 171 (exploitation or facilitation of prostitution), Article 171<sup>1</sup> (involving in prostitution or forcing to continue practicing prostitution), Article 173 (involving a child in anti-social activities), and Article 187 (illegal acts to provide employment abroad). This makes it difficult to know how many injured parties and defendants there were specifically in THB cases. Further, GRETA notes that there is a lack of statistics on compensations awarded to victims of THB, as well as the final convictions on traffickers.



71. **For the purpose of preparing, monitoring and evaluating anti-trafficking policies, GRETA considers that the Belarusian authorities should develop and maintain a comprehensive statistical system on trafficking in human beings by compiling reliable statistical data on presumed and formally identified victims of THB from all main actors, including specialised NGOs and international organisations, as well as on the investigation, prosecution and adjudication of human trafficking cases, allowing disaggregation concerning sex, age, type of exploitation, and 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.**

72. As regards research, there have been a number of studies led by NGOs and international organisations. In 2010, a study on compensation for trafficked persons in Belarus was prepared by the Young Women's Christian Association of Belarus and La Strada International Association, with funding from the Danish Programme against THB in Eastern and South-Eastern Europe.<sup>21</sup> In 2013, the International PA "Gender Perspectives" published the book "Characteristics of labour migration from the Republic of Belarus to the Republic of Poland". Further, in 2016 IOM Belarus published a study "Legislation on Combating Trafficking in Human Beings in Belarus: compliance with international and regional law".

73. More research is necessary as regards new trends of THB, in particular trafficking in children, internal trafficking, the use of Internet to commit THB, and risk groups vulnerable to trafficking, such as population of economically disadvantaged regions in Belarus, people fleeing the conflict in Ukraine, Roma communities and children without parental care. Further, the lack of information of the extent of THB for the purpose of labour exploitation warrants research in this area.

74. **GRETA considers that the Belarusian authorities should conduct and support research on THB issues as an important source of information for the evaluation of current programmes and for planning future policy measures. More research is needed in order to shed light on new trends of human trafficking in Belarus and inform policy makers, to establish root causes and groups most vulnerable to THB, including among foreign nationals, the extent and characteristics of trafficking for the purpose of labour exploitation, as well as the misuse of the Internet for the commission of THB, including through social networks.**

*iv. International co-operation*

75. 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).

76. Article 25 of the Law "On combating trafficking in human beings" provides the basis for co-operation with other states, law enforcement agencies and foreign organisations involved in combating THB. International co-operation in general is regulated in Chapter 5 of the Law and in the National Action Plan on Combating Crime and Corruption 2013-2015. International co-operation in criminal cases on THB is provided according to international treaties or on the basis of the principle of reciprocity.

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Available via the link:

<http://lastradainternational.org/Isidocs/La%20Strada%20Belarus%20research%20on%20Compensation.pdf>

77. Along with the international agreements listed in paragraph 12, other international legal instruments and decisions are applicable to international co-operation in this field, such as the 1949 UN Convention on the Suppression of THB, and regional agreements concluded within the Commonwealth of Independent States (CIS).<sup>22</sup> In addition, the CIS decision on harmonisation of law in the area of THB (2008), the CIS decision on a model-law on assistance of THB victims (2008), the CIS decision on co-operation concerning THB (2013), and the CIS Decision on training to combat THB (2008) are also relevant.

78. Further, Belarus has concluded bilateral agreements on international legal assistance in criminal matters with a number of countries.<sup>23</sup> In addition, agreements on co-operation in the field of combating trafficking in human beings have been concluded by Belarus with the Commonwealth of Independent States and Turkey.<sup>24</sup>

79. The Criminal Procedure Code provides that the competent authorities carrying out preliminary investigations can send requests for legal assistance. According to the Belarusian authorities, the requirement to promptly inform the requesting party of the results of a request for legal assistance is always respected. The competent authorities can also provide information to foreign counterparts on their own initiative, without prior request. Such information may be transmitted through Interpol via liaison officers or directly to the interested foreign law enforcement agencies. Only operative information about traffickers and facts of THB may be transferred to foreign law enforcement agencies without prior request.

80. According to information provided by the Belarusian authorities, in 2012-2014, transnational trafficking cases were investigated jointly by the criminal police units of the Ministry of the Interior and the law enforcement agencies of the United Kingdom, the Netherlands, Germany, the Czech Republic, Lithuania, France, Poland, Australia, Turkey, Israel, Ukraine and the Russian Federation. Since 2002, joint law enforcement efforts of Belarusian and foreign counterparts have resulted in the disruption of 21 transnational criminal organisations and 85 organised groups which committed 300 crimes related to THB. Belarusian law enforcement authorities interact with their counterparts in other CIS member states within the framework of the Programme of Co-operation among the CIS member-states in the fight against trafficking in human beings for 2014-2018.

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<sup>22</sup> Agreement on Co-operation of the CIS Member States in Combating Trafficking in Persons, Human Organs and Tissues of 25 November 2005; Agreement on Information Exchange in Combatting Crime (within the CIS) of 22 May 2009; Agreement on Co-operation Between the Offices of Prosecutors General of the CIS Member States to Combat Trafficking in Persons, Human Organs and Tissues of 3 December 2009; Agreement on Co-operation Between the Ministries of Internal Affairs (Police) of the CIS Member States to Combat Trafficking in Human Beings of 17 September 2010;

<sup>23</sup> China, Cuba, Cyprus, Czech Republic, Bulgaria, Egypt, Estonia, Finland, Hungary, India, Iran, Latvia, Lithuania, Poland, Serbia, Sri Lanka, Syria, Turkey, Venezuela, Vietnam.

<sup>24</sup> Agreement on Co-operation of the Commonwealth of Independent States (CIS) in the fight against trafficking in human beings, human organs and tissues (Moscow, 25 November 2005); Agreement on Co-operation of the Ministries of the Interior of the CIS in the fight against trafficking in human beings (Saint-Petersburg, 17 September 2010); Memorandum of Understanding between the Ministries of Internal Affairs of Belarus and Turkey on co-operation in the fight against human trafficking and illegal migration (Minsk, 28 July 2004).

81. Belarus had been active at the level of the United Nations in the area of combating human trafficking. At the UN Millennium Summit in 2005, the President of Belarus proposed an initiative to enhance international efforts to combat THB. Belarus has sponsored six UN General Assembly Resolutions concerning THB, adopted respectively at the 61st, 63rd, 64th, 67th, 68th and 70th General Assembly sessions. Further, in February 2010, upon Belarus' initiative, a Group of Friends against Human Trafficking was set up in the UN, which brings together 24 countries from different regions of the world.<sup>25</sup> The Group of Friends has led the process which resulted in the adoption of the UN Global Action Plan against human trafficking on 30 July 2010. The UN General Assembly has adopted several more resolutions on combating THB, initiated by Belarus, including the most recent one on "Improving the co-ordination of efforts against trafficking in persons".<sup>26</sup> Further, Belarus pursues active co-operation with the OSCE, in particular the Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, through the organisation of conferences and side-events.

82. There have been a number of international projects related to THB funded by donors and implemented by the Belarusian authorities and NGOs. By way of example, between 2010 and 2015, the Icelandic Red Cross implemented a project on THB together with the Belarusian Red Cross Society, funded 70% by the Icelandic Ministry of Foreign Affairs and 30% by the Icelandic Red Cross.

83. **GRETA commends the efforts of the Belarusian authorities to develop international co-operation in the field of action against THB and invites them to continue these efforts with a view to preventing THB, providing assistance to Belarusian and foreign victims of trafficking, and prosecuting traffickers.**

## **2. Implementation by Belarus of measures aimed to prevent trafficking in human beings**

84. 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**

85. With the assistance of the Ministry of Communications and Information, a telephone hotline number (113) for safe migration and anti-trafficking was established in 2011. As mentioned in paragraph 29, in three of the country's regions and Minsk the hotline is managed by the PA "Gender Perspectives" and in the other three regions, by the PA "Business Women Club". The Ministry of the Interior, in co-operation with these NGOs, has organised social advertising on TV and billboards to inform the public about the hotline. In 2014-2015, there were 1 077 consultations via the hotline on issues of safe migration and THB.

86. In 2013-2014 the PA "Gender Perspectives" implemented a campaign entitled "Ask while you're here" to inform potential migrants about safe travel abroad, legal employment and behaviour in crisis situations. The campaign spread knowledge of the NGO's website and as the result of the campaign, the number of visitors to the website and the number of e-mail consultations increased considerably (more than 276 000 visits to the website and more than 1 100 electronic consultations per year).

<sup>25</sup> Bangladesh, Bahrain, Belarus, Bolivia, Chile, Ecuador, Egypt, Eritrea, India, Kazakhstan, Kyrgyzstan, Laos, Libya, Nigeria, Nicaragua, the Philippines, Qatar, Russia, Singapore, Tajikistan, Turkmenistan, United Arab Emirates, Uzbekistan, Venezuela.

<sup>26</sup> Resolution A/RES/70/179, available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/70/179](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/179)

87. Another campaign entitled “Going abroad? – Call!” started in 2013 and continued until the end of 2015. During this campaign, flyers and posters were produced and distributed at Departments of Citizenship and Migration, educational institutions and territorial social service centres. The contribution provided by the state to this campaign was equivalent to around USD 128 000 in 2014 and around USD 201 500 in 2015.

88. As Belarus is mostly a country of origin of trafficking victims, specialised NGOs pay considerable attention to prevention of THB. According to the authorities, in 2014-2015 NGOs conducted some 2 230 different events with at-risk groups, including school children, students, children without parental care, children registered with the Juveniles’ Inspectorate and people who are unemployed or have low income. These events were attended by an estimated 80 800 persons.

89. Discussions, round tables and classes are also organised at schools to raise awareness of THB among children. The “corners of legal information” at most educational institutions contain regularly updated materials concerning personal safety issues, secure employment abroad, illegal migration, human trafficking, as well as hotlines numbers. However, representatives of civil society stressed the need of including the topic of THB into general education from earlier stages.

90. The Ministry of the Interior regularly informs Belarusian and foreign nationals about THB risks and safe employment abroad. This information is provided through special programmes, information bulletins and spots on television, radio and in the printed media. The Ministry of the Interior, in co-operation with the UNDP Office in Belarus, also produces information materials on these issues. By way of example, the authorities referred to a video entitled “Night Watch. Undeclared War” which contained an overview of the situation in the areas of combating THB and drug trafficking and was developed by the Ministry of the Interior and the News Agency of the Belarusian Television and Radio Company. There are information displays, using audio and video messages, at airports in Belarus to inform travellers about risks of THB and ways of ensuring safe employment abroad. The Department of Citizenship and Migration of the Ministry of the Interior operates a hotline for safe travel to work abroad, which received 1280 calls in 2015 and 1158 in 2016.

91. Lists of agencies licenced to advertise and mediate employment in foreign countries are published four times a year. The website of the Ministry of the Interior contains detailed information about the procedure for obtaining a license related to employment outside Belarus. Publishing announcements of employment or studies abroad without preliminary authorisation of the Ministry of the Interior and the Ministry of Education is prohibited.

92. As regards measures to prevent trafficking for the purpose of organ removal, GRETA was informed that this aspect is included in the general awareness-raising activities conducted by the Ministry of the Interior. Pursuant to the Law on Transplantation of Organs (adopted in 1997), only kidney and partial liver transplantations are allowed from living donors. In Belarus a total of six hospitals may perform transplantation surgeries and living donor transplantations are done only in Minsk.

93. GRETA welcomes the efforts made in Belarus to raise general public awareness on human trafficking and to target specific groups, in particular young people and persons travelling to work abroad. **GRETA considers that the Belarusian authorities should continue their efforts to prevent THB, in particular for the purpose of labour exploitation, in co-operation with countries where Belarusian nationals are exploited. Future awareness-raising measures should be designed in the light of the assessment of previous measures, focussing on the needs identified and new trends.**

b. Measures to discourage demand

94. 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 it is 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>27</sup>

95. In Belarus, the use of services of a person with the knowledge that he/she is a victim of trafficking in human beings is not a criminal offence. The authorities have expressed the view that it would be possible to prosecute the users of services of trafficked persons for complicity in the commission of THB. The possibility of introducing administrative liability for persons using the services of persons involved in prostitution, including victims of trafficking in human beings, is currently being considered. By way of discouraging demand for sexual services, the authorities have indicated that they carry out raids and monitor the Internet for advertisements of sexual services.

**96. GRETA considers that the Belarusian authorities should enhance their efforts to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with NGOs, trade unions, international organisations and the private sector.**

**97. Further, GRETA invites the Belarusian authorities to consider establishing as a criminal offence the use of services which are the object of exploitation as defined in Article 4 of the Convention, with the knowledge that the person is a victim of trafficking in human beings.**

c. Economic, social and other initiatives for groups vulnerable to THB

98. GRETA was informed that the key challenge in Belarus in terms of preventing trafficking is the difficult economic situation of people targeted by traffickers. An in-depth analysis and mapping of risk groups is needed to more accurately tailor the preventive measures to the needs for such groups.

99. The Law "On employment of the population of the Republic of Belarus" is the main legal instrument for defining and implementing the employment policy. According to Article 11 of this law, the state provides additional guarantees in the field of employment to persons in need of social protection, such as persons with disabilities, first-time job seekers under the age of 21, parents of large families and single-parent families, parents looking after children with disabilities and former prisoners. The annual state programme on promotion of employment contains measures such as assistance in starting a business, training, employment on paid public works, temporary jobs within the framework of "Youth practice" and developing an information system on employment opportunities on the website of the Ministry of Labour and Social Security. A nationwide "job bank" is available on the site of the State Employment Service, providing access to information about available vacancies.

100. The system of state-funded social services in Belarus guarantees minimum standards in the areas of health care, education, social assistance and social services to people in difficult economic and life circumstances, which include victims of THB. The Ministry of Labour and Social Protection contributes to preventing THB by promoting employment and competitiveness on the labour market, expanding the network of institutions providing social assistance and other services to victims of THB, and carrying out information activities to prevent THB.

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<sup>27</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>

101. Belarus has put in place economic support measures for families with children including allowances, benefits and social guarantees. Working mothers are entitled to a child-care leave and social benefits until the child reaches the age of three, with the preservation of their jobs.<sup>28</sup> Further, a programme of targeted social assistance is in place for low-income families, which includes monthly social allowance, lump-sum social security benefits and reimbursement of certain indispensable child-care expenses (e.g. food for children up to two years of age). The main recipients of these benefits are single-parent families and large families (74% of all recipients).<sup>29</sup> As of 1 January 2015 for the birth of a third and each subsequent child families receive a lump-sum family capital allowance (non-cash allowance) of 10 000 USD. According to the authorities, these measures contribute to reducing the proportion of low-income families<sup>30</sup> and are therefore relevant to preventing THB.

102. Unregistered children are at higher risk of being trafficked and therefore GRETA pays particular attention to measures taken to ensure the registration of all children at birth, in particular from socially vulnerable groups. According to the Belarusian authorities, births always take place in a medical setting and no problems are reported as regards birth registration. The state policy in the field of education is based on the principle of compulsory general education until 9th grade.

103. As noted in paragraph 10, a considerable number of children were reported to have been trafficked for the purpose of sexual exploitation, including the production of child pornography. In 2015 the concept of “safe life for children” has been modernised and includes the use of Internet-based tools and education of parents on computer literacy in order to enable them to effectively protect their children. The Investigative Committee, in co-operation with the PA “Women’s Business Club” and funding from the State Department of the United States of America, developed in 2016 a project on the protection of the rights of child victims of sexual violence and trafficking. This project will be implemented in 2017 and envisages the organisation of workshops and awareness campaigns in all regions of the country. It also envisages developing guidelines on the identification and investigation of child pornography cases and the referral of victims for assistance, and drawing up recommendations for the prevention of crimes against children, including through the Internet.

104. With a view to combating violence against women, in 2012-2015 the Ministry of Labour and Social Protection implemented a project entitled “Development of national capacities for Belarus in counteraction to domestic violence in conditions of achievement of gender equality” and the Ministry of the Interior implemented a project entitled “Improving national capacity in counteraction to domestic violence in Belarus”. In 2012-2015 a large-scale campaign entitled “A house without violence” was implemented as part of the technical assistance framework supported by the United Nations Population Fund (UNPF). Since August 2012 the PA “Gender Perspectives” has been operating a nationwide hotline for victims of domestic violence. The National Action Plan on Gender Equality referred to in paragraph 15 is also relevant to combating THB through eliminating gender inequality and providing conditions of equal participation of men and women in all spheres of life. However, GRETA notes that the Concluding Observations of the Committee on the Elimination of Discrimination against Women (CEDAW)<sup>31</sup> refer to an increase in the prevalence of gender-based violence against women, including sexual and psychological violence.

105. As noted in paragraph 11, some 160 000 Ukrainian nationals have fled the conflict in the East of Ukraine and currently reside in Belarus. GRETA was informed of a decree adopted in 2014 which contains specific social and economic measures to assist Ukrainian nationals arriving from the Donetsk and Luhansk regions of Ukraine, including waivers on employment and residence fees and access to education and medical assistance.

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<sup>28</sup> There are 11 types of state allowance. The lump-sum payment on the birth of the first child is 1 801 Roubles (about €890), and for the second and subsequent children 2 521 Roubles (€1240). Allowance for childcare is paid until the child is three years old, regardless of the employment and income of parents. In total, state allowance covers 551 700 children. In 2015, these allowances equalled 1 697,14 million Belarusian Roubles.

<sup>29</sup> According to the authorities, in 2014, some 217 800 people received this social assistance, which equalled about €31 294 040, while in the first nine months of 2015 benefits were provided to 189 200 people (€22 975 152).

<sup>30</sup> According to statistical data, the proportion of low-income families with children was 7.6% in 2015, compared to 9.2% in 2012.

<sup>31</sup> CEDAW/C/BLR/CO/8, adopted by the Committee at its sixty-fifth session (24 October-18 November 2016).

106. While welcoming the above-mentioned measures, **GRETA considers that the Belarusian authorities should further strengthen the prevention of THB through social and economic empowerment measures for groups vulnerable to THB. Such measures should be based on the root causes of THB (economic and social conditions, gender inequality, gender-based violence, vulnerability of children, and absence of employment opportunities) and should aim to decrease and ultimately eliminate these causes.**

d. Border measures to prevent THB and measures to enable legal migration

107. The State Border Committee carries out checks of persons crossing the country's border and provides information about risks of THB and where to seek help, including contact numbers of NGOs, diplomatic and consular representations. Information stands have also been set up at the borders crossing points, drawing attention to the importance of travelling in compliance with the laws and regulations of foreign countries and the risks of deportation for failing to do so. About 100 border guards were trained in nine sessions organised by IOM and NGOs in 2015. As the result of the training, typologies of trafficking victims were developed and are being used. However, no victims of THB have been identified by the State Border Committee so far.

108. Information about the rules of entry and stay in Belarus is posted on websites of diplomatic missions of Belarus in foreign countries and is also displayed at their premises. Nationals of countries considered as "migratory disadvantaged states" are interviewed personally and visas for them are issued on the basis of requests of Belarusian legal entities or private persons living in Belarus. If during visa applications the consular officers have reasonable grounds to believe that the person is a victim of human trafficking, the relevant information is transferred to the Ministry of Foreign Affairs of Belarus, as well as to other competent authorities (the Ministry of the Interior, the State Security Committee, the State Border Committee).

109. Border officials interview Belarusian nationals who return after having been deported from abroad, to establish the circumstances and reasons for their deportation. The interviews are carried out with the participation of investigative officers of the State Border Committee and psychologists. Information about deported Belarusian nationals is transmitted quarterly to the Main Department for Drug Control and Combating THB. In 2016, five such cases were transmitted to the Ministry of the Interior for further examination of indicators of THB, but none of them resulted in the identification of victims of THB. GRETA was informed that standard operative procedures had been drawn up in cooperation with the IOM and distributed to all territorial entities of the State Border Committee.

110. **GRETA invites the Belarusian authorities to continue their efforts to detect and prevent THB through border control measures, and to enable migration to take place legally.**

e. Measures to ensure the quality, security and integrity of travel and identity documents

111. Belarusian passports conform to the International Civil Aviation Organisation (ICAO) standards established in 1996 under Doc 9303 "Machine Readable Travel Documents". According to the authorities, an effective system of manufacturing, personalisation, issuance and control of identity documents is in place, which uses an automated centralised system of registration of issued documents. In 2006 the passport blanks were modernised and the security level against counterfeiting was increased. Belarus is currently considering the transition towards the use of biometric identity documents. Activities related to counterfeiting, illicit manufacturing and issuance of travel and identity documents are punishable under Article 380 of the CC.

### **3. Implementation by Belarus of measures to protect and promote the rights of victims of trafficking in human beings**

#### **a. Identification of victims of trafficking in human beings**

112. 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, and 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.

113. Pursuant to Article 17, paragraph 1, of the Law “On combating trafficking in human beings”, in conjunction with Article 8, paragraph 1, of the same law, the identification of victims of THB in Belarus is carried out by the state bodies responsible for combating THB, i.e. agencies of the Ministry of the Interior, state security services, border guard agencies, prosecuting authorities and the Investigative Committee. This provision is replicated in Chapter 2, paragraph 3, of Decree № 485 of the Council of Ministers approving the regulation on the identification of victims of THB (hereinafter “Victim Identification Regulation”), in force as of 22 June 2015. According to this regulation, the bodies performing identification, after providing the possible victim with an interpreter and a legal representative, if needed, interview the person and fill in the identification questionnaire which is annexed to the regulation, after which they inform the person of his/her rights, clarify his/her needs and refer him/her to an appropriate organisation for assistance. In order to perform, the responsible bodies check the available information and collect additional evidence, if necessary by carrying out operational and investigative activities.

114. According to Chapter 3 of the Victim Identification Regulation, the identification of possible victims of THB can be initiated by diplomatic and consular offices of Belarus, employment and social protection agencies, educational institutions, health-care organisations and centres for the protection and assistance of victims of THB. Further, Chapter 4 provides that NGOs and international organisations working in the anti-trafficking area can participate in the identification of victims of THB by detecting possible victims, including together with state bodies, and initiating their identification. The “initiation of identification” consists of interviewing the possible victim, if necessary after providing him/her with an interpreter and a legal representative, and completing the above-mentioned identification questionnaire. The questionnaire contains detailed information about the identity of the person, what happened to him/her at the stages of recruitment, transportation, exploitation and release/return, and the person’s current situation. The possible victim has to sign the completed questionnaire. The information contained in it is treated as confidential. Once the questionnaire has been completed by the body initiating the identification, it is transmitted to the law enforcement authorities carrying out the identification.

115. The process of identification as a victim of THB should be completed within 30 days of the questionnaire being completed. During this period, possible victims are entitled to receive state-funded assistance. At the end of the identification process, the relevant body has to declare whether the person concerned is a victim of trafficking or not. In case of a negative outcome, the person is no longer entitled to assistance as a victim of THB, but may qualify for assistance under another category.

116. Victims of trafficking identified in other countries are not given automatically the status of victim of trafficking in Belarus, but need to undergo identification by the competent authorities as explained above.



117. According to information provided by the Belarusian authorities, the identification of about 90% of victims of THB was initiated by law enforcement agencies in the course of operational and investigative activities. Representatives of public bodies and NGOs informed GRETA that cases of self-reporting by victims are very rare.

118. GRETA was informed that the Victim Identification Regulation had been disseminated to the units of the Department for Drug Control and Combating Trafficking in Human Beings and other relevant units of the Ministry of Internal Affairs. Officials of the Ministry of Foreign Affairs have access to this document through the website of the Ministry. Medical professionals are reportedly also familiar with the regulation and in case of detecting a possible victim of trafficking they would fill in the identification questionnaire. Other state bodies and public associations have access to this document via public information sources. However, no specific training on the practical application of the Regulation has been conducted for the time being.

119. The number of victims of internal THB for the purpose of sexual exploitation identified in Belarus has been on the increase.<sup>32</sup> GRETA was informed the Main Department for Drug Control and Combating Trafficking in Human Beings carried out proactive investigations of THB and related offences and identified victims as a result of raids in casinos, bars and hotels.

120. As noted in paragraphs 11 and 56, there have been very few cases of identified victims of trafficking for the purpose of labour exploitation. The statistics provided by the Belarusian authorities in this respect refer to one person identified in 2013 and 16 Vietnamese men identified in 2014. The identification of victims of THB for the purpose of labour exploitation among Belarusian citizens working abroad is complicated due to the fact that often there is no evidence available to start a criminal investigation in Belarus and no criminal investigations are initiated in the country of destination (predominantly the Russian Federation). On the other hand, the IOM statistics on victims of trafficking assisted by the IOM office in Minsk refer to 211 victims of trafficking for the purpose of labour exploitation in 2013, 143 in 2014 and 203 in 2015, the majority of whom were men. According to the Belarusian authorities, the difference between the statistical information collected by the IOM and that of the Ministry of the Interior is due to the fact that the Ministry collects only information concerning victims identified in criminal cases, whereas IOM data includes all persons who have come to their attention and asked for assistance, regardless of whether there is evidence of a criminal offence. The authorities consider that this discrepancy will disappear through the application of the Victim Identification Regulation, which enables the identification of a person as a victim of trafficking not only in the context of criminal cases, but also on the basis of operational information and inquiries.

121. As regards the 16 Vietnamese men identified as victims of THB, GRETA was informed that they were irregular migrants who had been transported from the Russian Federation to Belarus in 2014 following which the Belarusian man who organised their transportation exploited them for a period of time on a farm. An investigation was initiated and the perpetrator was convicted for the use of slave labour (see also paragraphs 151 and 164).

122. Standard Operating Procedures for border guard officials on the identification and referral of victims of trafficking (as well as victims of sexual violence or gender-based violence) among irregular migrants stopped at the border of Belarus or residing illegally in the country, as well as asylum seekers, have been prepared in 2016 by IOM, the State Border Committee, UNHCR and UNDP, with financial support from the EU.

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<sup>32</sup> According to data from the Ministry of the Interior, there were 124 victims of internal trafficking in 2012, 90 in 2013, 54 in 2014, and 77 in 2015. However, these figures include victims of related crimes, such as exploitation/facilitation of prostitution and child pornography.

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

123. Applications for international protection are examined by the Department of Citizenship and Migration. Until 2014 Belarus received some 150-200 asylum applications per year, mostly from citizens of Afghanistan, Syria and Georgia, but since then the number of applications has grown to around 1 000 per year, about 90% of which are from Ukrainian nationals. No victims of THB have been identified among asylum seekers in Belarus. The authorities have indicated that the issue of drafting of guidelines to identify victims of trafficking among asylum seekers may be considered in 2017 in the context of bringing national legislation into conformity with the Law "On the introduction of amendments and additions to certain laws of the Republic of Belarus on forced migration", dated 20 July 2016.

124. The Belarusian authorities have identified three victims of THB for the purpose of kidney removals as the result of criminal investigations. A joint operation was conducted in 2010-2012 by Belarusian law enforcement authorities, in co-operation with the Ukrainian and Israeli police and EULEX Kosovo\* (the so-called "Medicus Clinic case" which concerned trafficking for the purpose of kidney removal in a clinic in Pristina).

125. There are no separate provisions regarding the identification of child victims of THB in the Law "On combating trafficking in human beings" or the Victim Identification Regulation, which apply in a similar way to adults and children. In the course of the visit, representatives of the Ministry of Health and the Ministry of Education informed GRETA of the lack of specific instructions on interviewing child victims of trafficking with a view to their identification and referral to assistance. The statistics provided by the Belarusian authorities indicate that 14 children were identified in 2013, 12 in 2014, 13 in 2015 and 71 in 2016 (almost all of them being victims of sexual exploitation), while from IOM statistics on assisted victims of THB refer to 14 child victims in 2013, 41 in 2014 and 47 in 2015.

126. GRETA welcomes the adoption of the Victim Identification Regulation, but notes that the identification of victims of trafficking is in practice carried out by law enforcement bodies and is closely linked to establishing the commission of a criminal offence of THB or a related offence. In GRETA's view, this does not fully conform to the human rights-based approach followed by the Council of Europe Anti-Trafficking Convention and risks leaving out victims who, for different reasons, cannot present sufficient evidence to prove that they have been subjected to exploitation. GRETA refers to paragraph 134 of the Explanatory Report to the Convention which stresses that the identification process is independent of any criminal proceedings, as well as the 1985 United Nations Declaration on the Principles of Justice for Victims of Crime and Abuse of Powers, according to which a person may be considered a victim "regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted".<sup>33</sup> In their comments on GRETA's draft report, the Belarusian authorities have argued that the identification of a person as a victim of trafficking can be carried out without the opening of a criminal case, but in order for an identification decision to be made, the fact of exploitation of the presumed victim needs to be established. In other words, the person's allegations that he/she has been exploited are not sufficient and there has to be evidence of *corpus delicti* in the acts and circumstances described by the presumed victim. GRETA stresses that it should be sufficient for persons to present reasonable grounds that they have been subjected to a combination of the three elements of the definition of THB referred to in paragraph 40 (action, means and purpose) in order to be considered as victims of trafficking.

127. **GRETA urges the Belarusian authorities to take further steps to improve the identification of victims of THB, in accordance with the provisions of Article 10 of the Convention, and in particular to:**

- **ensure that, in practice, the determination of reasonable grounds to believe that a person is a victim of human trafficking does not depend on the presence of elements to prove a criminal offence of THB or related offence;**

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<sup>33</sup> Further, according to the UNODC Model Law against Trafficking in Persons, "a person should be considered and treated as a victim of trafficking in persons, irrespective of whether or not there is already a strong suspicion against an alleged trafficker or an official granting/recognition of the status of victim". UNODC Model Law against Trafficking in Persons, p. 42.

- **promote a multi-agency involvement in the decision-making process leading to the identification of victims of trafficking, taking account of the findings and expertise of all relevant organisations and entities, including labour, employment and social protection services and public associations;**
- **introduce a procedure for the identification of child victims of trafficking which takes into account the special circumstances and needs of child victims of THB, involves child specialists, includes outreach activities and ensures that the best interests of the child are the primary consideration;**
- **provide frontline staff (in particular police officers, border guards, social workers and health-care professionals) with operational indicators, manuals and instructions which are regularly updated in order to reflect the changing nature of human trafficking and types of exploitation;**
- **pay increased attention to detecting victims of THB among asylum seekers and persons detained as irregular migrants and provide additional training to staff who come in contact with such persons. In this context, GRETA stresses the importance of providing presumed victims of THB with access to interpretation and information on their rights, in a language they can understand, from the early stages of the procedure.**

b. Assistance to victims

128. 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.

129. Articles 18 to 20 of the Law "On combating trafficking in human beings" set out the protection and assistance measures for victims of THB and related offences (i.e. facilitation or forcing to prostitution, abduction, slavery, illegal acts to provide work abroad, and production and distribution of pornographic materials). These measures are applicable to persons who are in the process of being identified as victims of THB, which may last up to 30 days, as well as formally identified victims. The social protection and rehabilitation measures include temporary accommodation, food, legal assistance, including free legal aid provided by the Bar Association, health care provided by public health-care organisations irrespective of the residence of the victim, psychological assistance and counselling, socio-educational assistance, assistance in finding employment, as well as other types of assistance in accordance with the decisions of relevant local authorities. Regarding children, the law provides for measures to locate their family, provide them with care in foster families or place them in a residential care institution. Further, as per Article 20, paragraph, 4 of the Law "On combating trafficking in human beings", victims of THB may be granted financial support in accordance with the legislation. The assistance and protection measures aim at ensuring the safety of victims, providing them with social protection and rehabilitation, and suspending any expulsion and deportation orders.

130. The Law "On combating trafficking in human beings" envisages that adult victims of THB should be referred to territorial centres for the provision of social services. As of January 2017, a total of 146 such territorial centres operate under the responsibility of the Ministry of Labour and Social Protection, and two city centres for social services for families and children in Minsk and Gomel. There are 124 crisis rooms within these centres for victims of domestic violence, victims of natural disasters, persons in difficult life circumstances (such as former prisoners, elderly persons or persons suffering from alcohol dependency) and victims of THB.

131. There are no specialised shelters for child victims of trafficking. Socio-pedagogical centres provide temporary accommodation and rehabilitation to children in need of protection, including orphans, children without parental care, victims of human trafficking from 3 to 18 years of age, and children in other difficult situations, until they are returned to their families or a decision is taken on their future living arrangements. At the beginning of the 2016/2017 academic year the education system included 138 socio-pedagogical centres, 106 of which had a children's shelter. No child victims of trafficking were admitted in children's shelters in 2014-2016. Further, the Ministry of Health is responsible for providing assistance to child victims of THB under the age of three who can be placed in one of the country's 10 children's houses; however, no such victims of trafficking have so far been identified.

132. The standards for the provision of social services are set out in a number of by-laws, in particular the Decree of the Council of Ministers № 1218 of 27 December 2012 "On some issues of providing of social services", Decree No. 14 on 18 March 2004 "On approval of the Regulations on socio-pedagogical establishments", and Decree No. 116 of on 25 July 2011 "On approval of the Regulations on social, educational and psychological service of the educational institution". Medical services are provided in accordance with Decree No. 41 on 28 April 2012 "On establishing a list of medical services provided by public health organisations, including inpatient treatment, to victims of trafficking, regardless of their place of permanent residence".

133. As regards state-funded legal aid, according to Decree No 122 "On the procedure for reimbursement of salaries of lawyers providing legal assistance to victims of trafficking and victims of acts of terrorism", the work of lawyers is reimbursed at a rate of 70% for representing a victim of THB at the Supreme Court, regional courts and Minsk city court, and 50% for representing victims of THB at district courts. The Decree does not cover the lawyers' travel expenses, which often hinders the continuous provision of legal aid to the victim of THB by the same lawyer. According to representatives of the Bar Association, not many applications for legal assistance have been received from victims of THB. However, specialised NGOs employ lawyers who have experience in representing victims of THB. For example, PA "Business Women's Club" in Brest has employed the same lawyer for nine years whose salary is covered by IOM under a project.

134. NGOs can provide assistance to any person considered to be a victim of THB. Article 21 of the "On combating trafficking in human beings" envisages the setting up of centres for protection and assistance of victims of THB which may be established by international organisations or NGOs for the purpose of providing victims with temporary accommodation, legal, psychological and other types of assistance. The assistance provided by such centres is not funded by the state budget. As a result of amendments passed in 2015 to the Law "On social services", specialised NGOs are now entitled to apply for public funding of services they provide to victims of THB. GRETA welcomes this development. However, GRETA was informed that so far only the Belarusian Red Cross Society has been contracted by the municipality of Lida to provide socio-psychological assistance to victims of THB and victims of domestic violence (the municipality covers 25% of the salary of a psychologist working with such victims).

135. Since 2006, the IOM Office in Minsk has operated a rehabilitation centre for victims of THB, which GRETA visited during the evaluation visit. The centre was initially envisaged for women and children, but at present male victims of THB can also be accommodated there. Victims of THB are referred to the centre by public bodies and NGOs, including without having been formally identified as victims. The average stay of victims is said to be two weeks, but it can be longer if necessary (e.g. in one case, a Ukrainian boy spent a year at the centre before turning 18 and returning to Ukraine). The experience of the centre's staff suggests that accommodating men, women and children in the same facility can be challenging. According to information provided by IOM, the rehabilitation centre assisted 79 victims of THB in 2012, 66 in 2013, 55 in 2014 and 73 in 2015. Staff include social workers, a medical doctor and a psychologist.

136. Further, GRETA visited the social services centre in Moskovsky District of the town of Brest. It was set up through a project funded by UNDP on combating domestic violence and gender inequality. A crisis centre for women and children victims of violence, victims of natural disasters and victims of trafficking was opened in 2013. It occupies a flat with two bedrooms, a kitchen and a bathroom, located in a residential area at a confidential address. Material conditions are of a high quality, but there is no permanent presence of staff (a psychologist reportedly attends the crisis centre periodically). GRETA was informed that so far no victims of THB had been referred to this crisis centre.

137. In addition, GRETA visited a social service centre in Minsk which also has a crisis room for victims of domestic violence and a room for persons in difficult life circumstance where victims of THB may be accommodated. Persons are referred to the centre by the law enforcement authorities, medical and educational institutions. The centre provides assistance in accordance with an individual plan agreed with the person concerned, based on a needs assessment. The length stay was said to vary from five to fifteen days. The expenses are covered from the budget of the social service centre, allocated by the Minsk municipal authorities.

138. GRETA also visited the SOS Children's Village in Mogilev, which accommodates women and children victims of domestic violence and child victims of THB.<sup>34</sup> The financing of this facility is shared between the local budget and a foreign donor organisation which initiated its setting up and provided full funding at the early stages. According to the Chief Executive Officer of the "SOS Children's Villages", only one victim of trafficking was assisted in the SOS Children's Village in Mogilev in 2010.

139. In Minsk, GRETA visited the socio-pedagogical centre of Leninsky District, which has a shelter for child victims of domestic violence and other forms of abuse. Material conditions were of a high standard and the staff included teachers, teaching assistants, psychologists, social educators and a nurse. No victims of trafficking had been accommodated at this shelter.

140. The Belarusian Red Cross Society operates five day-care centres called "Helping hands", where staff and volunteers get in touch with possible victims of THB and provide them with assistance, psychological help and information, and act as intermediaries for medical assistance.

141. According to information provided by the authorities, 54 victims of THB were assisted in 2012, 36 in 2013 and 32 in 2014. The authorities have explained the difference between the number of identified victims (see paragraph 10) and the number of those who received assistance by the refusal of some of the victims to benefit from protection and rehabilitation. Prior to Decree № 485, a person was officially recognised as a victim of trafficking in human beings only if a criminal case was opened. Since the entry into force of the Victim Identification Regulation, possible victims of trafficking have been referred by public associations to labour, employment and social protection services and thus four possible victims were assisted in 2015 and 12 victims in 2016.

142. Representatives of civil society organisations and local authorities informed GRETA that there is a shortage of funds to cover the different services for trafficking victims. GRETA notes that the social services provided to vulnerable categories of people do not fully match the specific needs of victims of THB.

143. **GRETA considers that the Belarusian authorities should enhance their efforts to provide assistance to victims of trafficking, and in particular to:**

- **ensure that assistance is provided for as long as needed to presumed and formally identified victims of trafficking and is not discontinued if no criminal proceedings are initiated;**

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For more information, visit: <http://www.sos-childrensvillages.org/where-we-help/europe/belarus/mogilev>

- ensure that all assistance measures provided for in law are guaranteed in practice; when assistance is delegated to NGOs or other non-state actors as service providers, the State has an obligation to provide adequate financing and ensure the quality of the services delivered by the NGOs;
- provide appropriate and safe accommodation with a sufficient number of places for victims of trafficking, including men and children, in the light of the assessment of trafficking trends in Belarus;
- ensure that the services available are adapted to the specific needs of trafficking victims and that minimum standards are guaranteed when victims of trafficking are accommodated in structures not specifically designed them;
- facilitate the reintegration 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 regular training to all professionals responsible for implementing assistance measures for victims of trafficking.

144. Further, **GRETA urges the Belarusian authorities to take steps to provide for specific assistance for child victims of trafficking which takes into account their specific circumstances and the best interests of the child, and to train all professionals working with child victims of trafficking to recognise and respond appropriately to their needs.**

c. Recovery and reflection period

145. 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 to 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.

146. There is no provision in Belarusian law establishing a recovery and reflection period for persons in respect of whom the authorities have reasonable grounds to believe that they are victims of THB. The authorities have referred to paragraph 31 of the Victim Identification Regulation which envisages that a person who may have been subject to THB or a related offence can benefit from protection and rehabilitation measures for the duration of 30 days, regardless of his/her participation in the criminal investigation and proceedings. However, GRETA notes that the Victim Identification Regulation does not refer to a recovery and reflection period as such and does not define the purpose of this period. Further, it is not clear who grants the 30-day period.

147. GRETA stresses that the purpose of the recovery and reflection period under the Convention is to enable possible victims of trafficking to escape the influence of traffickers and/or to take an informed decision on co-operating with the competent authorities. **GRETA urges the Belarusian authorities to ensure that the recovery and reflection period provided for in Article 13 of the Convention is specifically defined in law and that possible victims of THB, especially those at threat of expulsion from the country, are systematically informed of the possibility to use a recovery and reflection period and are effectively granted such a period.**

d. Residence permits

148. Article 14(1) of the Convention provides that victims of trafficking shall be issued with renewable residence permits. Provision for a residence permit meets both the victims' needs and the requirements of combatting human trafficking. The requirements laid down in the Convention for issuing a residence permit are that the victim's stay is necessary owing their personal situation or it is necessary for the purpose of their co-operation with the competent authorities in the investigation or criminal proceedings.

149. Pursuant to Article 22, paragraph 2, of the Law "On combating trafficking in human beings", foreign citizens or stateless persons who are victims of trafficking and actively assist in the investigation of human trafficking or related offences are given the right to temporarily remain in the country - as a rule, for up to one year - for the purpose of their participation in the criminal proceedings, social protection and rehabilitation. The granting of residence permits is regulated by the Law "On the legal status of foreign citizens and persons without citizenship in the Republic of Belarus" which provides for three regimes: temporary stay (defined as the period covered by the visa, which may not exceed 90 days during the calendar year, but may be prolonged under certain conditions defined in Article 40 of the law), temporary residence (of up to one year, subject to the conditions defined in Article 48) and permanent residence. These provisions are not specific to victims of THB.

150. GRETA notes that the Law "On combating trafficking in human beings" does not contain provisions concerning the issuance of residence permits to child victims of trafficking, taking into consideration the best interests of the child. The Belarusian authorities have stated that the provision of this law apply to all victims of trafficking, including children.

151. No victims of THB have received residence permits in Belarus since 2012. The 16 Vietnamese citizens identified as victims of THB were detained as irregular migrants and subsequently deported (see also paragraph 164).

152. GRETA recalls that Article 14 of the Convention allows Parties to choose between granting a residence permit in exchange for co-operation with the authorities or on account of the victim's needs, or indeed to adopt both simultaneously. There are situations in which victims might be afraid to co-operate in the investigation because of threats from the traffickers. Granting a residence permit on account of the personal situation of the victim takes in a range of situations, such as the victim's safety, state of health and family situation, and tallies with the human-rights based approach to combating THB.

**153. GRETA considers that the Belarusian authorities should take additional steps to ensure that victims of human trafficking can effectively benefit from the right to obtain a renewable residence permit, as specified in Article 14 of the Convention, without prejudice to the right to seek and enjoy asylum. The relevant legislation should be amended to provide for the issuing of residence permits for child victims of trafficking, when legally necessary, in accordance with the best interests of the child and, where appropriate, renewed under the same conditions (Article 14, paragraph 2, of the Convention).**

154. Further, GRETA invites the Belarusian 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.

e. Compensation and legal redress

155. 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.

156. The Law “On combating trafficking in human beings” does not contain provisions concerning the compensation of victims of trafficking. Pursuant to Article 149, paragraph 1, of the Criminal Procedure Code (CPC), victims of criminal offences may be awarded compensation in the framework of criminal proceedings if they file a civil claim, on the basis of a court decision for damages caused by the offence. Paragraph 5 of this article provides that a person who does not file a civil claim in the context of criminal proceedings has the right to do so in civil proceedings. The injured party making a civil claim is exempt from state fees. Pursuant to Article 156 of the CPC, the prosecution authorities are obliged to take measures to secure the civil action by identifying the property which may be seized and freezing and safeguarding it until the conclusion of the criminal case.

157. There are no statistics on the number of compensations received by victims of THB in criminal proceedings, but GRETA received examples of court decisions where compensation from the perpetrator was awarded to victims who had filed civil claims (usually between 200 and 1 000 euros). However, it would appear that there are delays in enforcing the compensation orders. When traffickers apply for early/conditional release, one of the conditions is that they pay any outstanding compensation orders and this usually helps.

158. According to a 2010 study on compensation for trafficked persons in Belarus, out of 50 women victims of THB surveyed for the purposes of the study, 44% had lodged a compensation claim (of whom 42% for moral damage); 18% said that they received the compensation in cash after the criminal process. 90% of the surveyed victims had taken part in the criminal process as victims and the remainder as witnesses. Those who did not lodge compensation claims either did not know about this possibility or did not want to do so for different reasons (e.g. fear of publicity of revenge).<sup>35</sup>

159. There is currently no provision in Belarus for State compensation to victims of violent crimes, including victims of THB.

160. **GRETA considers that the Belarusian authorities should adopt further measures to facilitate access to compensation for victims of trafficking, and in particular to:**

- **ensure that victims of trafficking are systematically informed in a language that they can understand of the right to seek compensation and the procedures to be followed;**
- **enable victims of trafficking to exercise their right to compensation by ensuring their effective access to legal aid, by building the capacity of legal practitioners to support victims to claim compensation and by including the issue of victim compensation into training programmes for law enforcement officials, prosecution and the judiciary.**

161. **Further, GRETA urges the Belarusian authorities to set up a State compensation scheme accessible to victims of THB, regardless of their citizenship and residence status.**

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<sup>35</sup> M. Shrub, G. Tyurina, T. Naumovich, Compensation for Trafficked Persons in the Republic of Belarus, Minsk, 2010, pp 126-128, available at: <http://lastradainternational.org/Isidocs/La%20Strada%20Belarus%20research%20on%20Compensation.pdf>.



162. **GRETA also invites the Belarusian authorities to collect statistical information concerning compensation awarded to victims of THB and related offences.**

f. Repatriation and return of victims

163. 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. Furthermore a victim may not be returned where such action would be in contravention of the State's obligation of international protection, recognised in Article 40(4) of the Convention.

164. Belarusian legislation contains no provisions regulating the return and repatriation of foreign citizens identified as victims of THB in Belarus. Article 22, paragraph 1, of the Law "On combating trafficking in human beings" provides for the suspension of the expulsion or deportation of victims of trafficking, witnesses in criminal proceedings on trafficking and related offences or persons assisting the authorities in the investigation. The suspension is done on the basis of a justified request from the body conducting the criminal proceedings, until a decision (verdict) is reached. GRETA notes with concern that 16 Vietnamese men identified as victims of THB in 2014 were deported to the Russian Federation (from where they had arrived to Belarus).

165. According to the Belarusian authorities, the Ministry of the Interior provides travel documents and makes travel arrangements for foreign citizens who wish or have to leave Belarus, but do not have identity documents and have no financial means to cover their travel expenses.

166. Article 23 of the Law "On combating trafficking in human beings" provides that Belarusian diplomatic missions and consular offices shall ensure the return of Belarusian citizens identified as victims of trafficking abroad to Belarus (or other country of their permanent residence). The Ministry of Foreign Affairs, diplomatic and consular missions administer data concerning Belarusian citizens and permanent residents going abroad to work or study. They provide Belarusian victims of THB with the necessary documents in order to assist their return and inform the authorities of the country of destination of Belarusian legislation and ant-trafficking activities in Belarus. According to representatives of the Consular Department, there is no budget envisaged by the Ministry of Foreign Affairs for returning Belarusian victims of THB and expenses related to such returns are mostly covered by the IOM offices in destination countries under their assisted voluntary return programmes.

167. **GRETA urges the Belarusian authorities to take steps to:**

- **review the legal and procedural framework for the return of victims of THB in order to ensure that it is conducted with due regard for the rights, safety and dignity of the person and the status of any legal proceedings related to the fact that the person is a victim, is preferably voluntary and complies with the obligation of *non-refoulement* (Article 40(4) of the Convention);<sup>36</sup>**
- **develop co-operation with the authorities and relevant NGOs in countries of origin of victims of trafficking in order to ensure proper risk assessment prior to the return/repatriation of the victims, and their rehabilitation and reintegration;**

<sup>36</sup> See [UNHCR, Guidelines on International Protection: The application of Article 1A\(2\) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking, HCR/GIP/06/07, 7 April 2006](#)

- **ensure that the best interests of the child are effectively respected, protected and fulfilled, including through pre-removal risk and security assessments, in particular for unaccompanied children, by specialised bodies, working with relevant partners in countries of return.**

#### **4. Implementation by Belarus of measures concerning substantive criminal law, investigation, prosecution and procedural law**

##### a. Substantive criminal law

168. 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).

169. As mentioned in paragraph 41, trafficking in human beings is established as a criminal offence in Article 181 of the Belarusian CC. The basic offence is punishable by imprisonment from three to seven years and confiscation of property. The aggravating circumstances are contained in Article 181, paragraphs 2 and 3, of the CC, all the aggravating circumstances envisaged in Article 24 of the Convention being covered (see paragraph 41). The term of imprisonment is increased from seven to 12 years, with confiscation of property, or from 12 to 15 years, with confiscation of property, depending on the aggravating circumstance.

170. As regards the criminalisation of acts relating to travel or identity documents, Article 377, paragraph 1, of the CC criminalises the theft, destruction, damage or concealment of official documents. Further, Article 378 of the CC criminalises the theft and wilful destruction of a passport or other important personal documents of another person. Activities related to counterfeiting, illicit manufacturing and issuance of travel and identity documents are punishable under Article 380 of the CC. According to the authorities, the perpetrators of such acts are charged regardless of the circumstances in which the acts occurred, and should these acts be related to THB, there would be a cumulative application of the relevant articles of the CC.

171. As noted in paragraph 95, the use of services of a victim of THB is not established as a criminal offence. The Belarusian authorities have indicated that if the use of services of victims is committed under conditions of exploitation, the perpetrator may be charged with complicity in THB.

172. According to the principle of personal liability established in Article 3, paragraph 1, of the CC, only natural persons may be charged with criminal offences. However, legal persons may be charged with administrative offences. According to Article 8, part 3, of the Law “On combating trafficking in human beings”, the Prosecutor’s Office may suspend the activities of an organisation and file an application to recognise the organisation as involved in THB by the Supreme Court, which results in the prohibition of the activities of the organisation and its liquidation. The procedure for the recognition of organisations as involved in trafficking in human beings and their liquidation is provided for in Articles 28 and 29 of the Law “On combating trafficking in human beings”.

173. As noted previously, the Law “On combating trafficking in human beings” applies not only to THB (Article 181 of the CC), but to several other offences considered to be related to THB: Article 171 (exploitation or facilitation of prostitution), Article 171<sup>1</sup> (involving in prostitution or forcing to continue practicing prostitution), Article 181<sup>1</sup> (use of slave labour), Article 182 (abduction), Article 187 (illegal acts to provide employment abroad) and Article 343<sup>1</sup> (production and distribution of pornographic material or items depicting a child). It would appear that there is an overlap between some of these offences, which has implications for the prosecution and convictions (see paragraphs 188-191).

174. **GRETA considers that the Belarusian authorities should conduct a thorough and comprehensive assessment of the effectiveness of the criminal law provisions concerning THB and related offences, with a view to clarifying the differences between trafficking offences and offences related to organising or facilitating prostitution, on the one hand, and between trafficking and illegal acts to send people for work abroad, on the other hand. The authorities should be prepared to readjust on the basis of such an assessment the content and/or the application of the relevant provisions with a view to addressing any shortcoming identified.**

b. Non-punishment of victims of trafficking in human beings

175. 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.

176. In Belarus victims of THB are exempt from administrative liability. Article 8, paragraph 7, of the Code of Administrative Infractions provides that “a person who has committed an administrative offence due to circumstances caused by the commission in respect of him/her of acts entailing responsibility under Article 181 of the CC or acts aimed at his/her use for the purpose of sexual or other exploitation the responsibility for which is provided by Articles 171, 171-1, 181-1, 182, 187 of the CC, is exempt from administrative liability.” In Belarus prostitution is an administrative offence. If it is established that a person engaged in prostitution is a victim of trafficking in human beings and related crimes, he/she would be exempted from administrative liability.

177. As regards the application of the non-punishment provision of the Convention to criminal offences, the Belarusian authorities have referred to the general provisions of the CC on necessary defence (Article 34)<sup>37</sup> and extreme necessity (Article 36).<sup>38</sup> Further, the authorities have made reference to Article 69, paragraph 1, of the CC on co-operation with the authorities which limits the punishment of persons who co-operate with the authorities on the basis of a pre-trial agreement.

178. However, GRETA was provided with examples where the application of the non-punishment provision to possible victims of THB reportedly did not work in practice. The previously mentioned case of Vietnamese citizens who were subjected to forced labour in Belarus were placed in administrative detention for six months before being deported to Russia, despite there being clear indicators that they had been subjected to trafficking and exploitation and the conviction of the Belarusian citizen who had exploited them. Another example concerns Belarusian women trafficked within Belarus for the purpose of sexual exploitation, who are reportedly given administrative fines by the police for engaging in prostitution. In this respect, GRETA refers to the Concluding Observations of CEDAW which notes that unless they can prove to be victims of trafficking or related offences, women engaged in prostitution face fines or administrative arrest and their official employer and the school of their children are notified of the charges against them.<sup>39</sup>

<sup>37</sup> “Article 34 - Necessary defence

1. Every person has the right to protection against socially dangerous encroachment. This right belongs to the person regardless of ability to avoid infringement or seek the assistance of other persons or authorities.

2. No action committed in a state of necessary defence is a crime, that is when protecting the life, health, rights of the defendant or another person, the interests of society or the state against the socially dangerous encroachments by injuring the attacker, if the limits of necessary defence were not exceeded.”

<sup>38</sup> “Article 36 - Extreme necessity

1. No action committed in a state of extreme necessity is a crime, that is to prevent or eliminate a direct danger to the life, rights and legitimate interests of the person or others, the interests of society or the state, if the danger in these circumstances could not be eliminated by other means and if the harm caused is less than the prevented.

2. The state of extreme necessity is also recognised in case the actions taken to prevent danger did not reach its target and harm occurred despite the efforts of a person, who in good faith meant to prevent it.”

<sup>39</sup> CEDAW/C/BLR/CO/8, adopted by the Committee at its sixty-fifth session (24 October-18 November 2016).

179. **GRETA urges the Belarusian authorities to take additional 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 police officers and prosecutors on the scope of the non-punishment provision, including with regard to criminal offences. Further, the Belarusian authorities should examine the possibility of repealing administrative sanctions imposed against victims of THB and providing compensation or reimbursement of fines paid by victims of THB.** Reference is made in this context to the recommendations on non-punishment for legislators and prosecutors contained in the paper issued by the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings in consultation with the Alliance against Trafficking in Persons Expert Co-ordination Team.<sup>40</sup>

c. Investigation, prosecution and procedural law

180. 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).

181. According to Article 26, paragraph 7, of the CPC, offences related to human trafficking are prosecuted *ex officio* regardless of whether there is the application by the victim. According to Article 166, paragraphs 1, 3 and 5, of the Criminal Procedure Code, criminal proceedings may be instituted on the basis of applications by citizens, reports of officials and detection by the prosecution authorities, if there is sufficient data indicating signs of a crime in the absence of circumstances excluding criminal proceedings. In addition, Articles 172 and 173 of the CPC establish the obligation to accept and consider applications and reports about crimes and the terms of their consideration.

182. As noted in paragraph 20, the Main Department for Drug Control and Combating Trafficking in Human Beings of the Ministry of the Interior, which has divisions at regional, city and district levels, employs 69 police specialised on combating THB and related offences and the identification of victims.

183. The Investigative Committee is responsible for investigating all THB and related offences, with the exception of cases requiring the involvement of the Prosecutor's Office (e.g. particularly complex crimes or crimes involving public officials). There are two specialised investigators for THB and child pornography per region and three in Minsk (see also paragraph 23 about the setting up of new divisions with the competence of investigating cases of child pornography on the Internet). The Prosecutor's Office supervises the implementation of legislation by all actors in Belarus and may initiate criminal proceedings if the Investigative Committee refuses to do this.

184. On 15 July 2015 a new law on operative search activities was adopted, providing for the use of 14 special investigation techniques (including interception of communication, secret surveillance, control of electronic information, control of telecommunications, operative experiment), all of which can be used in the investigation of THB cases. The Prosecutor's Office gives authorisation for the use of such techniques.

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<sup>40</sup> <http://www.osce.org/secretariat/101002?download=true>

185. Financial investigations are carried out by the Department of Financial Monitoring of the Committee for State Control which checks bank accounts for suspicious movements. GRETA was informed that 200 000 USD were confiscated in a recent case of a Belarusian woman recruiting women in Belarus and Ukraine and sending them to Turkey for the purpose of prostitution. This case was prosecuted under Article 171<sup>1</sup> of the CC (involving in prostitution or forcing to continue practicing prostitution).

186. As the majority of THB offences in recent years have involved recruitment through the Internet, analytical intelligence groups within the police monitor the Internet and social networks, check announcements for jobs or travel abroad, and collect evidence for opening criminal investigations.

187. Legal co-operation is carried out through bilateral requests for legal assistance. There have been cases of criminal groups convicted in Russia and Belarus for exploiting Belarusian nationals in the Russian Federation. However, no joint investigation teams (JITs) have so far been set up by Belarus.

188. Statistical data regarding investigations, prosecutions and convictions is collected under several articles of the CC which are considered as related to THB: in addition to Article 181, Article 171 (exploitation or facilitation of prostitution), Article 171<sup>1</sup> (involving in prostitution or forcing to continue practicing prostitution), Articles 181<sup>1</sup> (using slave labour), Article 182 (abduction), and Article 187 (illegal acts to provide employment abroad). Since 2005, the new Articles 343 and 343<sup>1</sup> of the CC (production and distribution of pornography, including of children) are also considered as offences related to THB and since 2013, offences related to paedophilia (Articles 166, 167, 168, 169 and 170) have also been added to the statistics. GRETA was informed that the fight against paedophilia was a priority for the police and resources were geared towards investigations of such cases.

189. According to statistical data provided by the Ministry of the Interior, the number of cases of THB investigated by law enforcement agencies was eight in 2012, six in 2013, none in 2014, and one in 2015. At the same time, the total number of THB and related offences<sup>41</sup> registered by law enforcement agencies was 71 in 2012, 50 in 2013, 99 in 2014 and 18 in 2015. The majority of these cases were related to exploitation or facilitation of prostitution and involvement of children in prostitution. According to the Ministry of the Interior, in 2012, law enforcement officials interrupted 31 channels sending Belarusian citizens abroad for the purpose of exploitation, 26 channels in 2013, 15 channels in 2014 and 16 channels in 2015. The principal countries of destination were the Russian Federation, Turkey, Cyprus, Poland and the United Arab Emirates.

190. The number of convictions for THB and related offences was 133 in 2012 (including 41 imprisonment sentences), 151 in 2013 (including 47 imprisonment sentences), 157 in 2014 (including 36 imprisonment sentences) and 337 in 2015 (including 300 imprisonment sentences). However, there were no final convictions under Article 181 (trafficking in human beings) of the CC in 2012, 2014, 2015 and 2016. In 2013, three persons were convicted under Article 181 of the CC, as well as Article 171 of the CC (exploitation or facilitation of prostitution), by the Court of the Soviet District of Gomel. The verdict was changed by decision of the judicial board on criminal cases of Gomel Regional Court on 31 March 2013, repealing the part of the conviction under Article 181 of the CC.

191. Representatives of the Investigative Committee noted that in the last few years the number of cases prosecuted under Article 181 of the CC had diminished drastically. The majority of cases were re-qualified by courts to, for example, Article 171 (exploitation or facilitation of prostitution). The drop in THB cases was explained by changes in the *modus operandi* of traffickers, as a result of which it had become more difficult to prove trafficking offences. It was noted that many victims actively seek to work abroad and do not complain about the abuse or exploitation they were subjected to. Most cases of THB have concerned sexual exploitation as it is harder to prove THB for the purpose of labour exploitation. As the alleged labour exploitation usually happens abroad (predominantly in the Russian Federation), requests for information take a long time and sometimes no replies are received.

<sup>41</sup> Articles 171, 171<sup>1</sup>, 181, 181<sup>1</sup>, 182 and 187.

192. In the first half of 2015 the General Prosecutor's Office prepared a summary of case-law on THB and related offences. This summary was disseminated to prosecutors in order to ensure uniformity in the implementation of the criminal law provisions relating to THB. The summary was also transmitted to the Investigation Committee. GRETA notes that nearly all cases analysed in this summary relate to Article 171 of the CC (exploitation or facilitation of prostitution).

193. According to Article 50 of the CPC, victims are entitled to a representative in criminal proceedings. NGOs providing assistance to victims of trafficking in human beings may participate in criminal proceedings as representatives of the aggrieved party (victim).

194. **GRETA considers that the Belarusian authorities should take further measures to ensure that THB offences are prosecuted as such, and lead to effective, proportionate and dissuasive sanctions, including by:**

- **identifying gaps in the investigation and prosecution of THB cases;**
- **reviewing the existing legal provisions and court rulings on THB and related offences (see also paragraph 174);**
- **carrying out proactive investigations of alleged cases of THB for the purpose of labour exploitation, including through co-operation with other countries;**
- **training investigators, prosecutors and judges on the rights of victims of THB and developing further their capacity and specialisation to deal with THB cases.**

d. Protection of victims and witnesses

195. 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 (physical, relocation, identity change, etc.) 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.

196. According to Article 19 of the Law "On combating trafficking in human beings" ensuring the protection of victims of trafficking in human beings as well as their family members, close relatives and other persons whom they reasonably consider as relatives and their property shall follow the provisions of the Criminal Procedure Code (CPC) related to the protection of participants in criminal proceedings, other persons and their property. These measures are described in detail in Articles 65 to 75 of the CPC. According to Article 65, the authority conducting criminal proceedings on receiving information that a victim, his/her family members, relatives or property are in danger, is obliged to ensure their protection. Article 66 of the CPC sets out the following procedural safeguards and safety measures: non-disclosure of information about the individual concerned; exemption to appear in court; closed hearing; use of technology to monitoring conversations; personal protection; protection of the person's home and property; change of identity; and prohibition of the distribution of information.

197. According to Article 73 of the CPC, the authorities should make a decision about the application of protection measures within 24 hours of a submission. The decision should be sent to the relevant law enforcement agency and if necessary the person to be protected should be notified. Protection measures may be cancelled if the reason for their application has ceased to exist or if someone receiving protection has violated the conditions for application.

198. Following amendments to the CPC, Articles 224<sup>1</sup> and 343<sup>1</sup> were introduced providing for a procedure for questioning victims and witnesses, cross-examination or identification of perpetrators with the co-operation of a victim or a witness, and questioning with the use of videoconference.

199. As regards protection measures for children, 15 child-friendly rooms have been set up across the country for interviewing children, in particular victims of sexual abuse, with the use of video and audio recording equipment (known as “green rooms”). The GRETA delegation visited two such rooms, in Minsk and Mogilev. Interviewing children in these rooms depends on a request being made by a law enforcement body and it would appear that they are not used very often (e.g. in Minsk, the “green room” at Leninsky District had been used five times in the first quarter of 2016). According to specialised NGOs, there have been some difficulties in using the “green rooms”, for example the information obtained was not stored and the children had to be questioned again. The lack of funding for the maintenance of these rooms is also a problem. Further, GRETA was informed that psychologists and other specialists working with child victims of abuse did not receive specific training prior to conducting interviews with them. GRETA was also informed of amendments to the CPC proposed by the Ministry of the Interior which would limit the number of interviews of children and make the information obtained during the interview in the “green room” admissible in court.

**200. GRETA considers that the Belarusian authorities should make full use of the available measures to protect victims, including children, and to prevent intimidation during the investigation and during and after the court proceedings.**

**201. GRETA also considers that the “green rooms” should be used systematically to interview children and other vulnerable victims of THB, and to use the testimony given in such rooms in court, thus avoiding repeated questioning of victims. The Belarusian authorities should issue national guidance on the use of the “green rooms” with a view to clarifying and harmonising the procedure.** In this context, GRETA refers to the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.<sup>42</sup>

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<sup>42</sup> [Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice](#) (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies)

## 5. Concluding remarks

202. GRETA welcomes the efforts made by the Belarusian authorities in the field of action against trafficking in human beings, notably by adopting relevant legislation and regulations, setting up the International Training Centre on Migration and Combating Trafficking in Human Beings, and promoting initiative aimed at enhancing international efforts to combat human trafficking. Further, with a view to preventing human trafficking, measures that been taken to raise general public awareness and to target specific groups, in particular young people and persons travelling to work abroad, in co-operation with civil society and international organisations. Other welcome developments are the adoption of regulations on the identification of victims of trafficking and the amendments to the Law “On social services” enabling specialised civil society organisations to apply for public funding of services they provide to victims of human trafficking.

203. However, several important challenges remain to be tackled through legislative, policy or practical measures, in order to meet the requirements of the human rights-based and victim-centred approach followed by the Convention (see paragraphs 33-36). In particular, the authorities should continue to improve the identification of victims of trafficking and ensure that presumed and identified victims can benefit from the assistance and protection measures provided for under the Convention, regardless of the opening of criminal investigation or their co-operation in it. Victims should be entitled by law to a recovery and reflection period as defined in Article 13 of the Convention and should effectively be granted such period.

204. GRETA underlines that the Belarusian authorities must ensure that presumed victims of trafficking are treated as persons who have been exposed to human rights violations. Enabling victims to remain in Belarus while investigations and court proceedings are on-going or on account of the victim's personal situation is an important feature of the victim-centred approach of the Convention. Moreover, the authorities must ensure that the return of foreign victims of trafficking is conducted with due regard for their rights, safety and dignity and is preferably voluntary. Ensuring compliance with the non-punishment provision, both for administrative and criminal offences, is another aspect of the human rights-based approach promoted by the Convention.

205. GRETA stressed the importance of ensuring that anti-trafficking is comprehensive and pays attention to all forms of trafficking, including for the purpose of labour exploitation, as well as internal trafficking. Additional prevention and protection measures should be taken to address the particular vulnerability of children to trafficking. The authorities should also ensure that relevant civil society actors are represented in the national co-ordinating structures and are involved in the planning, drafting, implementing and evaluation of national anti-trafficking measures.

206. The authorities should assess the criminal law provisions and practice concerning trafficking and related offences and with a view to increasing the number of convictions for the offence of human trafficking *per se*, leading to proportionate and dissuasive sanctions. All professionals who may come into contact with victims of human trafficking, including law enforcement officials, labour inspectors, social workers, health-care staff, professionals working with children, prosecutors and judges, should be continuously informed and trained about the need to apply a human rights-based approach to action against human trafficking on the basis of the Convention and the case law of the European Court of Human Rights.

207. GRETA invites the Belarusian authorities to keep it regularly informed of developments in the implementation of the Convention and looks forward to continuing the good co-operation with the Belarusian Government for achieving the purposes of the Convention.



## Appendix I: List of GRETA's proposals

### Core concepts and definitions

1. In order to be fully consistent with the definition of THB in the Convention, GRETA considers that the Belarusian authorities should include "abuse of a position of vulnerability" as one of the means for committing trafficking in human beings.
2. GRETA urges the Belarusian authorities to take legislative measures to fully align the definition of THB with the provisions of the Convention as regards trafficking in children by removing the requirement of "prior knowledge that the person is a child".
3. GRETA therefore invites the Belarusian authorities to specify in the Criminal Code and the regulations on the identification of victims of trafficking the irrelevance of victim's consent to the intended exploitation when any of the means are used with a view to ensuring the effective application of this principle in practice.
4. GRETA invites the Belarusian authorities to 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.

### Comprehensive approach and co-ordination

5. GRETA considers that the Belarusian authorities should consolidate the co-ordination of anti-trafficking activities at the national level by ensuring regular exchange of information between all public bodies involved in prevention of THB, identification and assistance to victims, and prosecution of traffickers. GRETA considers that the establishment of the post of National Co-ordinator on action against THB, supported by a dedicated office, would significantly strengthen co-ordination.
6. GRETA also considers that the authorities should further develop co-ordination between public bodies and civil society actors engaged in anti-trafficking action, and increase involvement of specialised NGOs and other relevant civil society actors in the planning, drafting, implementing and evaluating of national anti-trafficking policies.
7. Moreover, GRETA urges the Belarusian authorities to take further steps to ensure that national action to combat THB is comprehensive, and in particular to:
  - strengthen action to combat THB for the purpose of labour exploitation by introducing measures to prevent this form of trafficking, by involving all relevant actors (labour inspectors, trade unions, employment agencies, businesses and civil society), and improving the identification of and assistance to victims of THB for the purpose of labour exploitation;
  - address the particular vulnerability to trafficking of children and persons from groups affected by unfavourable social and economic conditions;
  - take steps to address internal trafficking.

### Training of relevant professionals

8. GRETA welcomes the setting up of the International Training Centre on Migration and Combating Trafficking in Human Beings and invites the Belarusian authorities to use this training platform to disseminate information about legislative changes, new trends and the application of the new National Referral Mechanism.

## **Data collection and research**

9. For the purpose of preparing, monitoring and evaluating anti-trafficking policies, GRETA considers that the Belarusian authorities should develop and maintain a comprehensive statistical system on trafficking in human beings by compiling reliable statistical data on presumed and formally identified victims of THB from all main actors, including specialised NGOs and international organisations, as well as on the investigation, prosecution and adjudication of human trafficking cases, allowing disaggregation concerning sex, age, type of exploitation, and 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.

10. GRETA considers that the Belarusian authorities should conduct and support research on THB issues as an important source of information for the evaluation of current programmes and for planning future policy measures. More research is needed in order to shed light on new trends of human trafficking in Belarus and inform policy makers, to establish root causes and groups most vulnerable to THB, including among foreign nationals, the extent and characteristics of trafficking for the purpose of labour exploitation, as well as the misuse of the Internet for the commission of THB, including through social networks.

## **International co-operation**

11. GRETA commends the efforts of the Belarusian authorities to develop international co-operation in the field of action against THB and invites them to continue these efforts with a view to preventing THB, providing assistance to Belarusian and foreign victims of trafficking, and prosecuting traffickers.

## **Measures to raise awareness**

12. GRETA considers that the Belarusian authorities should continue their efforts to prevent THB, in particular for the purpose of labour exploitation, in co-operation with countries where Belarusian nationals are exploited. Future awareness-raising measures should be designed in the light of the assessment of previous measures, focussing on the needs identified and new trends.

## **Measures to discourage demand**

13. GRETA considers that the Belarusian authorities should enhance their efforts to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with NGOs, trade unions, international organisations and the private sector.

14. Further, GRETA invites the Belarusian authorities to consider establishing as a criminal offence the use of services which are the object of exploitation as defined in Article 4 of the Convention, with the knowledge that the person is a victim of trafficking in human beings.

## **Social, economic and other initiatives for groups vulnerable to THB**

15. GRETA considers that the Belarusian authorities should further strengthen the prevention of THB through social and economic empowerment measures for groups vulnerable to THB. Such measures should be based on the root causes of THB (economic and social conditions, gender inequality, gender-based violence, vulnerability of children, and absence of employment opportunities) and should aim to decrease and ultimately eliminate these causes.

## **Border measures to prevent THB**

16. GRETA invites the Belarusian authorities to continue their efforts to detect and prevent THB through border control measures, and to enable migration to take place legally.

## Identification of victims of trafficking in human beings

17. GRETA urges the Belarusian authorities to take further steps to improve the identification of victims of THB, in accordance with the provisions of Article 10 of the Convention, and in particular to:

- ensure that, in practice, the determination of reasonable grounds to believe that a person is a victim of human trafficking does not depend on the presence of elements to prove a criminal offence of THB or related offence;
- promote a multi-agency involvement in the decision-making process leading to the identification of victims of trafficking, taking account of the findings and expertise of all relevant organisations and entities, including labour, employment and social protection services and public associations;
- introduce a procedure for the identification of child victims of trafficking which takes into account the special circumstances and needs of child victims of THB, involves child specialists, includes outreach activities and ensures that the best interests of the child are the primary consideration;
- provide frontline staff (in particular police officers, border guards, social workers and health-care professionals) with operational indicators, manuals and instructions which are regularly updated in order to reflect the changing nature of human trafficking and types of exploitation;
- pay increased attention to detecting victims of THB among asylum seekers and persons detained as irregular migrants and provide additional training to staff who come in contact with such persons. In this context, GRETA stresses the importance of providing presumed victims of THB with access to interpretation and information on their rights, in a language they can understand, from the early stages of the procedure.

## Assistance to victims

18. GRETA considers that the Belarusian authorities should enhance their efforts to provide assistance to victims of trafficking, and in particular to:

- ensure that assistance is provided for as long as needed to presumed and formally identified victims of trafficking and is not discontinued if no criminal proceedings are initiated;
- ensure that all assistance measures provided for in law are guaranteed in practice; when assistance is delegated to NGOs or other non-state actors as service providers, the State has an obligation to provide adequate financing and ensure the quality of the services delivered by the NGOs;
- provide appropriate and safe accommodation with a sufficient number of places for victims of trafficking, including men and children, in the light of the assessment of trafficking trends in Belarus;
- ensure that the services available are adapted to the specific needs of trafficking victims and that minimum standards are guaranteed when victims of trafficking are accommodated in structures not specifically designed them;
- facilitate the reintegration 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 regular training to all professionals responsible for implementing assistance measures for victims of trafficking.

19. Further, GRETA urges the Belarusian authorities to take steps to provide for specific assistance for child victims of trafficking which takes into account their specific circumstances and the best interests of the child, and to train all professionals working with child victims of trafficking to recognise and respond appropriately to their needs.

## Recovery and reflection period

20. GRETA urges the Belarusian authorities to ensure that the recovery and reflection period provided for in Article 13 of the Convention is specifically defined in law and that possible victims of THB, especially those at threat of expulsion from the country, are systematically informed of the possibility to use a recovery and reflection period and are effectively granted such a period.

## Residence permits

21. GRETA considers that the Belarusian authorities should take additional steps to ensure that victims of human trafficking can effectively benefit from the right to obtain a renewable residence permit, as specified in Article 14 of the Convention, without prejudice to the right to seek and enjoy asylum. The relevant legislation should be amended to provide for the issuing of residence permits for child victims of trafficking, when legally necessary, in accordance with the best interests of the child and, where appropriate, renewed under the same conditions (Article 14, paragraph 2, of the Convention).

22. Further, GRETA invites the Belarusian 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.

## Compensation and legal redress

23. GRETA considers that the Belarusian authorities should adopt further measures to facilitate access to compensation for victims of trafficking, and in particular to:

- ensure that victims of trafficking are systematically informed in a language that they can understand of the right to seek compensation and the procedures to be followed;
- enable victims of trafficking to exercise their right to compensation by ensuring their effective access to legal aid, by building the capacity of legal practitioners to support victims to claim compensation and by including the issue of victim compensation into training programmes for law enforcement officials, prosecution and the judiciary.

24. Further, GRETA urges the Belarusian authorities to set up a State compensation scheme accessible to victims of THB, regardless of their citizenship and residence status.

25. GRETA also invites the Belarusian authorities to collect statistical information concerning compensation awarded to victims of THB and related offences.

## Repatriation and return of victims

26. GRETA urges the Belarusian authorities to take steps to:

- review the legal and procedural framework for the return of victims of THB in order to ensure that it is conducted with due regard for the rights, safety and dignity of the person and the status of any legal proceedings related to the fact that the person is a victim, is preferably voluntary and complies with the obligation of *non-refoulement* (Article 40(4) of the Convention);
- develop co-operation with the authorities and relevant NGOs in countries of origin of victims of trafficking in order to ensure proper risk assessment prior to the return/repatriation of the victims, and their rehabilitation and reintegration;
- ensure that the best interests of the child are effectively respected, protected and fulfilled, including through pre-removal risk and security assessments, in particular for unaccompanied children, by specialised bodies, working with relevant partners in countries of return.

### **Substantive criminal law**

27. GRETA considers that the Belarusian authorities should conduct a thorough and comprehensive assessment of the effectiveness of the criminal law provisions concerning THB and related offences, with a view to clarifying the differences between trafficking offences and offences related to organising or facilitating prostitution, on the one hand, and between trafficking and illegal acts to send people for work abroad, on the other hand. The authorities should be prepared to readjust on the basis of such an assessment the content and/or the application of the relevant provisions with a view to addressing any shortcoming identified.

### **Non-punishment of victims of trafficking in human beings**

28. GRETA urges the Belarusian authorities to take additional 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 police officers and prosecutors on the scope of the non-punishment provision, including with regard to criminal offences. Further, the Belarusian authorities should examine the possibility of repealing administrative sanctions imposed against victims of THB and providing compensation or reimbursement of fines paid by victims of THB.

### **Investigation, prosecution and procedural law**

29. GRETA considers that the Belarusian authorities should take further measures to ensure that THB offences are prosecuted as such, and lead to effective, proportionate and dissuasive sanctions, including by:

- identifying gaps in the investigation and prosecution of THB cases;
- reviewing the existing legal provisions and court rulings on THB and related offences;
- carrying out proactive investigations of alleged cases of THB for the purpose of labour exploitation, including through co-operation with other countries;
- training investigators, prosecutors and judges on the rights of victims of THB and developing further their capacity and specialisation to deal with THB cases.

### **Protection of victims and witnesses**

30. GRETA considers that the Belarusian authorities should make full use of the available measures to protect victims, including children, and to prevent intimidation during the investigation and during and after the court proceedings.

31. GRETA also considers that the “green rooms” should be used systematically to interview children and other vulnerable victims of THB, and to use the testimony given in such rooms in court, thus avoiding repeated questioning of victims. The Belarusian authorities should issue national guidance on the use of the “green rooms” with a view to clarifying and harmonising the procedure.

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

### **Public bodies**

- Ministry of the Interior
  - Igor Shunevich, Minister of the Interior
  - Main Department on Drug Control and Combating Trafficking in Human Beings
  - Department on Citizenship and Migration
  - Main Department on Combating Organised Crime and Corruption
  - International Co-operation Department
- Ministry of Foreign Affairs
- Ministry of Justice
- Ministry of Labour and Social Protection
- Ministry of Education
- Ministry of Health
- General Prosecutor's Office
- Investigative Committee
- State Border Committee
- International Training Centre on Migration and Combating Trafficking in Human Beings of the Academy of the Ministry of the Interior
- Regional multi-disciplinary groups for preventing and combating trafficking in human beings and reintegrating victims in Brest and Mogylev

### **Intergovernmental organisations**

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

### **Civil society and other actors**

Belarusian Red Cross Society

Borisov Women's Social Public Association "Province"

Public Association "Children are Not for Violence"

Public Association "Belarusian Association of Young Christian Women"

Public Association "Business Women's Club"

Public Association "Business Women's Club Southwest"

Public Association "Gender Perspectives/La Strada Belarus"

Minsk City Bar Association

## **Government's Comments**

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

GRETA engaged in a dialogue with the Belarusian 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 Belarusian authorities on 18 May 2017 and invited them to submit any final comments within one month. The Belarusian authorities' comments, submitted on 19 June 2017, are reproduced hereafter.

## OFFICIAL COMMENTS

### Executive summary

The **tenth paragraph** indicates that child victims are assisted by socio-pedagogical centres for social protection. In this regard we would like to mention that the socio-pedagogical centres operating within the educational system of Belarus are aimed for temporary accommodation and social rehabilitation of the minors that are recognized as requiring the state protection, who are in a socially dangerous situation, orphans and children that are left without parental care, children in a difficult situation, before their returning to family or determination of their future living arrangements, that is decided together with the bodies of trusteeship and guardianship. Thus, child victims of human trafficking aged from 3 to 18 years, also can be assisted by socio-pedagogical centres.

**11.** The Ministry of Internal Affairs considers it necessary to note that according to the Belarusian legislation, the status of a victim of trafficking in human beings is acquired by a person recognised as a victim by identification results, which is conducted in accordance with the established procedure by law enforcement agencies. IOM and NGOs are involved in the identification and rehabilitation of persons who could have suffered from trafficking or related crimes, but are not authorised to identify victims of trafficking in human beings. They have only the right to initiate identification before law enforcement agencies. Consequently, the use of the term “victim of trafficking in human” in assessing the results of IOM and NGO activities to identify such persons is not entirely correct and leads to a distortion of the actual number of victims of trafficking in the Republic of Belarus. In connection with the foregoing, we believe that it is necessary to use the term “persons who could suffer from human trafficking or related crimes” regarding the activities of IOM and NGOs in identifying trafficked persons.

**15.** The Ministry of Internal Affairs of the Republic of Belarus would like to inform that the Programme on Combating Crime and Corruption for 2017-2019 was approved on May 26, 2017 by the Decision of the Republican Coordination Meeting on Combating Crime and Corruption No. 16.

**52.** The statement that the implementation of measures to prevent THB, assist victims and prosecute traffickers, included into the Programme on Combating Crime and Corruption for 2013-2015, was funded through the budgetary allocation of the Ministry of the Interior and its subordinate bodies is not entirely correct.

According to Chapter 2 “Financing of the Program” of the Programme on Combating Crime and Corruption for 2013-2015, approved by the Decision of the Republican Coordination Meeting of March 15, 2013, No. 26-07ркс-2013, the implementation of the program's activities was carried out within the limits provided in the republican budget for the maintenance of functioning of corresponding state bodies and other organisations, at the expense of means of local budgets and other sources.

**81.** Belarusian authorities would like to mention that in 2006 the Inter-Agency Coordination Group against Trafficking in Human Beings was established at the initiative of Belarus. The Group brings together 17 international specialised agencies, including the UN Office on Drugs and Crime, the Office of the UN High Commissioner for Human Rights, United Nations High Commissioner for Refugees, the UN Children's Fund, the UN Framework for gender equality and the empowerment of women (“UN women”), the International Labour organization, International organization for migration, the United Nations Development Programme, United Nations population Fund, UNESCO and others.



**Paragraph 191** of the report incorrectly reflects the position of the Investigative Committee on the reasons for the steady decline in the number of cases of trafficking in human beings in the Republic of Belarus. The transformation of the criminal situation with respect to the crimes of this category is caused both by the change in the criminological social portrait of the trafficker and by the active state policy in the sphere of prevention and detection of the facts of human trafficking and related crimes at an early stage. This is a confident position of the Investigative Committee.

The limited assumptions of GRETA about the reasons for the reduction in the number of criminal cases brought under Article 181 of the Criminal Code, including the facts of labour exploitation, reflected in paragraph 191 of the report, distort the objective picture of the activities of law enforcement agencies in this sphere.

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

Numerous proposals of GRETA on the need for significant changes in the national legislation of the Republic of Belarus on a formal basis (bringing the provisions to the literal translation of the original text of the Convention) had previously been repeatedly discussed. Argued objections of the Belarusian side against this approach and explanation of the norms of legislation, peculiarities of the legal system of the Republic of Belarus in its majority have not been taken into account by GRETA.

We consider it necessary to draw attention to the fact that a number of the proposals contained in the report on adjusting the criminal law are contrary to the fundamental principles of national law.

**Paragraph 1.** The definition of trafficking in human beings by the Council of Europe Convention on Action against Trafficking in Human Beings (Convention) includes use of a position of vulnerability. GRETA notes that these qualifying characteristics are not included in the disposition of Article 181 of the Criminal Code of the Republic of Belarus (hereinafter – CC), which is not true (paragraph 42 of the report).

In accordance with the note to Article 181 of the Criminal Code, exploitation in this article, articles 181-1, 182 and 187 of the Criminal Code refers to the unlawful coercion of a person to work or provide services (including sexual acts, surrogate motherhood, taking away human organs and/or tissues from a person) if for reasons beyond his control he cannot refuse to perform works (services), including slavery or practices similar to slavery.

The abuse of vulnerability as a qualifying feature of trafficking in national criminal law is clearly defined, which eliminates the uncertainty and ambiguity of the interpretation of the provision under review. These qualifying signs include unlawful actions committed by a person using his official powers (paragraph 5 of part 2 of Article 181 of the Criminal Code), against a pregnant woman, which is known by the guilty person (paragraph 7 of part 2 of Article 181 of the Criminal Code), connected with removal of a person outside the state (paragraph 8 of part 2 of Article 181 of the Criminal Code) against a known minor, regardless of the use of any of the means of influence specified in part 1 of Article 181 of the Criminal Code (paragraph 9 of part 2 of Article 181 of the Criminal Code), or against a knowingly underage (part 3 of Article 181 of the Criminal Code).

In addition, by virtue of the provisions of subparagraphs 2 and 6 of part 1 of Article 64 of the Criminal Code, the commission of a crime against a person in a helpless state, or against a person in material, official or other dependence on the perpetrator, may be recognised by the court as a circumstance, aggravating responsibility.

Thus, the adjustment of the legislation in this part is not necessary.

**Paragraph 2** indicates that there is a need to adjust the disposition of parts 2 and 3 of Article 181 of the Criminal Code and exclude the requirement “prior knowledge that the person is a child”.

Committing a crime under Article 181 of the Criminal Code against minors and juveniles, entails increased criminal liability under parts 2 and 3 of this article (respectively). The presence of any of the qualifying signs of an act by virtue of the provisions of Article 89 of the Code of Criminal Procedure is included in the subject of proof in the criminal case.

According to the provisions of part 5 of Article 3 of the Criminal Code, a person shall be subject to criminal liability only for those socially dangerous acts committed by him and the socially dangerous consequences provided for by this Code in respect of which his fault has been established. Thus, the prohibition of objective imputation is one of the fundamental principles of the criminal legislation of the Republic of Belarus.

Accordingly, the qualification of the deed committed under parts 2 or 3 of Article 181 of the Criminal Code is possible only if the guilty person is aware of the age of the minor or juvenile victim.

**Paragraph 3.** In accordance with Article 1 of the Law of the Republic of Belarus of January 7, 2012, No. 350-3 “On Combating Trafficking in Human Beings” (hereinafter – the Law), trafficking in human beings is defined as the recruitment, transportation, transfer, harbouring or receipt of a person for exploitation, by means of deception, or abuse of trust, or the use of violence, or under the threat of violence. The person's consent to the planned exploitation is not taken into account if any of the specified means of influence was used. The recruitment, transportation, transfer, harbouring or receipt of a minor for the purpose of exploitation are considered trafficking in human beings, even when they are not associated with the use of any of the listed means of influence.

These provisions are fully consistent with article 4, subparagraphs (b) and (c), of the Convention.

According to article 27 of the Law, the behaviour of a victim of trafficking in human beings, expressed in the unwillingness or inability to change his antisocial behaviour caused by human trafficking or related crime, does not exclude the responsibility of persons who have committed human trafficking or related crimes and cannot be regarded as a circumstance, mitigating their responsibility.

Accordingly, the insignificance of consent of the victim of trafficking in human beings for intentional exploitation is regulated by national legislation and does not require duplication in other regulatory legal acts, as GRETA insists (paragraph 45 of the report). The implementation of these provisions in the Criminal Code is unnecessary, since the disposition of Article 181 of the Criminal Code is of blanket (referral) character.

**Paragraph 17.** GRETA's conclusions (the first paragraph on page 8 of the summary, paragraph 127 of the report) that the identification of a victim of trafficking in Belarus depends on the ascertaining the fact of the commission of a criminal offense – trafficking in human beings or related crime is erroneous.

According to paragraphs 7, 12 and 14 of the Regulations on the procedure for identification of victims of trafficking in human beings, completing the identification form for possible victims of trafficking in human beings and related offences, and the handling of information contained therein, approved by the Decree of the Council of Ministers of the Republic of Belarus of June 11 2015 No. 485, state bodies, state or other organisations, public associations, international and foreign organisations (subjects of identification in terms of competence) inform a person about his right to apply for the measures for the protection and rehabilitation of victims of trafficking in human beings provided for in article 18 of the Law, as well as the

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right to apply for the protection and rehabilitation measures within 30 days from the date of filing in the questionnaire, regardless of his participation in criminal proceedings.

This fully ensures the implementation by the Republic of Belarus of the provisions of the Convention on the issue under consideration, which is confirmed by the practice of identifying victims of trafficking and related crimes. This statement was also reflected in the GRETA report, according to which the number of identified victims of trafficking in human beings and related crimes is much higher than the number of victims in criminal cases of this category.

It should be noted that the identification procedure does not depend on sex and age, and as a legally significant action in its essence cannot be different for different subjects of identification.

Other proposals contained in the report (the criminalisation of the use of services of persons who are known to be victims of trafficking in human beings in particular) need further elaboration in cooperation with competent state bodies.