



**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 Spain**

**SECOND EVALUATION ROUND**

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## Preamble

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

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

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

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

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

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

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

## I. Introduction

1. The first evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings ("the Convention") by Spain took place in 2012-2013. Following the receipt of Spain's reply to GRETA's first questionnaire on 31 May 2012, a country evaluation visit was organised from 15 to 19 October 2012. The draft report on Spain was examined at GRETA's 16th meeting (11-15 March 2013) and the final report was adopted at GRETA's 17th meeting (1-5 July 2013). Following the receipt of the Spanish authorities' comments, GRETA's final report was published on 27 September 2013.<sup>1</sup>

2. In its first evaluation report, GRETA noted that the Spanish authorities had criminalised trafficking in human beings (THB) in 2010 and adopted a national action plan to combat trafficking in human beings for the purpose of sexual exploitation, as well as a Framework Protocol for the Protection of Victims of Trafficking. Spain's anti-trafficking action had focused on combating the trafficking of foreign women for the purpose of sexual exploitation and therefore GRETA stressed the need for adopting a comprehensive national action plan which addresses trafficking for different purposes of exploitation. GRETA urged the Spanish authorities to develop measures to raise awareness of human trafficking for the purpose of labour exploitation, child trafficking and trafficking of Spanish nationals, as well as to make efforts to discourage demand for services of victims of trafficking for the purpose of all types of exploitation. GRETA also called on the Spanish authorities to improve the identification of victims of trafficking by adopting a proactive approach and strengthening multi-agency involvement in the decision-making process leading for formal identification. Furthermore, GRETA stressed that a specific referral mechanism should be set up for child victims of trafficking, taking into account their needs and involving child specialists, specialised police officers and prosecutors. GRETA welcomed the range of assistance services available to women victims of trafficking for the purpose of sexual exploitation, but urged the authorities to provide adequate assistance to men and children as well, regardless of the form of exploitation, including through guaranteeing adequate funding to service providers.

3. Another key recommendation made by GRETA in its first report was to review the application of the recovery and reflection period in order to ensure that it is granted whenever there are reasonable grounds to believe that a person is a victim of trafficking. GRETA welcomed the legal possibility to grant victims of trafficking a temporary residence permit on the basis of their co-operation with the authorities or owing to their personal situation and asked the authorities to ensure that victims of trafficking can take full advantage of this right. Moreover, GRETA stressed that forced removals of possible victims of trafficking should be avoided. GRETA also urged the authorities to take steps to improve access to compensation to victims of trafficking and to ensure that victims and witnesses of trafficking are effectively protected before, during and after criminal proceedings.

4. On the basis of GRETA's report, on 7 October 2013 the Committee of the Parties to the Convention adopted a recommendation to the Spanish authorities, requesting them to report back on measures taken by 7 October 2015.<sup>2</sup> The report submitted by the Spanish authorities was considered at the 17th meeting of the Committee of the Parties (30 November 2015). The Committee of the Parties decided to transmit the authorities' report to GRETA for consideration and to make it public.<sup>3</sup>

5. On 8 June 2016, GRETA launched the second round of evaluation of the Convention in respect of Spain by sending the questionnaire for this round to the Spanish authorities. The deadline for submitting the reply to the questionnaire was 8 November 2016. Spain submitted its reply on 27 October 2016.<sup>4</sup>

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<sup>1</sup> Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain, GRETA(2013)16, available at: <http://rm.coe.int/168071c836>

<sup>2</sup> Recommendation CP(2013)10 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain, available at: <http://rm.coe.int/168063c3d9>

<sup>3</sup> Available at: <http://rm.coe.int/168063c3db>

<sup>4</sup> Available at: <http://rm.coe.int/doc/090000168070ac80>

6. In preparation of the present report, GRETA used the reply to the questionnaire by the Spanish authorities, the above-mentioned report submitted by them to the Committee of the Parties and information received from civil society. An evaluation visit to Spain took place from 5 to 9 June 2017 in order to hold meetings with relevant governmental and non-governmental actors, collect additional information and examine the practical implementation of adopted measures. The visit was carried out by a delegation composed of:

- Ms Helga Gayer, member of GRETA;
- Mr Helmut Sax, member of GRETA;
- Ms Petya Nestorova, Executive Secretary of the Convention;
- Ms Ursula Sticker, Administrator in the Secretariat of the Convention.

7. During the visit, the GRETA delegation met Mr Jorge Sanchis Bordetas, Chief of Staff of the Secretary of State for Security and National Rapporteur for Trafficking in Human Beings, as well as members of the Office of the National Rapporteur from the Centre for Intelligence against Terrorism and Organised Crime (CITCO). Further, consultations were held with representatives of the Ministry of the Interior, the Ministry of Justice, the Ministry of Education, Culture and Sport, the Ministry of Health, Social Services and Equality, the Ministry of Labour and Social Security, the Ministry of Foreign Affairs and Co-operation, the General Council of the Judiciary, the Prosecutor General's Office, *Policía Nacional*, *Guardia Civil*, and the Office for Asylum and Refugees. The GRETA delegation also met the Ombudsman, Ms Soledad Becerril Bustamante, and her First Deputy, Mr Francisco Fernández Marugán.

8. Further, the GRETA delegation met representatives of the Autonomous Community of Madrid. In addition to holding meetings in Madrid, the GRETA delegation travelled to Malaga and Zaragoza in order to collect information about the situation in the area of combating trafficking in human beings at regional and local level. In Malaga, it met the Government Representative in Malaga, Mr Miguel Briones Artacho, representatives of the Government Delegation and law enforcement officers. In Zaragoza, meetings were held with the Mayor of Zaragoza, Mr Pedro Santistevé Roche, the Government Representative in Zaragoza, Mr Angel Val Pradilla, representatives of the Municipality of Zaragoza, the Autonomous Community of Aragon, the Women's Institute of Aragon and law enforcement officers.

9. Separate meetings were held with representatives of non-governmental organisations (NGOs), including the Spanish NGO Network against Human Trafficking (RECTP), trade unions and the Spanish General Council of Lawyers. The GRETA delegation also met officials of the International Organization for Migration (IOM), the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Children's Fund (UNICEF).

10. In the course of the visit, the GRETA delegation visited four NGO-run shelters for female victims of trafficking (in Madrid, Zaragoza and Malaga), a first reception centre for children (in Madrid) and a police detention facility in Malaga.

11. The list of national authorities, NGOs and other organisations with which the delegation held consultations is set out in the Appendix to this report. GRETA is grateful for the information provided by them.

12. GRETA wishes to place on record the co-operation provided by the Spanish authorities during the visit, and in particular by Mr Ignacio Aguirre de Cárcer, Senior Advisor for the Council of Europe and OSCE at the Ministry of Foreign Affairs and Co-operation, and his assistant Mr Ernesto Casani Herranz.

13. The draft version of the present report was approved by GRETA at its 30th meeting (20-24 November 2017) and was submitted to the Spanish authorities for comments on 7 December 2017. The authorities' comments were received on 8 February 2018 and were taken into account by GRETA when adopting the final report at its 31st meeting (19-23 March 2018). The report covers the situation up to 22 March 2018; developments since that date are not taken into account in the following analysis and conclusions. The conclusions summarise the progress made since the first report, the issues which require immediate action and the other areas where further action is needed (see pages 66-73).

## II. Main developments in the implementation of the Convention by Spain

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

14. Spain continues to be primarily a country of destination for trafficked persons, as well as to some extent a country of transit to other destinations in Europe (mostly France and the United Kingdom) and also a country of origin. The data provided by the Spanish authorities for the years 2013 and 2014 reflects only THB for the purpose of sexual exploitation, with 264 victims of this form of trafficking identified by the State Security Forces<sup>5</sup> in 2013 (251 women, 1 man and 12 girls) and 153 in 2014 (142 women, 4 men, 4 girls and 3 boys). The data for 2015 covers for the first time victims of sexual as well as labour exploitation: the total number of identified victims of THB was 267 (163 women, 101 men and 3 girls), of whom 134 were trafficked for the purpose of labour exploitation (including 97 men) and 133 for the purpose of sexual exploitation (including 4 men). In 2016, a total of 193 victims of trafficking were identified, of whom 148 for the purpose of sexual exploitation, 25 for labour exploitation, 15 for forced criminal activities, 4 for forced marriage, and 1 for forced begging. The number of child victims identified during the period 2013-2016 was 42 (37 girls and 5 boys).

15. During the period 2013-2016, the main countries of origin of persons trafficked to Spain were Romania (306 victims), Nigeria (104), China (100), Paraguay (58) and Bulgaria (42). The number of Spanish nationals identified as victims of THB was 15 in 2013, 10 in 2014, 22 in 2015 and 3 in 2016.

16. GRETA notes that the above-mentioned figures do not reflect the real scale of the phenomenon of human trafficking in Spain, due to the absence of a comprehensive approach to detecting and combating all forms of human trafficking.<sup>6</sup> The continuing focus on trafficking for the purpose of sexual exploitation is reflected in the data, according to which the vast majority of the identified victims have been women and girls trafficked for the purpose of sexual exploitation (84%). As a result of improvements to data collection, in 2015 there was for the first time a significant number of men identified as victims of trafficking (38%). GRETA notes that there have been reports of suspected cases of trafficking for the purpose of labour exploitation in the sectors of agriculture, construction, domestic work and shoe manufacture, but this form of trafficking is probably underreported. There are also reports about persons who are believed to be victims of trafficking for the purpose of forced criminality, for example for the growing of cannabis or as drug couriers, but have not been identified as such. In 2016, the State Security Forces launched investigations into trafficking linked to forced marriages.<sup>7</sup>

17. Another factor limiting the number of identified victims of THB is the fact that formal identification as a victim of human trafficking remains exclusively the role of the law enforcement agencies and is linked to the criminal investigation. The above-mentioned statistics thus do not include presumed victims of trafficking detected by NGOs (which are, however, collected by the Government Delegation against Gender-based Violence, as far as trafficking for sexual exploitation is concerned), trade unions, asylum case workers, social workers or health-care professionals.

<sup>5</sup> In Spain, the National Police (hereafter *Policía Nacional*) and the Civil Guard (hereafter *Guardia Civil*) are jointly referred to as "State Security Forces".

<sup>6</sup> According to media reports, quoting Ministry of the Interior sources, the State Security Forces rescued 1,046 victims in 2016 (*El País*, 21 April 2017). The Spanish authorities have clarified that this figure included 193 identified victims of trafficking and 853 victims of sexual and labour exploitation (not identified as victims of THB).

<sup>7</sup> [http://www.laverdad.es/murcia/ciudad-murcia/cuatro-detenidos-murcia-20170731110621-nt.html?ns\\_campaign=rss&ns\\_mchannel=boton&ns\\_fee=0&ns\\_source=em&ns\\_linkname=undefined](http://www.laverdad.es/murcia/ciudad-murcia/cuatro-detenidos-murcia-20170731110621-nt.html?ns_campaign=rss&ns_mchannel=boton&ns_fee=0&ns_source=em&ns_linkname=undefined)

18. Moreover, the number of formally identified victims of trafficking is limited due to gaps in the identification of victims of trafficking among asylum seekers and persons detained as irregular migrants, including in the Spanish enclaves of Ceuta and Melilla (which are the only European territories sharing a land border with Africa, in Morocco). According to UNHCR, in 2016, 8,160 persons arrived to Spain by sea, representing a 65% increase compared to 2015. The total number of arrivals by sea to Spain in the first three months of 2017 was 4,313. However, there is a lack of victim identification and referral protocols among these new arrivals (see paragraphs 147-149).

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

19. The Spanish national legal framework relevant to action against THB has evolved since GRETA's first evaluation. Article 177 bis of the Criminal Code (CC), which criminalises human trafficking, was amended through Organic Law 1/2015 of 30 March 2015 by adding forms of exploitation, i.e. exploitation to commit criminal activities and forced marriage, and expanding the list of means to include the "giving or receiving of payments or benefits to achieve the consent of a person having control over another person", as recommended by GRETA in its first report. Other amendments made were the removal of trafficking in human beings as an aggravating circumstance for the crime of smuggling of migrants in Article 318 bis, paragraph 2, of the CC, and the classification of forced marriage as a new crime under Article 172 bis of the CC. A number of amendments were also made to other provisions of the CC designed to strengthen the prosecution and punishment of traffickers (see paragraph 226).

20. Another important legislative development was the adoption of Law 4/2015 of 17 April 2015 on the Statute of Crime Victims, which provides a catalogue of procedural and extra-procedural rights of victims of all crimes. The law pays specific attention to vulnerable victims, such as victims of THB and child victims, whose protection needs are to be taken into consideration in their individual assessment and measures are to be taken to avoid secondary victimisation during the pre-trial and prosecution stages.

21. Further, Organic Law 8/2015 of 22 July 2015 and Law 26/2015 of 28 July 2015 were enacted, modifying the system for the protection of children and adolescents. An article on the best interests of the child was included in the legislation, as well as new provisions relevant to the protection of children against all forms of violence, including THB. In addition, the right of foreign children to education, health care, social services and basic social benefits, under the same conditions as for Spanish children, was stipulated. The legislation provides that the authorities must safeguard especially vulnerable groups, such as child victims of trafficking. Further, it establishes rules and procedures for age assessment and the appointment of legal guardians.

22. Moreover, Article 59 bis of Organic Law 4/2000 on the Rights and Freedoms of Foreigners in Spain and Their Social Integration was amended, increasing the minimum duration of the recovery and reflection period from 30 to 90 days.

23. Further, pursuant to Royal Decree 3/2013 of 22 February modifying the fee regime in the administration of justice and the system of free legal aid, the right to free legal aid for victims of trafficking as well as other groups of victims is recognised without the need to prove their lack of resources to institute legal proceedings. The legal provisions concerning free legal aid to victims of gender-based violence and trafficking in human beings were amended through Law 42/2015 of 5 October, reforming Law 1/2000 of 7 January, on Civil Procedure (see paragraph 213).

24. Organic Law 4/2015 of 30 March 2015 on the Protection of Citizen's Security incorporated two measures of relevance to the fight against THB: first, it envisages sanctions for offering sexual services in public areas and second, it provides that foreigners detected while trying to cross the border into Ceuta and Melilla may be pushed back in order to prevent their illegal entry in Spain (see paragraphs 127 and 149).



25. GRETA was informed that the Subcommittee set up by the Committee on Equality of the Spanish Parliament in December 2013 to analyse and research THB for the purpose of sexual exploitation (see paragraph 32) had recommended the adoption of a comprehensive law on THB. Following a decision by the Congress of Deputies in November 2016, the Spanish Parliament adopted in December 2017 a State Pact against Gender-based Violence, which includes the elaboration of a comprehensive law against THB for the purpose of sexual exploitation. The State Pact envisages the inclusion of the definition of gender-based violence given in the Istanbul Convention in Article 1 of Organic Law 1/2004. It is also envisaged to amend Organic Law 19/1994 on Protection of Witnesses in order to improve the protection of victims, witnesses or “whistle-blowers” of trafficking in human beings.

26. The above-mentioned measures are discussed in greater detail in later parts of this report (see paragraphs 190, 210, 213, 222-226, 261-263).

### 3. Developments in the institutional framework

27. The institutional framework for action against THB in Spain has also evolved since GRETA’s first report. Through a resolution of the Secretary of State for Security of 3 April 2014, the Director of the Private Office of the Secretary of State for Security was appointed as National Rapporteur for trafficking in human beings. This appointment was linked to the designation of the Intelligence Centre against Terrorism and Organised Crime (CITCO)<sup>8</sup> as focal point in the field of THB on 27 May 2014, with the aim of supporting the National Rapporteur in his tasks. The Office of the National Rapporteur has a total of three staff, including a focal point official at CITCO. The tasks of the Office of the National Rapporteur include supervision, monitoring and control of the anti-trafficking activities of all state institutions; assessment of trends in THB; measuring results of actions; collection and analysis of information; identification and exchange of good practices; and development of common indicators to facilitate comparison and consistency of information. The Office of the National Rapporteur is focusing on creating synergies and channels for co-ordination among stakeholders, establishing collaboration mechanisms and providing a greater role to NGOs. Once every three months, it convenes meetings of the state actors involved in the fight against THB to which civil society actors and international organisations are invited. Separately, periodic meetings are organised with specialised civil society organisations: a total of 12 such meetings took place between the setting up of the Office in 2014 and June 2017, covering a variety of issues (child victims, disabled victims, THB for forced labour, residence permits and identification at the border). Every six months, a questionnaire is sent to all relevant stakeholders concerning trends in THB, assistance provided to victims, prevention activities and evaluation. The information received is compiled and analysed.

28. As part of the above-mentioned process, the State Secretariat for Security issued Instruction 6/16 of 15 June 2016 “On the actions of the State Security Forces in the fight against trafficking in human beings and in the collaboration with organisations and entities with proven experience in assisting victims”.<sup>9</sup> Its aim is to reinforce co-operation with NGOs and other members of civil society in the fight against THB. The instruction creates the function of “social interlocutor” at *Policía Nacional* and *Guardia Civil* whose role is to facilitate co-ordination of their anti-trafficking activities with those of other relevant bodies and institutions. Such “social interlocutors” have been appointed at national and regional level. The Instruction also describes the procedures for identifying victims of THB by “social interlocutors” on the basis of information provided by NGOs and for providing victims with information on their rights and available services. Further, the General Directorate of *Policía Nacional*, with the aim of implementing Instruction 6/16 of 15 June 2016, issued Instruction 5/15 of the General Commissariat of Aliens and Borders.

<sup>8</sup> CITCO is staffed by officers from *Policía Nacional* and *Guardia Civil* and can draw on the regional police forces, the customs service and the armed forces. It collects data and develops strategic intelligence to combat organised crime, including human trafficking, and terrorism.

<sup>9</sup> Available at: <http://rm.coe.int/esp-2-eval-report-annex-1-thb-comprehensive-plan-2015-2018/1680790618>

29. The Government Delegation against Gender-based Violence, under the Ministry of Health, Social Services and Equality, continues to play a central role in inter-institutional co-ordination of action against THB which, however, is limited to trafficking for the purpose of sexual exploitation. In particular, it is responsible for co-ordinating the implementation of the second Action Plan to combat THB of women and girls for sexual exploitation (2015-2018) and continues to co-ordinate the Social Forum to Combat THB for Sexual Exploitation, set up in 2009.

30. The composition, organisation and functions of the Social Forum to Combat THB for Sexual Exploitation were modified through its new Internal Code on 7 May 2015. Currently, the Social Forum is comprised of 11 representatives of the central state administration, four representatives of the autonomous regions and the autonomous cities of Ceuta and Melilla (rotating every two years), the Spanish Federation of Municipalities and Provinces, the National Rapporteur and NGOs assisting victims of THB for sexual exploitation, among which the Spanish Network against Trafficking. In January 2016, two additional NGOs specialised in assisting THB victims requested participation as full members of the Social Forum and were accepted. The functions of the Social Forum include follow up of the second Action Plan to combat THB of women and girls for sexual exploitation by participating in the drafting of the annual progress reports or preparing common proposals. In order to improve the capacity of the Forum to drive proposals and collaborate in specific matters, it is foreseen to create working groups to study and analyse specific topics. However, GRETA was informed that in recent years, the Social Forum has been meeting only about once a year. Two meetings of the Social Forum were held in 2017 (in February and September). The Social Forum has set up a working group to analyse the impact of legal measures on the protection of public safety on the identification of victims of THB for sexual exploitation, which met for the first time in December 2017. It involves representatives of the Spanish network against THB and other NGOs, the Ministry of the Interior, the Government Delegation against Gender-based Violence, the Spanish Federation of Municipalities and parliamentarians. At the same time, as noted in paragraph 27, there has been increased co-ordination of stakeholders through meetings organised by the Office of the National Co-ordinator, covering THB in general.

31. As part of the implementation of the new Law 4/2015 on the Statute of Crime Victims, the Ministry of Justice has set up 26 Victim Assistance Offices across Spain (see paragraphs 155 and 210).

32. The Committee on Equality of the Spanish Parliament set up in December 2013 a Subcommittee to analyse and research THB for sexual exploitation in order to gather proposals to improve anti-trafficking policies and victims' assistance and protection. The Subcommittee was composed of three representatives belonging to each of the parliamentary groups with more than 100 MPs in the Parliament, two representatives belonging to each of the parliamentary groups with more than 10 MPs and one representative belonging to the rest of the parliamentary groups. The Subcommittee analysed the implementation of the first Action Plan and produced a report which was published on 9 July 2015.

33. In order to facilitate co-ordination and co-operation in the process of identification of victims and to guarantee their assistance, in addition to the Framework Protocol for the Protection of Victims of Trafficking in Human Beings which existed already at the time of GRETA's first evaluation,<sup>10</sup> steps have been taken to develop the following collaboration protocols:

- the Framework Protocol on certain actions related to unaccompanied foreign children, signed on 22 July 2014 by the Ministers of Justice, Employment and Social Security, Health, Social Services and Equality, the Prosecution Service, the State Secretariat for Security of the Ministry of the Interior and the Under-Secretary of the Ministry of Foreign Affairs and Co-operation, was published in the Spanish Official Journal on 16 October 2014. It foresees certain actions related to the protection of potential foreign child victims of THB (see paragraph 95);

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<sup>10</sup> The Framework Protocol was signed in October 2011 by the Ministries of Justice, the Interior, Employment and Immigration, Health, Social Services and Equality, the Prosecution Service and the General Council of the Judiciary. See paragraphs 24-25 of GRETA's first report on Spain.

- a Protocol for identification and action in potential cases of THB for the purpose of sexual exploitation was approved by the General Secretariat for Migration and Emigration of the Ministry of Employment and Social Security, aimed at staff and NGOs working with migrants;
- a draft Framework Protocol for the identification and assistance to child victims of trafficking in human beings was prepared in May 2015 through a working group led by the General Directorate for Family and Children Protection. It was approved by the Plenary of the Children's Observatory on 1 December 2017 as an annex to the Framework Protocol for the Protection of Victims of Trafficking;
- an agreement was reached on 3 December 2015 to draft an Appendix to the Protocol for Sanitary Action in the National Health System against Gender Violence and Trafficking for the Purpose of Sexual Exploitation. A working group established with the autonomous regions under the co-ordination of the Ministry of Health, Social Services and Equality and the Commission against Gender Violence of the Interterritorial Council of the National Health System has prepared the document and it will be included after approval by the plenary of the Interterritorial Council in the first quarter of 2018;
- in addition to Catalonia, the Basque country and Galicia, several more autonomous communities have developed or are in the process of developing regional protocols linked to the Framework Protocol: Extremadura adopted its protocol on 29 June 2015, Navarre on 2 December 2016, Madrid on 20 January 2017, Valencia on 19 May 2017, and Aragón was in the process of finalising a protocol for identification of victims of THB for the purpose of sexual exploitation (see paragraph 141).

34. GRETA welcomes the steps taken in Spain to further develop the institutional framework for combating THB, including the creation of a network of "social interlocutors", the setting up of the Office of the National Rapporteur and the multi-disciplinary co-operation at national and regional level. However, GRETA notes that combating trafficking for the purpose of sexual exploitation continues to dominate the agenda and there is a lack of political will to address trafficking for the purpose of labour exploitation. GRETA is concerned by the lack of a comprehensive, integrated institutional approach to addressing all forms of trafficking in human beings, including for the purposes of forced labour, forced criminality, forced begging and forced marriage, and all victims of trafficking, including men and children. **GRETA invites the Spanish authorities to further strengthen the co-ordination of national action against THB for all forms of exploitation and to clearly define the co-ordination roles of different entities.**

35. GRETA notes that the functions of the National Rapporteur include co-ordination of stakeholders and would like to stress that Article 29 of the Convention makes a clear distinction between national co-ordination and National Rapporteur. In GRETA's view, the key features of National Rapporteurs' mechanisms within the meaning of Article 29, paragraph 4, of the Convention 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. A structural separation between these monitoring functions and executive functions makes possible an objective evaluation of the implementation of anti-trafficking legislation, policy and activities, identification of lacunae and shortcomings, and the formulation of comprehensive legal and policy recommendations. Therefore, **GRETA considers that the Spanish authorities should examine the possibility of establishing an independent National Rapporteur or designating another mechanism as an independent organisational entity with a view to ensuring an effective monitoring of the anti-trafficking activities of state institutions and making targeted recommendations (see Article 29, paragraph 4, of the Convention and paragraph 298 of the Explanatory Report).**

## 4. National Action Plan

36. Following the expiry of the first National Action Plan to combat THB for sexual exploitation in 2012, there was a period without a national anti-trafficking policy document. At the time of GRETA's second evaluation visit, Spain was implementing the second National Action Plan to combat THB of women and girls for sexual exploitation (2015-2018), approved by the Council on Ministers on 18 September 2015 and presented by the Ministry of Health, Social Services and Equality on 23 September 2015.<sup>11</sup> The plan was elaborated with the participation of relevant ministries, the Prosecution Service, the autonomous regions, the Spanish Federation of Municipalities and Provinces, organisations specialised in supporting victims of THB for sexual exploitation and other NGOs members of the Social Forum to Combat THB for Sexual Exploitation. For the plan's preparation, reports by national bodies (e.g. the Ombudsman) and international agencies, including GRETA's first report on Spain, were taken into account. The plan is based on seven pillars: human rights approach; gender approach; primacy of the best interests of the child; improving knowledge of situations of THB for sexual exploitation; focus on victims throughout the process; prosecution; and integral approach, co-operation and participation. The plan stresses that trafficking in women and girls for sexual exploitation is a form of gender violence, and that this crime derives from the lack of opportunities for women and the situation of inequality between women and men in countries of origin and destination. The plan also recognises for the first time that demand constitutes one of the causes of human trafficking, which is why raising public awareness about the impact of demand for sexual services is one of the objectives of the plan.

37. GRETA was informed that the budget for the implementation of the Action Plan amounted to 104 million euros over the period of four years. Relevant ministries and agencies are expected to fund different activities through their budget lines related to combating gender-based violence.

38. The follow-up and evaluation of the Action Plan is based on the work of two bodies: the Sectoral Conference on Equality, which serves as a mechanism for co-operation and exchange between the central state administration and the autonomous regions in equality policies, and the Social Forum to Combat THB for Sexual Exploitation. A series of indicators are set to assess the achievements in each of the plan's priorities. A report is prepared every year on the actions carried out for each of the priorities, taking stock of progress and gaps, and proposing solutions to continue moving forward. The report is drawn up by the Government Delegation for Gender Violence and following its approval by the Social Forum, it is presented to the Council of Ministers for information and is sent to the Parliament's Committee on Equality. At the end of the plan's duration, a final evaluation will be conducted to sum up all the work carried out during four years using this same participatory methodology.

39. The first annual report on the implementation of the Action Plan in 2015 was published in October 2016.<sup>12</sup> According to it, the main achievements included legislative changes, awareness-raising and prevention actions in order to promote greater visibility of trafficking situations, especially in the tourism sector, and to discourage demand, as well as to enhance students' knowledge of human trafficking and increase the provision of information to teachers. Some progress was also noted in the areas of data collection, identification of victims, prosecution and co-ordination and co-operation between public institutions and civil society. The main remaining gaps identified in the report included co-operation and co-ordination, both domestically and internationally, strengthening the impact of the media to help reduce demand, further training and information of professionals, improving the compilation of reliable data on trafficking, and promoting research.

<sup>11</sup> Available at: <http://rm.coe.int/esp-2-eval-report-annex-1-thb-comprehensive-plan-2015-2018/1680790614>

<sup>12</sup> Available at: <http://rm.coe.int/esp-2-eval-report-annex-1-thb-comprehensive-plan-2015-2018/1680790616>

40. GRETA notes that there is no external evaluation or monitoring of the implementation of the Action Plan. **GRETA considers that the Spanish authorities should introduce an independent evaluation of national action plans as a tool for assessing the impact of the activities and for planning future policies and measures to combat trafficking.** Such an independent assessment is in the spirit of the human rights-based approach to anti-trafficking action underpinning the Convention.

41. Reference should also be made to the National Strategy for the Eradication of Violence against Women (2013-2016) adopted by the Ministry of Health, Social Services and Equality.<sup>13</sup> It envisaged the elaboration of a comprehensive instrument against trafficking in women and girls for sexual exploitation purposes and reinforcing collaboration with the autonomous regions and the autonomous cities of Ceuta and Melilla in providing assistance to victims of human trafficking for sexual exploitation purposes in the framework of the Sectoral Conference on Equality. The Spanish authorities have indicated that the Strategy was in the process of being evaluated by an independent expert in collaboration with relevant agencies and organisations.

42. Further, the Community of Madrid has adopted a Strategy for Combating Gender Violence as well as Strategy for Combating THB for Sexual Exploitation (2016-2021), based on the objectives of the Action Plan.<sup>14</sup> The latter strategy has a total of nine objectives and 46 activities, with an overall implementation budget of 7 million euros.

43. The national action plan to combat THB for the purpose of labour exploitation which had been drafted with the participation of trade unions was never adopted, despite recommendations by the Spanish Ombudsman that the Under-Secretary of State for Employment and Social Security speed up work to publish this plan.<sup>15</sup> The Labour and Social Security Inspectorate (ITSS) also supports the adoption of such a plan and has communicated its willingness to collaborate on this issue with the National Rapporteur.

44. GRETA welcomes the Action Plan to combat trafficking of women and girls for sexual exploitation, as well as the strategy for Madrid region, which are ambitious documents and are supported by considerable funding. GRETA stresses, however, the need to combat with the same energy trafficking for other forms of exploitation, in particular labour exploitation, and to pay increased attention to preventing and combating trafficking in children.

45. **GRETA once again urges the Spanish authorities to adopt as a matter of priority a comprehensive national action plan including measures to:**

- **strengthen action to combat THB for the purpose of labour exploitation and improve the identification of, and assistance to, victims of this form of trafficking, involving civil society, trade unions, labour inspectorates and the private sector;**
- **address all victims of trafficking for all forms of exploitation, including forced marriages, forced begging, forced criminality and the removal of organs, while taking into account the gender-dimension of trafficking and the particular vulnerability of children;**
- **prioritise the identification of victims of trafficking amongst asylum seekers and irregular migrants.**

<sup>13</sup> Available at: <http://rm.coe.int/esp-2-eval-report-annex-1-thb-comprehensive-plan-2015-2018/1680790617>

<sup>14</sup> Available at: <http://rm.coe.int/esp-2-eval-report-annex-1-thb-comprehensive-plan-2015-2018/1680790615>

<sup>15</sup> See paragraph 19 of GRETA's first report on Spain.

## 5. Training of relevant professionals

46. The Spanish authorities have stated that in the past years, training in prevention and combating trafficking in human beings has been a priority for all relevant actors, including the Ministry of Health, Social Services and Equality, the Ministry of Employment and Social Security, the Ministry of Justice, the Ministry of Foreign Affairs and Co-operation, the Ministry of the Interior, the Prosecution Service, the General Council of the Judiciary, and the Spanish NGO Network against Trafficking. Each stakeholder assesses the training needs of their staff and determines the training goals according to their participation in the process of identification, protection and assistance of victims of trafficking. Article 30 of Law 4/2015 of 27 April 2015 on the Statute of Crime Victims requires the Ministry of Justice, the General Council of the Judiciary, the Prosecution Service and the autonomous regions, in their respective competencies, to ensure general and specific training on the protection of victims in criminal proceedings for judges, prosecutors, legal secretaries, members of the State Security Forces, forensic doctors, officers in the administration of justice, officers in Victims Assistance Offices and officers in the central state administration or autonomous regions with these competencies. In these training courses, particular attention is to be paid to victims in need of special protection or in especially vulnerable situations, children and disabled victims. Further, Bar Associations are required to promote training and awareness among their members on the protection of victims.

47. The Government Delegation against Gender-based Violence under the Ministry of Health, Social Services and Equality has signed an agreement with the Spanish Federation of Municipalities and Provinces with the objective of raising awareness of trafficking in women and girls for sexual exploitation and training professionals of local bodies, in particular on identifying potential victims. In 2015, the first online training course on trafficking in women and girls for sexual exploitation aimed at professionals at the local level was conducted. Due to the great number of requests by local professionals, in 2016, three training activities involving 360 persons were organised, and in 2017, three training activities for the same amount of participants. Reference should also be made to the training on the implementation of Instruction 6/16 and collaboration through the Framework Protocol for the Protection of Victims of Trafficking, which was provided to the units for co-ordination and combating gender-based violence in the Government Delegations and Sub-delegations in the provinces (two training sessions in 2016 and two in 2017).

48. The State Security Forces (*Policía Nacional* and *Guardia Civil*) have made a considerable effort in the last years to increase training related to trafficking in human beings, from basic training for all new officers to specialised training for investigators dealing with human trafficking cases, Border Guards and "social interlocutors". The training is compulsory and follows study plans. The courses follow a multidisciplinary approach and are taught by, *inter alia*, specialised members of the State Security Forces, experts from Europol, staff from the Secretary of State for Equality and NGOs.

49. The Intelligence Centre against Terrorism and Organised Crime (CITCO) regularly participates in seminars and conferences whose aim is to provide knowledge to the professionals involved. In 2015 CITCO held two informative meetings about the methodology used by the Trafficking Data Management System (BDTRATA), addressed to *Policía Nacional* and *Guardia Civil* officers from units involved in prevention and combating THB. In 2015 the CITCO, in collaboration with the Spanish Agency for International Co-operation (AECID), organised the seminar "Trafficking in Human Beings: invisible victims between Latin America and the European Union. State Security Forces: detection, identification, assistance and protection to victims", in Cartagena de Indias (Colombia), with the purpose of exchanging best practices and procedures in terms of protection and assistance to victims of trafficking.

50. The Centre for Legal Studies under the Ministry of Justice provides initial training to trainee prosecutors on THB, how to conduct an investigation and the system for protection of victims. Every year continuous training courses are held for the rest of the prosecutors. Once a year a two-day meeting is held in Madrid for the network of prosecutors specialised in dealing with THB cases, who are part of the Prosecutor's Office unit dealing with foreigners (*Fiscalía de Extranjería*) (see also paragraph 240). At these meetings, prosecutors receive updated information on developments and case-law in the area of THB.<sup>16</sup>

51. As regards judges and investigating judges, according to the General Council of the Judiciary, not enough focus has been given to their training and specialisation on THB. In the last two years some 30 judges have received training annually on "Slavery in the 21<sup>st</sup> century". A handbook on THB for judges was in the process of being developed by the General Council of the Judiciary (see paragraph 255). Since 2016, one annual three-day training activity dedicated to combating THB has been offered to members of the judiciary. Cross-cutting training on THB is also provided to judges through lectures included in 15 training activities in 2017 and another 15 training activities in 2018 (on topics such as mothers victims of THB and their custodial rights over children; specific protection of victims of THB in the internal and European law: administrative protection of victims of THB; the use of new technologies in investigating THB cases; the role of international judicial co-operation in combating THB). The Spanish authorities have stressed that cross-cutting training is more effective and reaches a larger number of judges (30 per activity) than the training dedicated exclusively to THB.

52. The Office of Human Rights of the Ministry of Foreign Affairs and Co-operation has agreed, together with the College of Diplomacy, to include the topic of trafficking in human beings in the training provided to staff before taking up consular duties abroad. The purpose is to improve information, early detection and recognition of visa applications that may be associated with THB.

53. In 2013 training on THB for labour exploitation began to be provided to labour inspectors, in two stages. First, two courses were held at the College for Labour and Social Security Inspection in Madrid where one to two inspectors per province participated, totalling 60 people. Second, the labour inspectors who attended the courses in Madrid provided the same training to labour inspectors and sub-inspectors who work in the field of inspecting the irregular economy in each province. Since 2014, new inspectors receive a specific training course on THB as part of the selection process for starting work at the Labour and Social Security Inspection.

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<sup>16</sup> See, for example:

[https://www.fiscal.es/fiscal/publico/ciudadano/fiscal\\_especialista/extranjeria/documentos\\_normativa/!ut/p/a1/04\\_Sj9CPykssy0xPLMnMz0vMAfGjzOI9HT0cDT2DDbzcFszcDBzdPYOdTD08jE3czYEKI0EKDHAARwN8-oNdjaD68SjAo9\\_fzwy\\_fosgE-Lcj8cCAvrD9aPwKQG7AKwAXxAR8mRBbmhoaIRBpqejoiIA8pzg6A!!/dl5/d5/L2dJQSEvUUt3QS80SmiFL1o2X0IBSEExSVMwSkdMOEYwQUdJU0I1SEgzS0c2/](https://www.fiscal.es/fiscal/publico/ciudadano/fiscal_especialista/extranjeria/documentos_normativa/!ut/p/a1/04_Sj9CPykssy0xPLMnMz0vMAfGjzOI9HT0cDT2DDbzcFszcDBzdPYOdTD08jE3czYEKI0EKDHAARwN8-oNdjaD68SjAo9_fzwy_fosgE-Lcj8cCAvrD9aPwKQG7AKwAXxAR8mRBbmhoaIRBpqejoiIA8pzg6A!!/dl5/d5/L2dJQSEvUUt3QS80SmiFL1o2X0IBSEExSVMwSkdMOEYwQUdJU0I1SEgzS0c2/)



54. The General Secretariat for Immigration and Emigration at the Ministry of Employment and Social Security facilitates the exchange of information and training of professionals implementing the Protocol for identification and action in potential cases of THB for the purpose of sexual exploitation and provides funding for training of professionals providing direct support to migrants in vulnerable situations and applicants for/beneficiaries of international protection. By way of example, in 2014 and 2015, the Cepaim Foundation received funding to organise training courses on trafficking for the purpose of sexual exploitation and to publish and distribute a teaching material. In 2014-2016, training was provided under the NOVICOM Programme ("Reinforcing knowledge, awareness raising and actions to support immigrant women engaged in prostitution and victims of THB for purposes of labour and sexual exploitation and their children"), which was run by the Spanish Catholic Commission Association for Migration and the Spanish Red Cross, on detection of victims of THB and intervention. Moreover, a series of training sessions have been organised for staff working in migration centres and staff from the Sub-directorate General for Migrant Integration, including social workers of the Unit of Social Work who carry out tasks in the Asylum and Refugee Office. This training is voluntary and has included the following sessions: "Prevention of THB for sexual exploitation. Identification and assistance to victims" (7 October 2014); "Application of the Protocol on identification and action in potential cases of THB for sexual exploitation" (16 December 2014) and "Trafficking in human beings. Identification of signs and intervention in potential cases" (25-26 May 2016).

55. The National Centre for Innovation and Research on Education, under the Ministry of Education, Culture and Sport, provides training and information to teachers on trafficking in women and girls for sexual purposes, as well as resources and materials to be used with students. The Spanish authorities have referred to the Programme INTERCAMBIA which aims at linking the educational community, agencies active in the area of gender equality and other interested entities to exchange knowledge and experiences on teaching diverse values. Specific THB materials are available on the programme's website.<sup>17</sup> Moreover, the Ministry of Education, Culture and Sport has developed a project on developing effective training for teachers and school leaders on teaching controversial issues (as part of the Council of Europe network of co-ordinators for Education for Democratic Citizenship and Human Rights Education (EDC/HRE) and a seminar for teachers and other member of the educational community on awareness and prevention of sexual violence against children.

56. A variety of training activities have been organised by civil society organisations. By way of example, in 2014-2016, the NGO APRAMP (Association for the Prevention, Reintegration and Assistance to Prostituted Women) ran the project "Nobody volunteers to be a slave: combating THB. Raising-awareness project for professionals in order to increase zero tolerance against THB". Further, APRAMP carried out an awareness project for health workers of the Mobile Unit to enable them to properly detect potential victims and take health prevention measures to help women engaged in prostitution and potential victims of THB.

**57. GRETA welcomes the steps taken to train relevant professionals on THB and considers that these efforts should continue and be strengthened, in particular as regards labour inspectors, border guards, staff working in detention centres and centres for asylum seekers, judges, medical staff and professionals working with children, based on a comprehensive approach to address all forms of trafficking.**

<sup>17</sup> *El viaje de Laia. Guía de sensibilización sobre la trata de seres humanos con fines de explotación sexual* (Laia's Journey: Awareness Guide on THB for sexual purposes); *Laberintos de libertad: Entre la esclavitud del pasado y las nuevas formas de esclavitud del presente* (Labyrinths of freedom: Between the Slavery of the Past and the Current New Forms of Slavery).



## 6. Data collection and research

58. In its first evaluation report, GRETA urged the Spanish authorities to develop and maintain a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical information from all main actors and allowing disaggregation (concerning sex, age, type of exploitation, country of origin and/or destination).

59. The Trafficking Data Management System (BDTRATA) held by the CITCO is a tool for compiling quantitative information concerning prevention and fight against THB, on the basis of information received from the State Security Forces. The processing of information about personal data collected in the BDTRATA is carried out according to Organic Law 15/1999 of 15 December on Personal Data Protection. Since 2013, the CITCO has been updating, improving and adapting the BDTRATA in order to have wider and more trustworthy information on the different purposes of trafficking taking place in Spain, i.e. not only on trafficking for the purpose of sexual exploitation. The information included in the BDTRATA is the basis for the preparation of the yearly report on THB by the CITCO, which until recently focused only on THB for sexual exploitation. In 2015, the CITCO published for the first time data on victims of THB for the purposes of sexual as well as labour exploitation (see paragraph 14). Since 2016, CITCO has started collecting data on all forms of THB, including forced begging, forced criminal activities and forced marriage.

60. Further, the Prosecutor Service's unit dealing with foreigners' affairs (*Fiscalia de Extranjeria*) collects information on criminal proceedings in THB cases, including on victims in such proceedings, and publishes every year a report entitled "Informative notes and follow-up on the crime of trafficking in human beings".<sup>18</sup> The difference between the statistics on victims of trafficking collected and published by the Prosecutor's Office and those of CITCO (BDTRATA) arises from the fact that the CITCO statistics come from all the police investigations with a suspicion on THB, while the Prosecutor Office's statistics are based on a judicial analysis of those cases that can result in a proper judicial case. The Prosecutor Service's unit dealing with foreigners' affairs studies every action taken throughout the country regarding all types of THB, receiving information from all national and regional law enforcement agencies regarding police reports opened in accordance with Article 117 bis of the CC and the investigative measures taken, as well as requests for mutual legal assistance.

61. GRETA was informed that since January 2015, in compliance with the Protocol for identification and action in potential cases of trafficking in human beings for sexual exploitation, the professionals included in the Protocol have started contributing to a database information about the detection of presumed victims of THB and the measures taken. The information compiled includes the following variables: identification data (initials and ID number, sex, age and nationality); stages of the action (detection, information to authorities, reception, legal aid, psychological assistance, identification by the State Security Forces, assisted return); documentation; observations. This data is collected by the General Secretariat for Immigration and Emigration' Sub-directorate General for Migrant Integration and is sent every six months to CITCO (BDTRATA).

62. Since the last quarter of 2017, the General Council of the Judiciary has started collecting data directly from criminal courts on the judicial response to THB.

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<sup>18</sup> Available at:

[https://www.fiscal.es/fiscal/PA\\_WebApp\\_SGNTJ\\_NFIS/descarga/NOTAS\\_INFORMATIVAS\\_Y\\_DILIGENCIAS\\_DE\\_SEGUIMIENTO\\_2015?idFile=1e016a34-59c1-45cf-9c6c-df22f8e39acc](https://www.fiscal.es/fiscal/PA_WebApp_SGNTJ_NFIS/descarga/NOTAS_INFORMATIVAS_Y_DILIGENCIAS_DE_SEGUIMIENTO_2015?idFile=1e016a34-59c1-45cf-9c6c-df22f8e39acc)

63. GRETA notes that there are NGOs to which presumed victims of THB may turn for assistance and if these persons do not wish to have contacts with the police, they are not entered in the official police statistics. As already stressed by GRETA in the first evaluation report, the data collection should be broadened to include victims of THB identified by law enforcement agencies, NGOs and other relevant bodies regardless of whether criminal proceedings have been instituted and whether the persons have given testimony against the alleged perpetrators. GRETA stresses that the absence of a comprehensive data collection system makes it difficult to make an assessment of the situation and the extent to which measures to combat THB correspond to the actual needs.

**64. While acknowledging the steps taken to improve data collection, GRETA urges the Spanish authorities to finalise the development of a comprehensive and coherent statistical system on measures to protect and promote the rights of victims of trafficking as well as on the investigation, prosecution and adjudication of THB cases. Statistics regarding victims should be collected from all main actors and allow disaggregation concerning sex, age, type of exploitation, country of origin and/or destination. This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection, including when NGOs working with victims are asked to provide information for the national database.**

65. As regards research, GRETA was informed that the State Security Forces, the Office of the National Rapporteur, the Prosecution Service, the Ministry of Justice, the Ministry of Employment and Social Security, the Ministry of Health, Social Services and Equality, and the General Council of the Judiciary collaborate with several Spanish universities on the issue of THB. Some of the collaboration has a more institutional format (with the University Carlos III), while other is more occasional or aimed at logistic support (e.g. with the University of Comillas and the University of Granada). The objective is to facilitate research in this field in order to provide new data and increase a wider and multidisciplinary knowledge of THB.

66. In 2015 the organisation Mujeres en Zonas de Conflicto implemented a research project called "Prevention, repression, protection, redress and assistance to victims of trafficking in the region of Andalusia", funded by the General Directorate for Migration of the General Secretariat for Migration and Immigration, with co-funding from the European Fund for Integration. The purpose of this project was to gather information through interviews with key informants in order to analyse the phenomenon of THB and its psycho-social impact. This research also aimed at generating more understanding and knowledge on trafficking in women, girls and boys to facilitate the adoption of preventive measures.

67. Further, the Government Delegation against Gender-based Violence commissioned a research study on the social and legal needs of victims of trafficking for the purpose of sexual exploitation.<sup>19</sup> The study was based on information received from NGOs concerning different aspects of the assistance provided to such victims as well as interviews with prosecutors, *Policía Nacional* and *Guardia Civil* in nine autonomous regions. As part of this project, a random sample of 1,674 Spanish men was asked about their opinions concerning trafficking for sexual exploitation and prostitution and 17 in-depth interviews were carried out with men using prostitution services. The report, published in 2015, contributed to the visualisation of demand for sexual services and served to raise awareness and sensitise men of the fact that prostitution often involves crimes against persons, especially women.

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<sup>19</sup> *Apoyando a las víctimas de trata. Las necesidades de las mujeres víctimas de trata con fines de explotación sexual desde la perspectiva de las entidades especializadas y profesionales involucrados. Propuesta para la sensibilización contra la trata* (Supporting victims of trafficking. The needs of women victims of trafficking for sexual exploitation from the perspective of specialised institutions and professionals involved. Proposal for raising awareness on trafficking). Available at: [http://www.violenciagenero.msssi.gob.es/violenciaEnCifras/estudios/investigaciones/2015/pdf/Apoyando\\_Victimas\\_Trata.pdf](http://www.violenciagenero.msssi.gob.es/violenciaEnCifras/estudios/investigaciones/2015/pdf/Apoyando_Victimas_Trata.pdf)

68. The organisation El Servicio Jesuita a Migrantes de España (SJM-E) published in 2015 its annual report entitled "*Vulnerables vulnerabilizados*", based on visits to the seven administrative detention centres for irregular migrants (CIE) in Spain and interviews with 503 detained persons, including 49 women in Madrid and 24 in Valencia.<sup>20</sup> According to this report, a number of the interviewed detainees were possible victims of THB. Similarly, SJM-E's 2016 report on the CIE refers to cases of victims of trafficking detained in CIE (see also paragraph 148).<sup>21</sup>

69. Further, SJM-E and the University Institute of Studies on Migration at Comillas Pontifical University (Madrid) published the report "No Protection at the Border - Human Rights at the Southern Frontier between Nador and Melilla". According to it, English speaking sub-Saharan women are victims of THB in 95% of cases.<sup>22</sup>

70. In February 2017 UNICEF published a report based on research carried out by the University Institute of Studies on Migration at Comillas Pontifical University (Madrid) which presents a number of cases of child trafficking for different purposes of exploitation and analyses the existing gaps in their identification and referral to assistance.<sup>23</sup>

**71. While welcoming the above-mentioned research efforts, GRETA considers that the Spanish authorities should continue to conduct and support research on THB-related issues as an evidence base for future policy measures. Areas where research is needed in order to shed more light on the extent and nature of the problem of THB include trafficking for the purpose of labour exploitation, trafficking in children, trafficking in relation to migration and internal trafficking (i.e. within Spain).**

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<sup>20</sup> *Servicio Jesuita a Migrantes de España, Vulnerables vulnerabilizados, Informe anual 2015*

<sup>21</sup> *Servicio Jesuita a Migrantes de España, Informe CIE 2016, 25,66 media diaria de repatriaciones forzadas*, June 2017.

<sup>22</sup> Available at: [http://www.asylumineurope.org/sites/default/files/resources/no-protection-at-the-border\\_sjm.pdf](http://www.asylumineurope.org/sites/default/files/resources/no-protection-at-the-border_sjm.pdf)

<sup>23</sup> UNICEF Spanish Committee, *They're Children, They're Victims: Situation in Relation to Child Victims of Human Trafficking in Spain*, February 2017.

### III. Article-by-article findings

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

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

72. In its first report, GRETA urged the Spanish authorities to develop measures to raise awareness of THB for the purpose of labour exploitation and to organise information and education activities to raise awareness about THB among Spanish nationals, including children. GRETA stressed that future information and awareness-raising campaigns should be planned with the involvement of civil society, on the basis of research and impact assessment of previous measures, and focusing on the needs identified.

73. There has been no national awareness-raising campaign addressing THB for different purposes of exploitation in Spain. Measures to raise general awareness of THB by public authorities and NGOs have continued to focus primarily on THB for the purpose of sexual exploitation and reducing demand for sexual services (see paragraphs 111-116).

74. The Government Delegation against Gender-based Violence has been organising annual awareness-raising events on the occasion of the International Day against Sexual Exploitation and Trafficking in Women, Girls and Boys (23 September) and the European Anti-Trafficking Day (18 October). During the week before 18 October 2015, the first campaign against trafficking in women for sexual exploitation organised by the Ministry of Health, Social Services and Equality was launched with the hashtag #tomaconciencia (Become aware). Moreover, to commemorate this day, a national lottery ticket was sold with the image of the UN Blue Heart campaign. The World Day against Human Trafficking (30 July) was commemorated in 2015 by selling a ONCE coupon (Spanish Organisation of the Blind) where the image of the Blue Heart campaign was included and in 2016 the coupon included the image of the campaign #tomaconciencia. Further, on the occasion of the Day against Sexual Exploitation and Trafficking in Women, Girls and Boys in 2017, the Government Delegation against Gender-based Violence organised several events, targeting in particular young people (e.g. launch of a video game, screening of two documentaries, an interactive exhibition). The previously mentioned campaign was re-launched with the hashtag #contralatrata demujeres TOMACONCIENCIA.

75. The Government Delegation against Gender-based Violence has continued to inform professionals about developments and progress made in the action against trafficking in women for sexual exploitation with the weekly newsletter "*La DGVG informa*" (five newsletters were disseminated in 2016 and six in 2017).

76. Article 34 of Law 4/2015 of 27 April 2015 on the Statute of Crime Victims establishes that "the public powers shall promote social awareness-raising campaigns for victims, as well as self-regulation of the public and private social media in order to preserve the privacy, dignity and other victims' rights." In the framework of the Police Plan against THB, several awareness-raising campaigns were conducted in the media and on radio stations. The State Security Forces have increased their presence in the social media (Facebook, Twitter, Tuenti and YouTube) in order to provide updated information warning citizens of risks and raising awareness of the suffering of victims. The State Security Forces also publish informative brochures aimed at potential victims and clients, facilitating the information flow towards those in charge of anti-trafficking activities.

77. Civil society organisations, in collaboration with public institutions, have carried out a series of awareness-raising initiatives, including organising seminars, conferences, publishing research, producing leaflets, and recording feature and short films.

78. In the last years, more than 90 % of the victims identified in Spain have originated from other countries, mainly Romania, Nigeria, China, Paraguay and Bulgaria. In this context, the CITCO holds regular meetings with counterparts from other countries in order to share best practices in the prevention and combating of THB. Examples are advertising campaigns in the social media about the ways the traffickers recruit victims (advertisements in newspapers, recruitment agencies, etc.) or awareness-raising campaigns at schools.

79. The Government Delegation against Gender-based Violence has indicated that the impact of the last campaign organised to raise awareness of THB for the purpose of sexual exploitation was evaluated in the autumn of 2017 by a company which carried out a survey of people who had seen the campaign in order to research their perceptions of THB.

**80. GRETA considers that the Spanish authorities should increase their efforts to raise general awareness of THB, not only for the purpose of sexual exploitation but also for other purposes, such as forced marriage, forced begging, exploitation in criminal activities and organ removal. Awareness-raising measures should be designed in the light of impact assessments of previous measures and research, in collaboration with civil society and the media. This should include steps to integrate sensitisation about THB into the education system, following a transversal approach, and providing information about the risks of being recruited through Internet/social networks, the "loverboy" recruitment scenario and the fact that Spanish nationals can also fall victim to THB.**

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

81. There have been no awareness-raising campaigns in Spain on THB for the purpose of labour exploitation and, as pointed out in paragraph 43, there is currently no national policy document (action plan) to address this issue. At the same time, a number of risk factors point to the need to prevent THB for the purpose of labour exploitation in Spain, such as an important unemployment rate (around 18% in 2017), a sizeable shadow economy (17.2% of GDP), an important agricultural sector and a large domestic and care work sector (reportedly the second largest in EU, after Italy), both of which employ many migrant workers.

82. Through its work, the Labour and Social Security Inspection (ITSS), under the Ministry of Employment and Social Security, can detect THB for the purpose of labour exploitation. In 2016, the total number of labour inspectors in Spain was 1,797 (960 inspectors and 837 sub-inspectors).<sup>24</sup> Labour inspectors check the labour conditions of workers, social security registration and work authorisation for foreign workers in all economic sectors. They can also check labour aspects (wages, working hours, contracts), occupational risks and other social security aspects (contributions, benefits) or employment matters.<sup>25</sup> Inspections are unannounced and can take place at the weekend and at night. According to the Spanish authorities, the Labour Inspection checks employment agencies to ensure that they abide by the regulations and monitors compliance with the regulations by companies in subcontracting chains. Possible cases of THB have to be communicated to the Prosecutor's Office. Law 23/2015 introduced changes and improvements to the organisation and functioning of ITSS, such as the creation of a new anti-fraud office, an increase in the resources of the ITSS and the setting up of a new group of sub-inspectors.

<sup>24</sup> ITSS Annual Report 2016.

<sup>25</sup> Pursuant to Act 23/2015 of 21 July 2015, Royal Decree 5/2000 of 4 August 2000 approving the consolidated text of the Act on Infringements and Sanctions in the Social Order, and Organic Law 4/2000 of 11 January 2000 on the Rights and Freedoms of Foreigners in Spain and Their Social Integration.

83. On 30 April 2013, a collaboration agreement was concluded between the Ministry of Employment and Social Security and the Ministry of the Interior on co-ordination between the Labour and Social Security Inspection and the State Security Forces in the fight against irregular employment and social security fraud. One of its specific goals is collaboration against THB for labour exploitation. Joint visits to work places, such as clandestine workshops or agricultural sites, are conducted in co-ordination with the State Security Forces. The purpose of these joint actions is higher effectiveness because the Labour Inspection has the competence to identify possible cases of THB, but the investigation to ascertain that a crime is committed is carried out by the State Security Forces. The Spanish authorities have indicated that the Labour Inspection and *Guardia Civil* conducted a total of 20,501 inspections in 2014 and 19,452 in 2015. In 2016, 18,645 joint visits with police forces were carried out. However, the Spanish authorities have not indicated how many cases of possible THB were identified during such inspections.

84. The authorities have stated that prosecuting labour exploitation has become a priority for the actors engaged in the fight against THB, including the National Rapporteur, CITCO and the Prosecution Service's unit dealing with foreigners' affairs. An annual meeting of specialised prosecutors took place on 3-4 October 2016 focusing on this phenomenon, with the participation of the Labour Inspection, trade unions and the Spanish Confederation of Employers' Organisations. The main conclusion of this meeting was that prosecutors should monitor proceedings under Articles 311 and 312 of the CC and define the criminal liability of natural and legal persons acting as intermediaries or clandestine placement agencies, as well as the possible criminal liability of the recipient business that do not check the conditions imposed on workers by intermediaries. Prosecutors should also co-ordinate with labour inspectors in order to collect all the necessary information and carry out additional activities deemed necessary.

85. However, GRETA notes that the limited capacity of labour inspectors, difficulties in effectively controlling remote rural areas and the fact that they cannot enter private households unless there is a court order contribute to a situation where it is possible and profitable to exploit trafficked labour. The absence of a national action plan covering this form of THB and the lack of research and data on its scale and manifestations are matters of concern. According to reports received by GRETA, cases of labour exploitation have been dropped by prosecutors and the victims were sent back to their countries of origin. The absence of judgments for this form of trafficking could be attributed to difficulties in the investigation and prosecution of such cases, but also lack of experience and awareness.

86. According to research, the development of the private domestic and care market in Spain has been mostly uncontrolled.<sup>26</sup> Until 2012, domestic and care work in Spain was covered by a "special employment relationship" that gave the workers a very weak status and rights as compared with the rest of the workforce. In 2012, a new regulation on domestic work was adopted by the then Government, establishing a minimum wage, a statutory maximum working week of 40 hours, inclusion in the social security system and a mandatory written contract once a working relationship has lasted more than four weeks. However, the new regulation has reportedly had a limited effect in reducing irregular employment. The Spanish National Statistical Institute estimates a total of 700,000 domestic and care workers, of whom around 126,000 remain uncovered by the regulations. In 2016, 107 infringements were detected on domestic workers' working conditions and 198 workers were affiliated to the Social Security System as a result of ITSS investigations.

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<sup>26</sup> Sara PICCHI, The elderly care and domestic services sector during the recent economic crisis. The case of Italy, Spain and France, *Investigaciones Feministas*, Vol. 7, num. 1 (2016), pp. 169-190.

87. Spanish trade unions cover all sectors of the economy and migrant workers, including those with irregular status, can be unionised and have the same rights as Spanish workers. A network of information centres for migrant workers has been set up. The trade unions have issued a guide on THB for the purpose of labour exploitation, which includes indicators and guidance for trade union members on how to detect victims of trafficking, practical cases and analysis of the definition of THB.<sup>27</sup> Trade unions in Spain have the capacity to promote the prevention of THB for the purpose of labour exploitation, but are still not recognised as a partner in anti-trafficking work. Trade unions representatives met by GRETA stressed the need for more political attention and resources to prevent trafficking for the purpose of labour exploitation.

88. Spain has recently ratified the Protocol to the ILO Convention on Forced Labour (No. 29), but has not yet signed ILO Convention No. 189 concerning decent work for domestic workers.

89. GRETA stresses Spain's positive obligations under Article 4 of the European Convention of Human Rights to put in place adequate measures regulating businesses and other economic activity to ensure that they do not use trafficked or forced labour. In this context, GRETA refers to the European Court of Human Rights judgment in the case of *Chowdury and Others v. Greece* in which the Court found a violation of Article 4, paragraph 2, of the European Convention on Human Rights due to the failure of the Greek authorities to fulfil their positive obligations to prevent human trafficking, to protect victims, to effectively investigate the offences committed, and to punish those responsible for human trafficking offences.<sup>28</sup>

90. **GRETA urges the Spanish authorities to intensify their efforts to prevent THB for the purpose of labour exploitation, in particular by:**

- **expanding the capacity and mandate of labour inspectors so that they can be actively engaged in the prevention of THB, including in private households;**
- **addressing the risks of THB in the agricultural sector and ensuring that sufficient resources are made available to labour inspectors to fulfil their mandate, including in remote locations at risk of THB;**
- **training labour inspectors throughout the country, as well as law enforcement officers, prosecutors and judges, on combating THB for the purpose of labour exploitation and the rights of victims;**
- **reviewing the regulatory systems concerning migrants working as home care workers and ensuring that inspections can take place in private households with a view to preventing abuse of domestic workers and detecting cases of human trafficking;**
- **strengthening the monitoring of recruitment and temporary work agencies and supply chains and reviewing the legislative framework for any loopholes that may limit protection or preventive measures;**
- **raising awareness among the general public as well as, in a targeted manner, among migrant workers, about the risks of THB for the purpose of labour exploitation;**

<sup>27</sup> *Guía Básica Sindical: Trata de seres humanos con fines de explotación laboral.*

<sup>28</sup> European Court of Human Rights, *Chowdury and Others v. Greece*, application No. 21884/15, 30 March 2017.

- **working closely with trade unions, civil society and the private sector to raise awareness of trafficking for the purpose of labour exploitation, prevent trafficking in supply chains and strengthen corporate social responsibility, drawing on the Guiding Principles on Business and Human Rights<sup>29</sup> and Recommendation CM/Rec(2016)3 on human rights and business.<sup>30</sup>**

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

91. Prevention of trafficking in children for the purpose of sexual exploitation has been the predominant concern in Spain, often linked to the prevention of prostitution, while other forms of exploitation have received less attention. The Ministry of Health, Social Services and Equality, in co-operation with the autonomous regions, runs online courses for professionals providing direct assistance to children aimed at preventing, identifying and intervening in cases of child abuse, sexual abuse, trafficking and sexual exploitation.<sup>31</sup> In 2015, 56 professionals received training on THB through this online course and in 2017, 83 professionals.

92. The Ministry of Health publishes annual grant calls for developing programmes on prevention and intervention in cases of abuse and child sexual exploitation, including THB. In the grant call for 2015, child victims of THB were included as a priority category. The funding available was 585,174 euros in 2015. A programme was developed by the NGO APRAMP under the title "Strategies for Identification and Assistance of Sexually Exploited Children" which aimed at reinforcing co-ordination between private and public institutions working with children at risk of sexual exploitation and victims of trafficking. APRAMP has published a leaflet entitled "Child victims of trafficking and exploitation" to raise awareness of the problem of child trafficking, as well as other publications on the issue of child trafficking.<sup>32</sup>

93. The Ministry of the Interior, the Ministry of Education, Culture and Sports and the Ministry of Health, Social Services and Equality collaborated in the development of the Master Plan for coexistence and improvement of security in educational centres, implemented by the State Secretariat for Security, with the goal to help prevent security and coexistence problems that may affect children and young people (school bullying, drugs and alcohol, violent gangs, racism and intolerance, violence against women and discrimination, Internet and social media). The Plan includes different actions at educational centres (meetings with police experts, seminars about safety problems, measures to prevent sexist behaviour and violence) and foresees specific measures to train professionals about child victims of trafficking. The Government Delegation against Gender-based Violence has also been engaged in raising awareness in schools, organising a total of 6,642 activities at schools in 2016, including on risks associated with the use of the Internet and new technologies.

94. The Spanish authorities have also referred to awareness-raising campaigns, such as the one by the Council of Europe for the prevention of sexual violence against children, "One in five", developed since 2012 by the Spanish Federation of Associations for the Prevention of Child Abuse with the financing of the Ministry of Health. Another example given is the campaign "Don't look away", launched in December 2013, to minimise the risk of child sexual exploitation in world sports events, especially in the Football World Cup in Brazil in 2014.

<sup>29</sup> [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

<sup>30</sup> [Recommendation CM/Rec\(2016\)3](#) of the Committee of Ministers to member States on human rights and business, adopted by the Committee of Ministers on 2 March 2016 at the 1249th meeting of the Ministers' Deputies.

<sup>31</sup> *La trata de niños, niñas y adolescentes con fines de explotación sexual. La atención integral a sus víctimas* (Trafficking of boys, girls and adolescents for sexual exploitation. Integral assistance to victims).

<sup>32</sup> For example, "*A pie de calle - actuaciones con menores víctimas de trata*" ("At the foot of the street - performances with minors victims of trafficking").



95. The Spanish authorities have indicated that special attention is paid to unaccompanied children since they are particularly vulnerable. Paragraph 10 in the Article 35 of the Organic Law 4/2000 of 11 January on the Rights and Freedoms of Foreigners in Spain and Their Social Integration establishes that the State Security Forces will adopt the necessary technical measures to identify undocumented foreign children. Information about the child, including finger prints, is entered into the Register of Unaccompanied Foreign Children (RMENA), which is managed by *Policía Nacional* and co-ordinated by the Prosecution Service. The Framework Protocol on certain actions related to unaccompanied foreign children, signed on 22 July 2014 by the Ministers of Justice, Employment and Social Security, Health, Social Services and Equality, the Prosecution Service, the State Secretariat for Security of the Ministry of the Interior and the Under-Secretary of the Ministry of Foreign Affairs and Co-operation, was published in the Spanish Official Journal on 16 October 2014. The Protocol aims at establishing co-ordination guidelines related to the identification of unaccompanied children, age determination and handing over to the public institution in charge of child protection, as well as the proper functioning of the RMENA, focusing on guaranteeing the best interests of the child.

96. According to various reports, the conditions in which migrants, including children, are kept in the autonomous cities of Ceuta and Melilla are such that there is a heightened risk of children falling victim to trafficking and abuse (e.g. overcrowding in the administrative detention centres, mixing of adults and children). NGOs working in immigration detention centres (CIE) have reported cases of children, some of them claiming to be adults, showing indicators of being trafficked.<sup>33</sup> Children may be moved from the CIE to the care of the child protection authorities. However, GRETA was informed that the existing centres for children lack staff trained in detecting victims of trafficking and there are reports about children disappearing from such centres.

97. Further, GRETA was informed that not sufficient attention was being paid to child, early and forced marriages, usually of girls from the Roma communities, which are seen as a "cultural phenomenon". According to information provided by the General Directorate of Services for Family and Childhood, which is a member of the Ad hoc Committee of Experts on Roma Issues (CAHROM) of the Council of Europe, the minimum age for concluding a marriage in Spain is 16 years (exceptionally, 14 years, with the permission of a judge). Through Law 15/2015 modifying the Civil Code, the minimum age of marriage was set at 18 years, and the dispensation in exception circumstances and with a judge's permission was raised from 14 to 16 years. As regards the issue of child marriages in the Roma community, which is more frequent among first-generation migrants from countries like Romania and Bulgaria than among indigenous Roma, the authorities have referred to the work of Roma mediators and Roma associations to raise awareness and to empower Roma girls and women.

98. While welcoming the steps taken in Spain to raise awareness of the risks of child trafficking, GRETA notes that awareness-raising work often depends on civil society initiatives and is mostly focused on sexual exploitation.

**99. Referring to Article 5, paragraph 5, of the Convention, according to which Parties to the Convention shall take specific measures to reduce children's vulnerability to trafficking, notably by creating a protective environment for them, GRETA urges the Spanish authorities to ensure that unaccompanied and separated children benefit from effective care arrangements, including accommodation, access to education and healthcare, so that they are not exposed to risks of trafficking.**

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<sup>33</sup> According to reports by SJM-E, in 2015, 19 children were identified as possible victims of trafficking in CIE and in 2016, 51 children.

100. **Further, GRETA considers that the Spanish authorities should intensify their efforts to prevent trafficking in children, in particular by:**

- **raising public awareness about the risks and different manifestations of child trafficking (including forced marriage, forced begging and forced criminality);**
- **sensitising and training teachers, educational staff and child welfare professionals across the country about THB and its different forms;**
- **integrating the prevention of THB in training on online safety.**

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

101. GRETA notes that while human trafficking for the purpose of organ removal as defined by the Convention and organ trafficking as defined by Articles 4 to 8 of the Council of Europe Convention against Trafficking in Human Organs<sup>34</sup> are two distinct crimes, they bear certain similarities and share similar root causes, such as shortage of organs to meet demand for transplantation and poor economic and other conditions that put persons in a vulnerable position. Therefore, measures to prevent organ trafficking can help prevent trafficking for the purpose of organ removal and the reverse is also true.<sup>35</sup> Among the necessary preventive measures, GRETA underlines the importance of a robust and transparent domestic system for the removal and transplantation of human organs and the need for training of health-care professionals. GRETA also stresses the importance of conducting a thorough investigation of each case where there is information or suspicion of trafficking for the purpose of organ removal, paying attention to the abuse of the vulnerability of the "donor" and ensuring that "donors" are treated as victims of trafficking in human beings.

102. Trafficking in human beings for the purpose of organ removal is penalised under Article 177 bis of the CC. Further, Article 156 bis of the CC criminalises the promoting, facilitating or advertising of the illegal procurement or trafficking of other people's organs or their transplantation and envisages penalties for the recipients of organs who are aware of their illicit origin and legal persons involved.

103. Pursuant to Law 30/1979 of 27 October 1979 on the Removal and Transplantation of Organs, no remuneration must be received for organ donation and the recipient must not be requested money for the organ transplanted. Further, Royal Decree 1723/2012 of 28 December 2012 regulating the activities of obtaining, clinical use and territorial co-ordination of human organs for transplantation and establishing quality and safety requirements, provides in Article 7 that donations must be free and any advertising of the need for an organ or its availability, offering or seeking any type of reward or remuneration, are forbidden. Chapters III and V of the Royal Decree contain the conditions for deceased and living donors and for authorisation to perform transplantation. Thus living donation can be practiced only in specifically authorised centres, subject to free, informed and specific consent, following independent medical, social and psychological assessment by an Ethics Committee and a judge. Children and legally incompetent persons are excluded from living donations. Chapter VI contains provisions on organs and donors characteristics, organs traceability and health-care professionals training. Chapter VII establishes that the Spanish Transplant Organisation (ONT) and the Autonomous Communities are the competent authorities for the co-ordination of the activities related to the obtaining and transplantation of organs. These authorities are represented in the National Transplant Committee which is the collegiate body where agreements on donation and transplantation are taken. The ONT is the authority responsible of the development and maintaining of the registry of centres of organ procurement and transplantation, as well as of the information systems on donors, transplanted patients and organs.

<sup>34</sup> Opened for signature in Santiago de Compostela on 25 March 2015.

<sup>35</sup> See "[Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs](#)", [Joint Council of Europe/United Nations Study](#) (2009), in particular pages 55-56; "Trafficking in human beings for the purpose of organ removal in the OSCE region: Analysis and Finding", OSCE Occasional Paper No. 6 (2013).

104. A National Protocol for living donors in non-resident donor-recipient pairs was approved in December 2014 by the ONT, composed of one person from every Autonomous Community and presided by the ONT. It specifies an exhaustive list of requisites: i) the referring centre has to carry out a complete evaluation of donor and recipient; ii) all the information related to donor and recipient has to be presented before travelling; iii) the recipient must present unequivocal proofs of relationship with the donor; iv) the donor and recipient should have on their own at least a three months validity visa; v) every individual case has to be examined in Spain; vi) the consent and approval process have to follow the routine procedures performed in Spain; vii) there must exist a guarantee for the living donor follow-up in the country of origin; viii) the cost should be assumed by the donor's and recipient's country(s) of origin.

105. GRETA was informed of two cases of attempted trafficking for the purpose of organ removal. In July 2013, an Algerian migrant woman informed a Spanish NGO that she had been offered 40,000 euros for a liver lobe, but after an evaluation in a private clinic in Valencia she had been disregarded as a live liver donor. The NGO informed the police which initiated an investigation (Operation JEREZ) in close co-operation with the ONT. The recipient was a Lebanese patient who had travelled to Spain and after a first assessment at a Spanish liver transplant centre, had not been accepted in the deceased donor waiting list. Through four intermediaries (three Lebanese, one Palestinian), nine persons (including eight migrant workers) were recruited and evaluated as potential live liver donors in a private clinic in Valencia and offered 40,000 euros. The recipient presented himself at two different Spanish liver transplant centres with a potential live organ donor (Romanian). The live liver donor/transplant procedure was disregarded in both centres because there was no evidence of emotional relationship between donor and recipient and unclear motivations for donating an organ. The second liver transplant team advised the recipient to consider if there were any family members who could be considered and assessed as live liver donor candidates. One son was studied and deemed suitable after evaluation. The donation and transplantation procedures took place in August 2013. In the meantime, the criminal investigations unveiled the trafficking attempts and the recipient was arrested when he returned to Spain for a routine check-up in March 2014. The four intermediaries were arrested, the "donors" were considered victims and the ONT presented itself as private prosecutor. The case was referred to the Provincial Court of Valencia; provisionally, the prosecutor brought charges under Article 156 bis of the CC (promoting, encouraging and facilitating illegal organ transplantation). **GRETA would like to be kept informed of the outcome of this case.**

106. A second case was an attempt perpetrated by an international criminal group (Serbia) which was being investigated for different criminal activities by the Belgian, German and Spanish police. Conversations within the group were recorded by the police as part of the investigation. The leader of the criminal group discussed on the phone that his son was in need of a kidney transplant and asked members of the group to recruit a potential live kidney donor. The group recruited a migrant worker of Moroccan origin in an irregular administrative situation and in a state of extreme necessity. He was offered 6,000 euros for the kidney and asked to present himself as a willing live organ donor in a Spanish kidney transplant centre. During the evaluation of the donor, there was evidence that the migrant worker had been coerced and, when he refused to continue with the donation, he was kidnapped and tortured. The Spanish police immediately contacted the ONT to co-ordinate a joint investigation. The transplant centre was asked to co-operate with the police when the donor-recipient pair presented themselves for the next round of evaluation pretending a legitimate relationship. The organised criminal group was arrested in May 2015 (48 arrests, including five with charges of attempted trafficking). A conviction was issued by the Provincial Court of Barcelona on 13 October 2017 under Article 156 bis of the CC. The members of the organised criminal group were sentenced to six years of imprisonment and the prospective recipient, to four years of imprisonment. The decision was confirmed by the Second Chamber for Criminal Cases of the Supreme Court in judgment No. 710/17 of 27 October 2017.

107. The Spanish authorities have stated that the two cases referred to above were not considered at human trafficking for the purpose of organ removal since there was no transfer of the victim, neither inside the country nor across borders. GRETA notes that to establish a THB offence, it is not necessary to have an element of movement of a person (e.g. the action could be to recruit a person for the purpose of exploitation). The authorities have referred to another case, initiated in 2017, where the possible offence is trafficking for the purpose of organ removal. The investigation began in November 2017, as a result of the detection by *Policía Nacional* officers of non-accompanied children of Moroccan nationality who had left the reception centre in Viznar (Granada) with the intention of travelling to Madrid, having been urged to do so by several individuals who offered to pay their travel expenses. One of the children affirmed in his statement to the police that one of these individuals asked him if he would be willing to sell a kidney for 20 million euros, but no other action materialised because the children were intercepted by the police. The procedure is still at its initial stage. One person was arrested and is currently released on bail.

108. Spain signed the Council of Europe Convention against Trafficking in Human Organs on 25 March 2015. **GRETA encourages Spain to ratify the Council of Europe Convention against Trafficking in Human Organs, which entered into force on 1 March 2018, as this could contribute to preventing trafficking for the purpose of organ removal.**

109. **GRETA considers that the Spanish authorities should strengthen the training and awareness-raising measures aimed at health professionals involved in organ transplantation and other relevant professionals regarding trafficking for the purpose of organ removal, and effectively monitor the operation of private transplant clinics.**

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

110. In its first report, GRETA urged the Spanish authorities to continue efforts to discourage demand for the services of victims of trafficking for the purpose of sexual exploitation, bearing in mind that such measures should be balanced and not lead to the criminalisation of victims of trafficking, as well as to strengthen their efforts to discourage demand for the services of victims of trafficking for the purpose of labour exploitation, including by reinforcing labour inspections, in particular in sectors at high risk such as agriculture, textile industry, domestic service, construction and the hotel/catering trade.

111. The Action Plan to combat THB of women and girls for sexual exploitation (2015-2018) establishes the need to address demand for sexual services as a root cause of human trafficking and envisages measures aimed at promoting awareness and educating society in its responsibility for the existence of trafficking situations. The awareness-raising activities already mentioned in paragraphs 74-76 are also aimed at reducing demand for sexual services from victims of THB. In addition, the Spanish authorities have referred the touring exhibition "*No seas cómplice*" ("Don't be an accomplice"), promoted by the Government Delegation for Gender Violence, in collaboration with the Institute of Women and Equal Opportunities. By way of example, the exhibition was made available to the following bodies in 2015: Ateneo in Orense (Galicia), 6 to 30 April; *Policía Nacional* Academy (Ávila, Castile and León), 13 to 30 October; City Council of Ortigueira (La Coruña, Galicia), 3 to 17 of November; Women Association Flor Espliego (Alcaudete, Jaén, Andalusia), 19 November to 3 December. In 2017, the exhibition was shown in seven cities.

112. Further, raising awareness of trafficking in women and girls for the purpose of sexual exploitation amongst school children is part of the joint Plan of the Ministry of the Interior and the Ministry of Education, Culture and Sports under the Master Plan for coexistence and improvement of security in educational centres. *Policía Nacional* has been involved in the development and implementation of several awareness-raising activities, including a TV advertising campaign launched in 2015 in co-operation with the TV company MEDIASET ESPAÑA, under the project "12 months, 12 causes", aimed as consumers of prostitution.

113. Reference should be made to two projects funded by the Ministry of Employment and Social Security and implemented by NGOs. The first one, developed by ACCEM and entitled NOVICOM (Programme aimed at promoting knowledge, awareness and implementation of actions for the social support of immigrant women engaged in prostitution and women victims of trafficking for labour or sexual exploitation and their children), included the production of awareness materials, information talks in educational centres, the campaign "*Abre los ojos*" ("Open your eyes") and collaboration with national and international media in 2014 and 2015. The second awareness-raising project, developed by APRAMP, was entitled "*Nadie se ofrece para ser esclav@: contra la trata*" ("Nobody volunteers to be a slave: against trafficking"). Two audio-visual materials were produced: the documentary "*Chicas Nuevas 24 horas*" ("New Girls 24 hours") and the short film "Loveth".<sup>36</sup>

114. Considering the lack of knowledge of journalists about the phenomenon of THB, in 2013 a guide was drafted by APRAMP under the title "Guide for media professionals"<sup>37</sup>, co-financed by the Directorate General for Migration and the European Integration Fund. This material continues to be handed in events where media are present.

115. One of the measures envisaged by the Action Plan to combat THB of women and girls for sexual exploitation is to promote the revision of advertising contents and media contents, as well as those disseminated through cinema, television or Internet, in order to prevent them from contributing to trivialising or encouraging violence against women and demand for sexual services resulting in trafficking in women and girls. The Institute of Women and Equal Opportunities promotes through its Women's Image Observatory the limitation of advertising of escort clubs or other places where there is prostitution, as well as sexist advertising or adverts which promote the commodification of women in public-owned or managed platforms (billboards, urban furniture, public transport).

116. One of the goals of the second stage of the Police Plan against THB is reducing demand for prostitution services. A leaflet has been issued for potential clients explaining the indicators to identify a victim of trafficking. In 2014 there was an increase in comparison with the previous year in the number of administrative inspections in places for prostitution (night clubs, private houses) and workplaces (construction, agriculture, hotel sector), 6 % and 44 % respectively.

117. According to civil society actors, the lack of political and legal position on the phenomenon of prostitution in Spain facilitates THB for the purpose of sexual exploitation. There is reportedly a "normalisation" of the culture of paid sex by men, increasingly young (according to polls, 39% of Spanish men acknowledge having used paid sex). The number of brothels, in particular along the border with France, has continued to grow.<sup>38</sup>

118. As a measure to discourage demand, the Spanish authorities have referred to Organic Law 4/2015 of 30 March 2015 on the Protection of Citizens' Security, which prohibits "the request or acceptance of paid sexual services by the client in public areas near places for children, educational centres, children parks or leisure areas accessible to children, or when these behaviours, due to the place they occur, may entail a risk for road safety (schools, parks, ...)". Civil society representatives have expressed concerns about this legislation, which does not address the root causes of the problem, prevents vulnerable women and girls from requesting assistance and might be in conflict with the non-punishment provision (see paragraph 235). In addition, there are municipal ordinances in several Spanish cities that sanction prostitution and may contribute to the criminalisation of trafficked persons.<sup>39</sup>

<sup>36</sup> Accessible at: <https://vimeo.com/156383192> and <https://www.youtube.com/watch?v=9fWtHTQe3As>

<sup>37</sup> Available at: <https://apramp.org/download/guia-de-intervencion-con-victimas-de-trata-para-profesionales-de-los-medios-de-comunicacion/>

<sup>38</sup> *El País*, 21 April 2017.

<sup>39</sup> See research by the Autonomous University of Barcelona available at: <http://www.europapress.es/catalunya/noticia-estudio-uab-afirma-multas-prostitutas-empeoran-condiciones-vida-20170602134335.html>

119. In the field of trafficking for the purpose of labour exploitation, the Spanish authorities have referred to the Labour and Social Security Inspection's annual Integral Action Plan, which includes four groups of inspections: labour relations, prevention of occupational risks, social security, and irregular employment and foreigners' employment. According to the authorities, the inspection activity has been reinforced in sectors such as hotels, restaurants, shops and agriculture. Further, the Plan against Irregular Employment and Social Security Fraud, which was approved by the Council of Ministers on 27 April 2012, aims at combating behaviour that violates workers' rights and negatively impacts competition between companies. However, GRETA notes with concern that discouraging demand for services of victims of trafficking for the purpose of labour exploitation is overlooked by Spain. In this context, GRETA refers to the recommendations made in paragraph 90.

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

- **raising awareness of the important role of the media and advertising in tackling demand which leads to human trafficking;**
- **promoting awareness among businesses, strengthening corporate social responsibility and preventing trafficking in supply chains.**

121. **Further, GRETA considers that the Spanish authorities should continue implementing educational programmes at schools which stress the importance of gender equality and respect for the dignity and integrity of every human being and the consequences of gender-based discrimination.**

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

122. In its first report, GRETA urged the Spanish authorities to strengthen their efforts to detect cases of THB at the borders and when tackling irregular migration, in particular by providing specialised and regular training on THB to law enforcement officers, including border police, with clear instructions on how to proceed. GRETA also considered that the Spanish authorities should keep under review the application of the new instructions to register undocumented children arriving in Spain and check the relationship between the child and the accompanying adult(s), keep under review the issuing of visas and accreditations for domestic workers in diplomats' households, and take further steps to provide written information to foreign nationals seeking employment in Spain, in a language that they can understand, in order to alert them about the risks of THB and where to seek help and advice.

123. *Policía Nacional* has created the Protocol of Intelligence and Collection of Data for the Analysis of Risks at Borders in the framework of the Integral Plan of Spanish Border Management. Its aim is gathering and immediately communicating any information which can enable the adoption of measures and mechanisms to prevent and combat irregular immigration, trafficking in human beings and document counterfeiting, as well as identifying threats and risks at the borders. There is close collaboration with Frontex whose training manual with indicators to detect victims of trafficking at the border is disseminated among officers working at borders as a complement to the training they regularly receive.

124. The identification of possible victims of THB at border points is done by the Office of the Commissioner-General for Aliens and Borders of *Policía Nacional*. When *Guardia Civil* intervenes through its units of the Fiscal and Borders Department, possible victims are brought to the Office of the Commissioner-General for Aliens and Borders. There is a structure in the Central Border Unit of *Policía Nacional* that carries out functions of management, co-ordination and control in relation to entry and departure of Spanish nationals and foreigners into and from the national territory. Furthermore, the detection of possible victims of THB at border points is done both by the Office of the Commissioner-General for Aliens and Borders of *Policía Nacional* and the Customs and Border Command of *Guardia Civil*, depending on where it takes place, at a border crossing point or another border area, such as the maritime border.

125. Bearing in mind that most of the immigrants arriving in Spain enter the country through airports (primarily El Prat in Barcelona and Barajas in Madrid), there is a need for strengthening victim detection mechanisms as part of border control procedures. GRETA was informed that at Madrid Barajas Airport, following an agreement with the Provincial Brigade for Combating THB, specialised NGOs are allowed to be present at the interviews with applicants for international protection. This practice will also be extended to El Prat Airport in Barcelona. However, NGO representatives are not allowed to get involved in the interview or ask questions.

126. As noted in paragraph 18, according to UNHCR, in 2016, 8,160 persons arrived in Spain by sea, representing an increase of 65% compared to 2015. The majority of them were rescued at the high seas and transferred to different points on the Andalusian coast (Almeria, Motril, Tarifa and Malaga). Of particular concern is the situation of Sub-Saharan women arriving from Morocco who are usually in a very poor physical and mental condition, having suffered grave sexual violence, and sometimes accompanied by a "watcher" who always stays with them. New arrivals are detained in police facilities for up to 72 hours and then moved to immigration detention centres (CIE) where they can spend a maximum of 60 days. Identification of victims of trafficking in these facilities can be challenging (see paragraphs 147-149).

127. In 2013, the Spanish Ombudsman published an update on the 2012 thematic report on THB which stressed the detection of possible victims of THB in the autonomous cities of Ceuta and Melilla as one of the main challenges for the identification of victims.<sup>40</sup> According to UNHCR, women, young children and persons with special needs who are unable to climb the fenced borders of Ceuta and Melilla frequently turn to organised crime networks in order to gain access to Spanish territory.<sup>41</sup> As noted in paragraph 24, Organic Law 4/2015 of 30 March 2015 on the Protection of Citizen's Security provides that foreigners detected while trying to cross the border in Ceuta and Melilla may be summarily returned (pushed back) in order to prevent their illegal entry in Spain. Despite the fact that this provision states that any summary return must be carried out in compliance with international human rights standards, NGOs have raised concerns that this measure affects negatively the detection of victims of THB. GRETA was not provided with information on whether the application of this provision has been assessed.

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<sup>40</sup> Defensor del Pueblo, *Seguimiento del informe presentado en septiembre de 2012, La Trata de Seres Humanos en España: Víctimas Invisibles* (Human Trafficking in Spain: Invisible Victims), octubre de 2013.

<sup>41</sup> Servicio Jesuita a migrantes España, *No Protection at the Border – Human Rights at the Southern frontier between Nador and Melilla*.

128. In this context, GRETA refers to the European Court of Human Rights judgment in the case of *N.D. and N.T. v. Spain*<sup>42</sup> concerning a Malian and Ivorian nationals who tried to enter Spain via the Melilla border crossing in August 2014, climbing over three consecutive fences at the border. Together with some 75-80 other migrants, they were apprehended by *Guardia Civil* and immediately returned to Morocco, without being apply to apply for asylum. The Court ruled that the Spain was in violation of Article 4 of Protocol 4 of the European Convention on Human Rights (which prohibits collection expulsions) and Article 13 of the Convention (right to an effective remedy) due to the absence of individual assessment and effective remedy against expulsion.

129. As noted in paragraph 96, since GRETA's first evaluation, following recommendations made by the Spanish Ombudsman, a database in which all foreign children arriving irregularly in Spain are registered (with photographs and finger-prints) has been set up under the co-ordination of the Prosecution Service GRETA was informed by the Prosecution Service that 13 551 unaccompanied children were registered in this database (of whom 13 202 were boys). According to the Ombudsman's Office, this database has permitted the tracing of children who had disappeared in Spain in other countries to which they had been moved.

130. **GRETA considers that the Spanish authorities should continue their efforts to detect and prevent THB through border control measures, in particular in the context of increased migration. This should include:**

- **steps to build the capacity of all competent authorities (State Security Forces, interpreters, lawyers, Spanish Red Cross, NGOs) to detect indicators of THB among persons arriving in Spain;**
- **ensuring that the protocol for State Security Forces working at the borders include indicators to enable the identification and referral to assistance of possible victims of trafficking;**
- **designating a formal role to specialised NGOs in the process of assessment of the needs of new arrivals and the detection of victims of THB;**
- **providing information to foreign nationals arriving irregularly or seeking asylum, in a language that they can understand, about the risks of THB, their rights and where to turn for advice and assistance. In this context, GRETA refers to the United Nations Office of the High Commissioner for Human Rights (OHCHR) 2014 Recommended Principles and Guidelines on Human Rights at International Borders.<sup>43</sup>**

<sup>42</sup> European Court of Human Rights, *N.D. and N.T. v. Spain*, applications No. 8675/15 and 8697/15, 3 October 2017.

<sup>43</sup> [http://www.ohchr.org/Documents/Issues/Migration/OHCHR\\_Recommended\\_Principles\\_Guidelines.pdf](http://www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf)



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

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

131. In the first evaluation report on Spain, GRETA urged the Spanish authorities to review the victim identification procedure with a view to ensuring that possible victims of THB are treated, in the first place, as persons who have been exposed to human rights violations rather than as a source of evidence for criminal investigations. To this end, GRETA recommended to strengthen multi-agency involvement in the decision-making process leading to the identification of victims of trafficking, including giving a formal role in the identification process to other frontline actors, such as labour inspectors, social workers, medical staff and NGOs, and to ensure co-ordination and exchange of information between all relevant actors involved in the identification procedure. Further, GRETA asked the Spanish authorities to adopt a proactive approach to the identification of victims of trafficking for the purpose of labour exploitation, in particular in at-risk sectors such as agriculture, construction, textile, restaurants, hotels and domestic work, as well as to improve the detection and identification of victims of trafficking among irregular migrants.

132. The legal basis and regulations for the identification of victims of trafficking remain as described in GRETA's first report.<sup>44</sup> The Framework Protocol for the Protection of Victims of Trafficking adopted on 18 October 2011 by the Ministers of Justice, the Interior, Employment and Social Security, Health, Social Services and Equality, the Prosecution Service and the General Council of the Judiciary defines the procedure for the identification and referral to assistance of victims of trafficking, from initial detection through to repatriation, and the co-ordination between relevant authorities and institutions. The Framework Protocol builds on the provisions of Organic Law 4/2000 of the Rights and Freedoms of Foreigners in Spain and Their Social Integration (in particular, Article 59 bis) and its implementing regulation approved by Royal Decree 557/2011, and covers all presumed victims of trafficking, without discrimination on the basis of gender, nationality of legal status.

133. The Framework Protocol describes the responsibilities of different actors<sup>45</sup> and sets the general obligation to report any suspected case of THB to the Prosecution Service, the courts or the police. When law enforcement officers come into contact with a possible victim of trafficking, in the context of an investigation or in the framework of immigration control, they must immediately notify the Prosecution Service. When possible cases of THB are detected during labour inspections, they must also be notified to the Prosecution Service. The Prosecution Service must comply with its legal duty to safeguard victims of crime and ensure that victims of trafficking are regularly informed of their rights, in a clear and accessible manner, including concerning any legal proceedings which could affect their safety and the possibility of initiating legal action. Furthermore, the new Status of Crime Victims puts general obligations on the provision of information to all victims of crimes.

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<sup>44</sup> See paragraphs 142-143 of GRETA's first report.

<sup>45</sup> State Security Forces, Labour and Social Security Inspectorate, Prosecution Service, judicial bodies, government delegations or sub-delegations, State Secretariat for Immigration and Emigration, Asylum and Refugee Office, forensic doctors, staff of detention centres for irregular migrants, institutions with accredited experience in the assistance to victims of trafficking.

134. The bodies competent for the identification of victims of THB are law enforcement units with specific training in the prevention and fight against THB and in the identification and assistance to victims. The identification of the victim relies on three elements: evaluation of indicators, interview with the person concerned and information from third parties. The Framework Protocol establishes in paragraph VI.C that in order to determine the existence of reasonable grounds or evidence that a person is a victim of trafficking, the responsible police officers should give consideration to the indicators set out in Appendix 2 to the protocol (which are not public). In the process of identification, all the information available about the personal situation of the presumed victim should be gathered and taken into account, including from specialised NGOs assisting victims and professionals qualified to evaluate aspects related to the health and social situation of presumed victims. It is specified that the evaluation of the existing evidence must be performed "in accordance with the principle of utmost protection for the possible victim, in order to guarantee their support and safety and to further the investigation". The evaluation must consider the risks for the possible victim and include a proposal regarding the protection, safety and privacy measures required.

135. According to the Framework Protocol, following identification as a presumed victim, the competent police unit shall provide the person concerned with information, in a clear manner and in a language which he/she understands, on the right to free legal assistance protection measures, recovery and reflection period, residence permit, assisted repatriation, the possibility of contacting an organisation with experience in assisting victims of trafficking in order to receive the necessary support, and redress for damages, wrongs or grievances suffered, including through civil action.

136. As part of the EU-funded project "Elaborating common guidelines and procedures for the identification of victims of trafficking" (Euro TrafGuID),<sup>46</sup> practical tools for first level identification of victims of different forms of THB (sexual exploitation, labour exploitation, forced begging and illicit activities) were developed, translated into Spanish and made available on the website of the Government Delegation against Gender-based Violence.<sup>47</sup> These tools contain formalised indicators for the identification of victims of THB for different types of exploitation and have been distributed to all stakeholders who may come into contact with possible victims of THB (for example, in 2014, 3000 copies of these tools were distributed). Moreover, NGOs have produced various tools to promote the identification of victims of trafficking.<sup>48</sup> Further, a guide for lawyers on detecting and assisting victims of THB has been issued by the Spanish General Council of Lawyers.<sup>49</sup>

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<sup>46</sup> This project involved Bulgaria, France, Greece, Romania, Spain and the Netherlands.

<sup>47</sup> <http://www.violenciagenero.msssi.gob.es/otrasFormas/trata/detectarla/home.htm>

<sup>48</sup> For example, APRAMP, *Guía de intervención con víctimas de trata para profesionales de los medios de comunicación; Guía de intervención con víctimas de trata para profesionales de la salud; Guía de intervención con víctimas de trata para profesionales de la seguridad del estado; Guía de intervención con víctimas de trata ayuntamientos y trabajadores sociales.*

<sup>49</sup> *Fundación Abogacía española, Detección y defensa de víctimas de trata – guía práctica para la abogacía.*

137. As noted in paragraph 28, since GRETA's first evaluation visit, Instruction 6/16 of the State Secretariat for Security "On the actions of the State Security Forces in the fight against trafficking in human beings and in the collaboration with organisations and entities with proven experience in assisting victims" has been issued on 15 June 2016. The instruction refers, *inter alia*, to the Council of Europe Anti-trafficking Convention and the recommendations made in GRETA's first report on Spain. It creates the function of "social interlocutor on trafficking in human beings" within *Policía Nacional* and *Guardia Civil* at national and regional level. These "social interlocutors" are responsible for the co-ordination, co-operation and promoting of actions for combating THB within their geographical area of competence and serve as permanent points of contact with other organisations and entities with proven experience in assisting victims of THB (referred to as "specialised entities", which include NGOs). The Instruction provides that information on possible victims of THB should be shared between the law enforcement agencies and specialised entities, via the social interlocutor, "by the fastest and most efficient means". Further, it states that identification of victims shall be carried out exclusively by law enforcement units with specialised training on the basis of "legal and factual evidence available to them". Law enforcement agencies have to promptly inform specialised entities of the detection of possible victims of trafficking (e.g. as part of immigration control) so that they can collaborate in the early identification and interviewing process.

138. On the basis of Instruction 6/16, the General Directorate of the Police issued Instruction 5/16 of July 2016 which instructs the police to appoint social interlocutors at all territorial levels and to set up an email address for the transmission of information relevant to victim identification.

139. GRETA welcomes the adoption of Instruction 6/16 and the setting up of a network of social interlocutors throughout Spain. According to specialised NGOs, this has had a positive impact on building trust and collaborative networks for the identification of victims of trafficking. As a result of the new instructions, NGO are involved from an early state in the victim identification procedure and can provide informal reports to the police about cases they have detected. Nevertheless, although there are indications that a more multi-disciplinary approach is being developed, GRETA notes that formal identification remains exclusively within the remit of law enforcement agencies (*Policía Nacional* and *Guardia Civil*) specialised in the investigation of THB offences and a connection continues to be made between the identification of victims of trafficking and the criminal investigation. As noted in GRETA's first report, Spain's identification system brings possible victims of trafficking into early contact with the police and this can be a deterrent for victims with irregular status or low trust in the police. NGOs have reported that if law enforcement officers suspect in the course of controlling foreigners that a person is a victim of trafficking, they would take that person to a police station, inform them of the relevant legislation (Article 59 bis of the Alien's Law) and indicate that if the person does not want to collaborate, the police will file a request for his/her expulsion from the country. According to many interlocutors met during the second evaluation visit, law enforcement agencies continue to require a high threshold of proof to consider a person as a victim of trafficking and offer her/him assistance and protection measures, instead of applying the concepts of "presumed victim" and "reasonable grounds". Thus, in practice, identification as a victim and assistance continue to be made conditional on the co-operation of the victim of trafficking with the police inquiry. The Spanish authorities have stressed that national legislation entitles victims of THB to a wide range of rights even before the formal identification, that assistance is not conditional on collaboration in the police investigation or the judicial proceedings, and that victims can apply for residence and work permits on account of their personal circumstances.

140. Furthermore, concerns have been expressed by NGOs about the negative impact of gender stereotyping on victim identification, law enforcement agents reportedly expecting women who are victims to behave in a certain way and if they do not to, question their status as victims, as well as stereotypes based on race.

141. The autonomous regions are encouraged to develop the Framework Protocol in their territories, with the participation of all the actors involved and several of them have developed their own regional protocols (see paragraph 33). At the time of GRETA's second visit, a protocol of the identification of victims of trafficking for the purpose of sexual exploitation was in the process of finalisation in Aragon. Further, in Madrid, there were plans to set up a multi-disciplinary mobile team (comprising a social worker and cultural mediator from the NGO APRAMP) to improve the proactive detection of victims of trafficking for the purpose of sexual exploitation. While welcoming the development of regional protocols based on multi-agency co-operation, GRETA stressed that such protocols should not be limited to sexual exploitation, but should cover all forms of exploitation and all victims.

142. In May 2017 the Ministry of Justice issued a Protocol for forensic doctors with the purpose of introducing uniform procedures and criteria for forensic medical examination of presumed victims of trafficking. The Protocol includes a model report by forensic doctors on victims of trafficking.

143. The State Security Forces operate 24-hour hotlines and electronic mail addresses to which victims or other persons can report information about THB (see also paragraph 242). By way of example, *Policía Nacional* received 1,388 calls in 2015, 1,172 in 2016 and 881 in 2017, as well as 414 electronic messages in 2015, 1,022 in 2016 and 764 in 2017. As a result of information received through these calls and messages, 23 victims of trafficking were rescued in 2014, 45 in 2015 and 52 in 2017.

144. According to information provided by the Spanish authorities, with a view to proactively detecting victims of THB for the purpose of sexual exploitation, in 2016, NGOs made 52,872 contacts with women in prostitution (e.g. through mobile street units, telephone lines, visits to houses, clubs and other places), detecting signs of THB for sexual exploitation in 16,387 women and of sexual exploitation in 3,858 women. NGOs found that 182 of the presumed victims (4.7%) were children, a higher number than in previous years. Half of the women and girls who showed signs of THB were from Nigeria and Romania.

145. GRETA notes that the number of identified victims of trafficking for the purpose of labour exploitation remains low. As noted in paragraph 14, there is only data available about such victims for 2015 and 2016. There is still a knowledge gap when it comes to identifying this form of trafficking and the absence of a national action plan addressing it is a matter of concern. Labour inspectors are covered by the Framework Protocol and are instructed to inform the Prosecution Service and law enforcement agencies about detected evidence of THB, but there are gaps in their mandate and capacity (see paragraph 85). Further, as noted in paragraph 87, trade unions are not sufficiently involved in combating this phenomenon.

146. In their comments on the draft GRETA report, the Spanish authorities have referred to a Joint Action Day (JAD) in May 2017, focusing on combating THB for the purpose of labour exploitation, under the umbrella of the European platform EMPACT and co-ordinated by Europol. State police forces carried out joint actions in several provinces, involving a total of 702 police officers, alongside Labour Inspectorate personnel and NGO staff who assisted during the identification interviews. More than 500 inspections were carried out, 50 persons were detained, 10 persons were identified as presumed traffickers and 7 new investigations were initiated. Another JAD was carried out in June 2017, focusing on THB for the purpose of sexual exploitation; 26 potential victims of THB were identified and 2 new investigations were initiated. In October 2017, a large-scale JAD was carried out, focused on detecting child victims of THB for all the purposes of exploitation. Operational actions were carried out in 42 provinces, with a deployment of more than 800 police officers, who conducted more than 350 inspections, as a result of which 50 persons were arrested, 61 presumed traffickers identified, and 13 new investigations were initiated. A guide for labour inspectors and sub-inspectors (only for internal use) on THB for the purpose of labour exploitation is being elaborated by the Labour Inspectorate.

147. Newly arrived migrants can be held in police custody for up to 72 hours prior to removal from Spanish territory directly from the police station, without intervention of the judiciary. This short time-limit creates time pressure and requires highly specialised/trained staff to detect victims of THB. During the visit to the police detention centre in Malaga, GRETA could observe these challenges. The detained persons were kept in overcrowded cells, it was not possible to create an atmosphere of trust and there was a lack of interpretation services (apart from English and French) and cultural mediators.

148. If the removal (return) cannot be executed within 72 hours, the border control authority must refer the case to a judge who will decide on detention. Once a detention order is issued, the person can be kept in detention for a maximum of 60 days in an immigration detention centre (CIE). As noted in paragraph 68, NGOs have reported cases of victims in trafficking being held in CIE, despite there being clear indicators of trafficking.<sup>50</sup> After interventions from NGOs, some of these persons were identified as victims and released. In this context, reference should be made to a case brought by Women's Link Worldwide to the UN Committee against Torture, concerning a Nigerian woman who was detained in Spain in 2010 and placed in the CIE in Aluche. She was pregnant at the time and applied for asylum, but her application was turned down despite the fact that several organisations had identified her as a possible victim of trafficking. She was deported a few days later without prior notice to her lawyer and with no verification as to whether the return was safe.<sup>51</sup>

149. As already noted in paragraph 127, there are challenges in the identification of trafficking victims among migrants arriving in the autonomous cities of Ceuta and Melilla. All arrivals are accommodated in temporary reception centres (CETI), originally designed for short periods of stay of irregular migrants, usually single males. These centres are reportedly overcrowded and inappropriate for holding women and children due to the heightened risks of violence and exploitation. No proactive identification of presumed victims of THB takes place, despite the existence since 2014 of a Protocol for detention of possible cases of THB for the purpose of sexual exploitation, approved by the General Secretariat for Migration of the Ministry of Employment and Social Security. Staff reportedly lack training and capacity to perform victim identification and to organise transfer to a safe reception centre on the mainland.

150. The Spanish authorities have indicated that pursuant to the Framework Protocol, there is a communication procedure between the Office of Asylum and Refugees and the State Security Forces and in case there are indications of THB during an application of international protection, the Office of Asylum and Refugees would inform the Office of the Commissioner-General for Aliens and Borders, without prejudice of processing the international protection application. GRETA was informed by the Office of Asylum and Refugees that in 2015, they detected indicators of THB in 19 cases, in 2016, 60 cases were communicated to the State Security Forces, and in the first five months of 2017, 41 cases. Information on presumed victims of THB is communicated by email to the police, but reportedly very few of them are formally identified as victims of THB. The Office of Refugees and Asylum would also contact specialised NGOs to co-ordinate a proper intervention with the presumed victim when possible (e.g. at Madrid and Barcelona airports specialised NGOs have access to the restricted zone). However, these are isolated practices. There are no special protocols on how to proceed when a victim of THB is detected and only a few persons who sought asylum at the border or in detention centres have been identified as victims of THB. In 2016, 71 persons were interviewed by *Policía Nacional* following communications by the Office of Asylum and Refugees, of whom three were referred as victims of THB. For 48 others the results were still pending, and 20 were discarded as victims of THB. In 2017, 185 persons were interviewed by *Policía Nacional* following communications by the Office of Asylum and Refugees, of whom one was referred as a victim of THB, 112 cases were pending, and 72 were discarded as victims of THB.

<sup>50</sup> See the 2015 and 2016 annual reports of *Servicio Jesuita a migrantes de España* (SJM-E).

<sup>51</sup> An application of behalf of G.J., born in 1985 and living in Nigeria, was represented before the European Court of Human Rights by Women's Link Worldwide in September 2012 (application No. 59172/12). In a decision issued on 12 July 2016, the Court rejected the application for being incompatible *ratione personae*, pursuant to Article 35, paragraphs 3 and 4, of the European Convention on Human Rights.

151. **GRETA urges the Spanish authorities to take further steps to improve the timely identification of victims of THB, and in particular to:**

- **ensure that, in practice, formal identification of victims of THB does not depend on the presence of sufficient evidence for the initiation of criminal proceedings;**
- **continue to strengthen multi-agency involvement in the identification of victims of trafficking by formally recognising the role of specialised NGOs in the decision-making process leading to identification;**
- **increase efforts to proactively identify victims of trafficking for the purpose of labour exploitation, by reinforcing the capacity and training of labour inspectors and involving trade unions;**
- **pay increased attention to the proactive detection of victims of trafficking among asylum seekers and persons placed in immigration detention, as well as migrants arriving in the autonomous cities of Ceuta and Melilla, allowing sufficient time to gather necessary information and taking into account their traumatic experience. In this context, training on the identification of victims of THB and their rights should be provided to asylum officers and staff working in centres where such persons are placed (CIE, CETI);**
- **ensure the availability and quality of interpreters and cultural mediators during the investigation process.**

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

152. In its first evaluation report, GRETA urged the Spanish authorities to ensure that all victims of trafficking are provided with adequate support and assistance, from their identification through to their recovery, to ensure that safe and suitable temporary accommodation is provided to all victims of trafficking, to ensure access to health services for all victims of trafficking, to enable victims of trafficking lawfully resident in Spain to have access to the labour market, vocational training and education as a form of rehabilitation, and ensure that undocumented foreign victims of trafficking have effective access to assistance measures by providing them with temporary identity documents.

153. As explained in the first GRETA report, the assistance measures for victims of trafficking are detailed in the Framework Protocol for the Protection of Victims of Trafficking, including the right to suitable and safe accommodation, material assistance, psychological assistance, medical assistance, interpretation services and legal counsel. Subject to their consent, victims are referred to the regional or local services providing social assistance or organisations with accredited experience in assisting victims of THB. Specialised NGOs can provide assistance to victims of THB outside the formal identification procedure and regardless of whether the victim wants to co-operate with the authorities. All participating institutions must guarantee confidentiality and the informed consent of the victim. The right to assistance is recognised to all victims without exclusion and, in the case of foreign victims, regardless of whether they have a residence permit in Spain.<sup>52</sup>

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<sup>52</sup> For more details, see paragraph 166 of GRETA's first report on Spain.

154. The Act 4/2015 of 27 April on the Statute of Crime Victims established a catalogue of rights for crime victims, beyond those recognised in the criminal sphere, so that victims and their families can receive not only a legal but also a social response. Thus Article 4 establishes the right of the victims to understand and be understood. Article 5 provides for, *inter alia*, the right to promptly receive information on the assistance and support available, the right to file a complaint, the procedure for obtaining legal aid, the entitlement to compensation and the procedure for obtaining it, and the availability of interpretation/translation services. The Act also provides for assistance to the most vulnerable victims, such as victims of THB and children, regardless of their origin, administrative situation or other circumstances. It also establishes that the protection needs of victims of THB must be met on the basis of an individual evaluation in order to avoid secondary victimisation.

155. As noted in paragraph 31, the Ministry of Justice runs 26 Victim Assistance Offices across Spain, employing psychologists, lawyers and social workers. Two protocols have been issued by the Ministry, respectively on the assistance given by Victim Assistance Offices to victims of trafficking for the purpose of sexual and those who are victims of labour exploitation. The protocols define the steps to be taken during the initial interview with a possible victim, the detection of indicators, the application of the Framework Protocol, and the assistance to be offered to the victim.

156. A Guide of Resources for victims of trafficking for the purpose of sexual exploitation is updated by the Ministry of Health, Social Services and Equality twice a year. According to the issue from September 2016, there were 44 centres with a total of 420 places providing assistance to such victims on the territory of 14 autonomous communities. The assistance was offered by 20 specialised organisations and included psychological assistance (44), legal assistance (39), training (36), insertion in the labour market (36) and psychiatric assistance (2). In addition, there were 59 entities providing ambulatory (outpatient) services in 143 centres on the territory of 16 autonomous communities. The highest number of available places was in Madrid (91), followed by Barcelona (43), Cadiz (32), Almeria (29), Malaga (24) and Valencia (20). There were no places in the regions of Castilla La Mancha and La Rioja and in the autonomous cities of Ceuta and Melilla. The Spanish authorities have provided an update of the existing resources, according to which there currently are 548 places available for victims of sexual exploitation at 104 different locations.

157. The Ministry of Health, Social Services and Equality publishes grant calls for organisations specialised in the assistance of women and girls victims of trafficking for sexual exploitation with an allocation of 2 million euros annually through which around 40 organisations are financed every year. There is another grant call for NGOs, through the National Tax Agency (allocation of income tax for social purposes), which has a line for THB in the field of programmes to prevent crimes related to all forms of violence against women, financing annually around 15 programmes of 10 institutions with a budget of approximately 1.5 million euros. Moreover, tenders of the Ministry of Employment and Social Security (co-financed by the Asylum, Migration and Integration European Fund) give priority to the development of programmes aimed at the reception of victims of THB, awareness raising, creating supportive networks and other actions aimed at combating trafficking. In 2014-2015 funding was granted to nine projects run by seven entities. This Fund also finances the voluntary return of the victims to their country of origin. Overall, the annual funding provided for the support of victims of trafficking amounts to 5-6 million euros.

158. The GRETA delegation visited several specialised facilities for victims of trafficking, in Madrid, Zaragoza and Malaga, and could witness the excellent work done by the civil society organisations running them. In general, the shelters offered very good material conditions and employed round-the-clock staff, including volunteers.

159. The NGO APRAMP receives funding of 1 million euros per year for anti-trafficking projects and runs five different locations in Spain. A comprehensive approach is followed, comprising outreach work by mobile teams and rehabilitation. GRETA visited a day centre run by APRAMP in Madrid, comprising a tailoring workshop providing work to some 40 women. A number of former victims of trafficking work at the day centre and in the mobile teams carrying out outreach work. They work effectively as cultural mediators, but are not formally recognised as such and have no professional status.

160. In Madrid, GRETA visited another shelter for female victims of human trafficking, run by Diaconia, a social action network that operates with NGOs and evangelical institutions in Spain. The shelter offers eight beds and all places were taken at the time of GRETA's visit. Most of the victims came from Nigeria, Brazil, Romania and Spain.

161. Proyecto Esperanza, run by the religious community Adoratrices, provides a range of services to women victims of THB for all purposes of exploitation. It comprises an emergency shelter (for one to two month's stay), a long-term shelter (from six months to one year) and two flats for autonomous living. Under the contract with the Autonomous Community of Madrid, 12 of the shelter places have to be reserved for victims of sexual exploitation. Most of the victims assisted through this project have been trafficked for sexual exploitation (95%) and originate from foreign countries (Nigeria, Romania, Latin American countries), but there have also been some Spanish women. Proyecto Esperanza collaborates with companies which offer employment to victims of THB. It also runs a telephone hotline (in 2016, it received 188 calls, 130 were identified as coming from victims of THB). GRETA was informed that EU nationals from Bulgaria and Romania do not have the same rights of access to services and that Spanish victims do not have access to social welfare. In their comments on the draft GRETA report, the Spanish authorities have stressed that under Spanish legislation, access to services is the same for all victims of THB, irrespective of their sex, nationality or form of exploitation. At the same time, the comments note that there is a lack of resources to assist victims of THB for purposes of exploitation other than sexual, and that EU (including Spanish) citizens may not benefit from resources provided for third-country victims by the General Secretary for Immigration and Emigration.

162. In Malaga, GRETA visited another shelter run by the religious community Adoratrices, which is the only accommodation facility for female victims in Malaga. It offers integral support to women who are excluded or at risk of social exclusion due to sexual exploitation, drug abuse, gender-based violence, human trafficking or other situations. The shelter has a capacity of 20 places and there were four victims of human trafficking on the day of the visit. A multi-disciplinary team of professionals including educators, social workers and psychologists work in the shelter.

163. Since 2014, the Ministry of Employment and Social Security has provided funding to the NGO Foundation Cruz Blanca for a shelter with four places for men in vulnerable situations or at risk of social exclusion, in Huesca (Aragon), which also receives male victims of THB. The number of referrals is high and the shelter is usually full. Most of the victims have been exploited in agriculture, often in remote, isolated farms, but there have also been male victims of sexual exploitation. In addition, in Madrid, Foundation Cruz Blanca offers support (legal, psychological, social, assistance to find work) to male victims who do not access accommodation because no places are available or they do not need it. Further, Foundation Cruz Blanca runs mobile units throughout Spain and a network of accommodation facilities for victims.

164. The Spanish authorities have referred to Royal Decrees 576/2013 and 1192/2012 which extended the health care coverage to victims of trafficking during the recovery and reflection period. In this context, the Government Delegation against Gender-based Violence has requested the General Secretariat for Health to agree with the autonomous regions (which are responsible for health care provision) on a common interpretation so that a victim of trafficking is understood as any individual who has been subjected to trafficking, according to reasonable grounds, after an identification by the law enforcement authorities.



165. GRETA was informed that victims of trafficking who are returned to Spain under the Dublin III Regulation are not referred to specialised services or given assistance upon arrival in Spain. This puts them at risk of being re-trafficked if they are found by criminal networks as in many cases the victim may have fled Spain to escape from them. In some cases victims have been known to have undergone rehabilitation treatment in another EU country, which had to be interrupted when they were transferred to Spain.

166. GRETA welcomes in increased resources for assistance and reintegration programmes for women victims of sexual exploitation, as well as the improved access to health care for victims of THB. However, there is a marked shortage of assistance projects for men and for women victims of other forms of exploitation. Considering the increasing number of male victims of trafficking for labour as well as sexual exploitation, a needs assessment should be carried out and on the basis of it a plan made for the provision of services tailored to the needs of male victims. This should take into account the need for shelter capacity for presumed victims of trafficking detected among asylum seekers.

**167. GRETA urges the Spanish authorities to comply with their obligations under Article 12 of the Convention and to provide assistance, including safe accommodation, adapted to the specific needs of male victims of THB.**

**168. Further, GRETA considers that the Spanish authorities should continue and strengthen their efforts to provide assistance to all victims of trafficking, and in particular:**

- **secure long-term funding for victim assistance projects, guaranteeing the quality of services and subject to evaluation, in order to ensure the continuity of assistance;**
- **take steps to give a formal professional status to former victims working as cultural mediators;**
- **facilitate the reintegration of victims of trafficking into society by providing them with vocational training and access to the labour market;**
- **ensure that in practice, all victims of THB have access to adequate assistance regardless of sex, nationality and form of exploitation;**
- **refer victims of trafficking who are returned to Spain under the Dublin III Regulation to assistance projects adapted to their needs.**

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

169. In Spain, child victims of trafficking fall under the system for child protection which is integral and non-discriminatory on grounds of origin and is the competence of the 17 autonomous regions composing the country. The authorities have stressed that the principle of the best interests of the child is the basis upon which any decision with regard to a child is built, whatever their nationality. If the reunification of the child with his/her family in the country of origin does not guarantee the child's best interests, the child will remain in Spain. In the case of unaccompanied foreign child victims, a long-lasting solution on their future must be adopted, which could be return and reintegration in the country of origin, granting international protection or authorising a residence permit.

170. Specific provisions concerning child victims of trafficking are contained in Article 146 of the implementing regulation of the Law on the Rights and Liberties of Foreigners in Spain, which specifies that all actions should be carried out in accordance with the best interests of the child. The public institution in charge of the legal custody of child victims or the Prosecution Service can refer the child to specific facilities to victims of THB. In all cases, a separation between children and adults must be guaranteed. Further, Part XIV of the Framework Protocol is dedicated to child victims of trafficking due to their special vulnerability.

171. As noted in paragraph 21, the modification of the system for the protection of children and adolescents through Organic Law 8/2015 of 22 July and Law 26/2015 of 28 July included the inclusion of an article on the best interests of the child and new provisions relevant to the protection of children against all forms of violence, including THB. Further, the right of foreign children to education, health care, social services and basic social benefits, under the same conditions as for Spanish children, was stipulated. The legislation provides that the authorities must safeguard especially vulnerable groups, such as child victims of trafficking. Further, it establishes that a person will be considered a child while his/her age is determined. When a child is identified as a victim of THB and there is a conflict of interests with their parents or guardians, their guardianship may be taken by the corresponding public institution.

172. The current Action Plan to combat THB of women and girls for sexual exploitation notes that child victims are particularly vulnerable and envisages a series of measures aimed at adapting the processes of identification, assistance and protection, including specific training of various professionals who may be in contact with child victims.

173. At a plenary meeting of the Childhood Observatory held on 9 June 2014, it was agreed to draft a Framework Protocol for the identification and assistance of child victims of trafficking with the aim of responding to a recommendation made in the Ombudsman's report concerning THB in Spain published in 2012. A working group was set up comprising representatives of the Prosecution Service (specialised services dealing with children and with foreigners), Ministry of Justice, Ministry of Education, Culture and Sports, Ministry of Employment and Social Security, Ministry of the Interior, Ministry of Health, Social Services and Equality, the autonomous regions of Andalusia, Asturias, Balearic Islands, Catalonia, Castilla La Mancha, Extremadura, Galicia and Madrid, the autonomous city of Ceuta, as well as the Red Cross, Save the Children, FAPMI ECPAT Spain, the Spanish Network against Trafficking in Human Beings, Foundation Amaranta, APRAMP and UNICEF. A draft protocol was prepared, including a list of indicators. As noted in paragraph 33, the draft protocol was presented at the Plenary of the Children's Observatory on 1 December 2017, with the intention of making it an annex to the Framework Protocol of the Protection of Victims of THB and its final adoption in March 2018.

174. Article 35 (10) of the Law on the Rights and Liberties of Foreigners expressly lays down that law enforcement agencies shall take the necessary measures for the identification of foreign unaccompanied children, in order to find possible information about them that might be found in any public institution, whether national or foreign, in charge of their protection, and that these data cannot be used for a purpose other than the purpose intended. In the event of an unaccompanied child or a child at risk being detected, the Public Prosecutor has to be informed. Further, the Act 12/2009 of 30 October, regulating the right to asylum and subsidiary protection, establishes that unaccompanied children applying for international protection will be referred to the competent services for children protection which will inform the Prosecution Service. In the case of child victims of THB, the prosecutors specialised in THB co-ordinate with prosecutors specialised in child protection in order to ensure an appropriate response in terms of protection.

175. The Framework Protocol on certain actions related to unaccompanied foreign children, signed on 22 July 2014 by the Ministers of Justice, Employment and Social Security, Health, Social Services and Equality, the Prosecutor General, the State Secretariat for Security of the Ministry of the Interior and the Under-Secretary of the Ministry of Foreign Affairs and Co-operation, was published on 16 October 2014. The Protocol aims to establish co-ordination guidelines related to processes of identification, age determination and handing over to the public institution in charge of children protection, as well as the proper functioning of the Register of Unaccompanied Foreign Children (RMENA), focused on guaranteeing the best interests of the child. It remains limited to aspects regarding the protection of potential foreign child victims of THB. On a monthly basis, the public institution for child protection sends to the Prosecution Service a list of the unaccompanied foreign children under their scope of protection.

176. The Spanish Civil Code provides for the appointment of legal guardians for children in “vulnerable situations” (including victims of THB) by the competent court at the request of the public prosecutor. Pursuant to the Organic Law on the Legal Protection of Under-age Children and the Civil Code, child victims of THB are in a situation of distress and are placed in automatic institutional care. The institutional guardians (tutors) can refer such children, on a case-by-case basis, to institutions other than the child protection services managed by the autonomous communities, at the request of the child protection service or the prosecutor. That said, NGOs have pointed out that regional centres for child protection, which are often assigned the guardianship of child victims of trafficking, do not have the necessary expertise and child victims of trafficking placed in those centres often remain undetected. According to information from the Prosecutor’s Office, in 2015, 33 presumed child victims of THB were placed under automatic institutional care, and in 2016, 39 (13 from Latin America, 17 from Europe, 7 from Africa and 2 from Asia; 37 of them were female and two male; 34 were alleged victims of sexual exploitation, two of labour exploitation and three of forced marriage).

177. Further, Article 35 (7) of the Law on the Rights and Liberties of Foreigners in Spain provides that the residency of children in Spain under the guardianship of a public administration or of any other entity, following a court order, shall be considered lawful for all purposes. At the request of the agency that has the guardianship and once the impossibility of returning to their family or country of origin has been established, the child shall be issued a residence permit. The absence of a residence permit shall not prevent the recognition and enjoyment of the rights to which a child is entitled.

178. GRETA notes that according to official data, the number of child victims identified during the period 2013-2015 is low, namely 22 (19 girls and 3 boys). At the same time, there are reports suggesting that the scale of the problem of child trafficking in Spain is much bigger. The report “They’re Children, They’re Victims: Situation in Relation to Child Victims of Human Trafficking in Spain” published by UNICEF Spain in February 2017 refers to data published by the Prosecutor Service’s unit dealing with foreigners’ affairs (*Fiscalía de Extranjería*), according to which in 2013, the number of possible child victims of THB was 35 (34 girls subjected to sexual exploitation, from Romania, Nigeria, China, Paraguay and Spain, and one girl subjected to forced begging); in 2014, 29 (21 girls subjected to sexual exploitation and 8 children subjected to forced begging) and in 2015, 48 (mostly sexual exploitation, including of 2 boys, and 3 cases of forced marriage).<sup>53</sup>

179. Girls exploited in prostitution are difficult to detect and identify as victims of THB as they are usually highly controlled. By way of example, in Zaragoza, NGOs referred to the presence of a large community of girls and young women from Equatorial Guinea, in brothels in very poor areas, who have travelled legally to Spain thinking that they would study or work, but were in fact “adopted” or “reunited” with pretended relatives and forced into prostitution. Further, concerns were raised about the number of Romanian girls in prostitution who are under the control of violent boyfriends or common-law husbands.

<sup>53</sup> UNICEF Spanish Committee, *They’re Children, They’re Victims: Situation in Relation to Child Victims of Human Trafficking in Spain*, February 2017, p. 9.

180. In recent years, there have been reports about trafficking of children for the purpose of forced marriage, linked to other forms of exploitation. By way of example, in 2016, media reports referred to the case of two Romanian girls, aged respectively 13 and 15, who were forced to marry members of another clan and transferred to Seville where they were forced to work collecting scrap metal and to beg.<sup>54</sup> Another case of trafficking of Romanian girls for the purpose of forced marriage was reported in July 2017.<sup>55</sup> In relation to the first case, *Policía Nacional* conducted an investigation in Seville in 2016; seven persons were arrested and the two girls were assisted as victims of THB. In the second case, as part of the investigation, four persons were arrested the two victims were rescued and assisted by the social services as victims of THB. Other reported forms of trafficking of children include forced begging (which concerns mostly children from Romania, Bulgaria and Morocco) and petty crime.

181. GRETA notes with concern the lack of specific resources for child victims of trafficking, such as dedicated accommodation and assistance projects. Nevertheless, girls aged 15-18 have access to some of the projects for victims of sexual exploitation.

182. In Madrid, GRETA visited a first reception centre for children under the Department for Social Services of the Regional Government of Madrid, in the district of Hortaleza. With a capacity of 35 beds (for both girls and boys), the centre is intended for children subjected to different forms of abuse and unaccompanied foreign children, starting from 15 years of age. Some of the girls brought to the centre by the police had been identified as victims of THB. The maximum length of stay is two months. The centre provides very good material conditions and a range of activities (life-skills classes, Spanish language classes, PC classes, gym). Staff including teachers, social workers, cultural mediators and medical staff are available around the clock. GRETA was informed that around 5% of the children absconded from the centre.

183. Further, GRETA was informed of plans to set up a specialised shelter for girls victims of trafficking for sexual exploitation in Madrid, with funding from the Regional Government, to be run by the NGO APRAMP.

184. Paragraph 3 in Article 26 of the Act approving the Statute of Crime Victims establishes that when there are doubts about the age of a victim, this person is to be considered a child for the purposes of the provisions of the Act. Medical tests can be made to determine the person's age, such as an X-ray of the left-hand carpus or oral cavity examination and dental X-ray study. GRETA notes that these methods of age assessment do not take into account psychological, cognitive or behavioural factors and therefore are not reliable.

185. **GRETA urges the Spanish authorities to improve the identification of and assistance to child victims of trafficking, on a basis of a specialised co-operation and referral mechanism which is integrated into the existing child protection systems, in particular by:**

- **ensuring that relevant actors take a proactive approach and increase their outreach work to identify child victims of THB, by paying particular attention to unaccompanied and separated foreign children, including those arriving by sea and at the autonomous cities of Ceuta and Melilla, as well as to children from Roma communities;**
- **providing further training to stakeholders (police, NGOs, child protection authorities, social workers) as well as guidance for the identification of child victims of THB for different purposes, including the exploitation of begging and exploitation of criminal activities;**

<sup>54</sup> *El Mundo*, 16 May 2016.

<sup>55</sup> See [http://www.laverdad.es/murcia/ciudad-murcia/cuatro-detenidos-murcia-20170731110621-nt.html?ns\\_campaign=rross&ns\\_mchannel=boton&ns\\_fee=0&ns\\_source=em&ns\\_linkname=undefined](http://www.laverdad.es/murcia/ciudad-murcia/cuatro-detenidos-murcia-20170731110621-nt.html?ns_campaign=rross&ns_mchannel=boton&ns_fee=0&ns_source=em&ns_linkname=undefined)

- **setting up sufficient shelters with qualified staff and assistance services for presumed child victims of trafficking, for different forms of exploitation;**
- **taking steps to address the problem of unaccompanied children disappearing by providing suitable safe accommodation and adequately trained supervisors or foster parents;**
- **ensuring long-term assistance for the integration of child victims of trafficking.**

186. **Further, GRETA invites the Spanish authorities to review the age assessment procedures, ensuring that the best interests of the child are effectively protected, and taking into account the Convention on the Rights of the Child and General Comment No. 6 of the Committee on the Rights of the Child.<sup>56</sup>**

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

187. The Spanish Constitution recognises the right to personal privacy, secrecy of communications, and the protection of personal data. The Data Protection Act (LOPD 15/99 of 13 December) brought Spanish law in line with the EU Data Protection Directive. It applies to information held by the public and private sectors and establishes the right of citizens to know what personal data is contained in electronic records and to correct or delete incorrect or false data. Additionally, the law restricts the disclosure of personal information to a third party by requiring the person's consent to the specific purpose for which the data is collected. Additional protections are provided for sensitive personal data.

188. The Spanish Data Protection Agency (AEPD) is the public authority overseeing compliance with the legal provisions on the protection of personal data, enjoying as such an absolute independence from the Public Administration.

189. Further, Article 22 of the Statute of Crime Victims establishes the right to protect victims' privacy as follows: "Judges, courts, prosecutors and the rest of the authorities and civil servants in charge of the criminal investigation, as well as all those intervening or participating in the process in any way, will adopt the measures necessary to protect the privacy of all the victims and their families and, in particular, to avoid the dissemination of any information that may facilitate the identification of under-age victims or victims with disabilities in need of special protection, according to the law."

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

190. In its first evaluation report, GRETA urged the Spanish authorities to review the rules and application of the recovery and reflection period with a view to ensuring, in compliance with the obligations under Article 13 of the Convention, that all possible victims of trafficking, including EU nationals, are systematically informed of the possibility to benefit from a recovery and reflection period, and are offered such a period without having to apply for it. As part of this review, the authorities should establish clear criteria for determining the duration of the recovery and reflection, taking into account the personal situation and need for recovery of the possible victim, and provide training to the competent authorities in order to ensure that these criteria are applied in a harmonised way throughout Spain. Further, GRETA considered that the Spanish authorities should take additional steps to ensure that victims and possible victims of trafficking have access to all the assistance measures provided for in Article 12 (1) and (2) of the Convention during the recovery and reflection period.

<sup>56</sup> [General Comment No. 6 Treatment of unaccompanied and separated children outside their country of origin](#), Committee on the Rights of the Child, Thirty-ninth session, 17 May - 3 June 2005.

191. Since GRETA's first report, the duration of the recovery and reflection period has been increased from 30 to 90 days, with a possibility for renewal. There have been no other changes to the legal provisions regarding the recovery and reflection period. The legal basis for granting such a period is Article 59 bis of Organic Law 4/2000 on the Rights and Freedoms of Foreigners in Spain and Their Social Integration, which provides for a recovery and reflection for foreign victims of trafficking with an irregular administrative situation in order to decide whether to collaborate in the investigation and, if appropriate, the criminal proceedings.<sup>57</sup> The procedure for granting the recovery and reflection period is stipulated in part XIII of the Framework Protocol for the Protection of Victims. Pursuant to it, the presumed victim has to be informed of the possibility of being granted such a period and the resources available during it, and to be removed from the influence of the alleged perpetrators. The relevant police immigration unit has to submit a request for granting a recovery and reflection period within 48 hours of identification to the responsible Government's Regional Delegation Office, with the victim's agreement. Applications for the period have to be accompanied by the full police file on the victim and other relevant information available. Decisions to grant or not the period must be motivated and can be appealed, in accordance with the Law on the Common Administrative Procedure. The authorities have clarified that this provision applies only to foreign victims in an irregular situation because they need protection in case of a potential expulsion.

192. According to information provided by the Spanish authorities, the number of recovery and reflection period granted in 2013 was 99 (of which 7 to male victims), in 2014 - 62 (of which 3 to male victims), in 2015 - 95 (of which 9 to male victims), and in 2016 - 81. Concerning 2016, there were 106 requests for a recovery and reflection period, i.e. a 76% acceptance rate; the majority of the victims granted this period were from Nigeria (48). **GRETA would like to receive information about the reasons for rejecting the remainder of the requests and what happened to the presumed victims.**

193. NGOs have raised concerns about the failure to grant presumed foreign victims of THB a recovery and reflection period due to inadequate identification procedures, as a result of the high threshold of evidential proof needed for identification, as well as the short deadline for performing identification when a person is detained as an irregular migrant. Victims are often afraid of the consequences of speaking to the police and do not self-identify as victims or provide information during the first interview with the police. If this interview takes place without the presence of cultural mediators and/or specialised NGO representatives as well as interpreters, the victims do not enter into a relationship of trust with the interviewer. In their comments on the draft GRETA report, the Spanish authorities have stressed that the victim's statement or collaboration in the investigation/prosecution is never a condition for granting a recovery and reflection period.

194. GRETA's concerns expressed in the first evaluation report around the granting of a recovery and reflection period remain valid, in particular the fact that an application has to be submitted to obtain such a period and the decision-making body is the immigration police. GRETA recalls that according 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. Further, in GRETA's view, considering that after three months EU citizens can only stay legally in other EU countries provided they meet a number of requirements (e.g. economic activity, sufficient resources, being enrolled as a student), the possibility that they would be considered as being irregular cannot be excluded and they should logically be entitled to enjoy a recovery and reflection period.

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<sup>57</sup> See paragraphs 189-198 of GRETA's first report.

195. **While welcoming the extension of the minimum length of the recovery and reflection period from 30 to 90 days, GRETA recalls the recommendation made in its first report and once again urges the Spanish authorities to review the rules and application of the recovery and reflection period with a view to ensuring that:**

- **all possible foreign victims of trafficking, including EU nationals, are systematically informed of the possibility to benefit from a recovery and reflection period. The involvement of specialised NGOs in the victim identification process and the possibility for NGOs to request themselves that a presumed victim of trafficking be granted a recovery and reflection period should be part of this review;**
- **the relevant authorities are informed of the State's positive obligation to grant a recovery and reflection period to all possible victims of THB, whether or not such a request is made by the presumed victim.**

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

196. In its first report, GRETA considered that the Spanish authorities should strengthen their efforts to ensure that victims of trafficking can take full advantage of the right to be granted a temporary residence permit for their personal situation and/or for co-operating with the authorities, in particular by setting up clear criteria for the granting of residence permits and a timeframe for the processing of applications for residence permits for victims of trafficking, and taking due account of the information submitted by specialised NGOs when considering applications for residence permits on the basis of the victim's personal situation.

197. The legal provisions regulating the issuing of residence permits to victims of THB in Spain remain the same as at the time of the first evaluation.<sup>58</sup> Spanish legislation provides for the possibility of issuing residence permits to victims of trafficking both on the basis of the victim's personal situation and for co-operation with the authorities. The granting of residence permits to victims of human trafficking is regulated in Article 59 bis, paragraph 4, of Organic Law 4/2000 on the Rights and Freedoms of Foreigners in Spain and Their Social Integration, reformed through the Aliens Act No. 2/2009, as well as Articles 143 and 144 of Royal Decree 557/2011. These provisions grant victims of human trafficking entitlement to exemption from the administrative liability arising from their illegal stay in Spain and to a residence permit for two different reasons: collaboration in the prosecution of the crime or their personal situation.

198. When a residence permit is based on personal reasons, the authority with jurisdiction is the Ministry of Labour and Social Security (State Secretariat for Immigration and Emigration) which completes a case-by-case assessment based on the information available from the process of identification of a victim, taking into account relevant information from organisations which have accredited experience in assisting victims. Residence permits for the purpose of co-operation are issued by the State Secretary for Security. Article 143 provides for two possibilities: collaboration in the context of the investigation of a crime or in the context of a criminal process. The Immigration Department of the Prosecution Service has stressed that the requirement of "collaboration" has a low threshold and involves providing information potentially useful for the investigation or prosecution of a crime. The residence permit is issued to the victim and, if relevant, any children of the victim, for a period of five years and allows the victim to work in any sector and location in Spain.

<sup>58</sup> See paragraphs 206-210 of GRETA's first report.

199. According to statistics provided by the Spanish authorities, in 2013, a total of 19<sup>59</sup> victims of trafficking received a temporary residence permit on the basis of their co-operation with the authorities, in 2014, 25,<sup>60</sup> in 2015, 38,<sup>61</sup> and in 2016, 127.<sup>62</sup> The number of residence permits granted on the basis of the victim's personal situation was 4 in 2013 (of which 2 to children of victims), 12 in 2014 (including to 8 children of victims), 19 in 2015 (including to 3 children of victims) and 30 in 2016 (including to 6 children of victims). Concerning residence permits granted on the basis of the victim's personal situation in 2016, 22 were issued to women (13 from Nigeria) and 2 to men (from Brazil and the Dominican Republic). GRETA notes positively the gradual increase in the number of residence permits issued to victims of trafficking on the basis of their personal situation.

200. In 2015, the Intelligence Centre against Terrorism and Organized Crime (CITCO), in its role as focal point of the National Rapporteur on THB, promoted the creation of a Working Group involving the police, prosecutors, judges and the Spanish NGO Network against Trafficking in order to complement Royal Decree 557/2011 and establish a Joint Instruction on the granting of residence permits to victims of trafficking. The issuing of such an instruction would reportedly meet the recommendations made in GRETA's first report concerning the setting up of criteria and timeframe for granting residence permits. The Spanish authorities have indicated that the work on the Joint Instruction were interrupted in 2016 during the development of Instruction 6/2016, but have restarted in 2017 in the framework on a joint working group composed of members of the General Secretariat of Immigration and Emigration and the Commissioner-General for Aliens and Borders of *Policía Nacional*.

201. NGOs have referred to certain problems around the issuing of residence permits due to the difficulty of some victims to obtain identify documents (passports and birth certificates) from their countries of origin. Nigeria was in particular mentioned as a country posing such difficulties. The Spanish authorities have noted that pursuant to the above-mentioned Article 59 bis (see paragraph 197), an exemption may be made from the requirement to provide documents the production of which endangers the victim. Further, Articles 144 of Royal Decree 557/2011 states that the passport may be replaced by a valid registration card (*cédula de inscripción*).

202. GRETA notes that the Framework Protocol does not mention that victims of trafficking should be informed of their right to ask for international protection. In this context, the Action Plan to combat THB for the purpose of sexual exploitation (2015-2018) contains measures aimed at improving the co-ordination between the Office for Asylum and Refugees and the State Security Forces as well as improving the information provided to victims of trafficking regarding their rights to seek asylum. According to UNHCR, until mid-2016, victims of trafficking seeking asylum were rarely considered to be in need of international protection and were automatically referred to the procedure laid down in Article 59 bis of the Law on the Rights and Freedoms of Foreigners, which was considered to provide effective protection for them. Asylum applications on grounds of THB were systematically rejected. Since mid-2016, UNHCR has observed a more sensitive approach to the assessment of asylum applications from presumed victims of THB during the accelerated procedure (i.e. at border points or detention centres) and a higher admissibility rate in the regular refugee status determination procedure. According to UNHCR, in the last quarter of 2016, the asylum authorities recognised refugee status to 19 victims of trafficking (all of whom were Sub-Saharan women trafficked to Spain for the purpose of sexual exploitation). GRETA welcomes this development and encourages the Spanish authorities to consolidate this practice.

<sup>59</sup> Including 6 from Nigeria, 3 from Brazil, 3 from Paraguay, 2 from China, 2 from the Dominican Republic, 1 from Bolivia, 1 from India, and 1 from Malaysia.

<sup>60</sup> Including 16 from Nigeria, 2 from Pakistan, 2 from Congo, 1 each from Brazil, Paraguay and the Republic of Moldova, and 2 from other countries.

<sup>61</sup> Including 28 from Nigeria, 3 from Paraguay, 2 each from Cameroon, Russia and other nationalities, and 1 from the Dominican Republic.

<sup>62</sup> Including 49 from Nigeria, 22 from Nicaragua, 21 from Paraguay, 6 from Brazil, 5 from Morocco, 3 each from Bolivia and Venezuela, 2 each from Colombia, Congo, Ecuador and the Dominican Republic, and 1 each from Albania, Benin, Peru, Ukraine and Uruguay.



203. **GRETA considers that the Spanish authorities should continue making efforts to ensure that victims of trafficking, regardless of the form of exploitation, can fully benefit in practice from the right to obtain a renewable residence permit for their personal situation or for co-operating with the authorities, without prejudice for the right to seek and enjoy asylum. In this context GRETA refers to the UNHCR 2006 Guidelines on the application of refugee status to victims of trafficking.<sup>63</sup>**

204. **Further, GRETA considers that the Spanish authorities should address the difficulties faced by victims in securing identify documents from their countries of origin by issuing them with a document specifying their entitlement to a residence/work permit.**

205. **In addition, GRETA considers that the Spanish authorities should review the Framework Protocol with a view to including in it a mechanism which guarantees effective co-ordination and referral between the asylum process and the procedure for the identification, assistance and protection of victims of THB.**

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

206. In its first report, GRETA urged the Spanish authorities to systematically provide information to victims of trafficking, in a language that they can understand, on their right to compensation from the traffickers and/or the State and the procedures to be followed, and to ensure that victims have effective access to legal aid in this respect. GRETA also considered that the Spanish authorities should amend Law 35/1995 on the Assistance to Victims of Violent Crimes and Crimes against Sexual Freedom so that all victims of trafficking have access to State compensation, regardless of their nationality, type of exploitation and without needing to have sustained grievous bodily harm or serious physical or mental damage as a result of THB. Further, GRETA considered that the Spanish authorities should strengthen their efforts to ensure that convicted traffickers pay compensation to victims of trafficking, including through appropriate training and co-ordination between the police, judges and prosecutors so that they can investigate, identify and freeze assets as well as verify the profits made by traffickers.

207. The legal framework for compensation of victims of THB in Spain has already been described in GRETA's first evaluation report.<sup>64</sup> Victims of THB can claim compensation from the perpetrators during criminal proceedings as civil claimants and/or in a civil court. The Criminal Procedure Law (Articles 105 and 108) requires prosecutors to seek compensation for the victims of any crime, unless the victim expressly foregoes compensation. Pursuant to Article 108, the prosecutor must file a civil action together with the criminal action regardless of whether the injured party is involved as a civil claimant ("private prosecutor") in the case. However, should the victims expressly waive their right to redress or compensation, the prosecutor will do no more than seek punishment for the guilty. Compensation depends on the physical and psychological suffering of the victim and is calculated on a case-by-case basis. Prosecutors have received instructions from the State Prosecutor's Office to be particularly vigilant in relation to those obligations when it comes to victims of trafficking.

<sup>63</sup> [UNHCR, Guidelines on International Protection: The application of Article 1A\(2\) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked, HCR/GIP/06/07, 7 April 2006](#)

<sup>64</sup> See paragraphs 221-222 of GRETA's first report

208. According to information provided by the Spanish authorities, in 2013, compensation from perpetrators was awarded to five victims of trafficking: two girls from Romania, victims of sexual exploitation, were awarded respectively 10 000 euros and 60 000 euros; a Nigerian woman trafficked for sexual exploitation was awarded 60 000 euros; and a Romanian man and a Romanian woman, victims of THB for the purpose of forced begging, were awarded 300 euros each. In 2014, compensation was awarded to 12 victims of THB, ranging from 6 000 to 125 000 euros; all victims had been subjected to sexual exploitation, three of them were children (girls from Romania). In 2015, a total of 82 victims were granted compensation, ranging from 2 000 to euros 71 000 euros, the majority of whom were subjected to sexual exploitation. However, two women from Romania and two men from Romania subjected to trafficking for labour exploitation were granted compensation of 2 000 euros each.<sup>65</sup> Further, there were several cases of Romanian men, women and children subjected to forced begging who were granted compensation of 30 000 euros each.<sup>66</sup> In 15 cases in 2015, the victims waived compensation or compensation was not awarded. GRETA was informed that victims face difficulties in receiving the compensation granted by courts because the defendants are declared insolvent or have no assets in their name.

209. Concerning State compensation, no amendments have been made to Law 35/1995, but the Spanish authorities have indicated that the new Statute of Crime Victims in force since 2015 uses a wide concept of victim and provides for the right to compensation, *inter alia*, of victims of trafficking, regardless of the purpose of exploitation and without the need to have sustained grievous physical or mental damage. GRETA has not received information on any victims of trafficking having received compensation from the State.

210. As noted in paragraph 20, the new Statute of Crime Victims provides for a series of rights of victims, including to be informed of the entitlement to compensation and the relevant procedures and the right to legal assistance. This information is also available at the Victim Assistance Offices. One of the duties of these offices is to inform victims on the procedure for obtaining legal advice and defence, and the conditions for free-of-charge legal aid. However, NGOs have stressed the limited access to effective information on victims' rights to claim compensation and obtain free legal assistance. Written information is reportedly available only in Spanish.

211. The Spanish authorities have reinforced the civil liability system for committing a crime through Organic Law 1/2015 of 30 March 2015 reforming the Criminal Code. Thus Article 116 establishes civil liability of all persons criminally liable to compensate for damages and Article 127 bis sets up reinforced mechanisms to seize goods, properties and gains of a convicted person in case there are well-founded grounds of their illegal origin. Further, Law 41/2015 of 5 October, modifying the Criminal Procedure Code to streamline criminal justice and reinforce procedural safeguards, establishes a process for stand-alone confiscation that will enable deprivation of goods gained from crimes even if the perpetrator cannot be judged. As part of criminal proceedings, the assets of those investigated are examined to secure pecuniary liabilities. Any action designed to secure the assets of those investigated is incorporated into a file or "evidence" referred to as "for civil liability". Article 727.6 of the Criminal Procedure Law allows registry annotations to be posted as a precautionary measure in public property registers such as the Property Register, the Register of Chattels and the Central Maritime Register. To regulate investigation, *Guardia Civil* has drawn up Technical Procedure Guide No. 17/2014 of 24 June 2014 on the Investigation of Assets.

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<sup>65</sup> Ruling of 20 October 2015 of the Provincial Court of Seville for trafficking for practices similar to slavery: 2,000 euros for each victim.

<sup>66</sup> Ruling of 13 November 2015 of the Provincial Court of Almería for trafficking for begging: 30,000 euros for each victim.

212. The Office for Asset Recovery and Management (ORGA) was established by Royal Decree 948/2015 of 23 October 2015. The setting up of this Office will allow victims to be compensated from seized assets and assign any excess to social projects for victims' support and assistance, prioritising certain groups of particularly vulnerable victims such as those trafficked, and promoting the fight against organised crime. As regards cases of THB, according to information provided by the Spanish authorities, in 2016 ORGA managed three confiscated vehicles which were sold in public auction and for a total amount of 16,430 euros. A file from 2017 for the location of assets in Spain and abroad of a total of six natural and legal persons is currently being dealt with.

213. As noted in paragraph 23, Royal Decree 3/2013 of 22 February modifying the system of fees in the justice administration and the system of free legal assistance recognises the right to free legal aid to victims of human trafficking along with other groups, without the need to prove their lack of resources to institute legal proceedings. Victims are also exempted from payment of charges. Further, Law 42/2015 of 5 October reforming Law 1/2000 of 7 January on Civil Procedure provides that victims of gender-based violence and trafficking in human beings, as well as their successors, regardless of their resources, have the right to free legal aid, which will be provided to them immediately for relevant legal proceedings stemming from or a consequence of their status as victims. The free legal aid covers free advice and guidance immediately before the filing of the complaint or lawsuit.

214. The Spanish General Council of Lawyers brings together 83 local Bar Associations and comprises some 150,000 lawyers in the country. It has issued a practical guide for lawyers on the detection and defence of victims of trafficking.<sup>67</sup> Bar Associations have a permanent on-call duty to provide counselling and legal assistance to victims of THB and other forms of violence.

215. GRETA welcomes the increased number of compensations granted by courts to victims of trafficking, which is the result of prosecutors more regularly making compensation claims. **GRETA considers that the Spanish authorities should take further steps to facilitate and guarantee access to compensation to victims of THB, in particular by:**

- **enabling victims of trafficking to exercise their right to compensation, by informing them, in a language they can understand, of the right to compensation and the procedures to be followed, and building the capacity of legal practitioners to support victims to claim compensation;**
- **including victim compensation into training programmes for law enforcement officials, prosecutors and judges;**
- **making full use of the existing legislation on the freezing and forfeiture of assets to secure compensation to victims of trafficking.**

216. **Further, GRETA urges the Spanish authorities to make the State compensation scheme effectively accessible to victims of trafficking, including third-country nationals.**

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

217. GRETA first report on Spain described that provisions for the return of victims of trafficking to their countries of origin, which are contained in Article 59 bis of Organic Law 4/2000 on the Rights and Freedoms of Foreigners in Spain and Their Social Integration and the Framework Protocol.<sup>68</sup>

<sup>67</sup> *Detección y Defensa de Víctimas de Trata – Guía práctica para la abogacía.*

<sup>68</sup> See paragraphs 230-234 of GRETA's first report.

218. The authorities have stressed that victims of trafficking are not forcibly removed from Spain and there is provision in law to grant them residence/work permits due to their exceptional circumstances. Part XIII.F of the Framework Protocol entitled "voluntary repatriation" entitles victims to apply for assisted return to their countries of origin through the Secretary of State for Immigration and Emigration. The Ministry of Labour and Social Security through the General Secretariat for Immigration and Emigration has continued to fund voluntary return projects, since 2015 jointly with the EU Asylum, Migration and Integration Fund. In 2013, the General Secretariat for Immigration and Emigration started implementing a specific Protocol for the Management of Voluntary Return of victims of trafficking to their countries of origin, the goal of which is to improve the safety and facilitate their return. The Protocol emphasises the importance of an evaluation of risks and security prior to and during the trip and action to intervene to address the victim's reintegration. All NGOs benefiting from subsidies for voluntary return projects must, before embarking on the return of trafficking victims, seek clearance from the General Secretariat for Immigration and Emigration, furnishing a specific report that includes measures for the protection, security and assistance for the victim at points of departure, transit and destination. The NGOs in charge of returning the victim has to prepare a "social report" which is reviewed by the Return Unit of the Sub-directorate General for Migrant Integration.

219. In 2015-2016 Spain collaborated as a partner in the IOM-led TACT Project designed to support the return of trafficking victims. Its general aim was to help improve the safe return and conditions for the reintegration of trafficking victims (adults and/or children) travelling from France, Greece, Italy, Poland and Spain back to three priority countries: Albania, Morocco and Ukraine. The project was intended to reinforce the capacity of the authorities in these priority countries in the areas of victim protection and assistance, and enhance transnational co-operation and the exchange of information among the authorities responsible, in close collaboration with civil society.

220. According to information provided by the Spanish authorities, the number of victims of THB repatriated to other countries was 29 in 2013 (all women), 12 in 2014 (all women), 24 in 2015 (21 women and 3 men), 45 in 2016 and 15 in the first five months of 2017. Most of the returns were to countries in Latin America, Nigeria and Romania. The Spanish authorities have stated that there is no record of any trafficking victim being sent back against their will. However, GRETA refers to the information in paragraph 68 concerning the presence of victims of THB in immigration detention centres (CIE) and the case brought by Women's Link Worldwide to the UN Committee against Torture. In this context, reference should also be made to the case of *N.D. and N.T v. Spain* already mentioned in paragraph 128 which highlights the need for individual assessment.

221. **GRETA considers that the Spanish authorities should continue to take steps to ensure that the return of victims of THB is conducted with due regard to their rights, safety and dignity, including the right to *non-refoulement* (Article 40(4) of the Convention), and in the case of children, by fully respecting the principle of the best interests of the child. In this context, the authorities should continue to develop co-operation with countries of origin of victims in order to ensure comprehensive risk and security assessment (Article 16(7) of the Convention) and safe return of the victims, as well as their effective reintegration on return.**

### 3. Substantive criminal law

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

222. As noted in paragraph 19, the March 2015 amendments to the CC expanded the list of exploitative purposes by adding exploitation to commit criminal activities and forced marriage. Further, the list of means was expanded to include the offence being committed by “giving or receiving payments of benefits to achieve the consent of a person having control over another person”. The amended Article 177 bis of the CC reads as follows:

“Whoever recruits, transports, transfers, harbours, receives or houses a person, be it on Spanish territory, from Spain, in transit or to Spain, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability, or by giving or receiving payments or benefits to achieve the consent of a person having control over another person, for any of the following purposes: forced labour or services, including slavery or practices similar to slavery, servitude or begging, sexual exploitation, including pornography, the exploitation to commit criminal activities, the removal of organs, or forced marriage, will be punished with imprisonment of five to eight years for the crime of trafficking in human beings.”<sup>69</sup>

223. Article 177 bis of the CC defines a “situation of necessity or vulnerability” as one in which a person has no other real or acceptable alternative than to subject him/herself to abuse. The aggravating circumstances listed in paragraph 4 of Article 177 bis include that the victim is especially vulnerable due to pregnancy, disability, his/her personal situation, being a child, or illness.

224. Forced marriage is expressly foreseen in Article 177 bis of the CC as one of the purposes of exploitation resulting from trafficking. Similarly, forced begging and the exploitation of criminal activities are included as purposes of trafficking. The CC does not contain an explicit reference to forced adoption within the offence of trafficking, but Article 221 of the CC criminalises the delivery of a child, against remuneration, to another person where no filiation or kinship relation exists, avoiding legal procedures of guardianship, foster care or adoption, with the purpose of establishing a similar relation to filiation.

225. As stated in GRETA’s first report, Article 177 bis of the CC provides for all the aggravating circumstances envisaged in the Convention (i.e. the trafficking puts the victim in serious danger; the victim is a child; the victim is particularly vulnerable for reasons of health, disability or his/her personal situation; the perpetrator is a public official; the offender belongs to an organisation or association of more than two persons, even if transitory in nature). The penalties are increased to imprisonment from eight to 12 years.

226. Through an amendment to Article 89.9 of the CC, human trafficking was added to the list of exceptions to the general rule that establishes the possibility of substituting prison verdicts of more than one year given to foreign nationals with an expulsion from the national territory, thereby preventing foreign nationals convicted of THB from starting their criminal activity again in their country of origin. Further, an amendment to Article 57 of the CC included THB in the list of offences for the commission of which the prohibitions listed in Article 48 of the CC can be applied (deprivation of the right to live in certain places, restraining order prohibiting the perpetrator to come close to or communicate with the victim.) THB has been incorporated in Article 132.1, paragraph 2, of the CC regarding the starting point of calculating the term of the statute of limitations of crimes when the victim is a child, so that the term starts to count once the victim becomes an adult.

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<sup>69</sup> Non-official translation.

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

227. There is no provision under Spanish law criminalising the use of services of a person with the knowledge that he/she is a victim of THB. Reference is made to paragraph 120 where GRETA considers that the Spanish authorities should strengthen their efforts to discourage demand for services from trafficked persons. In their comments on the draft GRETA report, the Spanish authorities have indicated that they are currently considering how to implement GRETA's recommendation, in the light of the measures proposed by the State Pact against Gender-based Violence (see paragraph 25).

**228. GRETA once again invites the Spanish authorities to adopt legislative measures to criminalise the use of services with the knowledge that the person is a victim of THB, regardless of the form of exploitation, as stipulated by Article 19 of the Convention.**

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

229. As described in GRETA's first evaluation report, under Article 177 bis, paragraph 7, of the CC, when, as provided for Article 31 bis of the CC, a legal entity is responsible for a crime of human trafficking, a fine is imposed of between three and five times the profits obtained. This provision applies to cases of human trafficking for forced labour as well as to subcontractors, provided that their liability for the crime can be proven. Moreover, in certain cases one or more of the following penalties can also be imposed: dissolution of the legal entity (leading to permanent loss of legal capacity and the capacity to act in any way in legal business or to pursue any form of activity); suspension of activities for a term which may not exceed five years; closure of the premises and establishments for a period which may not exceed five years; temporary or permanent prohibition to carry out future activities having allowed the commission of a crime, facilitated or enabled the covering up of the crime; disqualification from public subsidies and aid, from contracting with the public sector and benefiting from tax breaks and incentives or from the Social Security system, during a period which may not exceed 15 years; judicial control in order to safeguard the rights of workers and creditors for the estimated time required that shall not exceed five years.

230. The Spanish authorities have informed GRETA that in the period 2013-2015, there were two sentences imposing the closure of establishments where trafficking of persons was committed.

**231. GRETA considers that the Spanish authorities should continue to take measures to ensure that the criminal liability of legal entities is effectively implemented.**

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

232. As noted in GRETA's first report, pursuant to Article 177 bis, paragraph 11, of the CC, "notwithstanding the application of the general rules of this Code, victims of THB will be exempted from the penalties corresponding to the criminal offences committed while being exploited, provided their involvement was the direct consequence of the situation of violence, intimidation, deceit or abuse to which they were subjected, and provided there is an adequate proportionality between that situation and the criminal act perpetrated".

233. The application of this provision is specified in Circular 5/2011 of the Prosecution Service, which indicates that a proportionality test should be applied in each case between the situation of duress faced by the victim and the offence committed. According to the Circular, it will be possible to consider non-punishment in cases where the victim was exploited in order to commit certain offences (e.g. pick pocketing, shoplifting, drug trafficking). Victims of trafficking may also benefit from the non-punishment provision if they use fraudulent documents to enter irregularly Spain whilst being trafficked there. Further, the Circular indicates that the non-punishment provision also applies in cases where the victim contributes to the victimisation of other persons at the request of the traffickers (e.g. surveillance of newly arrived victims, recruitment of other victims).

234. The Spanish authorities have indicated that according to experience, many trafficking victims, notably those subjected to sexual exploitation, are forced by traffickers to collaborate in the commission of crimes. Among the cases arising most frequently in practice, mention is made of victims trafficked for sexual exploitation who are forced to facilitate the selling of drugs or psychotropic substances to clients. The authorities have stressed that, as corollary to the principle of non-prosecution of victims of trafficking, it would always be proportionate for victims to be exempted from criminal liability for any crime committed to facilitate their fraudulent or clandestine migration, especially associated with falsification of documents. In other cases, victims are forced to act as guards of recent arrivals in sexual exploitation centres, thereby participating directly in the victimisation of another person or in the maintenance of the situation of exploitation. Such persons are not completely free in the commission of these acts, although not to the level of exclusion of the absence of will or, should they have acted out of fear of reprisals, for them to be covered by the exemption of responsibility pursuant to Article 20.6 of the CC, taking account of the case-law of the Supreme Court's Second Division in interpreting each of the elements comprising this provision ("impulse" and the "insuperability" of the fear).

235. Despite the above-mentioned legal provision and guidance to prosecutors, NGOs have reported cases of victims of THB who were held accountable for offences committed as a direct consequence of violence or intimidation suffered during their exploitation. Due to the regulations in many cities which prohibit soliciting in public places, trafficked women who are forced to exercise prostitution in the street are fined and this administrative penalty puts at risk the renewal of their residence permits. By way of example, GRETA was informed of the case of a woman who had received nine fines of 601 euros each between 1 March and 17 June 2016 on the basis of Organic Law 4/2015 on the Protection of Public Safety. She was detected as a possible victim of trafficking by an NGO mobile team and was subsequently identified as a victim of trafficking by *Guardia Civil*. Criminal proceedings for human trafficking were opened and the woman was given the status of a protected witness. Following a meeting with the Government Delegation in Madrid, it was agreed to suspend the administrative sanctions against her until the criminal court decides on this case.

236. Reference should also be made to the case mentioned in paragraph 147, brought by Women's Link Worldwide to the UN Committee against Torture, concerning a Nigerian woman who was detained in in 2010, placed in the CIE and deported a few days later, despite the fact that several organisations had identified her as a possible victim of trafficking. Further, Women's Link has documented cases of women victims of THB deprived of the custody of their children because the authorities consider that they are not "fit" to take care of them.

237. In its first report, GRETA urged the Spanish authorities to remove the reference to co-operation with the authorities for victims of trafficking to be exempted from the responsibility derived from their irregular stay in Spain. The Spanish authorities have indicated that the irregular stay of a victim of trafficking is not a criminal offence under Spanish law, but an administrative offence punishable by a fine or expulsion according to Organic Law 4/2000 on the Rights and Freedoms of Foreigners in Spain and Their Social Integration. The authorities have indicated that none of these punishments are applicable to victims of trafficking as provided for in Articles 140 to 146 of the implementing regulation of this law. Article 143 of this regulation establishes that the Government Delegate or Sub-delegate may determine ex officio the liability exclusion, regardless of the collaboration of the victim with the investigation of the crime or the criminal proceedings.

238. The General Council of the Judiciary was in the process of drafting a comprehensive handbook on THB for judges and other legal professionals, which would include a section on the non-punishment provision.

239. **GRETA considers that the Spanish authorities should keep under review the application of the non-punishment provision in Article 177 bis, paragraph 11, of the CC and the guidance provided by Circular 5/2011 of the Prosecution Service, and continue to draw attention to the non-punishment principle though guidance and training provided to relevant professionals (in particular law enforcement officials, prosecutors and judges). Further, the 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>70</sup>

## 4. Investigation, prosecution and procedural law

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

240. The Spanish authorities have stressed the specialisation within the Prosecution Service in fighting human trafficking as being fundamental for combatting this crime. The co-ordination of the activities of the Prosecution Service concerning prevention and prosecution of THB and protection of victims is within the remit of the Chief Prosecutor for Foreigners' Affairs who heads a network of 50 specialised prosecutors. In 2015, this network was expanded by 27 additional "liaison" prosecutors at local Prosecution Offices in cities which are particularly important in the context of combating THB. The prosecutors' network is in permanent communication internally. Training is provided (see paragraph 50) and a two-day meeting is held annually in Madrid, attended by all specialised prosecutors with a view to co-ordinating strategies, know-how and responses. Since 2013, the unit dealing with foreigners' affairs (*Fiscalía de Extranjería*) has been monitoring police investigations in cases of trafficking in human beings and publishes information notes.<sup>71</sup> There are also prosecutors specialised on working with children who play an important role in the protection of unaccompanied foreign children (see paragraph 95).

241. According to the Spanish authorities, there is a high level of collaboration between the Prosecution Service, the State Security Forces, the Labour and Social Security Inspection and NGOs assisting victims. The basis for this co-ordinated action is the Framework Protocol for the Protection of Victims of Human Trafficking, as well as the regional protocols adopted in some parts of the country (see paragraph 33).

242. *Policía Nacional*, which comprises central, provincial and local units, has set up the Central Brigade for Combatting Human Trafficking under the Unit against Immigration Networks and False Documents (UCRIF) which is attached to the Office of the Commissioner-General of Aliens and Borders. There are 23 territorial UCRIF in Spain's provinces which deal with THB cases, and in those parts of the country where there are no UCRIF, THB cases are dealt with by the brigades for aliens' affairs. *Policía Nacional* operates a hotline (+34 900 10 50 90) and an email address ([trata@policia.es](mailto:trata@policia.es)) to report THB cases. As a result of calls and messages received by the Police, a number of victims of THB were removed from exploitation (see paragraph 143) and 72 suspects were detained in 2016 and 13 in 2015. As noted in paragraph 138, 53 police "social interlocutors" (and 53 substitutes) have been appointed in all regions of Spain and trained to deal with THB cases. *Policía Nacional* has approved a Strategic Plan for 2017-2021, which includes as a strategic objective the dismantling of national and international networks dealing with migrant smuggling and THB for all forms of exploitation.

<sup>70</sup> <http://www.osce.org/secretariat/101002?download=true>

<sup>71</sup> Available at:

[https://www.fiscal.es/fiscal/publico/ciudadano/fiscal\\_especialista/extranjeria/documentos\\_normativa/!ut/p/a1/04\\_Sj9CPykssy0xPLMnMz0vMAfGjzOI9HT0cDT2DDbzcFszcDBzdPYOdTD08jE3czYEKI0EKDHAARwN8-oNjJaD6cSiwCDIhzn48FhDQH64fhU8J2AVgBfi8iM8Ezf8z\\_YLc0NAIq0xPAEe2nd4!/dl5/d5/L2dJQSEvUUt3QS80SmIFL1o2X0IBSEExVMwSkdMOEYwQUdJU0I1SEgzS0c2/](https://www.fiscal.es/fiscal/publico/ciudadano/fiscal_especialista/extranjeria/documentos_normativa/!ut/p/a1/04_Sj9CPykssy0xPLMnMz0vMAfGjzOI9HT0cDT2DDbzcFszcDBzdPYOdTD08jE3czYEKI0EKDHAARwN8-oNjJaD6cSiwCDIhzn48FhDQH64fhU8J2AVgBfi8iM8Ezf8z_YLc0NAIq0xPAEe2nd4!/dl5/d5/L2dJQSEvUUt3QS80SmIFL1o2X0IBSEExVMwSkdMOEYwQUdJU0I1SEgzS0c2/)



243. *Guardia Civil* is, *inter alia*, responsible for the surveillance of green borders and coastline, and has Human Trafficking Groups within the Criminal Intelligence Unit and the Central Operative Unit of the Criminal Investigation Command (Judicial Police). At provincial level, there are THB teams within the criminal investigation units. As within *Policía Nacional*, *Guardia Civil* "social interlocutors" have been appointed in all regions of Spain. *Policía Nacional* is competent for the entry/exit border control checks and procedures (first and second line control included) concerning Spanish and foreign citizens. In addition, *Policía Nacional* is competent on immigration, asylum and refugee policies, extradition and expulsion.

244. As noted in paragraph 27, the Counter-Terrorism and Organised Crime Intelligence Centre (CITCO) under the Ministry of the Interior, which is staffed by officers from *Policía Nacional* and *Guardia Civil*, act as focal point for the National Rapporteur. It develops strategic intelligence to combat organised crime and operational co-ordination when more than one law enforcement agency is involved in an investigation and keeps the Management Data System on Trafficking in Human Beings (BDTRATA).

245. The law enforcement agencies and the CITCO have included human trafficking in their multiannual plans as one of the strategic objectives in combatting organised criminality. *Policía Nacional* Plan to Combat Human Trafficking, dated 17 April 2013, and *Guardia Civil* Directive 40/2009 to Combat Human Trafficking of 11 November 2009, include as objectives the more active prosecution of criminal groups, protection of victims and enhancing international co-operation.

246. The Criminal Proceedings Act was amended through Organic Law 13/2015 of 5 October 2015 to incorporate a detailed regulation on the use of certain investigation techniques such as interception of telephone and online communications, capture and recording of verbal communications using electronic devices, technical monitoring devices, image-location and capture, registration of mass data storage devices and remote registers on computer equipment. Spanish law reserves the use of these investigation techniques to certain particularly serious crimes, including human trafficking, even in the absence of a criminal organisation. The use of these investigation techniques is made subject to the principles of specialty, suitability, exceptionality, necessity and proportionality. Their application requires a judicial authorisation.

247. The Spanish authorities have stated that all investigations into criminal groups linked to trafficking are accompanied by financial investigations with a view to having the accounts and assets of traffickers blocked, thus depriving criminals of the financial benefits generated by such activity (see also paragraph 211). According to information provided by the Spanish authorities, between 2012 and 2015, there were seven sentences for THB offences in which forfeiture of assets and proceeds of crime were ordered.

248. The possibility of blocking websites is expressly provided for in Article 10 and following of Act 34/2002 of 11 July 2002 on the Information Society Services and E-commerce. The Prosecution Service has a Unit specialised in IT crimes, including child pornography.

249. The CITCO, *Policía Nacional* and *Guardia Civil* have implemented a number of joint actions in combatting trafficking at both national and international levels. CITCO participates in the European Union's Multidisciplinary Platform against Criminal Threats (EMPACT) established as a basic component in the EU's 2011/2017 Policy Cycle. Moreover, data exchange has been enhanced through the network of the Ministry of the Interior's Councillors and Attachés, and with the Police Links of other countries and international bodies such as Europol and Interpol.

250. The Spanish authorities have indicated that they increasingly resort to joint investigation teams, co-ordinated by Eurojust and Europol and implemented with other EU police forces (e.g. France, Romania, Germany, Belgium, Bulgaria) and less frequently with South American countries, mainly Paraguay.<sup>72</sup> By way of example, reference can be made to Operation Odisea, in which law enforcement agencies of Spain, Morocco, Austria and Italy co-operated over the span of two years in order to dismantle a criminal network trafficking Nigerian women to Europe. The women, some of whom were underage, were recruited in Benin City and trafficked via Niger, Ceuta and Morocco to Spain where they were forced into prostitution; some of them applied for asylum in Spain and were moved to other EU countries (e.g. Austria and Italy). One of the victims co-operated with the Austrian police, which enabled the tracing of the traffickers to Morocco. As part of the investigation conducted by *Policía Nacional*, special investigation techniques were used and money transfers followed. As a result of this operation, 36 victims were identified and seven perpetrators were arrested in Spain, facing sentences of up to 20 years of imprisonment. In relation to one perpetrator arrested in Italy, an update has been requested to the Italian authorities via Europol, but no information has been received yet.

251. According to information provided by the Spanish authorities, the number of investigations into THB cases was 97 in 2013, 75 in 2014, 80 in 2015 and 79 in 2016. The figures for 2013 and 2014 include only THB for sexual exploitation cases, whereas the figure for 2015 covers both sexual exploitation (63) and labour exploitation (17) cases. The number of prosecutions in THB cases was, respectively, 29 in 2013 (involving 120 defendants), 19 in 2014 (18 for sexual exploitation and one for forced begging, involving a total of 51 defendants), 18 in 2015 (12 for sexual exploitation, four for forced labour and two for forced begging, involving a total of 62 defendants) and 17 in 2016.

252. The number of convictions of THB resulting in sentences of deprivation of liberty was as follows: in 2013, six convictions (five for sexual exploitation and one for forced begging); in 2014, eight convictions for THB for sexual exploitation (one was reversed by the Supreme Court to sexual abuse); in 2015, 20 convictions, of which one for labour exploitation and one for forced begging (one sentence was suspended); and in 2016, 18 convictions, including one for forced begging and one for labour exploitation/slavery. The imprisonment sentences are given in a cumulative manner (for all defendants in each case) which makes it impossible to indicate the length of the individual sentences. However, for 2016, individual sentences are indicated, ranging between 6 and 10 years of imprisonment.

253. The Spanish authorities have referred to three judgments concerning trafficking for the purposes of forced work or services, slavery, practices similar to slavery or servitude. In the first judgment, of the Provincial Court of Coruña of 29 July 2016, three Portuguese and one Spanish citizens who had recruited four Spanish men suffering from mental and physical problems and forced them to beg and carry out work, were convicted of THB, degrading treatment, theft and possession of weapons. In a judgment of 20 October 2015, the Provincial Court of Seville convicted two Romanian citizens of trafficking for the purpose of practices similar to slavery. They had recruited three Romanian men living in poor conditions, without work or income, promising them a legal and remunerated activity in Spain. Once in the Spain, they had taken the victims' documents and forced them to steal copper cables. In the third judgment, on 13 November 2015 the Provincial Court of Almería convicted six Romanian citizens of trafficking in human beings for the purpose of begging. The perpetrators had recruited two Romanian citizens, offering them jobs in agriculture in Spain, but had confiscated the victims' documents, forced them to beg, monitored the victims at all times, assaulted them physically and threatened them.

254. The authorities have indicated that a fundamental element in cases of labour exploitation is that the victims file a complaint. Most of the victims are reluctant to do so because they are in Spain in an irregular situation and do not speak the language. In most cases, the victims are scared and threatened by the traffickers, not only with reprisals against them but also against their families in their countries of origin.

<sup>72</sup> See, for example, information concerning a recent JIT between Spain and Bulgaria: <http://www.eurojust.europa.eu/press/PressReleases/Pages/2017/2017-07-07.aspx>

255. There are no judges specialised on THB in Spain. As noted in paragraph 51, in May 2017, a working group was set up by the General Council of the Judiciary to prepare a comprehensive handbook on THB for judges. The draft has been finalised and was expected to be approved in the summer of 2018, following which it would be published on the website of the General Council of the Judiciary as well as printed and circulated to all members of the judiciary. GRETA welcomes the development of a handbook on THB for judges.

256. The General Council of the Judiciary produced a study of sentences issued on THB until the beginning of 2015.<sup>73</sup> However, this study predates the reform of Article 177 bis of the Criminal Code which took place in July 2015 and the relevant Supreme Court decisions in 2016 and 2017 (e.g. clarifying the difference between human trafficking and illegal migration).

257. GRETA welcomes the training and specialisation of law enforcement officers and prosecutors to deal with human trafficking cases, as well as the active engagement in international co-operation and participation in joint investigation teams. However, GRETA is concerned that the number of convictions, in particular for trafficking for labour exploitation, is still very low. GRETA recalls the Court's judgment in the case of *Chowdury and Others v. Greece* and the positive obligation of States to effectively investigate the offences committed and to punish those responsible for human trafficking offences.<sup>74</sup>

**258. GRETA considers that the Spanish authorities should take measures to ensure that THB offences are investigated and prosecuted effectively, leading to proportionate and dissuasive sanctions, in particular by:**

- **continuing to improve the knowledge of investigators, prosecutors and judges about the seriousness of THB, the severe impact of exploitation on the victims and the need to respect their human rights;**
- **strengthening efforts to investigate and prosecute cases of trafficking for the purpose of labour exploitation**
- **reviewing the legislation and the investigation/prosecution procedure with a view to identifying and addressing gaps (e.g. in relation to trafficking for the purpose of labour exploitation/forced labour).**

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

259. Act 19/94 on the Protection of Witnesses and Experts in Criminal Cases contains provisions to conceal the victim's personal details (identity, domicile, workplace, profession and any other data enabling their identification), such as using a code to identify the witness and concealment of the witness using voice distortion or one-way glass. Protected witnesses may ask to be driven to police stations and courts in an official vehicle. In addition, members of the State Law Enforcement Agencies, prosecutors and judges must ensure that photographs of witnesses are not taken and must remove photographic, film, video or any other material from those infringing this prohibition.

260. Further, as noted previously, there are Victim Assistance Offices set up pursuant to Act 35/1995 of 11 December 1995 on Assistance to Victims of Violent Crimes and Crimes against Sexual Freedom which comprise justice administration personnel and psychologists. All victims are entitled to free and confidential access to the assistance and support services offered by these offices.

<sup>73</sup> *Estudio de investigación en material de trata de seres humanos, que se presenta a la Comisión de Igualdad del Consejo General del Poder Judicial.*

<sup>74</sup> European Court of Human Rights, *Chowdury and Others v. Greece*, application No. 21884/15, 30 March 2017.

261. The 2015 Statute of the Victims of Crime contains several provisions on the protection of victims. Pursuant to Article 20, direct contact between the victim and the perpetrator has to be avoided, including at the investigation stage. Article 21 provides for the following measures of victim protection during the investigation: victim's statements must be taken without unjustified delay, the least possible number of times and only when strictly necessary for the purposes of the criminal investigation; victims may be accompanied, in addition to their representative and legal representative, by a person of their choice; medical examinations of victims are to be performed only when required by the criminal procedure and their number is to be kept to a minimum. Pursuant to Article 25, the victim's statement must be taken in spaces especially designed or adapted for the purpose, by professionals who have received special training to reduce or limit harm to the victim; all statements from a victim have to be taken by one person, unless this is to the significant detriment of the process, or directly by a judge or a prosecutor; statements from victims of trafficking for sexual exploitation must be taken by a person of the same sex as the victim, should the victim so request, unless this is to the significant detriment of the process, or the statement must be taken directly by a judge or prosecutor. At the trial stage, the following measures may be adopted to protect victims: measures to avoid eye contact between the victim and the alleged perpetrator, including while evidence is being heard, through the use of communication technologies; measures to guarantee that the victim can be heard while not present in the room where the trial is being held, using communication technologies; measures to prevent putting questions related to the victim's private life and not relevant to the criminal act, unless the judge considers exceptionally that they must be answered so as to adequately evaluate the facts or the credibility of the victim's statement; measures to exclude the public from court proceedings.

262. Concerning children and disabled persons with special protection needs, Article 26 of the Statute of the Victims of Crime provides that statements taken during the investigation will be recorded using audio-visual media and may be reproduced during the hearing in the cases and under the conditions determined in the Criminal Proceedings Act. The statement may be taken through experts. The prosecutor shall ask the judge or tribunal to designate a legal representative of the victim during the investigation and criminal proceedings under certain conditions. Should there be doubts as to the age of the victim and this cannot be determined with certainty, they will be deemed to be a child for the purposes of the Act.

263. Pursuant to Articles 4, 21 and 28 of the Statute of the Victims of Crime and Article 433 of the Criminal Proceedings Act, victims may be accompanied by a social worker, psychologist and/or an NGO representative during the investigation and court hearings.

264. Civil society representatives drew GRETA's attention to the lack of technical, material and human resources for the protection of victims. Victims are reportedly questioned repeatedly, even when their statements have already been recorded, because judges consider that otherwise the rights of accused persons would be violated. Videoconferencing is apparently rarely used. Accused persons' defence lawyers request that the identity of the victims be disclosed. Further, there are no separate premises for witnesses in court buildings and their contact with the defendants cannot be avoided.

265. **While welcoming the range of protection measures provided for in Spanish law, GRETA considers that the Spanish authorities should ensure that the existing provisions on the protection of victims are effectively applied to protect victims of THB at the investigation, trial and post-trial stages, including by:**

- **providing court rooms with appropriate facilities and staff to ensure the protection of victims and witnesses;**
- **clarifying the competences of different agencies in the protection of victims and witnesses to avoid confusion and gaps;**
- **ensuring that Victim Assistance Offices have appropriate resources to carry out their functions;**

- **securing budgetary resources to cover the costs of protecting victims/witnesses of THB collaborating with the authorities, including their relocation for security reasons.**

### **c. Jurisdiction (Article 31)**

266. Pursuant to Article 23 of the Organic Judiciary Act, Spanish courts have jurisdiction over human trafficking crimes committed in Spain (i.e. when Spain is the country of origin, transit or destination), whether by Spanish or foreign citizens, as well as crimes committed overseas, on the following conditions: 1. the procedure is against a Spanish citizen; 2. the procedure is against a foreigner habitually resident in Spain; 3. the procedure is against a legal entity, company, organisation, groups or any other category of body or groups of persons with headquarters or corporate domicile Spain; or, 4. the crime was committed against a victim who, at that moment, was a Spanish national or habitually resident in Spain, if the person charged with committing the illegal act is in Spain.

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

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

267. Spain is party to several Inter-American Conventions, including on mutual assistance in criminal matters, the Belem do Pará Convention to prevent, punish and eradicate violence against women, on the international trafficking of children, and on the enforcement of foreign criminal convictions. It has also signed a number of multilateral agreements with Central American countries, on mutual legal assistance in criminal matters, extradition and the arrest warrant. Further, Spain has concluded bilateral conventions concerning mutual legal assistance in criminal matters with Argentina, Bolivia, Colombia, the Dominican Republic, Chile, Mexico, Panama, Paraguay, Peru, El Salvador, Uruguay and Brazil, and extradition agreements with Cuba, Guatemala, Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, the Dominican Republic, Chile, the United States, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Salvador, Uruguay and Venezuela. Spain is a member of IberRed, the Ibero-American international judicial cooperation NETWORK, and the Ibero-American Association of Public Prosecutors (AIAMP).

268. The Spanish Ministry of the Interior has concluded agreements on co-operation in combatting organised crime (including human trafficking) with a number of countries, including Cameroon, Serbia, Bosnia and Herzegovina, Croatia, Kazakhstan, Ivory Coast, Panama, Republic of Moldova, Uzbekistan, Saudi Arabia, Mexico, China, Chile, Georgia, Egypt, Mauritania, Niger, Andorra, and the Philippines.

269. In the absence of an agreement, international co-operation is based on relevant Council of Europe and EU conventions, such as the European Convention on Judicial Assistance in Criminal Matters, Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant, Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the EU of orders freezing property or evidence, Council Framework Decision of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders, Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters, imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the EU, Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions, Framework Decision 2009/829/JHA of 23 October 2009 on the application between EU Member States of the principle of mutual recognition of decisions on supervision measures as an alternative to provisional detention, and Directive 2011/99/EU of 13 December 2011 on the European Protection Order.

270. The Spanish authorities have noted that collaboration has been strengthened in recent years with the Paraguayan authorities in investigating and prosecuting networks for abducting women and transferring them to Spain for sexual exploitation.

271. Within the EU, Spain collaborates with Europol and Eurojust in setting up JITs in THB cases (see also paragraph 250). Through international police co-operation, the State Security Forces have received signals from family members or acquaintances of trafficking victims being exploited in Spain (mainly from Romania and Bulgaria) and have, in some cases, made it possible to release the victims and arrest the traffickers.

272. The Spanish Agency for International Development Co-operation (AECID) under the Ministry of Foreign Affairs and Co-operation has funded three projects in Mauritania since 2013 (on combating slavery and on the protection and integration of girls who are domestic workers and victims of violence and abuse, for a total of 435,000 euros), as well as one project in Jordan in 2015-2016 (on a plan to fight trafficking of women and girls for sexual exploitation, for 175,000 euros). Furthermore, three projects have been financed in Mexico and Paraguay on a "Comprehensive Plan to fight trafficking of women and girls for sexual exploitation 2015-2018", for a total of 680,000 euros.

273. Further, in 2014 and 2015, the AECID organised, in collaboration with different Spanish stakeholders, seminars on the prevention and fight against THB in AECID's training centres in Colombia, Guatemala, Uruguay and Bolivia, with the attendance of experts from public bodies and civil society. The topics included the protection of children against cybercrime, child pornography and sexual exploitation, and a networking meeting of prosecutors against THB.

274. The Migration and Development Fund Spain - Economic Community of West African States (ECOWAS) finances projects to promote free movement of people in Western Africa, to combat human trafficking and to foster the link between migration and development (budget: 10 million euros). Currently, projects are being implemented in Guinea-Bissau, Niger, Sierra Leone, Burkina Faso, Mali, Sierra Leon, Togo and Liberia.

275. Instruction 14/2014 of 3 July of the State Secretariat for Security regulates the procedure for the activation of "Alert Missing Child" which, on request from the party responsible for the police investigation, broadcasts public alerts and calls for collaboration in cases of high-risk disappearances of children through the media and other public and private resources (motorway and station displays, social networks), both nationally and internationally. This Instruction states that should there be a risk that a child is in another country, the alert will be distributed to *Policía Nacional* International Co-operation Division (SIRENE, Europol, Interpol), for delivery to other Police Corps in accordance with the applicable international agreements. When their international distribution is authorised in other similar systems, the channels for international co-operation established for cross-border activation will be used.

**276. GRETA commends the efforts made by the Spanish authorities in the area of international co-operation and invites them to continue these efforts, including through exploring further possibilities for co-operation with governmental and non-governmental actors in the main countries of origin of trafficking victims.**

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

277. The Spanish authorities have taken important steps to develop co-operation with NGOs specialised in assisting victims of THB. In 2016, the composition of the Social Forum against Trafficking for Sexual Exploitation was expanded by adding two more specialised NGOs. Further, NGOs participate in regular meetings with the National Rapporteur (see paragraph 27). Instruction 6/2016 setting up "social interlocutors" within *Policía Nacional* and *Guardia Civil* has strengthened collaboration between the State Security Forces and organisations and entities with experience in the field of victim assistance.

278. As noted in paragraph 157, NGOs receive grants from the Ministry of Health, Social Services and Equality as well as from the Ministry of Employment and Social Security to organise preventive activities, carry out outreach work, run shelters and assist victims in their rehabilitation. NGOs are also involved in the Framework Protocol for Protection of the Victims of Human Trafficking. Many training and research activities also involve NGOs.

279. According to civil society actors, co-operation with the authorities has improved since GRETA's first evaluation. However, experience with the implementation of Instruction 6/2016 is still rather recent and in some parts of the country collaboration between specialised NGOs and the State Security Forces is still not satisfactory. NGOs are not allowed to participate in the follow-up meetings on the Framework Protocol at national level despite having requested this on several occasions. In some provinces, the Prosecutor's Office which is responsible for co-ordinating the implementation of the Framework Protocol does invite NGOs to follow-up meetings. At national level, the Prosecutor's Office convenes specialised NGOs for periodic meetings which is positively assessed by civil society.

280. GRETA welcomes the partnerships established with NGOs and the increased funding provided for projects run by civil society. GRETA stresses the importance of involving NGOs as equal partners in the planning, implementation and assessment of anti-trafficking measures. The involvement of specialised NGOs in the victim identification process and as support providers with a view to ensuring the provision of appropriate assistance to victims of trafficking is envisaged by the Convention.

**281. GRETA considers that the Spanish authorities should continue building strategic partnerships with NGOs and trade unions, in particular through involving them in the planning, monitoring and evaluation of anti-trafficking action, the victim identification process and the provision of assistance to victims of trafficking. Further, GRETA invites the authorities to ensure long-term funding for anti-trafficking activities of NGOs.**

## IV. Conclusions

282. Since the adoption of GRETA's first report on Spain in July 2013, progress has been made in a number of areas.

283. The Spanish authorities have further developed the legal framework for combating trafficking in human beings, by adding forms of exploitation to in the definition of trafficking in human beings and expanding the list of means included in it, as well as adopting legislation on the rights of victims of crime and the protection of children from all forms of violence, including human trafficking.

284. The institutional framework for combating human trafficking has also evolved, with the appointment of a National Rapporteur for trafficking in human beings and the creation of the function of "social interlocutor" at *Policía Nacional* and *Guardia Civil* with a view to reinforcing co-operation with civil society in the fight against human trafficking.

285. Further, with a view to facilitating co-operation in the process of identification of victims of trafficking, steps have been taken to develop additional protocols, such as the Framework Protocol on certain action related to unaccompanied foreign children, a draft Framework Protocol for the identification and assistance to child victims of trafficking, and regional protocols in several autonomous communities.

286. Efforts have been made to provide training concerning different forms of human trafficking to relevant professionals and to expand the categories of staff trained.

287. Progress has also been made in the area of data collection concerning human trafficking. GRETA welcomes the research on different aspects of human trafficking, including on the identification and assistance of child victims of trafficking, the identification of victims of trafficking among migrants, and the needs of victims of THB for the purpose of sexual exploitation.

288. Moreover, steps have been taken to raise awareness of trafficking for the purpose of sexual exploitation and to discourage demand for sexual services as a root cause of human trafficking.

289. GRETA welcomes the increased resources for assistance and reintegration programmes for victims of trafficking for the purpose of sexual exploitation, as well as the improved access to health care for such victims.

290. Another positive development is the extension of the minimum length of the recovery and reflection period from 30 to 90 days.

291. Furthermore, GRETA welcomes the increased number of compensations granted by courts to victims of trafficking, which is the result of prosecutors more regularly making compensation claims.

292. GRETA also commends the specialisation of law enforcement officers and prosecutors to deal with human trafficking cases, as well as the active engagement in international co-operation and participation in joint investigation teams.

293. However, despite the progress achieved, some issues give rise to concern. In this report, GRETA requests the Spanish authorities to take further action in a number of areas. The position of the recommendations in the text of the report is shown in parentheses.



**Issues for immediate action**

- **GRETA once again urges the Spanish authorities to adopt as a matter of priority a comprehensive national action plan including measures to:**
  - **strengthen action to combat THB for the purpose of labour exploitation and improve the identification of, and assistance to, victims of this form of trafficking, involving civil society, trade unions, labour inspectorates and the private sector;**
  - **address all victims of trafficking for all forms of exploitation, including forced marriages, forced begging, forced criminality and the removal of organs, while taking into account the gender-dimension of trafficking and the particular vulnerability of children;**
  - **prioritise the identification of victims of trafficking amongst asylum seekers and irregular migrants (paragraph 45).**
- **GRETA urges the Spanish authorities to finalise the development of a comprehensive and coherent statistical system on measures to protect and promote the rights of victims of trafficking as well as on the investigation, prosecution and adjudication of THB cases. Statistics regarding victims should be collected from all main actors and allow disaggregation concerning sex, age, type of exploitation, country of origin and/or destination. This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection, including when NGOs working with victims are asked to provide information for the national database (paragraph 64).**
- **GRETA urges the Spanish authorities to intensify their efforts to prevent THB for the purpose of labour exploitation, in particular by:**
  - **expanding the capacity and mandate of labour inspectors so that they can be actively engaged in the prevention of THB, including in private households;**
  - **addressing the risks of THB in the agricultural sector and ensuring that sufficient resources are made available to labour inspectors to fulfil their mandate, including in remote locations at risk of THB;**
  - **training labour inspectors throughout the country, as well as law enforcement officers, prosecutors and judges, on combating THB for the purpose of labour exploitation and the rights of victims;**
  - **reviewing the regulatory systems concerning migrants working as home care workers and ensuring that inspections can take place in private households with a view to preventing abuse of domestic workers and detecting cases of human trafficking;**
  - **strengthening the monitoring of recruitment and temporary work agencies and supply chains and reviewing the legislative framework for any loopholes that may limit protection or preventive measures;**
  - **raising awareness among the general public as well as, in a targeted manner, among migrant workers, about the risks of THB for the purpose of labour exploitation;**
  - **working closely with trade unions, civil society and the private sector to raise awareness of trafficking for the purpose of labour exploitation, prevent trafficking in supply chains and strengthen corporate social responsibility, drawing on the Guiding Principles on Business and Human Rights and Recommendation CM/Rec(2016)3 on human rights and business (paragraph 90).**

- Referring to Article 5, paragraph 5, of the Convention, according to which Parties to the Convention shall take specific measures to reduce children's vulnerability to trafficking, notably by creating a protective environment for them, GRETA urges the Spanish authorities to ensure that unaccompanied and separated children benefit from effective care arrangements, including accommodation, access to education and healthcare, so that they are not exposed to risks of trafficking (paragraph 99).
- GRETA urges the Spanish authorities to take further steps to improve the timely identification of victims of THB, and in particular to:
  - ensure that, in practice, formal identification of victims of THB does not depend on the presence of sufficient evidence for the initiation of criminal proceedings;
  - continue to strengthen multi-agency involvement in the identification of victims of trafficking by formally recognising the role of specialised NGOs in the decision-making process leading to identification;
  - increase efforts to proactively identify victims of trafficking for the purpose of labour exploitation, by reinforcing the capacity and training of labour inspectors and involving trade unions;
  - pay increased attention to the proactive detection of victims of trafficking among asylum seekers and persons placed in immigration detention, as well as migrants arriving in the autonomous cities of Ceuta and Melilla, allowing sufficient time to gather necessary information and taking into account their traumatic experience. In this context, training on the identification of victims of THB and their rights should be provided to asylum officers and staff working in centres where such persons are placed (CIE, CETI);
  - ensure the availability and quality of interpreters and cultural mediators during the investigation process (paragraph 151).
- GRETA urges the Spanish authorities to comply with their obligations under Article 12 of the Convention and to provide assistance, including safe accommodation, adapted to the specific needs of male victims of THB (paragraph 167).
- GRETA urges the Spanish authorities to improve the identification of and assistance to child victims of trafficking, on a basis of a specialised co-operation and referral mechanism which is integrated into the existing child protection systems, in particular by:
  - ensuring that relevant actors take a proactive approach and increase their outreach work to identify child victims of THB, by paying particular attention to unaccompanied and separated foreign children, including those arriving by sea and at the autonomous cities of Ceuta and Melilla, as well as to children from Roma communities;
  - providing further training to stakeholders (police, NGOs, child protection authorities, social workers) as well as guidance for the identification of child victims of THB for different purposes, including the exploitation of begging and exploitation of criminal activities;
  - setting up sufficient shelters with qualified staff and assistance services for presumed child victims of trafficking, for different forms of exploitation;
  - taking steps to address the problem of unaccompanied children disappearing by providing suitable safe accommodation and adequately trained supervisors or foster parents;
  - ensuring long-term assistance for the integration of child victims of trafficking (paragraph 185).

- **While welcoming the extension of the minimum length of the recovery and reflection period from 30 to 90 days, GRETA recalls the recommendation made in its first report and once again urges the Spanish authorities to review the rules and application of the recovery and reflection period with a view to ensuring that:**
  - **all possible foreign victims of trafficking, including EU nationals, are systematically informed of the possibility to benefit from a recovery and reflection period. The involvement of specialised NGOs in the victim identification process and the possibility for NGOs to request themselves that a presumed victim of trafficking be granted a recovery and reflection period should be part of this review;**
  - **the relevant authorities are informed of the State's positive obligation to grant a recovery and reflection period to all possible victims of THB, whether or not such a request is made by the presumed victim (paragraph 195).**
- **GRETA urges the Spanish authorities to make the State compensation scheme effectively accessible to victims of trafficking, including third-country nationals (paragraph 216).**

#### Further conclusions

- GRETA invites the Spanish authorities to further strengthen the co-ordination of national action against THB for all forms of exploitation and to clearly define the co-ordination roles of different entities (paragraph 34);
- GRETA considers that the Spanish authorities should examine the possibility of establishing an independent National Rapporteur or designating another mechanism as an independent organisational entity with a view to ensuring an effective monitoring of the anti-trafficking activities of state institutions and making targeted recommendations (see Article 29, paragraph 4, of the Convention and paragraph 298 of the Explanatory Report) (paragraph 35);
- GRETA considers that the Spanish authorities should introduce an independent evaluation of national action plans as a tool for assessing the impact of the activities and for planning future policies and measures to combat trafficking (paragraph 40);
- GRETA welcomes the steps taken to train relevant professionals on THB and considers that these efforts should continue and be strengthened, in particular as regards labour inspectors, border guards, staff working in detention centres and centres for asylum seekers, judges, medical staff and professionals working with children, based on a comprehensive approach to address all forms of trafficking (paragraph 57);
- While welcoming the above-mentioned research efforts, GRETA considers that the Spanish authorities should continue to conduct and support research on THB-related issues as an evidence base for future policy measures. Areas where research is needed in order to shed more light on the extent and nature of trafficking for the purpose of labour exploitation, trafficking in children, trafficking in relation to migration and internal trafficking (i.e. within Spain) (paragraph 71);
- GRETA considers that the Spanish authorities should increase their efforts to raise general awareness of THB, not only for the purpose of sexual exploitation but also for other purposes, such as forced marriage, forced begging, exploitation in criminal activities and organ removal. Awareness-raising measures should be designed in the light of impact assessments of previous measures and research, in collaboration with civil society and the media. This should include steps to integrate sensitisation about THB into the education system, following a transversal approach, and providing information about the risks of being recruited through Internet/social networks, the "loverboy" recruitment scenario and the fact that Spanish nationals can also fall victim to THB (paragraph 80);

- GRETA considers that the Spanish authorities should intensify their efforts to prevent trafficking in children, in particular by:
  - raising public awareness about the risks and different manifestations of child trafficking (including forced marriage, forced begging and forced criminality);
  - sensitising and training teachers, educational staff and child welfare professionals across the country about THB and its different forms;
  - integrating the prevention of THB in training on online safety (paragraph 100);
- GRETA encourages Spain to ratify the Council of Europe Convention against Trafficking in Human Organs, which entered into force on 1 March 2018, as this could contribute to preventing trafficking for the purpose of organ removal (paragraph 108);
- GRETA considers that the Spanish authorities should strengthen the training and awareness-raising measures aimed at health professionals involved in organ transplantation and other relevant professionals regarding trafficking for the purpose of organ removal, and effectively monitor the operation of private transplant clinics (paragraph 109);
- GRETA considers that the Spanish authorities should adopt and strengthen legislative, administrative, educational, social, cultural or other measures to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with civil society, trade unions and the media, including by:
  - raising awareness of the important role of the media and advertising in tackling demand which leads to human trafficking;
  - promoting awareness among businesses, strengthening corporate social responsibility and preventing trafficking in supply chains (paragraph 120);
- GRETA considers that the Spanish authorities should continue implementing educational programmes at schools which stress the importance of gender equality and respect for the dignity and integrity of every human being and the consequences of gender-based discrimination (paragraph 121);
- GRETA considers that the Spanish authorities should continue their efforts to detect and prevent THB through border control measures, in particular in the context of increased migration. This should include:
  - steps to build the capacity of all competent authorities (State Security Forces, interpreters, lawyers, Spanish Red Cross, NGOs) to detect indicators of THB among persons arriving in Spain;
  - ensuring that the protocol for State Security Forces working at the borders include indicators to enable the identification and referral to assistance of possible victims of trafficking;
  - designating a formal role to specialised NGOs in the process of assessment of the needs of new arrivals and the detection of victims of THB;
  - providing information to foreign nationals arriving irregularly or seeking asylum, in a language that they can understand, about the risks of THB, their rights and where to turn for advice and assistance. In this context, GRETA refers to the United Nations Office of the High Commissioner for Human Rights (OHCHR) 2014 Recommended Principles and Guidelines on Human Rights at International Borders (paragraph 130);

- GRETA considers that the Spanish authorities should continue and strengthen their efforts to provide assistance to all victims of trafficking, and in particular:
  - secure long-term funding for victim assistance projects, guaranteeing the quality of services and subject to evaluation, in order to ensure the continuity of assistance;
  - take steps to give a formal professional status to former victims working as cultural mediators;
  - facilitate the reintegration of victims of trafficking into society by providing them with vocational training and access to the labour market;
  - ensure that in practice, all victims of THB have access to adequate assistance regardless of sex, nationality and form of exploitation;
  - refer victims of trafficking who are returned to Spain under the Dublin III Regulation to assistance projects adapted to their needs (paragraph 168);
- GRETA invites the Spanish authorities to review the age assessment procedures, ensuring that the best interests of the child are effectively protected, and taking into account the Convention on the Rights of the Child and General Comment No. 6 of the Committee on the Rights of the Child (paragraph 186);
- GRETA considers that the Spanish authorities should continue making efforts to ensure that victims of trafficking, regardless of the form of exploitation, can fully benefit in practice from the right to obtain a renewable residence permit for their personal situation or for co-operating with the authorities, without prejudice for the right to seek and enjoy asylum. In this context GRETA refers to the UNHCR 2006 Guidelines on the application of refugee status to victims of trafficking (paragraph 203);
- GRETA considers that the Spanish authorities should address the difficulties faced by victims in securing identify documents from their countries of origin by issuing them with a document specifying their entitlement to a residence/work permit (paragraph 204);
- GRETA considers that the Spanish authorities should review the Framework Protocol with a view to including in it a mechanism which guarantees effective co-ordination and referral between the asylum process and the procedure for the identification, assistance and protection of victims of THB (paragraph 205);
- GRETA considers that the Spanish authorities should take further steps to facilitate and guarantee access to compensation to victims of THB, in particular by:
  - enabling victims of trafficking to exercise their right to compensation, by informing them, in a language they can understand, of the right to compensation and the procedures to be followed, and building the capacity of legal practitioners to support victims to claim compensation;
  - including victim compensation into training programmes for law enforcement officials, prosecutors and judges;
  - making full use of the existing legislation on the freezing and forfeiture of assets to secure compensation to victims of trafficking (paragraph 215);
- GRETA considers that the Spanish authorities should continue to take steps to ensure that the return of victims of THB is conducted with due regard to their rights, safety and dignity, including the right to *non-refoulement* (Article 40(4) of the Convention), and in the case of children, by fully respecting the principle of the best interests of the child. In this context, the authorities should continue to develop co-operation with countries of origin of victims in order to ensure comprehensive risk and security assessment (Article 16(7) of the Convention) and safe return of the victims, as well as their effective reintegration on return (paragraph 221);

- GRETA once again invites the Spanish authorities to adopt legislative measures to criminalise the use of services with the knowledge that the person is a victim of THB, regardless of the form of exploitation, as stipulated by Article 19 of the Convention (paragraph 228);
- GRETA considers that the Spanish authorities should continue to take measures to ensure that the criminal liability of legal entities is effectively implemented (paragraph 231);
- GRETA considers that the Spanish authorities should keep under review the application of the non-punishment provision in Article 177 bis, paragraph 11, of the CC and the guidance provided by Circular 5/2011 of the Prosecution Service, and continue to draw attention to the non-punishment principle though guidance and training provided to relevant professionals (in particular law enforcement officials, prosecutors and judges). Further, the 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 (paragraph 239);
- GRETA considers that the Spanish authorities should take measures to ensure that THB offences are investigated and prosecuted effectively, leading to proportionate and dissuasive sanctions, in particular by:
  - continuing to improve the knowledge of investigators, prosecutors and judges about the seriousness of THB, the severe impact of exploitation on the victims and the need to respect their human rights;
  - strengthening efforts to investigate and prosecute cases of trafficking for the purpose of labour exploitation;
  - reviewing the legislation and the investigation/prosecution procedure with a view to identifying and addressing gaps (e.g. in relation to trafficking for the purpose of labour exploitation/forced labour) (paragraph 258);
- While welcoming the range of protection measures provided for in Spanish law, GRETA considers that the Spanish authorities should ensure that the existing provisions on the protection of victims are effectively applied to protect victims of THB at the investigation, trial and post-trial stages, including by:
  - providing court rooms with appropriate facilities and staff to ensure the protection of victims and witnesses;
  - clarifying the competences of different agencies in the protection of victims and witnesses to avoid confusion and gaps;
  - ensuring that Victim Assistance Offices have appropriate resources to carry out their functions;
  - securing budgetary resources to cover the costs of protecting victims/witnesses of THB collaborating with the authorities, including their relocation for security reasons (paragraph 265);
- GRETA commends the efforts made by the Spanish authorities in the area of international co-operation and invites them to continue these efforts, including through exploring further possibilities for co-operation with governmental and non-governmental actors in the main countries of origin of trafficking victims (paragraph 276);
- GRETA considers that the Spanish authorities should continue building strategic partnerships with NGOs and trade unions, in particular through involving them in the planning, monitoring and evaluation of anti-trafficking action, the victim identification process and the provision of assistance to victims of trafficking. Further, GRETA invites the authorities to ensure long-term funding for anti-trafficking activities of NGOs (paragraph 281).

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

### Public bodies

- Ministry of the Interior
  - Cabinet of the State Secretary for Security
  - Office of the National Rapporteur on Trafficking in Human Beings
  - *Policía Nacional*
  - *Guardia Civil*
  - Center of Intelligence against Terrorism and Organised Crime (CITCO)
  - Office for Asylum and Refugees
- Ministry of Justice
- Ministry of Education, Culture and Sport
  - National Centre for Innovation and Educational Research (CNIIE)
- Ministry of Health, Social Services and Equality
  - Government Delegation against Gender-based violence
  - Directorate General for Family and Children
- Ministry of Labour and Social Security
  - Sub-directorate General for Judicial Regime
  - Sub-directorate General for Integration of Immigrants
  - Sub-directorate General for Immigration
- Ministry of Foreign Affairs and Co-operation
- General Council of the Judiciary (CGPJ)
- Public Prosecutor's Office
- Spanish Ombudsperson (*Defensor del Pueblo*)
- Autonomous Community of Madrid
  - General Directorate for Women
- Autonomous Community of Andalusia
  - Deputy Government Delegation of Malaga
  - Unit Violence against Women of the Deputy Government Delegation of Malaga
  - *Policía Nacional*
  - *Guardia Civil*
- Autonomous Community of Aragon
  - Deputy Government Delegation of Zaragoza
  - Municipality of Zaragoza
  - Women's Institute of Aragon
  - *Policía Nacional*
  - *Guardia Civil*

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Intergovernmental organisations

- International Organization for Migration (IOM)
- United Nations High Commissioner for Refugees (UNHCR)
- United Nations Children's Fund (UNICEF)

Non-governmental organisations, trade unions

- ACCEM (Spanish Catholic Commission for Migration Association)
- Adoratrices Malaga
- Amar Dragoste
- Amnesty International
- "Antena Sur" NGO network, Andalusia
- Apip-Acam Foundation
- APRAMP (Association for the Prevention, Reintegration and Assistance of Prostituted Women)
- Caritas
- CC.OO. (*Comisiones Obreras*)
- CEAR (Spanish Commission for the Assistance of Refugees)
- Cruz Blanca Foundation
- Diaconía
- FAPMI-ECPAT Spain
- Fiet Gratia
- Fundación Amaranta
- General Council of Spanish Lawyers (CGAE)
- Médicos del Mundo
- Mujeres en Zona de Conflicto (Women in Conflict Areas)
- Oblatas
- Progressive Women Foundation
- Programa Daniela
- Proyecto Esperanza
- Save the Children
- SOS Racismo
- Trabe
- Themis
- UGT (*Unión General de Trabajadores*)
- Women's Link Worldwide



## **Government's comments**

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

GRETA engaged in a dialogue with the Spanish 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 authorities on 20 April 2018 and invited them to submit any final comments. The comments of the authorities, submitted on 18 May 2018, are reproduced hereafter.



MINISTERIO  
DEL INTERIOR

SECRETARÍA DE ESTADO DE SEGURIDAD

CENTRO DE INTELIGENCIA CONTRA EL  
TERRORISMO Y EL CRIMEN ORGANIZADO  
(CITCO)



**Comments on the GRETA´s  
Report concerning the  
implementation of the Council of  
Europe Convention on Action  
against Trafficking in Human  
Beings by Spain**

**Second evaluation round**

**Madrid, 11<sup>th</sup> June 2018**

With regard to the **issues for immediate action** linked to paragraphs 85, 86 and 90 Spain would like to make the following comments:

1) **Agricultural sector:**

*'GRETA notes that the limited capacity of labour inspectors, difficulties in effectively controlling remote rural areas'*

Spain **does not agree with this statement:**

When an investigation has to be performed at rural areas (mainly agricultural sector) inspectors are assisted by the Police Forces according to the Collaboration Agreement concluded between the Ministry of Employment and Social Security and the Ministry of the Interior on co-ordination between the Labour and Social Security Inspection and the State Security Forces in the fight against irregular employment and Social Security fraud. The fact that joint visits are regularly programmed by all the Regional Inspectorates and the Regional Services of the Police Forces enables the Inspectorate to have effective access to remote areas.

2) **Domestic work:**

Article 18 of the Spanish Constitution guarantees the inviolability of the home. This fundamental right is also protected by Article 7 of the Charter of Fundamental Rights of the European Union and by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Therefore, the Inspectorate has to clearly respect the inviolability of the home.

The fact that the access to a private home differs from the access to other workplaces does not mean that there are not investigations on this field. If necessary, a court order can be requested, and the employer can also be asked to appear before the inspector at the Inspectorate office and to present all the documents that are needed for the investigation.

*'In 2016, 107 infringements were detected on domestic workers' working conditions and 198 workers were affiliated to the Social Security System as a result of ITSS investigations'. It could be added that 815 investigations were performed and the total of the quantity of the sanctions rose to 612,212.25 euro.*

✓ Concerning the paragraph 146:

*'The Spanish authorities have referred to a Joint Action Day (JAD) in May 2017, focusing on combating THB for the purpose of labour exploitation, under the umbrella of the European platform EMPACT and co-ordinated by Europol. State police forces carried out joint actions in several provinces, involving a total of 702 police officers, alongside Labour Inspectorate personnel and NGO staff who assisted during the identification interviews.'*

JAD actions were carried out in 2016 and 2017. They will be carried out again on May 14-19 in 2018. These actions are coordinated by Europol and involve Police Forces and Labour Inspectorates of the states involved in this EMPACT program. Police and Guardia Civil officers and Labour Inspectors performed the investigations, including the visits to workplaces.

In Spain Labour and Social Security Inspectorate plays a relevant role in detecting possible cases of THB for the purpose of labour exploitation; nevertheless, the Inspectorate does not participate in the identification of victims since it is a specific duty of the Police Forces. After JAD coordinated actions between Police Forces and Labour and Social Security Inspectorate were carried out, Police Forces might have been assisted by NGO staff while identifying possible THB victims.

✓ Regarding the concern of the GRETA:

*'GRETA once again urges the Spanish authorities to adopt as a matter of priority a comprehensive national action plan including measures to:*

*– strengthen action to combat THB for the purpose of labour exploitation and improve the identification of, and assistance to, victims of this form of trafficking, involving civil society, trade unions, labour inspectorates and the private sector ...'*

As it was said before, in Spain Labour and Social Security Inspectorate plays a relevant role in detecting possible cases of THB for the purpose of labour exploitation; nevertheless, the Inspectorate does not participate in the identification of victims since it is a specific duty of the Police Forces.



GOBIERNO DE ESPAÑA

MINISTERIO DEL INTERIOR

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