COUNCIL OF EUROPE CONSEIL DE L'EUROPE

G R E T A
Group of Experts on Action
against Trafficking in Human Beings

GRETA(2013)16

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

First evaluation round

Strasbourg, 27 September 2013

Secretariat of the Council of Europe Convention
on Action against Trafficking in Human Beings
(GRETA and Committee of the Parties)
DG-I Directorate General of Human Rights and Rule of Law
Council of Europe
F- 67075 Strasbourg Cedex
France
+ 33 (0)3 90 21 52 54

trafficking@coe.int

http://www.coe.int/trafficking

Table of contents

Preamble **5**
Executive summary **7**
I. Introduction **9**
II. National framework in the field of action against trafficking in human beings in Spain **11**
1. Overview of the current situation in the area of trafficking in human beings in Spain **11**
2. Overview of the legal and policy framework in the field of action against trafficking in human beings **11**
a. Legal framework 11
b. National Action Plans and Strategies 13
c. National and regional protocols 14
3. Overview of the institutional framework for action against trafficking in human beings **15**
a. The Government Delegation against Gender-based Violence 15
b. Monitoring Committee 15
c. Police and security forces 16
d. Prosecution Service 17
e. The Ombudsperson 17
f. Social Forum to Combat THB for Sexual Exploitation 17
g. NGOs, other civil society actors and intergovernmental organisations 17
III. Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain **19**
1. Integration of the core concepts and definitions contained in the Convention in the internal law **19**
a. Human rights-based approach to action against trafficking in human beings 19
b. Definitions of "trafficking in human beings" and "victim of THB" in Spanish law 20
i. Definition of "trafficking in human beings" 20
ii. Definition of "victim of THB" 21
c. Comprehensive approach to action against THB, co-ordination of all actors and actions, and international co-operation 22
i. Comprehensive approach and co-ordination 22
ii. Training of relevant professionals 26
iii. Data collection and research 28
iv. International co-operation 30
2. Implementation by Spain of measures aimed to prevent trafficking in human beings **32**
a. Measures to raise awareness and discourage demand 32
b. Border measures to prevent THB and measures to enable legal migration 34
c. Measures to ensure the quality, security and integrity of travel and identity documents 36
3. Implementation by Spain of measures to protect and promote the rights of victims of trafficking in human beings **36**
a. Identification of victims of trafficking in human beings 36
i. Description of the identification system 36
ii. GRETA's assessment of the identification system 40
b. Assistance to victims 41
c. Recovery and reflection period 47
d. Residence permits 50
e. Compensation and legal redress 53
f. Repatriation and return of victims 55
4. Implementation by Spain of measures concerning substantive criminal law, investigation, prosecution and procedural law **57**
a. Substantive criminal law 57
b. Non-punishment of victims of trafficking in human beings 58

c. Investigation, prosecution and procedural law.....59
d. Protection of victims and witnesses.....62
5. Concluding remarks.....63
Appendix I: List of GRETA's proposals.....65
Appendix II: List of public bodies and intergovernmental and non-governmental organisations with which GRETA held consultations.....71

Government's comments.....73

Preamble

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

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

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

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

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

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

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

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

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

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

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

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

As regards the procedure for the preparation of reports, GRETA examines a draft report on each Party in plenary session. The report is sent to the relevant government for comments, which are taken into account by GRETA when establishing its final report. This final report is adopted by GRETA in a plenary session and transmitted to the Party concerned, which is invited to submit any final comments. At the expiry of the time-limit of one month for the Party to make comments, the report and conclusions by GRETA, together with eventual comments made by the national authorities, are made public and sent to the Committee of the Parties. In the context of the first evaluation round, this completes GRETA's task in respect of the Party concerned, but it is only the first stage in an on-going dialogue between GRETA and the authorities.

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

Executive summary

The Spanish authorities have taken a number of steps to prevent and combat trafficking in human beings in recent years. Trafficking in human beings was criminalised in 2010. A Framework Protocol for the Protection of Victims of Trafficking was adopted in October 2011 with a view to improving the fight against THB, from identification to assistance and protection. A national action plan to combat trafficking in human beings for the purpose of sexual exploitation was adopted in 2008.

However, Spain's anti-trafficking action has been characterised by a focus on combating the trafficking of foreign women for the purpose of sexual exploitation. Whilst recognising the need to maintain efforts to combat this type of trafficking, GRETA stresses that more must be done to address trafficking for the purpose of all types of exploitation, including by adopting a comprehensive action plan also covering trafficking for the purpose of labour exploitation.

Furthermore, whilst a step forward, the above-mentioned framework protocol still needs to fully translate into practice by increasing the level of co-ordination between public agencies at State and regional levels (in particular the national and regional police forces) as well as co-operation between the competent authorities and civil society, including through the effective involvement of the latter in the evaluation of anti-trafficking legislation and policies to be undertaken as part of the framework protocol.

Concerning the prevention of human trafficking, a number of initiatives have been taken in order to raise awareness of THB for sexual exploitation. However, GRETA stresses the need for awareness activities to also address other types of exploitation, in particular labour exploitation in high risk sectors of the economy (seasonal agriculture, textile industry, domestic work, construction, hotel/catering sector, etc.), as well as child trafficking and THB of Spanish nationals. Efforts should also be deployed to discourage demand of services of victims of trafficking for the purpose of all types of exploitation.

As regards identification of victims of trafficking, GRETA notes that the role of NGOs is limited to reporting possible cases of THB to the police, offering legal advice and submitting information for consideration for the identification decision. Therefore, it recommends the formal involvement of frontline actors, including NGOs, in the identification process. Moreover, the detection and identification of victims of THB for the purpose of labour exploitation is still insufficient. According to GRETA, a proactive approach needs to be adopted to improve identification of victims of labour exploitation which implies increasing the involvement of other professionals than the police, such as labour inspectors. Furthermore, a specific referral mechanism should be set up for child victims of trafficking to take into account their special needs, involving child specialists, specialised police officers and prosecutors.

Concerning assistance to victims, GRETA welcomes the range of assistance services available to women victims of trafficking for the purpose of sexual exploitation, but stresses the need to provide adequate assistance to other victims of trafficking, such as men victims of sexual exploitation or women and men victims of trafficking for the purpose of labour exploitation. GRETA also emphasises the need for adequate assistance to be provided to all child victims of trafficking irrespective of the type of exploitation.

Spanish law provides for a recovery and reflection period of at least 30 days. GRETA notes that possible victims of trafficking are in contact with the police from the beginning of the identification process and that the request for a recovery and reflection period is submitted by the police. GRETA is concerned that the required contact with the police investigating the crime results in the low number of victims who benefit from it. GRETA stresses that a recovery and reflection period must be granted not only to identified victims of trafficking but also when there are reasonable grounds to believe that the person concerned is a victim of trafficking. GRETA finds that all possible victims should be systematically informed of the possibility of benefitting from a recovery and reflection period, and that clear criteria need to be established to decide on its duration.

As regards residence permits, GRETA welcomes the possibility for victims of trafficking to be granted a temporary residence permit on the basis not only of their co-operation with the authorities but also of their personal situation. However, it notes that very few residence permits have been granted owing to the personal situation of the victim and that the criteria for granting them lack clarity. More generally, GRETA underlines that more needs to be done to ensure that victims of trafficking can take full advantage of the right to be granted a temporary residence permit.

GRETA deems that access to compensation by victims of trafficking needs to be improved, including through better information in a language understood by the victims and access to the state fund for victims of serious crime. In addition, further efforts must be made to ensure that perpetrators pay compensation by improving the identification, seizure and confiscation of criminal assets.

Furthermore, GRETA stresses that forced removals of possible victims of trafficking should be avoided. The shortcomings of identification of victims at the borders and in reception centres for irregular migrants, as well as the lack of access to asylum procedures for victims of trafficking can result in possible victims being deported or repatriated for irregular stay without having been duly identified as victims of trafficking. Steps should also be taken to develop co-operation with countries of origin to ensure a proper risk assessment, a safe return and an effective reintegration of victims of trafficking.

GRETA notes with interest the inclusion of a non-punishment clause in the criminal code and instructions to prosecutors regarding it. However, further needs to be done to ensure and keep under review its effective application in the way of training of members of law enforcement agencies, prosecutors and judges.

In order to ensure co-operation from victims of trafficking during criminal proceedings, GRETA underlines the need to protect them effectively during investigations, trials and beyond. To this end, GRETA calls on the authorities to review the current system to improve the protection of adult and child victims of trafficking.

I. Introduction

1. Spain deposited the instrument of ratification of the Council of Europe Convention on Action against Trafficking in Human Beings ("the Convention") on 2 April 2009.[1] The Convention entered into force for Spain on 1 August 2009.[2]

2. As established in Article 36(1) of the Convention, the Group of Experts on Action against Trafficking in Human Beings (GRETA) monitors the implementation of the Convention by the Parties. GRETA does so in conformity with the procedure laid down in Article 38 of the Convention and the Rules on the evaluation procedure of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties. For the first evaluation round (2010-2013), GRETA drew up a monitoring timetable according to which the Parties to the Convention were divided into groups, Spain being in the third group of 10 Parties to be evaluated.

3. In accordance with Article 38 of the Convention, GRETA proceeded with the examination of the measures taken by Spain to implement the provisions set out in the Convention. The "Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties – first evaluation round" was sent to Spain on 31 January 2012. The deadline for replying to the questionnaire was 1 June 2012. Spain submitted its reply on 31 May 2012.

4. In preparation of the present report, GRETA used the reply to the questionnaire by Spain, other information collected by GRETA, and information received from civil society. In addition, an evaluation visit to Spain took place from 15 to 19 October 2012, carried out by the following delegation:

- Mr Helmut Sax, member of GRETA;
- Ms Diana Tudorache, member of GRETA;
- Ms Carolina Lasén Diaz, administrator at the Secretariat of the Convention on Action against Trafficking in Human Beings;
- Mr Gerald Dunn, administrator at the Secretariat of the Convention on Action against Trafficking in Human Beings.

5. During the visit, the GRETA delegation held meetings with officials from relevant Ministries and public agencies, the General Prosecutor's Office and the General Council for the Judiciary. Further, the GRETA delegation met representatives of the Autonomous Communities of Andalusia, Catalonia and Madrid, as well as prosecutors in these regions. Consultations were also held with Spain's Ombudsperson and Catalonia's Ombudsperson. These meetings (see Appendix II) took place in a spirit of close co-operation.

6. The GRETA delegation held separate meetings with representatives of non-governmental organisations (NGOs) and other members of civil society, as well as with relevant international organisations present in Spain (see Appendix II). GRETA is grateful for the information provided by them.

7. Further, in the context of the visit to Spain, the GRETA delegation visited two emergency shelters for women victims of trafficking, in Madrid and Barcelona, which are run by NGOs.

---

[1] Spain submitted a Declaration at the time of ratification, on the status of Gibraltar, which states that the international relations of Gibraltar come under the responsibility of the UK and that the authorities of Gibraltar have a local character and exercise exclusively internal competences attributed by the UK in its capacity as sovereign State on which Gibraltar depends.

[2] The Convention as such entered into force on 1 February 2008, following its 10th ratification.

8. GRETA is grateful for the assistance provided by the contact person appointed by the Spanish authorities, Mr Juan Armando Andrada-Vanderwilde Parada, Head of the Council of Europe and OSCE Unit at the Ministry for Foreign Affairs and Co-operation. GRETA would also like to extend its gratitude to Ms Miriam Benterrak Ayensa, Technical Adviser at the Government's Delegation against Gender-based Violence, for her invaluable assistance during the evaluation visit.

9. The draft version of this report was adopted by GRETA at its 16th meeting (11-15 March 2013) and was submitted to the Spanish authorities for comments on 11 April 2013. The authorities' comments were received on 11, 17 and 18 June 2013 and were taken into account by GRETA when drawing up the final evaluation report, which was adopted at GRETA's 17th meeting (1-5 July 2013).

II. National framework in the field of action against trafficking in human beings in Spain

1. Overview of the current situation in the area of trafficking in human beings in Spain

10. Spain is mainly a country of destination and transit for victims of trafficking in human beings (THB). According to the Spanish authorities, 443 victims of trafficking were identified in 2009, 1 605 in 2010 and 234 in 2011. All victims identified between 2009 and 2011 were subject to trafficking for the purpose of sexual exploitation and most of them were women, originating principally from China, Brazil, Paraguay, Nigeria, Romania and the Dominican Republic. A certain number of Spanish nationals were identified as victims of trafficking (26 in 2009, 109 in 2010 and eight in 2011). The number of identified child victims was low (four were identified in 2009, 13 in 2010 and seven in 2011). According to statistics provided by the Prosecution Service for 2012, there were 406 identified victims of trafficking for the purpose of sexual exploitation and 89 for labour exploitation and forced begging; 76% of the victims were women (primarily from Brazil, Paraguay and Romania) and 4.6% of the female victims of trafficking for sexual exploitation were children.

11. It is noteworthy that the offence of THB, as defined in the Council of Europe Convention, entered into force in December 2010, and therefore only the statistics for 2011 and 2012 correspond to the Convention's definition of THB. The figures provided by the Spanish authorities for 2009 and 2010 cover, in addition to cases of human trafficking, victims of related crimes such as forced prostitution, sexual exploitation of children, and the smuggling of migrants (the latter offence being linked with THB until December 2010, see paragraph 14). Another factor to bear in mind is that the rules on the identification of victims of trafficking, regardless of the type of exploitation, were adopted only in October 2011.

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

a. Legal framework

12. At the international level, in addition to the Council of Europe Convention on Action against Trafficking in Human Beings, Spain is Party to the United Nations Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (both of which it ratified in 2002). Spain is also Party to the UN Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (ratified in 1990 and 2001, respectively), the Convention on the Elimination of All Forms of Discrimination against Women (ratified in 1984), as well as conventions elaborated under the International Labour Organisation (ILO).[3] Further, Spain is Party to a number of Council of Europe conventions which are relevant to action against THB, including the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and conventions on co-operation in criminal matters.[4]

[3] Convention concerning Forced or Compulsory Labour (No.29), Convention concerning the Abolition of Forced Labour (No.105) and Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No.182).

[4] In particular, the European Convention on Mutual Assistance in Criminal Matters and its Additional Protocol; the European Convention on Extradition and its First and Second Additional Protocols; and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. In addition, Spain signed the Council of Europe Convention on preventing and combating violence against women and domestic violence, in 2011.

13. As a member of the European Union (EU), Spain is bound by Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, replacing Council Framework Decision 2002/629/JHA. Other relevant EU legislation applicable in Spain are Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, and who co-operate with the competent authorities, Directive 2004/80/EC relating to compensation to crime victims and Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, replacing Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings.

14. The offence of THB was introduced in the Spanish Criminal Code (CC) by Organic Law 5/2010 through the new Title VII bis on "Trafficking of Human Beings". Article 177 bis of the CC criminalising THB entered into force in December 2010 and the first judgments dealing with this offence were handed down at the end of 2012 (see paragraph 264). Prior to the addition of Article 177 bis, THB was often confused with the smuggling of migrants and clandestine immigration, as the former Article 318 bis, paragraph 2, of the CC criminalised the smuggling of migrants for the purpose of sexual exploitation. Certain provisions of the CC concerning labour rights violations were also used to prosecute cases of human trafficking before Article 177 bis was introduced, for example Article 312.2 of the CC (punishing the recruitment of workers[5] by offering them false jobs or misleading working conditions and the employment of foreign nationals without work permits in conditions that prejudice, reduce or remove their rights as established by law, collective agreement or employment contract) and Article 313 of the CC (criminalising the enabling of migration of a person to another country through fake contracts, job offers or other forms of deceit). The 2010 review of the CC also added Chapter II bis to Title VIII, on sexual abuse and assault on children, which extended the scope of the crime of child pornography, introduced the crime of sexual cyber-harassment and increased the penalties for these crimes to up to 15 years of imprisonment.

15. Other national legal instruments relevant for action against THB include:

- Organic Law 4/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration (hereinafter, the Law on Foreigners), which was amended in 2009 to introduce Article 59 bis on victims of trafficking of human beings.

- Royal Decree 557/2011, which established a new regulation implementing the Law on Foreigners (hereafter, Regulation on Foreigners).[6] Articles 140 to 146 of this regulation concern the identification of victims of trafficking, the recovery and reflexion period, non-punishment, temporary residence and work permits, and the assisted return of victims of trafficking, and special rules on child victims of trafficking.

- Organic Law 1/1996 on the Legal Protection of Minors which establishes the rights of children (defined as persons below 18 years of age) and applies to all children on Spanish territory. The law regulates the protection of children, including through guardianship and the provision of specialised assistance.

[5] As defined in Article 1 of the Statute of Workers' Rights. Domestic work has a special status (it was not included in Spanish labour law until 1985) and is regulated by Royal Decrees 1620/2011 and 29/2012. These regulations seek to bring the protection of domestic workers closer to that of other workers (in terms of wages, working hours, social security, termination of contract, etc.) whilst taking into account the specificities of this sector (e.g. service within the family household of the employer; trust as key feature of the work relationship).

[6] While the regulation implementing Organic Law 4/2000 was being amended, the State Secretary for Security at the Ministry of the Interior issued Instruction 1/2010 on the transitional application of Article 59 bis to victims of human trafficking.

b. National Action Plans and Strategies

16. A National Action Plan to Combat Trafficking in Human Beings for Sexual Exploitation was approved on 12 December 2008 by the Spanish Council of Ministers. It was initially intended to cover the period 2009-2011, but its application was extended until the end of 2012. The plan included a total of 62 measures in five areas: awareness-raising, prevention and investigation; education and training; victim care and protection; legislative and procedural measures; and co-ordination and co-operation measures.

17. The action plan set up an Inter-ministerial Monitoring Committee to monitor and evaluate its implementation. This committee was composed of representatives of five ministries (Health, Social Services and Equality; Justice; Interior; Foreign Affairs and Co-operation; and Employment and Social Security). Three annual reports monitoring the implementation of the action plan were published, covering the years 2009, 2010 and 2011.[7] According to the latest report, published in October 2012, the Spanish government dedicated 6.2 million euros to the implementation of the action plan in 2011. The Spanish authorities have informed GRETA that the 4th annual report concerning the implementation of the action plan in 2012 should be approved in July 2013. In addition, a comprehensive evaluation of the action plan will be carried out by the aforementioned committee, which will provide the basis for a new policy instrument against human trafficking for the purpose of sexual exploitation (expected to be adopted in late 2013).

18. The Government Delegation against Gender-based Violence, at the Ministry of Health, Social Services and Equality (see paragraph 29), is in charge of co-ordinating the implementation of the action plan.

19. A national plan to combat THB for the purpose of labour exploitation was drafted with the participation of the trade unions, but was never adopted. The Spanish Ombudsperson (see paragraph 37) has recommended that the Office of the Under-Secretary of State for Employment and Social Security speeds up work to publish this plan.[8]

20. The National Strategy against Organised Crime for 2011-2014 includes THB as one of the crimes to be combated as a priority. GRETA notes that this strategy maintains the confusion between the smuggling of migrants and THB that existed prior to the review of the CC in 2010, as it links the fight against illegal immigration with THB. A Co-ordination Committee against Organised Crime was set up as part of the strategy to facilitate the exchange of information and evaluate measures. This committee is chaired by the State Secretary on Security and includes representatives of the National Police, the Civil Guard, the Director of the Centre for Intelligence against Organised Crime (CICO), the Chief Prosecutors on Drugs and Corruption, and the Heads of the Judicial Police at the National Police and the Civil Guard. GRETA notes that the Chief Prosecutors on Foreigners and Minors, who deal with THB cases, are not members of this committee.

21. The Spanish authorities have informed GRETA that the National Police implements an operational plan to combat human trafficking and that a police plan against human trafficking for the purpose of sexual exploitation was launched in April 2013.

---

7 Available at: www.msssi.gob.es/ssi/violenciaGenero/tratadeMujeres/planIntegral/home.htm

8 Special report "*Human trafficking in Spain: invisible victims*", conclusions and recommendations available at: www.defensordelpueblo.es/es/Documentacion/Publicaciones/monografico/Documentacion/Trata_Conclusiones_y_Recomendaciones_Ingles.pdf
Full report available at:
www.defensordelpueblo.es/en/Documentacion/Other/Documentos/Defensor_del_Pueblo_Human_Trafficking.pdf

22. The Third Action Plan against the Sexual Exploitation of Children and Adolescents (2010-2013) includes a chapter on THB for the purpose of sexual exploitation and refers to the Action Plan to Combat THB for Sexual Exploitation, which had specific actions on child victims of trafficking. One of the operational measures envisaged by this action plan is to provide specialised assistance to children victims of trafficking for the purpose of sexual exploitation, which requires co-ordination between relevant ministries and the authorities of the autonomous communities. The monitoring and evaluation of the Third Action Plan is carried out by the Working Group on Child Abuse at the Observatory on Children,[9] which publishes annual reports.

23. Reference should also be made to the First Human Rights Plan for 2009-2011, which was adopted in December 2008. One of its objectives was to combat THB, including through closer international co-operation. The Human Rights Plan addressed THB in the context of migration policies and the fight against the smuggling of migrants. Further, it called for the adoption of an action plan to combat THB, in particular of women and children, and the introduction of the crime of THB in the CC. The evaluation of the First Human Rights Plan was published in November 2012[10] and a new human rights plan is expected to be adopted in 2013. The Centre for Political and Constitutional Studies (a public body under the Ministry of the Presidency carrying out research on social sciences and law) and the Constitutional Committee of the Chamber of Deputies participate in the drafting of the new plan.

c. National and regional protocols

24. Article 140 of the Regulation on Foreigners (see paragraph 15) refers to the need to adopt a framework protocol for the protection of victims of trafficking, setting down the tasks of the competent authorities, the basis for institutional co-ordination, and the role of non-governmental organisations specialised in assisting victims of trafficking. The Framework Protocol for the Protection of Victims of Trafficking was signed in October 2011. It establishes procedures for the detection, identification, referral, support and protection of adult and child victims of trafficking, covering both EU nationals and third-country nationals.

25. In October 2011, the Ministries of Justice, the Interior, Employment and Immigration, Health, Social Services and Equality, together with the General Council for the Judiciary and the Prosecution Service, signed an agreement for the implementation of the Framework Protocol for the Protection of Victims of Trafficking. The agreement applies throughout Spain, irrespective of the adoption of regional and local protocols which take account of the specificities of each autonomous community.[11]

[9] The Observatory on Children was set up in 1999 and is a public body under the Ministry of Health, Social Services and Equality. It aims to co-ordinate action for the protection of children among the central government, the autonomous communities, municipalities and not-for-profit organisations active in the field of child protection.

[10] Available (in Spanish only) at: www.abogacia.es/wp-content/uploads/2013/01/INFORME-DE-EVALUACION-DEL-PLAN-DE-DDHH.pdf

[11] Spain is divided into 17 autonomous communities and two autonomous cities in Northern Africa (Ceuta and Melilla). Autonomous communities have competence, *inter alia*, over education, health and social services, while the central government retains exclusive competence on international relations, immigration policy, criminal and labour legislation, etc. Each autonomous community has a directly elected single-chamber legislative assembly, which elects the President of the Autonomous Community and adopts legislation and the budget. Each autonomous community includes several provinces (except for one-province regions such as Madrid).

26. The authorities of some autonomous communities have developed, or are in the process of developing, regional protocols to protect victims of trafficking. A Regional Protocol on Institutional Measures to Prevent, Investigate and Assist Women Victims of THB for the Purpose of Sexual Exploitation in Galicia was signed in January 2010 by the President of the Autonomous Community and the Head Prosecutor of Galicia.[12] Another regional protocol has been developed in the Basque Country. A third regional protocol for the protection of victims of trafficking is being finalised in Catalonia and expected to be published in September 2013. In January 2010, the government of Andalusia adopted the first Strategic Plan on Equality between Women and Men (2010-2013) which includes measures to prevent sexual exploitation and assist women victims of sexual exploitation and THB.

27. Pursuant to Article 190 of the Regulation on Foreigners, the General Secretariat for Migration and Immigration of the Ministry of Employment and Social Security promotes the adoption of a framework protocol on foreign unaccompanied minors. Such a framework protocol is being prepared with the aim of co-ordinating the role of all relevant institutions and public bodies, from the moment the unaccompanied minor is found until his/her identification, age determination and referral to the institution for child protection.

28. Further, the Ministry of Foreign Affairs and Co-operation is planning the drafting of a national protocol for the detection of victims of trafficking for the purpose of labour exploitation in foreign diplomatic missions in Spain.

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

a. The Government Delegation against Gender-based Violence

29. Spain's anti-trafficking policy has for a long time focused on combating trafficking of women for the purpose of sexual exploitation as a form of gender-based violence. The Government Delegation against Gender-based Violence within the State Secretariat for Social Services (Ministry of Health, Social Services and Equality) is responsible for promoting co-ordination at the central government level on issues related to trafficking for the purpose of sexual exploitation, including the implementation of the Action Plan to Combat THB for Sexual Exploitation. The Government Delegation against Gender-based Violence (with a staff of 44) is also tasked with promoting co-operation among the public institutions and administrations that are responsible for assisting and protecting victims of trafficking.

b. Monitoring Committee

30. The inter-ministerial agreement for the implementation of the Framework Protocol for the Protection of Victims of Trafficking (see paragraph 25) set up a Monitoring Committee for its follow-up, which is also tasked with deciding on issues of interpretation or compliance. The Monitoring Committee was established in June 2012 with representatives from the Ministries of Justice, the Interior, Employment and Social Security, Health, Social Services and Equality (through the Government Delegation), as well as the General Council for the Judiciary and the State Prosecution Service. It meets at least twice a year. NGOs are not members of the Monitoring Committee. However, it was agreed at the first meeting of the Monitoring Committee in June 2012 that in order to receive information on the implementation of the framework protocol, representatives of organisations with experience in assisting victims of trafficking could be invited. The Social Forum to Combat THB for Sexual Exploitation (see paragraph 38) invited all the relevant organisations to its meeting of 28 February 2013, with the aim of including the issues raised by them on the agenda of the Monitoring Committee and inviting specialised NGOs to its meetings.

[12] Available (in Spanish only) at: www.msssi.gob.es/ssi/violenciaGenero/tratadeMujeres/ProtocoloMarco/DOC/ProtocoloActuacionConjuntaGalicia.pdf

c. Police and security forces

31. The National Police (*Cuerpo Nacional de Policía*) is the main police force in municipalities of over 20 000 inhabitants and has competences in the area of asylum and immigration. The National Police comprises central, provincial and local units. The Civil Guard (*Guardia Civil*) is responsible for controlling the Spanish coastline, borders, ports and airports and, in that context, it controls irregular migration. Both the National Police and the Civil Guard have Judicial Police units which assist judges, courts and prosecutors in criminal investigations. The provincial Judicial Police brigades of the National Police include Groups on Minors (GRUMEs), tasked with protecting children victims of physical and psychological abuse. Since 1995, the Civil Guard has had Teams for Women and Minors (EMUMEs) set up to protect and assist vulnerable persons such as women, children, the elderly and the disabled, as well as to investigate crimes involving them as victims. The EMUMEs are part of the Judicial Police Units in charge of the investigation of the THB-related crimes. The National Police and the Civil Guard are trained to identify victims of trafficking and investigate THB-related crimes.

32. The National Police has set up Units against Immigration Networks and False Documents (UCRIFs), which are in charge of investigating criminal activities related to THB, the people smuggling and irregular immigration. A central unit within the Police Headquarters for Foreigners and Borders co-ordinates 23 territorial UCRIF units throughout Spain. In provinces or municipalities with no UCRIF unit, the above-mentioned tasks are performed by provincial or local police squads on foreigners. In January 2013, a new internal structure of the National Police was set up, including a Central Brigade against THB, under the Central UCRIF Unit, which means that combating THB continues to be linked to action against people smuggling and irregular migration. The main tasks of the new brigade are "to investigate and combat networks and criminal organisations involved in the smuggling of migrants, illegal immigration, labour exploitation, exploitation of prostitution and THB".[13] In addition, the National Police includes a Central Brigade against Organised Crime, a Brigade to Respond to Clandestine Immigration (which includes THB) and a Central Brigade for the Investigation of Crimes against Persons, which covers crimes against children. A register of unaccompanied foreign minors (MENAS) is also run by the Directorate General of Police (see paragraph 36). The Spanish authorities have informed GRETA that 103 officers have been posted in the new Central Brigade against Human Trafficking which includes specialised groups on issues such as income-related investigations. The central brigade co-ordinates the work of the different brigades with other national or international police units and provides them with support and intelligence.

33. In September 2006, a national Centre for Intelligence against Organised Crime (CICO) was set up under the Ministry of the Interior. It is staffed by officers from the National Police and the Civil Guard and, if required, can draw on the regional police forces, the customs service and the armed forces. CICO develops strategic intelligence to combat organised crime as well as operational co-ordination criteria when more than one police force is involved in an investigation. It also collects data and prepares annual reports on the situation of organised crime in Spain, including THB.

34. The Autonomous Communities of Catalonia and the Basque Country have their own police forces (the *Mossos d´Esquadra* and *Ertzaintza*, respectively), which are required to co-ordinate anti-trafficking action with the National Police and the Civil Guard when third-country nationals are involved (as immigration and border control are the exclusive competence of the central government). The Catalonian police has a specialised central unit against THB, set up in 2007.

[13] Order INT/28/2013, of 18 January 2013 on the structure and tasks of the central and peripheral services of the Directorate General of Police (Official Journal no. 21, of 24 January 2013).

d. Prosecution Service

35. The Prosecution Service has some 111 prosecutors specialised on issues involving foreigners[14], including human trafficking, of whom 50 have a co-ordinating role when it comes to human trafficking cases at the provincial level. In November 2011, the Prosecution Service published Circular 5/2011 on criteria to harmonise action by prosecutors specialised on foreigners, which provides a detailed analysis of the concepts included in Article 177 bis and related criminal law provisions with a view to clarifying their application. These specialised prosecutors deal with all types of human trafficking (both internal or transnational), regardless of the type of exploitation and the nationality of the victim.

36. There are also prosecutors specialised on working with minors who play an important role in the protection of unaccompanied children victims of trafficking. Article 35 of the Law on Foreigners establishes that prosecutors lead the procedure to determine the age of undocumented foreign minors found by the police. If they are considered children, the Prosecution Service directs them to the relevant regional authorities for child protection. The Prosecution Service is tasked with co-ordinating the register of unaccompanied foreign minors (MENAS) set up by the Directorate General of the Police (pursuant to Article 215 of the Regulation on Foreigners). The MENAS register is part of the ADEXTTRA information system which contains data on third-country nationals, such as visas, residence permits, border control, expulsions, entry bans, asylum, etc. A framework agreement was signed in December 2011 between the Prosecution Service and the State Secretariat for Security to give public prosecutors access to the ADEXTTRA and MENAS systems. In 2012, the Prosecution Service published Instruction 1/2012 on the co-ordination of the MENAS register, which includes rules to ensure that co-ordination is carried out in an efficient way. In addition, prosecutors play an important role in monitoring the care and protection of children placed under guardianship (see paragraph 183).

e. The Ombudsperson

37. The Spanish Ombudsperson (*Defensor del Pueblo*) is responsible for defending the fundamental rights and civil liberties of citizens by monitoring the activities of public authorities. Any citizen may request the intervention of the Ombudsperson in order to investigate alleged misconduct by public authorities and/or their agents. The Office of the Ombudsperson can also intervene *ex officio* in cases that come to their attention. The Ombudsperson submits an annual report to Parliament and may submit reports on particularly serious or urgent matters. A thematic report entitled "Human Trafficking in Spain: Invisible victims"[15] was published by the Ombudsperson in September 2012, based on inspections of public authorities, *ex officio* investigations, complaints, meetings with organisations working with victims of trafficking, visits to shelters and interviews with victims of THB.

f. Social Forum to Combat THB for Sexual Exploitation

38. In July 2009, the Social Forum to Combat Trafficking in Human Beings for Sexual Exploitation was set up to enhance co-operation and exchange of information between the competent authorities and civil society.[16] The Social Forum was established under the Action Plan to Combat THB for Sexual Exploitation and was co-ordinated by the Government Delegation against Gender-based Violence. It is composed of NGOs specialised in providing assistance to victims, representatives of nine ministries involved in the implementation of the action plan, and representatives of two autonomous communities (Navarra and Galicia) and the Spanish Federation of Municipalities and Provinces. A working group on children has been set up within the Social Forum. NGOs have expressed their disappointment about the role played by the Social Forum, regretting that it has not carried out its aim of providing ongoing co-ordination. The Spanish authorities have informed GRETA that the Social Forum continues to be in operation since the expiry of the aforementioned action plan.

g. NGOs, other civil society actors and intergovernmental organisations

---

14 *Fiscalía de Extranjería*.

15 Available at: www.defensordelpueblo.es/en/Documentacion/Other/Documentos/Defensor_del_Pueblo_Human_Trafficking.pdf

16 The Social Forum's internal regulation and meeting agendas (in Spanish only) are available at: www.msc.es/ssi/violenciaGenero/tratadeMujeres/foroSocial/HomeI.htm

39. Civil society involvement in anti-trafficking action in Spain is organised mainly through the Spanish Network against Trafficking in Persons, which is composed of over 20 NGOs and international bodies as either full or associated members. This network was set up in 2006 and includes as members AIETI, APRAMP, ASKABIDE, Doctors of The World *(Médicos del Mundo*), the Federation of Progressive Women, the Hope Project, IEPALA, the Spanish Committee for Refugees, Tierra de Hombres Foundation, the White Cross Foundation, Women in Conflict Zone and Women's Link Worldwide. The following organisations participate as associated members (*organizaciones colaboradoras*): Accem, Amnesty International, Caritas, CONFER, the International Organisation for Migration (IOM), Save The Children, the Spanish delegation of United Nations High Commissioner for Refugees (UNHCR), the Spanish Red Cross and Villa Teresita.

40. The network is represented by a co-ordination committee comprising a secretariat and focal points from the two working groups which have been set up within the network (on identification and referral of victims and on policy and awareness). The tasks of the secretariat are carried out in turn by a member organisation, with a rotation every four months, and decisions are taken at plenary sessions with the participation of all members.

41. Three regional NGO networks against THB are also members of the national network: the networks against THB and sexual exploitation from the Autonomous Communities of Andalusia (*Antena Sur contra la Trata*), Cantabria (*Red Cántabra contra el Tráfico de Personas y la Explotación Sexual*) and Catalonia (*Xarza catalana sobre la trata de persones*). Cantabria's network against human trafficking and sexual exploitation was set up in 2003 and includes 25 organisations. The Catalonian network was set up in May 2008 and includes representatives of NGOs, institutions and authorities, such as the Catalonian Women's institute, the regional police (*Mossos d'Esquadra*)[17] and the Barcelona City Council. The Andalusian network, *Antena Sur*, was set up in December 2011 and includes 17 organisations. Its objective is to co-ordinate action by all members, map the existing resources, improve the assistance to victims of trafficking and defend their rights.

42. The Spanish Federation for the Prevention of Child Abuse (FAPMI), set up in 1990, includes professionals and associations working to eradicate all forms of child abuse and defend the rights of children. FAPMI includes associations for child protection based in the Autonomous Communities of Andalusia, Asturias, Basque Country, Cantabria, Castilla y León, Catalonia, Madrid, Murcia and Navarra. At the end of 2011, FAPMI joined the ECPAT International network (*End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes*) as national affiliate body.

43. The two main trade unions in Spain, *Comisiones Obreras* (CC.OO*.)* and *Unión General de Trabajadores* (UGT) provide information on labour regulations to migrant workers, as well as to Spanish workers going to work abroad. CC.OO. runs 136 information centres for migrant workers (*CITE)* throughout Spain. These trade unions took part in the preparation of a draft national plan to combat THB for the purpose of labour exploitation (see paragraph 19). In February 2013, UGT held a one-day seminar on THB for the purpose of labour exploitation from a gender perspective, which called for "zero tolerance" towards THB in Spain and for the adoption of the plan to combat THB for the purpose of labour exploitation.

44. The first trade union of domestic and care home workers in Spain, *Sindihogar/Sindillar*, was set up at the end of 2011 in Catalonia and includes Spanish and migrant domestic workers.[18] The associations Domestic Territory and Active Domestic Service (SEDOAC) provide information to migrant domestic workers in Spain and campaign for their rights.

---

[17] The regional police participates in the Catalonian network as a "support/advisory member", attending meetings without the right to vote or the obligation to sign up to the documents produced by the network.

[18] The Law on Foreigners used to deny the right of irregular migrant workers to join trade unions, but in December 2007 the Spanish Constitutional Court held that this provision was unconstitutional and the law was amended in 2009. By the end of October 2011, 300 000 persons were registered in the Ministry of Employment as domestic workers, while official statistics indicated that 700 000 families in Spain employed a domestic worker, which implies that more than half of the domestic workers were not regularised.

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

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

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

45. Article 1(1)(b) of the Convention establishes as one of its purposes the protection of the human rights of the victims of trafficking. Further, Article 5(3) includes the obligation for Parties to promote a human rights-based approach in the development, implementation and assessment of the policies and programmes to prevent THB. The Explanatory Report on the Convention states that the main added value of the Convention is its human rights perspective and its focus on victim protection. In the same vein, the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking emphasise that "the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims".[19]

46. THB constitutes an offence to the dignity and fundamental freedoms of the human being and thus a grave violation of human rights. GRETA emphasises the obligations of States to respect, fulfil and protect human rights, including by ensuring compliance by non-State actors, in accordance with the duty of due diligence. A State that fails to fulfil these obligations may, for instance, be held accountable for violations of the European Convention on Human Rights (ECHR). This has been confirmed by the European Court of Human Rights (ECtHR) in its judgment in the case of *Rantsev v. Cyprus and Russia*, where the Court concluded that THB within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the European Convention on Human Rights[20] (which prohibits slavery, servitude and forced or compulsory labour). The Court further concluded that Article 4 entails a positive obligation to protect victims or potential victims, as well as a procedural obligation to investigate trafficking.[21]

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

48. GRETA wishes to stress the need for States to also address THB as a form of violence against women and to take account of gender-specific types of exploitation, as well as the particular situation of child victims of trafficking, in line with the relevant international legal instruments.[22]

---

[19] Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), www.ohchr.org/Documents/Publications/Traffickingen.pdf

[20] *Rantsev v. Cyprus and Russia*, application No. 25965/04, judgment of 7 January 2010, ECHR 2010, paragraph 282.

[21] See also *Siliadin v. France*, application No. 73316/01, judgment of 26 July 2005; *C.N. and V. v. France*, application No. 67724/09, judgment of 11 October 2012; *C.N. v. the UK*, application No. 4239/08, judgment of 13 November 2012.

[22] Such as the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence; the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse; the United Nations Convention on the Rights of the Child and the Optional Protocol thereto on the Sale of Children, Child Prostitution and Child Pornography; the United Nations Convention on the Elimination of All Forms of Discrimination against Women.

49. In Spain, pursuant to Article 41 of the Organic Law regulating the Constitutional Court, a citizen may appeal to the Constitutional Court against violations of the rights and freedoms recognised in Articles 14 to 29 of the Spanish Constitution resulting from provisions, legal enactments, omissions or flagrantly illegal actions by the public authorities. Further, Article 10(2) of the Constitution states that norms relating to the fundamental rights and freedoms enshrined in the Constitution must be interpreted in accordance with the Universal Declaration of Human Rights and the international treaties and agreements on these subjects ratified by Spain. International treaties, once officially published in Spain, are part of the domestic legal system. The Council of Europe Convention on Action against Trafficking in Human Beings was published in Spain's Official Journal on 10 September 2009, making it an integral part of internal law.

50. The preamble of Organic Law 5/2010 amending the CC to introduce the provision on THB states that its objective is to protect the human dignity and freedom of victims of trafficking. Further, it is stated in the Framework Protocol for the Protection of Victims of Trafficking that it focuses on promoting and protecting human rights, giving priority to victim support and protection, avoiding re-victimisation and encouraging victims to co-operate in criminal proceedings against traffickers. In addition, the Action Plan to Combat THB for Sexual Exploitation addressed human trafficking from a gender perspective and as a human rights violation.

51. That said, according to NGOs, the focus of Spain's anti-trafficking action has been on combating irregular migration, rather than assisting and protecting victims of trafficking. There are indications that this focus is slowly beginning to change towards a more victim-centred approach, but NGOs consider that this shift is evolving at too slow a pace.

52. GRETA notes that the anti-trafficking actions contained in the First Human Rights Plan (see paragraph 23) focused on the development of Spain's legal and policy framework to combat THB. **GRETA encourages the Spanish authorities to strengthen their human rights approach to combating THB in the next human rights plan, including by addressing THB as a serious violation of the human rights of victims of trafficking. GRETA would like to be kept informed of the adoption of the next human rights plan.**

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

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

i. Definition of "trafficking in human beings"

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

55. Under Spanish law, paragraph 1 of Article 177 bis of the CC defines THB as "the use of violence, intimidation, deceit, or abuse of power or of a position of need or vulnerability of a national or foreign victim in order to recruit, transport, transfer, harbour, receive or house such a victim in Spanish territory, from Spain, in transit or bound for Spain, for any of the following purposes: forced work or services, slavery or practices similar to slavery, servitude or begging; sexual exploitation, including pornography; and the removal of organs".

56. The definition of THB under Spanish law includes the three above-mentioned constituent elements of THB under the Convention as regards adults. Concerning the element of means, Circular 5/2011 of the Prosecution Service (see paragraph 35) indicates that Article 177 bis includes the same means as those listed in the provision on forced prostitution (Article 188(1) of the CC) and that the case law of the Supreme Court[23] on that provision is also applicable to Article 177 bis. According to that case law, "violence" and "intimidation" cover the use of force, threats and coercion.[24] However, GRETA notes that the list of means in Article 177 bis does not refer to "abduction" and "giving or receiving of payments or benefits to achieve the consent of a person having control over another person". The Spanish authorities have indicated that the inclusion of the latter means has already been foreseen in a draft bill to amend the CC and it has also been proposed to include "abduction" among the means of committing human trafficking. In this regard, the authorities have noted that "abduction" is defined in Spanish law as an autonomous offence and if it used as a means for committing an offence, it will be punished separately as well as together with human trafficking. In order to be fully consistent with the definition of THB in the Convention, **GRETA considers that the Spanish authorities should include the means of "abduction" and "giving or receiving of payments or benefits to achieve the consent of a person having control over another person" in the legal definition of trafficking in human beings.**

57. As regards children, paragraph 2 of Article 177 bis establishes that when the crime of THB is committed in relation to minors[25] with the purpose of exploitation, the use of the means listed in the previous paragraph is irrelevant. This is in line with the definition of the Convention.

58. Paragraph 3 of Article 177 bis stipulates that the consent of a victim of human trafficking is irrelevant when one of the means listed in paragraph 1 has been used, which is also in line with the Convention.

59. For further analysis of the definition of THB and related offences from a substantive criminal law perspective, see paragraphs 240 to 249.

ii. Definition of "victim of THB"

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

61. Paragraph III.4 of the Framework Protocol for the Protection of Victims of Human Trafficking defines "victim of THB" as any person showing reasonable grounds that he or she has been subject to THB, as defined, even if the actual exploitation has not taken place and irrespective of whether or not the presumed victim has denounced his/her situation. The framework protocol is not a legally binding instrument and it clarifies that this definition is to be used "for the purposes of this Protocol".

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

---

23 Supreme Court judgments Nos.1367/2004, 1536/2004, 1257/2005 and 1425/2005.

24 See also Supreme Court judgments Nos. 1428/2000, 1588/2001, 823/2007 and 15/2008.

25 Under Spanish law, persons under 18 years of age.

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

i. Comprehensive approach and co-ordination

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

64. Migration control and other security concerns have dominated Spain's approach to THB, which has led to addressing THB mainly as a crime involving third-country nationals. As mentioned in paragraph 14, this can partly be explained by the fact that, until December 2010, the Criminal Code mixed the smuggling of migrants with sexual exploitation and did not criminalise THB as such. The current criminal law provisions criminalise THB as defined by the Palermo Protocol and the Council of Europe Convention separately from irregular migration. However, as noted in paragraph 20, the National Strategy against Organised Crime still links the smuggling of people with THB. The only legally binding provisions on the identification of victims of trafficking and their assistance, contained in the Law and Regulation on Foreigners, apply exclusively to third-country nationals. There were no rules on the identification of Spanish and EU nationals as victims of trafficking until the Framework Protocol for the Protection of Victims of Human Trafficking was signed in October 2011.[26] Whilst the framework protocol has a wide scope and covers all forms of exploitation linked to THB, it is not a legally binding instrument. GRETA notes that victim identification and assistance depend on immigration status and is concerned by the possible negative implications of this approach for the practical application of the Framework Protocol and, ultimately, for victims of trafficking themselves.

65. In addition to being a country of destination, due to its geographical situation, Spain is also a country of transit for victims of THB from Africa and Latin America into Europe. Further, as noted in paragraph 10, Spanish nationals have been identified as victims of THB. GRETA stresses the need for a comprehensive approach to action against THB in Spain as a country of destination, transit and origin.

66. Anti-trafficking law and policy in Spain has been characterised by a focus on combating trafficking of foreign women for the purpose of sexual exploitation. As noted above, the Action Plan to Combat THB for Sexual Exploitation expired at the end of 2012 and the plan to combat THB for the purpose of labour exploitation has not yet been adopted. GRETA notes that there is a lack of strategic and policy instruments to combat THB for all forms of exploitation in Spain.

67. Recent reports suggest that THB for the purpose of labour exploitation in Spain takes place mostly in the sectors of agriculture (in particular seasonal work), textile industry, domestic service, construction and hotel/catering trade (see also paragraph 101).[27] While the CC criminalises THB for the purposes of forced labour or services, slavery, servitude and forced begging, there have been no specific measures to prevent THB for the purpose of labour exploitation in Spain, apart from information on labour regulations made available to migrant workers by the competent authorities and the trade unions.

---

[26] In November 2009, the Civil Guard adopted an internal Service Directive on Action against Trafficking in Human Beings (No. 40/2009), which includes a list of indicators for detecting victims of THB (be it Spanish nationals or foreigners).

[27] The report on THB published by the Spanish Ombudsperson refers to 11 investigations carried out *ex officio* between May 2010 and January 2012 concerning THB for the purpose of labour exploitation. The cases involved Romanian men exploited in fruit picking in Valencia and Seville, Pakistani nationals exploited in fruit picking in Castellón, Chinese nationals exploited in textile workshops in Madrid and Toledo, Sub-Saharan Africans exploited for selling counterfeit goods in the streets of Madrid and on beaches and touristic areas of Southern Spain, and Romanian nationals exploited for forced begging in Majorca and Castellón.

68. The Spanish authorities have informed GRETA that a co-operation agreement was signed on 30 April 2013 between the Ministry of Employment and Social Security and the Ministry of the Interior, aimed at fighting irregular employment and social security fraud. The agreement covers co-ordination between the Employment and Social Security Inspectorate and law enforcement agencies on a number of issues, including THB for the purpose of labour exploitation as well as labour exploitation as a stand-alone crime. The co-operation agreement sets up joint working groups, foresees joint inspections and envisages co-ordination against labour exploitation at the provincial and national levels.

69. A consequence of having focused on combating THB exclusively for the purpose of sexual exploitation of women and girls[28] is the lack of institutional leadership to address the protection and assistance of all victims of trafficking, regardless of the type of exploitation. This has led to insufficient attention to THB of men and boys for sexual exploitation and THB for the purpose of labour exploitation. GRETA notes that there is no single institutional structure in Spain in charge of developing and co-ordinating anti-trafficking action for all types of exploitation and all victims of trafficking. In addition, there is no independent mechanism (e.g. national rapporteur) in charge of monitoring the implementation of anti-trafficking policy. GRETA notes that considerable advantages could be drawn from appointing an independent national rapporteur.

70. As mentioned in paragraph 17, an evaluation of the Action Plan to Combat THB for Sexual Exploitation is to be carried out in 2013. GRETA notes that an independent evaluation of the action plan could assist the authorities in assessing the impact of the activities and help them plan future policies and measures to combat THB. GRETA was informed that a parliamentary sub-committee on THB was to be set up under the Spanish Parliament's Equality Committee in early 2013, to focus on drafting legislation to transpose the 2011 EU Directive.

71. There are also important differences among autonomous communities when it comes to the exercise of victims' rights (see paragraph 176). For example. not all regional governments provide support to victims of trafficking for the purpose of labour exploitation.

72. The lack of a comprehensive approach in tackling THB is also related to insufficient co-ordination among the different public bodies regarding victim identification and assistance insofar as THB for other forms of exploitation than sexual exploitation is concerned. The Framework Protocol for the Protection of Victims of Trafficking aims to address this lacuna and calls for co-ordination meetings to be held in each province at least twice a year to ensure appropriate inter-institutional co-ordination, monitor actions for the detection of THB and analyse the effectiveness of the measures to support and protect victims of trafficking. These meetings are to be organised by the Prosecution Service. The framework protocol further tasks public prosecutors with maintaining institutional contacts with the courts, the police, healthcare and support agencies, lawyers' associations and NGOs with experience in assisting victims of trafficking "in order to enable effective co-operation in the response given to human trafficking".

[28] Media reports indicate that the first network of THB for the purpose of sexual exploitation of men in Spain was dismantled in 2010. A group of 60 to 80 Brazilian men (of around 20 years of age) were allegedly recruited in Brazil, brought to Spain with promises of work as dancers/models, and forced into prostitution ("*El Pais*", 31/08/10).

73. In her thematic report on THB in Spain, the Spanish Ombudsperson highlighted the draft protocol of the Basque Country on the co-ordination of the assistance to victims of trafficking for the purpose of sexual exploitation as an example of good practice of co-ordination. The draft protocol clarifies the tasks and roles of each institution and sets out inter-institutional co-operation measures. According to Galicia's Regional Protocol on Institutional Measures to Prevent, Investigate and Assist Women Victims of THB for the Purpose of Sexual Exploitation, the police, labour inspection, health authorities and NGOs have to send periodic reports to the office of the specialised prosecutor on foreigners at the provincial level, with information about women at risk of trafficking..

74. The Social Forum to Combat THB for Sexual Exploitation, referred to in paragraph 38, provides the only platform for co-operation and exchange of information between the competent authorities and civil society. According to NGOs, the Social Forum has not fulfilled its aim of ensuring co-ordination and there is need for clarifying the role of civil society in the development and assessment of Spain's anti-trafficking policies. Further, the elaboration of the Catalonian protocol for the protection of victims of trafficking (see paragraph 26) was reportedly done without the participation of NGOs.

75. Co-operation between public bodies and NGOs and other organisations specialised in assisting victims of trafficking is mentioned in the Law and Regulation on Aliens (paragraph 6 of Article 59 bis and Article 140), but the terms for this collaboration are to be defined by the Framework Protocol for the Protection of Victims of Trafficking. The Framework Protocol refers to the involvement of organisations specialised in victim assistance "in all processes described, in particular with regard to accommodation, protection and support for victims", but the modalities of their participation are not spelt out.[29]. A good example of co-operation between the authorities and NGOs can be found in Catalonia, where the regional police and organisations providing specialised assistance to victims of trafficking co-ordinate their activities to detect and assist victims of trafficking. This collaboration started in 2008 with the setting up of the Catalonian network against THB, which includes the participation of the regional police (see paragraph 41). GRETA stresses the importance of formalised arrangements with NGOs and other members of civil society to co-ordinate the development and application of anti-trafficking policy.

76. As noted in paragraph 10, the number of identified child victims in Spain has been low. The Framework Protocol has specific provisions for the support of child victims, including foreign unaccompanied minors and a new protocol on unaccompanied foreign minors is under development (see paragraph 27). However, there is still a lack of specific measures to tackle child trafficking involving all relevant institutions and public bodies responsible for children welfare at state, regional and local level. The Spanish Ombudsperson has asked that this situation be redressed through the preparation of a national protocol for the detection of and assistance to child victims of trafficking, together with the improvement of age determination procedures, and specific rules for the identification of undocumented foreign minors entering Spain.[30]

77. GRETA welcomes the extended scope of the Framework Protocol, which applies to all types of THB. It is stated in the protocol that action against THB "will be approached from a gender perspective, furthermore guaranteeing that the measures implemented comply with an integrated approach and are appropriate to the gender, age and other situations of vulnerability of possible victims of trafficking, such as their state of pregnancy, state of health and disability". GRETA recalls that Article 17 of the Convention establishes that Parties must aim to promote gender equality and use gender mainstreaming in the development, implementation and assessment of measures taken to protect and promote the rights of victims of trafficking.

---

[29] The Civil Guard has informed GRETA that even though there is no specific protocol, the Civil Guard has strategic and operational contacts with NGOs to co-ordinate action and co-operate with them in providing to victims of human trafficking, both at the national and provincial levels.

[30] Spanish Ombudsperson's report on THB (link to the report in footnote No. 8), pages 279, 285 and 286.

78. GRETA welcomes the manifold efforts to prevent and combat trafficking of women for the purpose of sexual exploitation in Spain, which should be continued, but stresses the need to develop and apply prevention, protection and prosecution policies regarding THB covering all victims of trafficking for the purpose of all types of exploitation. GRETA is concerned by the link made in Spain between THB and the control of irregular migration, and underlines the need to provide assistance and protection to all victims of trafficking, irrespective of their nationality.

79. **GRETA urges the Spanish authorities to take steps to ensure that national and regional action to combat THB is comprehensive, in particular by:**

- **addressing all victims of trafficking for all forms of exploitation in the anti-trafficking legal and policy framework, while taking into account the gender-dimension of trafficking, including through a comprehensive national action plan against THB;**

- **increasing efforts to prevent and detect THB within Spain, as well as addressing the situation of Spain as a country of transit;**

- **strengthening prevention and protection measures that address the particular vulnerability of children to trafficking.**

80. **Further, GRETA urges the Spanish authorities to strengthen co-ordination and co-operation:**

- **between State and regional authorities, including between the National Police, Civil Guard and regional police forces;**

- **between all competent authorities and civil society, in particular by clarifying the modalities of the participation of civil society in the development, implementation and evaluation of anti-trafficking measures and policies in Spain (at state level and in the autonomous communities), and by including civil society in the monitoring process established by the Framework Protocol for the Protection of Victims of Trafficking.**

81. **GRETA also considers that the Spanish authorities should analyse the implications of having different legal bases for the identification, referral and assistance of victims of trafficking depending on whether they are EU or third-country nationals, as this may negatively affect their rights under the Convention.**

82. **GRETA invites the Spanish authorities to commission an independent evaluation of the Action Plan to Combat THB for Sexual Exploitation, as a tool for assessing the impact of its activities and for planning future policies and measures to combat THB.**

83. **Further, GRETA invites the Spanish authorities to consider appointing a national rapporteur or other mechanism for monitoring the anti-trafficking activities of public authorities and the implementation of national legislation requirements (see Article 29, paragraph 4, of the Convention and paragraph 298 of the Explanatory Report).**

ii. Training of relevant professionals

84. One of the objectives of the Action Plan to Combat THB for Sexual Exploitation was to increase the capacity of law enforcement officials to investigate and combat THB. A number of measures were taken to this end, including providing training on the *modus operandi* of this crime and the use of specialised investigation techniques incorporating best practices at the national and international levels. This has reportedly enabled a more strategic approach to police action against THB, based on intelligence. A code of best practices for the investigation of THB has also been developed.

85. The third monitoring report on the above-mentioned action plan recognised that progress had been made but called for further action to improve the awareness and specialised training on THB of all relevant professionals. The report referred, *inter alia*, to the following training activities on THB carried out in 2011:

- Police units: 1 076 agents of the National Police were trained in 11 courses (specialised training had previously been provided to all investigating staff of UCRIF); 90 civil guard agents were trained in three courses for judicial police and 115 judicial police agents received advanced training on THB; 79 civil guard agents received training related to women and minors, including on THB; 24 civil guard agents received specialised training on THB in the Basque Country and Catalonia;
- Diplomatic and consular staff received specialised training on THB, including *attachés* for home affairs posted in Spanish consular missions abroad. The Government Delegation against Gender-based Violence produced a new edition of an on-line training module on equality, gender-based violence and THB aimed at staff of Consular Offices and civil servants of the Ministries of the Interior and Employment and Social Security posted outside Spain;
- 90 social workers from autonomous communities, municipalities and NGOs followed the internet-based training offered by the General-Directorate on Services for Families and Children (Ministry of Health, Social Services and Equality) on trafficking of children for the purpose of sexual exploitation;
- The Ministry of Defence carried out 24 training activities for staff of the armed forces, which included THB for the purpose of sexual exploitation;
- The Ministry of Employment and Social Security organised the project “Safer Path” targeted at professionals in the public and private sectors who work with asylum seekers, with a view to assisting victims of trafficking who are also asylum seekers;
- The Government Delegation against Gender-based Violence organised a course on combating THB for the purpose of sexual exploitation for staff of the provincial units against gender-based violence.

86. The Regulation on Foreigners and the Framework Protocol state that the identification of victims of trafficking is to be carried out by specifically trained police officers. The Framework Protocol also stresses the need to involve professionals with appropriate training in all interviews of victims of trafficking, given their particular vulnerability. The Spanish authorities have informed GRETA that new recruits of the National Police and officers seeking promotion receive training on the investigation of THB cases, with particular attention to victim protection. Police staff of specialised investigation units, border check-points, asylum and refugee offices and officers seconded overseas are trained on how to co-operate with the Ministry of Employment and Social Security, the Ministry of Health, Social Welfare and Equality, the Prosecution Service and NGOs providing assistance to victims. Further, police officers have participated in a “training of trainers” programme of FRONTEX. On-line training courses, including on the detection of victims of trafficking for the purpose of sexual exploitation, are provided to police officers. The Civil Guard also provides training on the investigation of different forms of trafficking, including a module on how to treat victims.

87. However, NGOs met during the evaluation visit raised concerns about the lack of expertise on child trafficking in both the specialised police units on THB and the specialised police units on minors. GRETA notes that the UN Committee on the Rights of the Child[31] has recommended that the Spanish authorities provide training on asylum matters and the specific needs of children, including THB-related issues, to staff dealing with unaccompanied children, including asylum officials, border police officers and civil servants who may come in contact with children in need of protection.

88. The Directorate on Labour and Social Security Inspectorate has developed guidelines on THB for labour inspectors and sub-inspectors and provides training on their application. The Spanish authorities have informed GRETA that training on the detection of THB for the purpose of labour exploitation was to be provided by the Labour Inspectors Training School as of February 2013. Further, the Civil Guard holds meetings with departments responsible for migration and labour and social security inspection in order to share information on THB networks for the purpose of labour exploitation.

89. Both initial and on-going training of prosecutors cover human trafficking. According to the Spanish authorities, the 50 prosecutors specialised on foreigners who have a co-ordinating role on human trafficking cases at the provincial level have followed specific training on human trafficking. In June 2011, the Ministry of Justice, the General Council for the Judiciary and the Prosecution Service held a joint seminar on THB for judges and prosecutors, which addressed challenges of prosecuting this crime, including evidence-related issues. Further, the conclusions of the 2011 annual meeting of public prosecutors specialised on foreigners referred to the application of Article 177 bis of the CC.

90. GRETA welcomes the efforts made by the Spanish authorities to train relevant professionals to identify victims of trafficking, investigate trafficking cases and prosecute traffickers. However, GRETA's attention has been drawn to the lack of training and awareness of the rights of victims of trafficking among border police officers, asylum officials, staff at temporary reception centres for aliens (particularly in the Autonomous Cities of Ceuta and Melilla), staff in reception centres for asylum seekers, reception centres for irregular migrants where third-country nationals await expulsion, and judicial bodies responsible for issuing expulsion orders. Improved knowledge by legal professionals on THB-related issues is also needed.

91. GRETA notes that training on THB should promote the rights of victims under the Council of Europe Convention and clarify the differences between THB, people smuggling and irregular immigration. Further, training should encourage a proactive attitude on the part of law enforcement officers and other frontline professionals to identify potential victims of trafficking.

92. **GRETA considers that the Spanish authorities should take further steps to provide specialised and regular training about THB to all relevant professionals, in particular national and regional law enforcement agents (including border police), labour inspectors, social workers, child protection officers, visa officers, asylum officials, judges and prosecutors. Such training should address THB as a serious violation of human rights and cover the rights of victims of trafficking, including the protection needs of child victims of trafficking. Future training programmes should be designed with a view to improving the knowledge and skills of relevant professionals to enable them to identify victims of trafficking, to assist and protect them, taking into consideration their gender and age, to facilitate compensation for victims, and to secure convictions of traffickers.**

[31] See "Concluding Observations: Spain", in document CRC/C/ESP/CO/3-4, of 29 September 2010, at paragraph 60(i).

iii. Data collection and research

93. The human rights-based approach to anti-trafficking policies advocated by the Convention requires adequate monitoring and evaluation. An essential element is the regular availability of comprehensive statistical information on both trends in human trafficking and on the performance of main actors in the fight against trafficking. The collation of data from different state institutions and NGOs raises concerns about data protection, especially when personal data are involved. International standards have been set for the collection, storage, transfer, compilation and dissemination of data. In order to ensure full compliance with these standards, Parties are expected to apply appropriate measures and techniques of data protection. An additional requirement for human rights-based anti-trafficking policies is the conduct of research and analysis with special attention to the rights and interests of victims.

94. One of the tasks of the Ministry of the Interior under the Action Plan to Combat THB for Sexual Exploitation was to gather data to be used by the National Intelligence Centre against Organised Crime (CICO) to set strategic priorities in the fight against THB. CICO manages a database on THB with information received from the national police forces. GRETA was informed that the database on THB has led to the unification of criteria for data collection by the police forces.

95. A sub-directorate was set up under the Government Delegation against Gender-based Violence in January 2012, charged with the setting up of an information system for the collection, analysis and dissemination of data on violence against women in order to improve knowledge on the situation and evaluate the effectiveness of the measures taken. However, this information system does not include data on THB.

96. Another source of information about THB in Spain are the annual reports of the Prosecution Service which include statistics on the number of criminal proceedings initiated on THB and related offences.

97. The Spanish authorities have informed GRETA that the database of the Labour and Social Security Inspectorate has been modified in order to improve data collection on THB. The Inspectorate expects to improve the quality of the information gathered on THB for the purpose of labour exploitation and an evaluation of the modification was to be carried out in June-July 2013.

98. GRETA welcomes the action taken to improve data gathering on THB for the purpose of labour exploitation. That being said, GRETA notes that there is a lack of reliable data on THB in Spain, given the discrepancy of the data made public from different sources (CICO, Prosecution Service, Labour and Social Security Inspectorate).

99. **GRETA urges 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, etc.). This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection, including when NGOs working with victims of trafficking are asked to provide information for the national database. The data collection system should contribute to the preparation, monitoring and evaluation of anti-trafficking policies.**

100. In 2011, the Government Delegation against Gender-based Violence published a study on the smuggling and trafficking of women into Spain, which had been carried out by a team of academic researchers between 2006 and 2010.[32]

101. The thematic report published in 2012 by the Spanish Ombudsperson (see paragraph 37) analysed the situation in Spain as regards THB for the purpose of sexual and labour exploitation, the identification of victims of trafficking and their assistance. The report provides conclusions and recommendations addressed to relevant national and regional government departments, as well as the Prosecution Service. It was sent to the Spanish government and Parliament and a follow-up will be carried out. GRETA welcomes the initiative of the Spanish Ombudsperson to draw up a thematic report on THB and **would like to be kept informed of the follow-up on the report, including the response of the competent authorities to the recommendations included therein**.

102. In 2010-2012, the Spanish NGO Accem, which works with refugees and migrants, led the EU-funded "Mirror project", aimed at developing a methodology for the identification and referral of victims of trafficking for the purpose of labour exploitation.[33] The project mapped the situation of THB for the purpose of labour exploitation in the participating countries (Italy, Romania and Spain) with a view to identifying the main sectors and circumstances where this form of THB is more likely to occur. Regarding Spain, the research showed that THB for labour exploitation occurred mostly in the sectors of agriculture (in particular seasonal work), textile industry, domestic service, construction and hotel/catering.

103. The Spanish authorities take part in an EU-funded project ("EuroTrafGuID"), led by France and with participation of Bulgaria, Greece, the Netherlands and Romania, to develop guidelines and procedures for the detection of possible victims of trafficking by front-line professionals (including social services, border officers, staff working in immigration centres, juvenile facilities and health centres).[34] The project was launched in early 2012 and the final products are scheduled for publication at the end of 2013. The Madrid-based Carlos III University participates in another EU-funded research project, led by Coimbra University (Portugal), entitled "The fight against trafficking in human beings in the EU: promoting legal co-operation and victims' protection". The main aim of this project, which runs until the end of 2013, is to explore the specificities of THB for the purpose of sexual and labour exploitation, and to develop co-operation between law enforcement bodies and judicial services.

104. **GRETA considers that the Spanish authorities should continue conducting and supporting research on THB-related issues as an important source of information for future policy measures. Areas where further research is needed in order to shed more light on the extent of THB in Spain include trafficking for the purpose of labour exploitation, internal trafficking, child trafficking and the incidence of trafficking among irregular migrants and asylum seekers**.

---

[32] García Cuesta, S., López Sala, A.M., Hernández Corrochano, E. and Mena Martínez, L. "*Poblaciones-mercancía: Tráfico y Trata de Mujeres en España",* Colección Documentos contra la Violencia de Género, no. 13, Ministry of Health, Social Affairs and Equality. Available at: www.msssi.gob.es/ssi/violenciaGenero/publicaciones/colecciones/libroscoleccionVG/libro_13.htm

[33] The final report of this project was published in October 2012 and is available in English at: www.accem.es/ficheros/documentos/pdf_trata/MIRROR_-_English.pdf

[34] The Government Delegation for Gender Violence participates in this project. A pilot training programme was carried out in Spain in November 2012, targeting key actors from public and private institutions, to define best practices on the detection, identification, assistance and protection of possible victims of trafficking victims and review the draft guidelines prepared under the project. In March 2013, a seminar was held in Madrid to share the information collected regarding the draft guidelines for the detection possible victims of trafficking.

iv. International co-operation

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

106. Spain is bound by a number of international conventions and EU legislation on mutual assistance in criminal matters. At the EU level, Spain co-operates through its Liaison Magistrates and Eurojust. Spain has also concluded regional and bilateral treaties on judicial and police matters and participates in IberRed, the Latin-American Network of International Co-operation on Judicial Matters, and the Latin-American Association of Public Ministries. Reference can be made to the report evaluating the implementation of the first Human Rights Plan (2009-2011) according to which THB was addressed by Spanish liaison officers deployed in West African and Latin American countries.[35]

107. The Spanish authorities have informed GRETA that the country's judiciary co-operates with foreign judicial authorities as established in the international treaties and conventions to which Spain is a party. In addition, Spain applies the reciprocity principle to international judicial co-operation. Pursuant to Articles 276 to 278 of the Organic Law on the Judiciary, requests for international co-operation from Spain must be forwarded by the Chief Justice of the Supreme Court, the Regional High Court or the *Audiencia Nacional*[36] to the Ministry of Justice, which sends them to the competent authorities of the State concerned via consular or diplomatic channels or directly if so provided by international treaties. For the purposes of international co-operation, Spanish public prosecutors have the same status as the members of the judiciary.

108. An example of bilateral co-operation to combat THB is the Memorandum of Understanding signed in October 2011 by the Prosecution Services of Spain and Panama to strengthen institutional co-operation and legal assistance in order to improve criminal investigations. This bilateral co-operation includes information exchange and training to share experience on investigating and prosecuting serious crimes such as corruption, THB, sexual exploitation and drug trafficking.

109. IberRed and Eurojust also provide instruments for international co-operation in criminal matters regarding the collection and analysis of information, investigations and joint actions. Police information is shared on a bilateral basis through police liaison officers and the *attachés* of the Ministry of the Interior posted in Spanish embassies abroad, and through Europol and Interpol, on the basis of the Schengen Treaty and the Prüm Treaty. According to the third monitoring report on the implementation of the Action Plan to Combat THB for Sexual Exploitation, in 2011 Spanish police forces participated in 28 police operations with police units from other countries, through Interpol and Europol, in relation to THB for the purpose of sexual exploitation.

110. The National Police maintains close co-operation with the EU Borders Agency (Frontex) and has participated in joint international missions and exchange of information on THB. Further, the National Police is awaiting the establishment of a joint investigation team (JIT) with the Greek authorities in the framework on an enquiry on THB in Spain. The Civil Guard has also taken part in joint international actions regarding the sharing of intelligence, co-ordination of investigations and joint investigative teams (JITs).

111. The national Intelligence Centre against Organised Crime (CICO) co-operates with countries of origin of victims of trafficking through the Conference of Ministers of Latin-American Countries (COMJIB). The objective of this co-operation is to prevent THB through detection of potential victims of trafficking. CICO also takes part in the EU project "EMPACT" (European Multi-disciplinary Project against Criminal Threats), which focuses on organised crime groups involved in THB for all types of exploitation.

---

[35] See report at page 23, available at: www.abogacia.es/wp-content/uploads/2013/01/INFORME-DE-EVALUACION-DEL-PLAN-DE-DDHH.pdf

[36] The *Audiencia Nacional* is Spain's central criminal court, which has nation-wide jurisdiction. It is an appeal court but also acts as a first instance court for those matters established by the Organic Law on the Judiciary, such as terrorist crimes.

112. The Action Plan to Combat THB for Sexual Exploitation included as an objective to improve mechanisms for better information and strengthen collaboration between countries of origin, transit and destination for this type of THB. The third monitoring report on the implementation of the action plan refers to numerous international co-operation actions addressing THB in priority countries of origin of the victims trafficked to Spain. The report lists the measures taken in the framework of the Master Plan on Spain's International Co-operation for 2009-2012, aimed at combating trafficking of women and girls for the purpose of sexual exploitation. Co-operation activities have also been carried out to tackle THB as a form of gender-based violence in Latin American countries and, to a lesser extent, to combat THB for the purpose of sexual exploitation in the Asia-Pacific region.

113. In 2012, direct channels of communication and collaboration with Latin American countries concerning the protection of victims of trafficking were established and a Spanish liaison prosecutor was appointed.

114. The Fourth Master Plan for Development Co-operation for 2013-2016, which was adopted on 21 December 2012, has a chapter on promoting the rights of women and gender equality, including a specific line of action on women's empowerment to tackle violence and discrimination against women and girls, in particular in situations of extreme difficulty such as THB and sexual exploitation. During the evaluation visit to Spain, the GRETA delegation was informed of a 75% cut in the funding allocated to the Fourth Master Plan on International Co-operation for 2013-2016, in relation to the previous one.

115. The Spanish authorities have contributed to the EU project ENPATES ("European NGOs Platform against Trafficking, Exploitation and Slaveries") which ran from 2010 and 2012 and involved nine EU countries establishing a platform for anti-trafficking NGOs to develop an effective co-ordination strategy for promoting and protecting the rights of trafficked persons.

116. While welcoming the international co-operation activities to combat THB carried out by Spanish authorities, in particular with the main countries of origin of persons trafficked to Spain, GRETA notes that international co-operation has focused on THB for the purpose of sexual exploitation.

117. **GRETA considers that the Spanish authorities should continue their efforts to strengthen international co-operation with governmental and non-governmental actors in order to prevent and combat all forms of THB, assist and protect victims of trafficking, and investigate and prosecute human trafficking cases.**

118. **Further, GRETA invites the Spanish authorities to evaluate the international co-operation activities carried out so far in order to focus future action on key priorities with a view to maximising the impact of the reduced financial resources.**

2. Implementation by Spain of measures aimed to prevent trafficking in human beings

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

120. In accordance with the Convention, measures to discourage demand for the services of victims of trafficking, especially women and children, should be understood as a positive obligation on Parties to adopt and reinforce such measures as regards THB for the purpose of any form of exploitation (see paragraph 108 of the Explanatory Report of the Convention). As it is stated in the Recommended Principles and Guidelines on Human Rights and Human Trafficking, strategies aimed at preventing THB shall address demand as a root cause of trafficking.[37]

a. Measures to raise awareness and discourage demand

121. As noted in paragraph 10, Spain is primarily a country of destination and transit for victims of trafficking, which is why prevention has focused on reaching out to possible victims in places where sexual services are offered and informing them about their rights and options to receive assistance and protection. Most of these awareness-raising activities are run by NGOs specialised in assisting victims of trafficking for the purpose of sexual exploitation, with funding from the central, regional or local governments. In April 2013, the National Police launched an awareness-raising campaign with a toll-free telephone number available round-the-clock and an e-mail address to report confidentially cases of THB for the purpose of sexual exploitation. The National Police has also set up a web page specifically on THB.[38]

122. The Action Plan to Combat THB for Sexual Exploitation included measures to discourage demand for sexual services from victims of human trafficking, including public information and awareness measures to promote social rejection of THB for the purpose of sexual exploitation as a violation of human rights. The total cost of the preventive measures to discourage demand for THB for the purpose of sexual exploitation, run by the Ministry of Health, Social Services and Equality, was around 576 000 euros. By way of reference, the following activities can be mentioned:

- Activities to eliminate the advertising of sexual services in the media, through negotiation with the media concerned, which resulted in 12 newspapers discontinuing such advertising;

- The Ministry of Trade, Energy and Tourism organised awareness and information activities targeted at travel agencies and sport/congress event planning companies in order to raise awareness of sex tourism and exploitation. This included the organisation of the First World Congress on Ethics and Tourism in Madrid on 15-16 September 2011, where 15 Spanish companies from the air travel and hotel sectors signed the Global Code of Ethics for Tourism of the World Tourism Organisation and committed themselves to apply the Code of Conduct for the Protection of Children from Sexual Exploitation in Tourism;

[37] Principle 4 of Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), www.ohchr.org/Documents/Publications/Traffickingen.pdf

[38] National Police's web page on THB available at: http://www.policia.es/trata/index.html

- An awareness-raising campaign "No to sexual exploitation" was conducted in 2009-2010 on the basis of an agreement with the Spanish Federation of Hotels and Restaurants. The campaign included the distribution of coasters, stickers and posters with information on THB for the purpose of sexual exploitation and a telephone number to report cases or seek help. The campaign covered around 13 000 bars and catering establishments in cities of over 50 000 inhabitants throughout Spain;

- The Ministry of Employment and Social Security co-funded the awareness-raising campaign "*Abre los ojos*" (Open your eyes), which was carried out by the NGO ACCEM, specialised in combating THB for the purpose of labour exploitation. The campaign produced six TV spots showing different stages of THB: recruitment, transportation, reception and exploitation. The campaign was launched in March 2012;[39]

- Two mobile exhibitions were organised on THB for the purpose of sexual exploitation and slavery, in order to give visibility to this phenomenon and discourage demand for sexual services.

123. The third report on the implementation of the aforementioned action plan, published in October 2012, stated that actions remained to be carried out, such as continuing raising the awareness of the general population about THB as well as the awareness and specialised training of relevant professionals. An educational guide to raise awareness on THB for the purpose of sexual exploitation ("*El viaje de Laia*") among students in primary and secondary schools has been produced by the Women's Institute and the Ministry of Equality.[40]

124. While welcoming the measures carried out in Spain to raise awareness about THB for the purpose of sexual exploitation, GRETA stresses the need to raise awareness and discourage demand for other forms of THB, including in economic sectors at higher risk of labour exploitation (e.g. seasonal agriculture, textile industry, domestic service, construction, hotel/catering trade). As there have been instances of children and Spanish nationals falling victim to THB, education and information measures to prevent child trafficking and trafficking of Spanish nationals should also be taken.

125. As mentioned above, anti-trafficking action in Spain has focused on THB for the purpose of sexual exploitation and has been linked to forced prostitution as a form of gender-based violence. Since 2004, some cities in Spain (including Barcelona, Seville, Bilbao, Malaga, Granada, Alicante) have issued civic ordinances establishing the possibility of fining prostitutes and/or their clients. Other municipalities are in the process of developing such regulations. In addition, the Spanish Federation of Municipalities and Provinces (FEMP) has developed a model local ordinance aimed at reducing prostitution in public areas. Further, the Autonomous Community of Catalonia has passed a regional law to fine prostitutes working along the roads and their clients. There is nonetheless a lack of research on the exploitation of prostitution from a THB perspective and no impact assessment of the measures taken in Spain.[41]

126. According to some NGOs, the consequence of such local ordinances is to make persons engaged in prostitution look for more remote and isolated areas, outside cities, which makes them even more vulnerable. In these circumstances, the detection of THB cases and the provision of assistance to possible victims of trafficking become even more difficult.

---

[39] Available at: www.accem.es/refugiados/inmigrantes

[40] The guide is available at: www.inmujer.gob.es/areasTematicas/multiDiscriminacion/mujeresVuln/docs/guia.pdf

[41] There is a legal vacuum regarding the regulation of prostitution activities in Spain. Estimates of the number of prostitutes in Spain range from around 60 000 to between 200 000 and 400 000 (as published in 2010 in a report by the Ministry of Equality) and the estimated number of brothels is 4 000.

127. GRETA stresses the need to differentiate THB for the purpose of sexual exploitation, on the one hand, and prostitution, on the other. GRETA notes that imposing fines on prostitutes and/or their clients does not specifically correspond to the obligation under Article 19 of the Convention, which is to criminalise the use of services provided by a person whom is known to be a victim of trafficking, as the situation of prostitutes does not systematically amount to trafficking. GRETA stresses the importance of keeping under review the impact of any measures regarding prostitution on the identification of victims of trafficking, their protection and assistance, and the prosecution of traffickers.

128. **GRETA urges the Spanish authorities to develop measures to raise awareness of THB for the purpose of labour exploitation. Information and education activities should also be taken to raise awareness about THB among Spanish nationals, including children. The Spanish authorities should plan future information and awareness-raising and education campaigns with the involvement of civil society, on the basis of research and impact assessment of previous measures, and focusing on the needs identified.**

129. **GRETA also urges 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;**

- **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**

130. **GRETA invites the Spanish authorities to consider adopting legislative and other measures to criminalise the use of services provided by victims of trafficking, with the knowledge that the person is such a victim.**

131. **Further, GRETA invites the Spanish authorities to continue contributing to prevention activities to raise awareness of THB in the main countries of victims trafficked to Spain.**

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

132. The Civil Guard and the National Police are responsible for border surveillance and immigration control in Spain, as well as for liaising with other authorities on issues related to third-country nationals (see paragraph 31). The Spanish authorities have informed GRETA that consular staff is trained to detect potential victims of trafficking. In case of suspicion of THB during the interview prior to the issuing of the visa, consular staff inform the Ministry of the Interior's *attaché* in charge of verifying personal data and other circumstances with the relevant authorities.

133. The third monitoring report on the implementation of the Action Plan to Combat THB for Sexual Exploitation indicates that THB is considered a priority issue in the co-operation between the Ministry of Foreign Affairs and the Ministry of the Interior, to improve information and early detection of THB through the visa procedure.

134. In the context of applying the Visa Information System (VIS) under the Schengen Agreement, the Secretariat of State for Security has introduced a mandatory checking of biometric visas on the European central database at border crossings. The new VIS system allows the sharing of data among Schengen countries through a centralised database which helps prevent fraud and enhances international co-operation.

135. NGO reports suggest that a considerable number of victims of trafficking from Northern and Sub-Saharan Africa enter Spain through airports or arrive irregularly by boat. The Spanish Ombudsperson has alerted the authorities of this situation and has asked that specific instructions be issued to officers responsible for controlling border crossings, in particular concerning young African women. According to information provided by the Civil Guard, immigrant assistance teams (EDATI) receive special training in order to guide and inform irregular migrants who arrive in Spain by boat about their rights and the procedures to follow to regularise their stay in Spain. According to the Spanish authorities, African nationals entering Spain irregularly through the coastline of Almeria, Granada and Murcia are interviewed in a manner that seeks to build trust, questioned about their personal circumstances and the reasons for their travel, provided with legal assistance and an interpreter, as well as with other types of assistance if needed. Investigations are opened to determine cases of smuggling of migrants or human trafficking. However, NGOs have highlighted the lack of capacity and expertise of law enforcement officers to identify potential victims of THB, as their priority is to control irregular migration. As noted in paragraph 90, there is need for training and awareness raising on THB among officials who process asylum claims.

136. Both NGOs and the Spanish Ombudsperson have highlighted the need for setting up a database on undocumented minors arriving in Spain and checking the parental links claimed by the adults accompanying them. The specialised co-ordinating prosecutor for minors has published Opinion 2/2012 on how to deal with accompanied foreign minors arriving with adults whose parental link has not been established, which includes specific identification mechanisms to protect such minors in view of their vulnerable situation. According to a press released issued by the Office of the Spanish Ombudsperson on 25 March 2013, the Directorate General of Police will take steps to identify foreign minors arriving irregularly in Spain. Their fingerprints and photographs will be recorded and the Prosecution Service and agencies in charge of child protection will be kept informed. The Police Headquarters for Foreigners and Borders has already issued instructions on this matter.

137. **GRETA urges 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, from a human rights and a victim-centred approach, to law enforcement officers, including border police, with clear instructions on how to proceed.**

138. **GRETA also considers that 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;**

- **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 for sexual and labour exploitation, as well as to inform them of their rights and where to go for help and advice.**

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

139. The Spanish authorities have informed GRETA that the security of Spanish identity and travel documents has improved as such documents now integrate sophisticated physical and electronic security features. Council Regulation 2252/2004 sets the standards for security measures and biometrics in passports and travel documents issued by EU member states. The use of biometric identifiers when issuing and checking visas and residence permits is required by EU Regulation 67/2008, which entered into force in 2011. As a result, all short-term Schengen visas include the photograph and fingerprints of visa applicants.

140. The Spanish authorities have further informed GRETA that, as a result of the evolution in the security of travel and identity documents in Spain, changes were carried out in the relevant department of the Police Headquarters for Foreigners and Borders and travel and identity documents are now in conformity with international and EU standards, both in format and security measures.

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

a. Identification of victims of trafficking in human beings

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

i. Description of the identification system

142. In Spain, the identification of victims of trafficking is regulated by Article 59 bis of the Law on Foreigners which states that "the competent authorities will adopt the necessary measures for the identification of victims of trafficking in conformity with Article 10 of the 2005 Council of Europe Convention". Article 141 of the Regulation on Foreigners includes rules for the identification of non-EU victims of trafficking. Further, the Framework Protocol for the Protection of Victims of Trafficking sets the procedure for the identification of victims of trafficking and the co-ordination between relevant authorities and institutions. The Framework Protocol builds on the provisions of the Law and Regulation on Foreigners and covers all victims of trafficking, whether EU or third-country nationals.

143. The Framework Protocol sets the general obligation to report any suspected case of THB to the Prosecution Service, the courts or the police.[42] 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 notify the Prosecution Service "immediately and where possible by electronic tools".[43] 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.

144. The different routes for the detection of possible victims of trafficking are spelt out in the Framework Protocol and include investigations by law enforcement agencies, labour inspections,

42 Framework protocol, paragraph V.A.4.
43 Framework protocol, section V.B.

contact of possible victims with health, social or education services, calls to information telephone lines, contact with NGOs, and self-reporting by the victims themselves. Detection of possible victims of trafficking can also take place at the borders, in reception centres for irregular migrants, in protection centres for minors and in the context of the asylum procedure.

145. The formal identification of victims of trafficking is carried out exclusively by police officers with specialised training on THB, which include the new Central Brigade against THB, central and provincial immigration police units (UCRIFs), Judicial Police units, and certain regional police forces such as the Central Unit on THB within the Catalonian police force (see paragraphs 31-34). The Spanish authorities have informed GRETA that in 2011, approximately 980 of the above-mentioned police officers received training on THB. The Civil Guard has trained 126 staff on the identification of victims of trafficking and a seminar in 2012 provided specialised training for 54 additional Civil Guard agents. In police stations with no UCRIFs, THB-related tasks are performed by specialised groups on aliens and migration. This is the case in 125 local police stations, 76 border check points, five centres of police and customs co-operation with Portugal, four such centres for police and customs co-operation with France, and two with Morocco.

146. The identification of victims of trafficking relies on three elements: an assessment of indicators, an interview and information provided by third parties. The Framework Protocol states that the identification of victims of trafficking requires an "evaluation of different elements, beyond simply obtaining information about aspects connected with the crime of human trafficking and the perpetrators". Interviews must be conducted on a private and confidential basis, in a language comprehensible to the victim or in the presence of an interpreter. Insofar as possible, the interview should be conducted within a context appropriate to the sex, age and other personal circumstances of the interviewee and the necessary measures should be taken in order to avoid contact with the presumed traffickers. The guidelines to be followed for conducting interviews with possible victims of trafficking are included in Annex 1 to the Framework Protocol, which is not public.

147. The competent police officers determine the existence of reasonable grounds to believe that a person is a victim of trafficking. The Framework Protocol does not define "reasonable grounds" and in order to make this assessment, consideration is given to the indicators set out in Annex 2 to the Framework Protocol, which are not public. The protocol indicates that during the identification process all information available about the personal circumstances of the possible victim will be gathered, including information from qualified professionals on the health and social circumstances of the possible victim, as well as information from NGOs. 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 a proposal regarding the protection, safety and privacy measures required.

148. According to the Framework Protocol, after the identification interview, the competent police officer provides information to the victim of trafficking on the right to free legal assistance, if the victim lacks financial resources, and the possibility of contacting an organisation with experience in assisting victims of trafficking in order to receive the necessary support. In addition, possible victims are informed that if they are identified as victims of human trafficking, they will have the following rights:

- redress for damages, wrongs or grievances suffered, including through a civil action;
- protection measures laid down in the 1994 Organic Law on the Protection of Witnesses and Expert Witnesses in Criminal Cases (see paragraph 270), in particular the right to be granted protected witness status;
- the rights set out in the Law for the Support and Assistance of Victims of Violent Crimes and Crimes against Sexual Liberty, and the rights of victims of gender-based violence, if relevant;
- assisted repatriation/return.

149. The Framework Protocol establishes that this information must be provided to victims of trafficking in a clear manner and in a language which they can understand. The Spanish authorities have indicated that this information is provided in both oral and written form, with the use of interpreters when necessary. There are two information forms: one for third-country nationals with irregular residence status and another one for third-country nationals with legal residency and EU/EEA nationals. The first form contains information on the right to a recovery and reflection period and the possibility of obtaining a residency and a work permit. The victim, the police officer and the interpreter, if relevant, have to sign the form to close the identification proceedings. The forms indicate the name of the police officer who carried out the interview as well as that of the victim. The forms are only available in Spanish and victims must rely on interpreters to get acquainted with their rights before signing.

150. The Framework Protocol states that "upon conclusion of the identification process, the police unit responsible for the identification will draw up a report to which will be attached all the information gathered during the identification process". This information may have been obtained in writing or verbally, and in the latter case a written record of the identity of the source and the contents of the information must be drawn up. Article 141(2) of the Regulation on Foreigners establishes that all the information collected during the identification of foreign victims of trafficking will be confidential in order to protect the person's integrity. The Spanish authorities have indicated that the same rules of confidentiality apply to EU nationals.

151. According to the Framework Protocol, throughout the identification process, the specialised police units must adopt the necessary measures to ensure the protection of the rights of the victim, including separation from the traffickers, medical and social care and, to the extent possible, legal support. If the possible victim is a third-country national without legal residency, he/she will not be pursued by the competent immigration police and expulsion or repatriation measures will be suspended, in accordance with paragraph 2 of Article 59 bis of the Law on Foreigners.

152. There is no timeframe for the identification of victims of trafficking and no set procedure for communicating the identification decision to the person concerned. The Spanish authorities have indicated that there is no information on the average length of time it takes to identify a victim of trafficking and that this depends on the evidence demonstrating that the person was subjected to THB, for which the co-operation of the possible victim is often crucial. The status of victim of trafficking is granted when the police consider that there are sufficient indicators and the result of the identification procedure is communicated orally to the person concerned. The Spanish authorities have stated that the identification of victims of trafficking cannot be considered as an administrative decision and therefore it cannot be appealed.

153. There are no specific rules for the identification of child victims of trafficking. Article 59 bis of the Law on Foreigners establishes that its provisions are also applicable to foreign children victims of trafficking and that their age and maturity should be taken into account during the procedure, where the children's best interest should prevail. Article 146 of the Regulation on Foreigners also refers to the need to uphold the best interests of foreign children who are victims of trafficking. The Framework Protocol has no specific procedure to identify children victims of trafficking, but refers to the future protocol on unaccompanied foreign minors, currently under development (see paragraph 27). The Framework Protocol stresses the need to establish the identity, nationality and place of origin of foreign unaccompanied children who are victims of trafficking and to protect children during police investigations and criminal proceedings, given their special vulnerability. GRETA notes that the Spanish Ombudsperson has recommended the preparation of a national protocol for the detection of and assistance to child victims of trafficking.[44]

[44] See the Ombudsperson's report on THB, pages 279, 285 and 286.

154. The Spanish authorities have reported an increase in the number of police inspections carried out in 2011 in places at risk of THB for the purpose of sexual exploitation, with 2 375 administrative inspections by police forces in places where prostitution takes place.[45] Regarding detection of THB by health professionals, in 2011 the Committee against Gender-based Violence of the inter-territorial Council on the National Health System started updating the 2007 common protocol on the health measures to be taken in cases of gender-based violence, with the aim of including cases of THB for sexual exploitation and in order to promote detection of this type of THB by health professionals. GRETA notes the high estimates published by CICO on the number of persons detected in situations of risk of sexual exploitation or trafficking for the purpose of sexual exploitation (6 157 in 2009, 15 075 in 2010 and 14 730 in 2011) and the disparity between the number of identified victims of trafficking according to the Report of the Ombudsperson[46], quoting CICO as the source, and figures provided to GRETA (see paragraph 19).

155. As regards the identification of victims of THB for the purpose of labour exploitation, the Labour and Social Security Inspectorate employs covers all economy sectors, including domestic work, but certain difficulties may arise due to the privacy rights of employers of domestic workers. There are over 800 labour inspectors who co-operate with law enforcement officers regarding possible THB cases. Labour inspectors use indicators linked to the recruitment and exploitation of victims of trafficking which have been adapted from the indicators developed by the International Labour Organisation (ILO). In 2011, over 12 000 labour inspections were conducted, but there is no data on the number of possible cases of THB detected. GRETA was informed that the database of the Labour and Social Security Inspectorate will be modified to produce this information. Training of labour inspectors on THB issues will also be reinforced and operational guidelines on THB for labour exploitation are under development (see paragraph 88). According to the Labour and Social Security Inspectorate, 21 cases of THB for the purpose of labour exploitation were detected in Spain between 2009 and 2011, before the CC was amended to criminalise THB.

156. Possible cases of THB detected at the border must be immediately notified to the provincial immigration brigade in order for the identification procedure to be carried out by specially trained officers. If detection occurs at reception centres for foreigners ("*Centros de Internamiento de Extranjeros"*, abbreviated as CIEs), the director of the centre and the Prosecution Service must be immediately notified so that the competent immigration police unit can take steps to identify the victim in accordance with the Framework Protocol. Social assistance is provided in CIEs by the Spanish Red Cross, which has permanent services in these centres. Certain other NGOs have access to CIEs and can meet the centres' directors to report anything they considered important, including the detection of possible victims of trafficking. In addition, the Spanish authorities have informed GRETA of a protocol for the detection of THB cases in temporary reception centres for immigrants and asylum-seekers (*Centros de Estancia Temporal a Immigrantes*, abbreviated CETIs) in the Autonomous Cities of Ceuta and Melilla, as well as a protocol used in the Red Cross centres for migrants. A common protocol with guidelines for the detection of victims of trafficking, applicable in all centres for immigrants, was expected to be adopted in 2013. When THB cases are detected at borders, CIEs or CETIs, the police force that has come across the offence (the Civil Guard, National Police or regional police) is competent to investigate the case and identify the possible victims.

[45] Third monitoring report on the implementation of the Action Plan to Combat THB for Sexual Exploitation, Government Delegation against Gender-based Violence, October 2012.

[46] The Ombudsperson's report refers to 1 301 victims of trafficking identified in 2009, 1 641 in 2010, and1 082 in 2011.

157. Irregular and undocumented migrants are placed by judicial order in reception centres for foreigners (CIEs) upon their arrival in Spain.[47] GRETA stresses the need to strengthen the detection of potential victims of trafficking among irregular migrants, as there is a risk that victims of trafficking may be recruited or controlled by their traffickers during detention and held in reception centres together with them. Further, GRETA notes that the policy of keeping irregular migrants in closed reception centres does not create an environment conducive to making victims of trafficking trust the authorities and come forward to seek help. The Spanish authorities have indicated that the National Police, which is responsible for CIEs, applies the Framework Protocol in order to detect possible victims of trafficking.

158. Pursuant to the Framework Protocol, if the authorities dealing with asylum applications come across an asylum-seeker who may be a victim of trafficking, they must inform the specialised police forces responsible for THB in order to start the identification process. Reference has already been made in paragraph 85 to the project "Safer Path" aimed at promoting the identification, protection and referral of victims of trafficking among asylum seekers and refugees. The project included the preparation of a set of guidelines for monitoring of responses to the needs of victims of trafficking in that context. However, NGOs have alerted GRETA that, in practice, the asylum authorities only refer such cases to the police exceptionally, which can result in possible victims of trafficking claiming asylum at the border or at a reception centre for irregular migrants being expelled or returned without being identified as a victim of trafficking.

ii. GRETA's assessment of the identification system

159. As noted in paragraph 145, in Spain the formal identification of victims of THB is carried out exclusively by police officers specialised in the investigation of THB offences. GRETA is concerned by the connection made between the identification of victims of trafficking and the criminal investigation. Spain's identification system brings possible victims of trafficking into early contact with the police and can be a deterrent for victims with irregular status or low trust in the police, which sometimes results from threats or misinformation by the traffickers, to come forward. Identification interviews are reportedly closer to interrogations, with no understanding of the impact of the traumatic experience lived by the possible victim and how it can have affected her/his memory and ability to tell a series of events

160. GRETA notes that the role of NGOs in the identification of victims of trafficking is limited to reporting possible cases of THB to the competent authorities,[48] offering legal advice to possible victims and submitting information which can be taken into account in the identification decision-making process. GRETA considers that specialised NGOs can substantially contribute to the victim identification process and should be involved in a multi-agency effort to ensure that no victim of trafficking remains unidentified. This is envisaged by Article 10 of the Convention, according to which identification is a collaborative process between the authorities and relevant victim support organisations

161. Another area of concern is the lack of understanding of the concept of "possible victim" and the confusion between "reasonable grounds" and "objective evidence". NGOs have highlighted the high level of proof required by police forces to consider a person as a victim of trafficking and offer her/him assistance and protection measures. In practice, formal identification and assistance are made conditional on the co-operation of the victim of trafficking with the police inquiry.

162. GRETA is also concerned by the lack of a systematic approach to detecting and identifying child victims of trafficking. NGOs have pointed at that unaccompanied minors are returned to their countries of origin without prior risk assessment and no efforts are made to find out if they are victims of human trafficking..

---

[47] Pregnant women or women with young children are not admitted into immigrant reception centres. They are either released or referred to social organisations providing humanitarian aid.

[48] Some NGOs run their own 24-hour hotlines. For instance, the Madrid-based Hope Project received 105 calls in 2011, leading to the detection of 84 possible victims of trafficking; 47 of whom received assistance from the Project.

163. Further, GRETA notes that the detection of victims of trafficking at borders and reception centres for irregular migrants appears to be limited. The Spanish Ombudsperson has highlighted shortcomings in the identification of victims of trafficking at the border and has developed guidelines for interviewing possible victims. The Ombudsperson has alerted the authorities of the need to pay special attention to a group of potential victims of trafficking, Nigerian nationals, mostly women, arriving undocumented in Spain and detected either when trying to enter the country's territory or during immigration controls in public places[49] (see also paragraph 135). According to the Spanish authorities, the African nationals found trying to reach the coast of Granada, Murcia and Almeria were in general victims of people smuggling, but the authorities recognised that these African women and children could be considered as being at risk of falling victim to human trafficking.

164. **GRETA urges the Spanish authorities to review the identification procedure of victims of trafficking with a view to ensuring that possible victims 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, the Spanish authorities should:**

- **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;**

- **ensure appropriate co-ordination and exchange of information between all relevant actors involved in the identification procedure;**

- **ensure that the indicators and other tools used for the identification of victims of trafficking cover all types of THB and that their application is duly monitored and evaluated;**

- **allow enough time for the identification of victims of trafficking, taking into account the traumatic experience suffered and the need for sufficient time to gather all the necessary information and decide on the identification;**

- **ensure the quality and availability of interpreters during the identification process, and provide the information document with the rights of victims of trafficking in a language that they can understand;**

- **inform in writing the persons concerned, in a language that they understand, about the outcome of the identification procedure;**

- **adopt a proactive approach to the identification of victims of trafficking for the purpose of labour exploitation, in particular in the sectors most at risk such as agriculture, construction, textile, restaurants, hotels and domestic work;**

- **improve the detection and identification of victims of trafficking among irregular migrants through a proactive approach which requires regular training on THB and the rights of victims for immigration, border police and asylum officers, including staff working at the CIEs and CETIs;**

- **take into account the special needs and circumstances for the identification of child victims of trafficking, which includes the setting up of a specific referral mechanism for children involving child specialists, child protection services, and specialised police and prosecutors.**

b. Assistance to victims

[49] The Ombudsperson's report on THB refers to complaints received and visits carried out at temporary immigrant reception facilities in Motril (Granada), which revealed a number of African women and children with profiles of possible trafficking victims.

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

166. The Framework Protocol establishes that victims of trafficking must be informed of the support available, including appropriate and secure accommodation, material assistance, psychological support, medical care, interpretation services and legal advice. With the victim's informed consent, she/he can be referred to the social services of the competent regional or local authorities or to organisations with proven experience in assisting victims of trafficking. Assistance and protection are available to victims irrespective of their nationality and immigration status. The Framework Protocol acknowledges the contribution of NGOs to assisting victims of trafficking, in particular their role to provide accommodation, protection and support for victims, supplementing public resources. Specialised NGOs can provide assistance to victims of trafficking outside the formal identification procedure and regardless of whether the victim wants to co-operate with the authorities.

167. The third monitoring report on the implementation of the Action Plan to Combat THB for Sexual Exploitation mentions that in 2011 the Ministry of the Interior produced and disseminated among the police and security forces materials designed for victims of trafficking in order to inform them of their rights and the assistance available to them, as well as contact information of specialised NGOs. These materials included posters and leaflets in seven languages (Spanish, Catalonian, English, French, Portuguese, Russian and Romanian).

168. According to the Spanish authorities, victims of trafficking for the purpose of sexual exploitation have access to all the assistance measures listed in Article 12 of the Council of Europe Convention. A Guide of Resources for victims of trafficking for the purpose of sexual exploitation was drafted in 2009 listing the organisations providing residential and non-residential assistance to victims of trafficking for sexual exploitation in each province.[50] The Guide includes information on the number of accommodation places provided by each organisation in each location and the maximum length of stay allowed, which ranges from one month to two years (in some cases the length of the stay can be unlimited).

169. There are 44 shelters with an overall capacity to accommodate some 400 victims of trafficking for sexual exploitation, mostly women. Only two shelters admit men (run by the White Cross Foundation in Huesca and APRAMU in Murcia). Two other shelters have places for girls victims of trafficking: one in Madrid, run by APRAMP and admitting girls aged from 14 to 18, and another one in Mallorca, run by the Amaranta Solidarity Foundation and admitting girls aged from 16 to 18. According to the Guide of Resources, most shelters provide psychological assistance and social services, and more than half of the shelters offer medical assistance. Psychiatric assistance is provided in public health centres. Labour integration programmes, legal advice and training are provided in many shelters. In addition, there are over 100 non-residential centres providing assistance, as well as outreach services providing information and advice. The shelters and non-residential centres providing assistance to victims of trafficking for sexual exploitation are run by 50 organisations, with a combination of public funding and their own resources.

170. The GRETA delegation visited two emergency shelters for women victims of trafficking for sexual exploitation, in Madrid and Barcelona. They are run by the Religious Adoratrices, an

[50] The Guide is updated every six months and was included as Annex 4 of the framework protocol. Version of November 2012 available at (in Spanish only):
www.msssi.gob.es/ssi/violenciaGenero/tratadeMujeres/ProtocoloMarco/DOC/GuiaRecursosActualizada.pdf

organisation which has shelters in all autonomous communities, some of them housing also children of victims of trafficking. The shelter in Madrid is run by the Hope Project (*Proyecto Esperanza*), set up by the Religious Adoratrices in 1999, This project provides three types of accommodation: emergency shelters, for stays of one to two months; longer-term shelters, for stays of up to six months, which include help with social and labour integration; and flats where victims of trafficking can lead a nearly independent life. The Hope Project also provides non-residential assistance through a support package which includes assistance to obtain identity documents. Possible victims of trafficking are referred to the Hope Project in Madrid by the police, social services, NGOs working with migrants and prostitutes or embassies. Since 2007 the Hope Project has been partly funded by Madrid's regional government, through annual grants. At the time of GRETA's visit, 12 of the 20 places in the shelters of the Hope Project, and 16 places for non-residential assistance, were funded by the regional government.

171. The emergency shelter visited by GRETA in Barcelona is run by the programme SICAR-Cat, funded in 2002 by the Religious Adoratrices to provide assistance to women victims of trafficking, including accommodation, health care, legal advice, social assistance and assisted return. SICAR-Cat runs the only project assisting victims of trafficking in Catalonia and employs 11 staff (including a lawyer, social workers, educators and a labour adviser). Psychological support and interpreters are drawn from other organisations. There are five places in emergency shelter for victims of trafficking, eight places in longer-term accommodation and four places for women at the stage of autonomy. The municipality of Barcelona[51] provides funding for the assistance provided by SICAR-Cat during the phases of emergency assistance and autonomy. In December 2012, a collaboration agreement was signed between the Religious Adoratrices and the Department of Interior of the Catalonian Government regarding the co-ordination of the SICAR-Cat programme with the regional police (*Mossos d'Esquadra*).

172. Both emergency shelters visited by the GRETA delegation were in a very good condition and had modern facilities. They employed round-the-clock staff, including social workers during the day and volunteers at night. The assistance offered included access to health care, legal advice, psychological care and social integration. At the time of the visit in Madrid, there were six victims housed in the emergency shelter, five in the longer-term shelter and three in the two independent flats. The majority of the victims accommodated in the longer-term shelter and flats run by SICAR-Cat in Barcelona were from Sub-Saharan Africa (two of them had been trafficked for labour exploitation and the rest for sexual exploitation).

173. The GRETA also delegation visited an empty emergency accommodation flat in Barcelona. The other emergency flat had been occupied the night before by a Romanian woman victim of sexual exploitation. Her partner, also a victim of trafficking, was taken to a municipal emergency shelter, which shows the difficulties to accommodate men victims of trafficking in Spain, whether alone or in couple with women victims of trafficking.[52]

[51] In 2006, Barcelona's City Council adopted a Plan for a Comprehensive Approach to Sex Work, with a number of outreach services and resources: health care, training, psychological assistance and legal assistance to women victims of THB for sexual exploitation who denounce their traffickers. These services are targeted to sex workers and victims of sexual exploitation and are provided by a dedicated Agency (ABITS), which has a co-operation agreement with SICAR-Cat. Barcelona is the biggest funder of emergency and longer-term assistance provided under this programme. In 2012, the budget of ABITS was increased from 824 661 euros to 1 382 000 euros

[52] Representatives of the SICAR-Cat programme informed GRETA of two other cases of couples who were victims of trafficking (in one case, the man was subject to sexual exploitation and, in the other, to carry out criminal activities). These two couples could not be assisted as they refused to be housed in separate accommodation.

174. The Spanish authorities have informed GRETA that, since 2009, the Government Delegation against Gender-based Violence has had an annual budget of two million euros to fund projects run by NGOs with proven experience in assisting women victims of trafficking for the purpose of sexual exploitation with a view to providing them with employment, training, medical, legal, or psychological services. There is an annual call for grant applications to ensure specialised assistance for this particularly vulnerable group, while also ensuring the mobility of victims when their security requires it. A total of 46 projects from 42 organisations were financed in 2011, and 40 projects from 40 organisations in 2012. The budget earmarked for such projects has been reduced to 1.5 million euros in 2013.

175. Other central government departments also fund assistance to women and children victims of trafficking for sexual exploitation. The General Secretariat for Immigration and Migration funded nine programmes, totalling 300 000 euros, in 2011 and another nine in 2012 with a budget of over 520 000 euros. In 2011, the Ministry of Employment and Social Security provided over 450 000 euros for 14 NGO projects in nine autonomous communities, aimed at facilitating the social integration of migrant women in a situation of special vulnerability, including women victims of trafficking for sexual exploitation.

176. GRETA notes that the assistance provided to victims of trafficking depends on the resources made available by the autonomous communities, which are responsible for victim support services. Most regions offer assistance only to women victims of trafficking for the purpose of sexual exploitation, as is the case in the Madrid region, Catalonia and Galicia.[53]

177. The legislation on access to public health care in Spain has been recently reviewed to limit access by irregular and undocumented immigrants[54] to the free health system (except for emergency and maternity services and assistance to children). As a result, irregular migrants need to pay to receive medical care, with the exception of some autonomous communities such as Andalusia, Catalonia, the Basque Country and Galicia (the latter, for those with very low income). GRETA is concerned by this situation which may lead to discrimination when it comes to access to health care, in particular as victims of trafficking may have regularised their stay in Spain but lack the necessary identity documents (see paragraph 185), which would prevent them from accessing the public health system in many autonomous communities.

178. In Spain, free legal assistance is provided on issues related to criminal law, children, third-country nationals, asylum and gender-based violence by lawyers who are on a duty roster (*turno de oficio*). The Bar Association (*Colegio de Abogados*) of Seville has set up a pool of around 100 lawyers trained on THB for the purpose of sexual exploitation. These lawyers provide legal advice and representation to victims and presumed victims of trafficking. The head of this pool of lawyers can be contacted at any time and alert colleagues accordingly. They enjoy close co-operation with the Prosecutor's Office in Seville in order to ensure that THB cases are dealt with appropriately. They also organise meetings with relevant stakeholders (public prosecutors, regional authorities, police, NGOs). **GRETA welcomes this practice and considers that a specialisation of lawyers providing free legal assistance to victims and presumed victims of trafficking, not only in the case of sexual exploitation but all types of exploitation, should be reproduced in other parts of Spain.**

---

53 By way of example, the budget for the provision of assistance to women victims of THB for sexual exploitation in Galicia in 2010-2012 amounted to 944 000 euros.

54 The number of irregular immigrants in Spain is estimated at around 500 000, out of a total number of foreigners residing in Spain of over 2 700 000 people. Source: National Statistics Institute (INE), quoted in an article published in *El Pais* on 20 April 2012. According to the Ministry of the Interior, 3 804 irregular migrants entered Spain through the coast in 2012. They were 5 441 in 2011, 13 424 in 2008 and 39 180 in 2006.

179. In November 2012, the President of the General Council of Lawyers issued Circular 110/2012[55] addressed to the Heads of all Bar Associations in Spain regarding the applicable legislation to protect and assist victims of trafficking in Spain, including their rights. The Circular refers to victims of trafficking for the purpose of exploitation in Spain and not just for sexual exploitation. The Heads of Bar Associations are asked to disseminate the information contained in the Circular and to step up efforts to assist victims of trafficking in order to prevent them from being treated as irregular migrants. GRETA welcomes this initiative.

180. According to the Framework Protocol, the police officer interviewing the victim should inform him/her of possible risks and the protection and security measures which must be adopted (such as providing the victim with a telephone number to contact the staff in charge of the investigation, informing the victim about self-protection measures, including the need to remain in a secure accommodation or to move to another autonomous region). Protection and security measures can also apply to the children of victims of trafficking who are in Spain (if they are disabled or under 18 years of age) and, on an extraordinary basis, to any other persons located in Spain with whom the victim has family or other ties, when it can be demonstrated that leaving them unprotected from the presumed traffickers would prevent the victim from co-operating. The form regarding information on protection and security measures is available in Spanish and is translated orally to the victim of trafficking, who needs to sign it to reflect his/her acceptance or refusal of such measures. The Civil Guard informed GRETA that a risk assessment in carried out in each case and victims are offered protection measures adapted to their personal circumstances. GRETA welcomes the individual risk assessment in order to propose tailor-made protection and security measures.

181. The Law on Foreigners and the Law on the Legal Protection of Minors guarantee the right to health care education and legal assistance to all foreign children in Spain, on an equal basis with Spanish children. The autonomous communities have competence with regard to child protection and each of them has set out their own institutions, resources and measures in this respect. The Framework Protocol states that child victims must be immediately provided with assistance, support and protection and that all measures adopted must address their safety, physical and psycho-social recovery, education needs and the search for a lasting solution to their situation.[56] Further, the Framework Protocol stipulates that assistance measures for child victims of trafficking must be based on an individual evaluation of the child's specific circumstances, taking into consideration the opinion, needs and interests of the child.

182. The Framework Protocol establishes that the regional institution responsible for the legal protection of children or the Prosecution Service may propose a referral to "specific resources" for victims of trafficking for reasons of protection or specialist care. These resources must guarantee the separation between adult and child victims of trafficking. However, GRETA is concerned by the lack of specific resources dedicated to child victims of trafficking. As noted in paragraph 169, only two organisations offer assistance to girls victims of trafficking for sexual exploitation. The lack of specialised shelters for child victims of trafficking, which ensure their security and recovery in their best interest, is a matter of concern.

183. The Spanish Civil Code provides for the appointment of legal guardians for children in "vulnerable situations" (including THB) by the competent court at the request of the public 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.

184. GRETA notes with concern the examples of cases provided in the Spanish Ombudsperson's report on THB, of victims of trafficking who refused assistance and protection. Four cases of THB for sexual exploitation were detected in 2011, on the basis of police action, involving over 50 Romanian women and including one girl, none of whom accepted assistance from NGOs and the girl went missing from a centre for the protection of minors.

---

55 Available at: www.abogacia.es/wp-content/uploads/2012/11/CIRCULAR-TRATA.pdf

56 Framework protocol, section XIV.A.

185. NGOs met during the evaluation visit informed GRETA that undocumented victims of trafficking cannot access the protection mechanisms provided for in the Law on Foreigners, the public health system, social support, education programmes and programmes for return. Many women victims of trafficking have reportedly filed claims against the traffickers and collaborated with the police without being able to apply for a resident permit on the basis of this co-operation because they did not have identity documents. Certain embassies fail to issue identity documents, which is a serious problem for victims. NGOs are working with the Spanish authorities to ensure that victims can be provided with an alternative temporary identity card (*Cédula de Inscripción*) in a timely manner after being identified.

186. GRETA welcomes the range of assistance services available to women victims of trafficking for the purpose of sexual exploitation. However, GRETA stresses the need to provide adequate assistance to other categories of victims of trafficking, such as men victims of sexual exploitation, women and men victims of THB for labour exploitation, and child victims of trafficking for all types of exploitation. An adequate level of assistance should be ensured to victims of trafficking regardless of where they are in Spain.

187. **GRETA urges the central and regional authorities in Spain to ensure that all victims of trafficking are provided with adequate support and assistance, from their identification through to their recovery, and in particular to:**

- **adopt minimum standards for assistance to all victims of trafficking, regardless of their sex, age, nationality and type of exploitation, and providing adequate funding to maintain these standards;**

- **ensure that safe and suitable temporary accommodation is provided to all victims of trafficking, adapted to their needs;**

- **ensure access to health services for all victims of trafficking in Spain;**

- **enable victims of trafficking lawfully resident in Spain to have access to the labour market, vocational training and education as a form of rehabilitation;**

- **ensure that undocumented foreign victims of trafficking have effective access to assistance measures by providing them with temporary identity documents;**

- **ensure that children victims of trafficking benefit from the assistance measures provided by the Convention, in a way which is tailored to their needs;**

- **provide specialised training to all professionals responsible for the provision of assistance and protection measures to victims of trafficking, including to lawyers giving free legal assistance to victims of trafficking;**

- **monitor the system of assistance to victims of trafficking and adapt it accordingly to ensure that it corresponds to the victims' needs.**

c. Recovery and reflection period

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

189. In 2011, Organic Law 10/2011 amending Article 59 bis of the Law on Foreigners introduced a recovery and reflexion period for foreign victims of trafficking with an irregular administrative status in Spain.[57] Paragraph 2 of Article 59 bis establishes that the duration of the recovery and reflection period is at least 30 days and that the period should be long enough to allow the victim to decide whether he/she wants to co-operate with the authorities in the investigation of the offence and, if appropriate, in criminal proceedings. During this period, victims of trafficking are authorised to stay in the country and any administrative infringement procedures, including the execution of expulsion orders or assisted return, are suspended. The competent authorities have to ensure the subsistence and, if necessary, the safety and security of the victim of trafficking, and her/his children, during the recovery and reflection period. The procedure for granting a recovery and reflection period is established in Article 142 of the Regulation on Foreigners and Chapters XIII.A and XIII.C of the Framework Protocol. GRETA notes that the provisions of the three instruments which regulate the recovery and reflection differ in some respects, as explained below.

190. Paragraph 2 of Article 59 bis of the Law on Foreigners establishes that when the competent immigration authorities consider that there are reasonable grounds to believe that a third-country national with irregular status is a victim of trafficking, the person will be informed of the availability of a recovery and reflection period. Pursuant to the Framework Protocol, the recovery and reflection period cannot under any circumstances be made conditional upon the victim giving a statement or co-operating with the authorities involved in the investigation and prosecution of the THB offence.

191. Both Article 142 of the Regulation on Foreigners and the Framework Protocol specify the procedure for obtaining a recovery and reflection. The relevant immigration police unit that carried out the identification of the victim of trafficking has to apply for this period with the victim's consent and within 48 hours of identification. Applications for the recovery and reflection period are submitted to the provincial Government's Delegation.

192. The Government's Delegate or his/her Deputy has up to five days to decide whether to grant a recovery and reflection period, from the day when the application was received. If there is no decision after the five days deadline, the recovery and reflection period is considered to have been granted. If the possible victim of trafficking is in a reception centre for foreigners (CIE), the decision on the recovery and reflection period must be taken within 24 hours.

[57] In 2009, the European Court of Justice ruled against Spain for the lack of transposition of Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings and co-operate with the competent authorities. Judgment of 14 May 2009, case C-266/08, *European Commission v. Spain*.

193. Applications for the recovery and reflection period must be accompanied by the full police file on the victim and any other relevant information available. NGOs and other institutions may provide relevant information to the police, but the competent authorities are not obliged to take this information into account when deciding whether to grant a recovery and reflection period. The Pursuant to the Regulation on Foreigners, the proposal for a recovery and reflection period has to be submitted together with "a reasoned report on the existence of reasonable grounds to believe that the person could be a victim of human trafficking". On the other hand, the Framework Protocol does not refer to such report but to information submitted by relevant NGOs, statements from the victim, information on the administrative situation of the victim and his/her personal circumstances, and any other relevant documents. GRETA notes the different requirements for processing applications for a recovery and reflection period included in the Regulation on Foreigners and the Framework Protocol. The Spanish authorities have indicated that the documents that must be submitted with the application for the recovery and reflection period are the record related to the interview of the possible victim (which refers to the victim's legal status in Spain) and the form concerning protection and security measures.

194. If police forces other than immigration units have interviewed the victim of trafficking, all relevant information must be sent to the immigration police unit where the identification was carried out. The Catalonian police has expressed concerns to the Spanish Ombudsperson regarding this point, as often the information they need to provide for granting a recovery and reflection period is part of confidential police investigations in which victims of trafficking have the status of protected witnesses. The Catalonian police consider that the confidentiality of information related to police investigations on THB must take precedence over administrative proceedings, even if the latter aim to assist victims, as they could put their security at risk. GRETA notes that in these cases the victim of trafficking is already co-operating with the authorities. The Spanish authorities have indicated all police forces keep the confidentiality of information exchanged for the purpose of investigations.

195. Paragraph 3 of Article 59 bis of the Law on Foreigners provides that the recovery and reflection period can be refused or revoked on grounds of public order or when there is knowledge that the status of victim of trafficking was claimed improperly. The decision must be motivated and can be appealed, in accordance with the Law on the Common Administrative Procedure. GRETA notes the different legal status of the identification decision and the resolutions concerning the recovery and reflection period, as the latter can be appealed,[58] but not the former.

196. Pursuant to paragraph 4 of Article 142 of the Regulation on Foreigners, decisions on granting the recovery and reflection period must be immediately notified by the Government's Delegation to the person concerned, directly or through the police unit that submitted the application, which must also be informed. If another police unit started the investigation, it will also be informed, as well as the authority holding the victim in custody. In case of a positive decision, the person concerned (as well as any children she/he may have) is granted a residence permit for the duration of the recovery and reflection period and, if she/he is detained as an irregular migrant, must be released from custody.

[58] In October 2011, the NGO Women's Link appealed against the refusal to grant a recovery and reflexion period to a woman in Madrid's CIE who had reported herself as having been a victim of trafficking for the purpose of sexual exploitation in another European country. The NGO claims that the woman did not receive any protection and that the Spanish authorities tried to deport her twice. Women's Link has submitted a claim to the European Court of Human Rights concerning this case. Available at: www.womenslinkworldwide.org/wlw/new.php?modo=detalle_proyectos&dc=59

197. GRETA notes that there are some differences between the Law and Regulation on Foreigners and the Framework Protocol as regards to whom the recovery and reflection period applies: to possible victims of trafficking, as per Article 59 bis of the Law on Foreigners, or to already identified victims of trafficking, as the Framework Protocol suggests. Further, the assistance provided during the recovery and reflection period, according to the Regulation on Foreigners, appears to be limited to social assistance, whereas the Framework Protocol states that victims must be informed that during the recovery and reflection period "they will be provided with the resources required for their physical, psychological and emotional recovery, and will be removed from the influence of the presumed traffickers, allowing them to take a considered and balanced decision on whether to co-operate or not with the authorities in the investigation and prosecution of the perpetrators of the offence".[59] Royal Decree 1192/2012 of 3 August 2012 regulating access to the Spanish National Health Service establishes that victims of trafficking holding a temporary residence permit during the recovery and reflection period will receive the necessary medical assistance, including "emergency care and basic treatment of illnesses".[60] Victims of trafficking with special needs will also receive the necessary attention during the recovery and reflection period. The Spanish authorities have confirmed that during the recovery and reflection period, victims of trafficking are in a regular situation and therefore have the right of access to health care.

198. The Framework Protocol establishes that at the end of the recovery and reflection period the police unit in charge of the identification contacts the victim to establish whether or not he/she wishes to co-operate in the investigation and prosecution of the offence. If the victim decides to co-operate, this is notified to the Prosecution Service and the relevant judicial body. If the victim requests a prolongation of the recovery and reflection period or if the relevant police unit considers this to be necessary, the police unit submits a proposal to the relevant Government's Delegation, together with the available information. GRETA welcomes the possibility of applying for an extension of the recovery and reflection period in consideration of the needs and personal circumstances of the victim of trafficking.

199. The Spanish authorities have informed GRETA that victims of trafficking who are EU nationals are not offered a recovery and reflection period, as its purpose is to regularise the administrative situation of victims of trafficking who are third-country nationals in an irregular situation.

200. According to information provided to GRETA by the Spanish authorities, 21 recovery and reflection periods were granted in 2010 and 63 in 2011. On the other hand, the report on THB by the Spanish Ombudsperson refers to information from the Secretariat for State Security according to which 219 recovery and reflection periods were offered by the immigration authorities in 2010 (of which 171 were refused by the victims, 21 were granted and six were rejected by the competent authorities), and 763 recovery and reflection periods were offered In 2011 (of which 680 were refused either by the victim or the Government Delegation, and 98 were granted).[61] In 2012, 61 recovery and reflection periods were granted, and 32 from January to April 2013.

201. NGOs met during the evaluation visit have indicated that recovery and reflection periods are usually granted for 30 days and no in-depth evaluation of the needs of the victims and their personal situation is carried out. NGOs have reported that in their experience, it is exceptional that a recovery and reflection period is granted for more than 30 days, which in their view is not sufficiently long to address the victims' trauma.

---

59 Framework Protocol, chapter XIII.A, paragraph 1.

60 See the fifth additional provision of R.D. 1192/2012 (Official Journal 186, of 4 August 2012).

61 The latest annual report of the Prosecution Service refers to the recovery and reflection period having been offered in 2011 to 149 women possible victims of THB for the purpose of sexual exploitation, of whom only 24 accepted it.

202. GRETA recalls that the Convention provides for a recovery and reflection period to be granted "when there are reasonable grounds to believe that the person concerned is a victim of trafficking", therefore before the identification procedure is completed. GRETA notes that in Spain the possible victim of trafficking is in contact with the police from the beginning of the identification procedure and the request for a recovery and reflection period is submitted by the immigration police, which makes it difficult to define how and when a victim is considered to co-operate with the authorities. GRETA is concerned that this procedure may account for the low number of victims who request a recovery and reflection period. GRETA is also concerned by the fact that an application needs to be submitted to obtain the recovery and reflection period and by the involvement of a decision-making authority which is not part of the identification and referral system.

203. **GRETA urges 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 offered one 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 to recover 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. The Spanish authorities should also address the reasons why so few victims of trafficking apply for and are granted a recovery and reflection period.**

204. **Further, GRETA considers 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.**

d. Residence permits

205. Article 14(1) of the Convention provides for two possibilities when it comes to the issuing of renewable residence permits to victims of trafficking: on the basis of their personal situation and/or their co-operation with the competent authorities in the investigation or criminal proceedings.

206. 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.

207. Paragraph 4 of Article 59 bis of the Law on Foreigners makes the issuing of residence permits to victims of trafficking with irregular residency conditional on them being exempted from their administrative responsibility for irregular residency. The Regulation on Foreigners and the framework protocol establish that the authority in contact with the victim of trafficking, in the context of the criminal investigation or during criminal proceedings, may propose to the Government Delegate that the victim be exempted from responsibility derived from irregular residency, which is considered a serious infringement of the Law on Foreigners. This exemption can also be declared *ex officio* by the Government's Delegate due to the personal situation of the victim. GRETA is concerned that this additional condition for allowing victims of trafficking to have access to temporary residency permits and the above-mentioned procedure adds another layer of decision-making by a separate authority.

208. Once exemption from responsibility for irregular residency has been declared, the victim or his/her representative can submit an application for a residence permit on the basis of "exceptional circumstances". Applications are to be addressed to the Government Delegate who declared the exemption from responsibility, who forwards them to the appropriate Secretary of State. Applications for residence permits on the grounds of co-operation with the authorities are sent to the State Secretary for Security, whereas application based on the personal situation of the victim are addressed to the State Secretary for Immigration and Migration. The Government Delegate must enclose a report on the administrative and personal status of the victim and a proposed decision. If the Government Delegate recommends granting a residence permit, the victim automatically receives a temporary residence permit while the application is processed. This temporary permit allows the victim of trafficking to reside and work in any sector and location in Spain, and is valid until a resolution is issued on the original application.

209. Within one month from receiving the provisional residence permit, the victim must request a "foreigner identity card" in the Aliens Office or a competent police station. These identity cards are issued for one year and can be renewed. They state that the card-holder is authorised to reside and work in Spain, without mentioning the provisional nature of the authorisation or that the card-holder is a victim of trafficking.

210. If the relevant Secretary of State gives a positive decision on the application, a residence permit for the victim and his/her children is issued for a period of five years. This permit also allows the victim of trafficking to work in any sector and location in Spain. Victims of trafficking holding a five-year residence permit can also apply for longer-term permits. If the application for a residence permit is refused, the temporary permit that the victim may have held loses its validity without the need for a specific administrative decision. The victim can nonetheless submit an application for residence permit on the basis of "exceptional circumstances" unrelated to the trafficking situation and also apply for international protection.

211. NGOs have expressed concerns about the different thresholds and criteria applied in practice when evaluating whether the co-operation of the victim of trafficking with the authorities justifies a residence permit. In some cases, such co-operation reportedly involved the provision of information allowing the opening of a criminal investigation or leading to arrests of those involved in the crime of THB. GRETA notes the lack of a set timeframe for the residence permit procedure, which can take months and leaves the victim of trafficking in an uncertain situation.

212. According to the statistics provided by the Spanish authorities, 28 victims of trafficking received a temporary residence permit on the basis of their co-operation with the authorities in 2010, and 51 in 2011. The Directorate General of Migrations has reported only one residence and work permit granted to a victim of trafficking on the basis of his/her personal situation in 2011, and two in 2012.

213. Gender persecution is recognised by the Asylum Law as a possible ground for international protection.[62] The vulnerable situation of victims of trafficking must be taken into account when processing applications for international protection. GRETA notes that in 2009 the UN Committee on the Elimination of Discrimination against Women called upon the Spanish authorities to afford full protection under the Convention relating to the Status of Refugees to trafficked women who seek asylum on grounds of gender-based persecution.[63] There is no information on whether any victims of THB have obtained such protection and the 2012 report on THB by the Ombudsperson indicates that applications by victims of trafficking are "routinely excluded" by the Asylum Office on the basis that these cases need to be processed under Article 59 bis of the Law on Foreigners (see paragraph 197). The Ombudsperson also draws attention for the situation of victims of trafficking seeking international protection and who are sent to another European country because of the EU's Dublin Regulations.

---

[62] In 2011, 3 422 asylum applications were filed in Spain, including 908 from women (152 came from Nigerian women, the largest nationality concerning women). In the first half of 2012, 1 296 asylum applications were filed, including 416 from women (68 from Nigerian women). Source: Office of Asylum and Refuge.

[63] Concluding observations addressed to Spain, Committee on the Elimination of Discrimination against Women, CEDAW/C/ESP/CO/6, 7 August 2009, paragraph 22.

214. According to NGOs, asylum applications by victims of trafficking are rejected both in the context of the accelerated procedure (which is applied only at borders and CIEs) and in the context of the refugee status determination procedure. NGOs have reported that the asylum authorities consider that the persecution of victims of trafficking has taken place in Spain and therefore they are out of the scope of the refugee protection. NGOs met during the evaluation visit were concerned that the identification system in Spain does not take into consideration the possible international protection needs of victims of trafficking and does not consider which type of protection may be more suitable (asylum or protection as a victim of trafficking), taking into consideration the risks that may be faced in case of return, in conformity with the principle of *non-refoulement*. The Spanish authorities have indicated that the asylum and refugee procedure is not applicable to victims of human trafficking, except for cases when other relevant circumstances make them eligible for asylum. GRETA recalls that, according to the UNCHR Guidelines on International Protection[64] victims or possible victims of trafficking may fall within the definition of a refugee contained in Article 1A(2) of the 1951 Convention on the Status of Refugees and may therefore be entitled to international refugee protection, provided there is a "well-founded fear of persecution" linked to one or more of the 1951 Convention grounds, such as membership of a particular social group or race.

215. The Framework Protocol does not mention that victims of trafficking should be informed of their right to ask for international protection. GRETA notes that, in its latest report concerning Spain, published in February 2011, the Council of Europe's Commission against Racism and Intolerance (ECRI) recommended that the Spanish authorities pursue efforts to provide information about asylum procedures to all new arrivals in reception centres for irregular migrants by distributing leaflets in a variety of languages, including African ones.[65] ECRI also recommended that the Spanish authorities take steps to ensure that unaccompanied minors are always informed about their right to seek asylum, and review the age determination methods to ensure that children are not treated as adults.

216. Regarding child victims of trafficking, residence permits are not made conditional upon their co-operation with the authorities. If nine months after the child was placed under the care of the competent child welfare authorities, reunification with the child's family or return has not been possible, the child will be granted residence in Spain.[66] That said, there is no specific legal provision on granting asylum to child victims of trafficking. The authorities in charge of processing asylum applications must place asylum seekers under 18 years of age who are in a vulnerable situation under the responsibility of the competent child welfare authority and notify the Prosecution Service.

217. GRETA welcomes the possibility for victims of trafficking to be granted a temporary residence permit on the basis of their personal situation, as well as for co-operating with the authorities. That said, GRETA notes the lack of clarity as regards the criteria for granting residence permits to victims of trafficking. GRETA is concerned that very few permits have been granted on the basis of the personal situation of the victim of trafficking, which sends the message to victims that they can only obtain a residence permit if they co-operate with the authorities. GRETA is further concerned by the reported lack of consideration of applications for international protection submitted by victims of trafficking.

---

64 UNCHR 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.

65 ECRI Report on Spain (fourth monitoring cycle), CRI(2011)4, available at: www.coe.int/ecri (see paragraphs 166, 175 and 177).

66 Fundamental Rights Agency, *Child Trafficking in the European Union: Challenges, perspectives and good practices*, 2009. Available at: fra.europa.eu/sites/default/files/fra_uploads/529-Pub_Child_Trafficking_09_en.pdf

218. **GRETA considers 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 granting a residence permit to victims of trafficking on the basis of their personal situation and for co-operation with the authorities;**

- **ensuring that the competent authorities are provided with updated information and receive adequate training to ensure a harmonised application of those criteria across Spain;**

- **setting a timeframe for the processing of applications for residence permits for victims of trafficking;**

- **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.**

219. **Further, GRETA considers that the Spanish authorities should strengthen their efforts to ensure that measures taken to implement the Convention do not affect the rights of adult and child victims of trafficking under international human rights law, in particular regarding access to international protection and the respect of the principle of *non-refoulement*, in line with Articles 14(5) and 40(4) of the Convention.**

e. Compensation and legal redress

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

221. In Spain, all victims of crime (whether adult or minor, national or foreigner) have the right to take part in the criminal proceedings and demand compensation. All damages, both physical and moral, can be compensated provided that they are proved. Civil liability can be claimed from the perpetrators, as established by Articles 116 to 122 of the CC, before civil or criminal courts. If the victim of trafficking does not want to take part in criminal proceedings against the perpetrators, the public prosecutor will ask for compensation for damages inflicted on the victim unless he/she refuses compensation. Article 108 of the Criminal Procedure Law establishes that the public prosecutor can file a civil action together with the criminal action, regardless of whether the injured party is involved in the criminal proceedings. That said, in order to make the perpetrators pay compensation to victims of trafficking, the money and goods must be followed in advance. The Spanish authorities recognise that efforts in this regard must be increased in order to guarantee the right of victims to compensation.

222. Law 35/1995 on the Assistance to Victims of Violent Crimes and Crimes against Sexual Freedom establishes a system of state compensation to direct or indirect victims of serious and violent crimes committed in Spain and resulting in death, serious bodily injuries, physical or mental damage. The law covers victims of crimes against sexual freedom even if there was no violence. Article 2(1) of this law gives access to one-off compensation payments to Spanish citizens or residents, nationals of another EU member state and nationals of another State which provides similar assistance to Spanish citizens in its territory, when the crime was committed. Third-country nationals who do not comply with those requirements do not have the right to state compensation. Pursuant to Article 4(2), the bodily injuries or physical or mental damage have to be sufficiently substantial to give rise to state compensation, which means that they must lead to a declaration of a certain level of permanent disability or a situation of temporary disability for more than six months. State compensation cannot be obtained if compensation from the perpetrators has been decided in a court judgment. That said, if the defendant is declared totally or partially bankrupt, the victim can benefit from state compensation, to the maximum level of what was established in the judgment. Requests must be filed within a year from the date of the crime (which needs to be reported to the authorities) and be addressed to the Ministry of Economy. Negative decisions can be appealed to the National Commission for the Assistance of Victims of Violent Crimes and Crimes against Sexual Freedom.

223. The Action Plan to Combat THB for Sexual Exploitation envisaged the creation of a fund with the assets confiscated from traffickers, to be used to assist victims of trafficking and to strengthen police action. However, no such fund has been set up.

224. GRETA notes that the information provided to victims of trafficking during the identification procedure (see paragraph 148) refers to the right to free legal assistance, but not to the right to compensation from the traffickers or the State. According to NGOs, compensation is rarely included in guilty verdicts. When compensation is awarded, it is reportedly too low to compensate the damages suffered by victims of trafficking and does not cover lost earnings. The experience of NGOs also suggests that victims of THB do not receive compensation because the defendant is declared bankrupt and has no assets in his/her name. NGOs have expressed concerns about the lack of police investigation into the profits made by traffickers, as well as the failure of judges to order measures to freeze and confiscate assets. The Spanish authorities have indicated that in 2012 victims of trafficking received compensation from perpetrators in four judgments based on Article 177 bis of the CC, the amounts granted ranging between 8 000 euros and 60 000 euros. GRETA welcomes the fact that the first judgments based on Article 177 bis of the CC have included compensation for the victims of trafficking.

225. Law 1/1996 on Free Legal Aid applies to Spanish nationals, EU citizens and third-country nationals lacking the necessary resources to initiate proceedings. Regarding third-country nationals, they are entitled to legal assistance, free defence and representation in proceedings that may lead to being refused entry in Spain, expelled or returned from Spain, and in all proceedings concerning asylum. Victims of trafficking are not included as such in the legislation currently in force, but the Ministry of Justice has indicated that adult and child victims of trafficking and victims of gender-based violence will be eligible for free legal aid under the revised law which will include an expanded scope of beneficiaries.[67]

226. **GRETA urges 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**.

[67] See news item at: www.mjusticia.gob.es/cs/Satellite/es/1215197775106/Medios/1288777493730/Detalle.html.

227. **GRETA considers 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**.

228. **Further, GRETA considers 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.**

f. Repatriation and return of victims

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

230. Article 59 bis of the Law on Foreigners and Article 145 of the Regulation on Foreigners provide the basis and conditions for facilitating the assisted return of victims of trafficking to their country of origin. The Spanish authorities have informed GRETA that identified victims of trafficking can request assisted return to their country of origin, together with their children. That said, return can be delayed if the presence of the victim in Spain is needed in connection with the investigation or the criminal procedure (see Article 145(1) of the Regulation on Foreigners). In such a case, the request for assisted return is processed as soon as the reasons for keeping the victim in Spain no longer apply.

231. The Spanish authorities have indicated that victims of trafficking have specific needs and their return requires careful preparation, sometimes including the involvement of the police and support organisations to protect the victims from reprisals or re-trafficking. Organisations such as IOM also get involved in these cases. The assisted voluntary return programme for victims of trafficking is funded by the General Directorate for the Integration of Migrants at the Ministry of Employment and Social Security, with the support of the European Return Fund. It covers third-country nationals including refugees, displaced persons, asylum seekers, victims of trafficking, persons under State protection for humanitarian reasons and irregular immigrants. The two requirements are to be in a situation of social vulnerability and need,[68] and to have stayed in Spain for at least six months.

232. Organisations with recognised experience in assisting victims of trafficking may propose the inclusion of the victim in the programme of voluntary return for migrants vulnerable to social exclusion. The application for assisted return must be addressed to the State Secretariat for Immigration and Migration and can be submitted to any of the authorities in contact with the victim of trafficking. The General Secretariat for Immigration and Migration, at the Ministry of Employment and Social Security, manages and monitors the assisted voluntary return programme, which includes evaluation, prior to departure, of the risks and safety of the victim, transport and assistance in the points of departure, transit and destination.

233. The assisted voluntary return programme includes information and guidance on the procedures for obtaining the documentation necessary for the return journey; psychological support; the return

[68] The list of requirements includes: to suffer hardship and social vulnerability, supported by a report from the social services of the local authority where the person has resided or by the specialised entity managing the return (being in an irregular situation is considered as a situation of hardship and social vulnerability), and to belong to a socially vulnerable group such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

fare for the person concerned and their third-country family members, including travel expenses within Spain from their place of residence to the point of departure; financial aid to settle in upon arrival in the country of origin; unforeseen medical or other expenses; and escorting the applicant if necessary due to illness, disability or other circumstances.

234. The Framework Protocol establishes that measures to assist child victims of trafficking must include support mechanisms guaranteeing accompanied return to the place of origin, including the return of child victims of trafficking from EU countries. The child's best interests must prevail and the evaluation of needs must take into account the benefits for the child of recovering in a family context. That being said, concerns have been expressed by NGOs that the competent authorities occasionally deport children victims of trafficking without carrying out a proper risk and needs assessment to make sure that the child will not be returned to a family who was involved in the trafficking. The Prosecution Service has denied that any child victim of THB has been deported. The Spanish authorities have informed GRETA that Instruction 2/2013 on Action following the Detection of Unaccompanied Foreign Minors or Minors at Risk, issued by the Police Central General Department of Foreigners and Borders, is applied regarding both unaccompanied foreign minors and accompanied minors at risk. The National Police is developing a "Protocol for Action for Unaccompanied Minors" in order to implement Instruction 2/2013. Decision 2/2012 of the Prosecution Service is also applied to unaccompanied minors. According to the Spanish authorities, the National Police contacts the child's family members or other institutions in their home countries to verify whether the child's security, development and physical integrity can be ensured, failing which they are not returned.

235. GRETA welcomes the inclusion of victims of trafficking in the group of vulnerable third-country nationals who have access to an assisted voluntary return. The Spanish authorities have reported no cases of return of victims of trafficking in 2009-2011, but 21 victims of trafficking were assisted to return to their countries of origin in 2012 and 10 in the first quarter of 2013.

236. GRETA stresses that forced removals of possible victims of trafficking should be avoided. The shortcomings in the identification of victims of trafficking at borders and in reception centres for irregular migrants, as well as the lack of access to the asylum procedure for victims of trafficking, can result in victims of trafficking not being identified as such and being deported for irregular entry or stay in Spain. Another consequence is that identified victims of trafficking have to return to their country of origin at the end of the validity of their residence permits, with no possibility of being granted asylum or international protection. GRETA further notes that the lack of identity documents (see paragraph 185) can prevent victims of trafficking from accessing their right to a voluntary return to their country of origin.

237. **GRETA urges the Spanish authorities to ensure that victims and possible victims of trafficking are not forcibly removed from the country and that the assisted voluntary return scheme is made available to them and adapted to their needs, with due regard for their rights, safety and dignity. This implies informing victims of trafficking about existing programmes, protecting them from re-victimisation and re-trafficking and, in the case of children, fully respecting the principle of the best interest of the child.**

238. **Further, GRETA considers that the Spanish authorities should take steps to develop co-operation with countries of origin of victims of trafficking in order to ensure proper risk assessment and safe return, as well as their effective reintegration**.

4. Implementation by Spain of measures concerning substantive criminal law, investigation, prosecution and procedural law

a. Substantive criminal law

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

240. Under paragraph 1 of Article 177 bis of the CC, THB is punished by imprisonment of five to eight years. Pursuant to paragraph 9 of Article 177 bis, the penalties foreseen in this article shall be imposed without prejudice to the relevant penalty for Article 318 bis (offences against the rights of aliens) of the CC and other offences effectively committed, including those related to the relevant exploitation.

241. The aggravating circumstances for THB provided for in paragraphs 4, 5 and 6 of Article 177 bis of the CC include: (i) the trafficking puts the victim in serious danger; (ii) the victim is a minor; (iii) the victim is particularly vulnerable for reasons of health, disability or his/her situation; (iv) the perpetrator is a public official; (v) the offender belongs to an organisation or association of more than two persons, even if transitory in nature, which perpetrates human trafficking activities. These aggravating circumstances entail imprisonment from eight to 12 years, and in the case of more than one aggravating circumstance, the punishment is imposed in its upper half (i.e. from 10 to 12 years of imprisonment).

242. If a public official is involved in THB, in addition to the penalty of imprisonment he/she will be barred from public office for six to 12 years. When the offender belongs to an organisation or association of more than two persons, he/she will be barred from his/her profession during the period of the sentence. In the case of the managers, directors or persons in charge of the organisations or associations, the upper half of the punishment applied, which may be raised to the one immediately above it in degree.

243. According to paragraph 8 of Article 177 bis of the CC, provocation, conspiracy and solicitation to commit the offence of trafficking in human beings are punished with a penalty lower by one or two degrees to that of the relevant offence.

244. Under paragraph 10 of Article 177 bis of the CC, sentences by foreign courts imposed for THB offences shall have the effect of recidivism, except if the criminal record has been cancelled or may be so, pursuant to Spanish Law. An authentic certified copy of the foreign judgment is required. Public prosecutors are entitled to use all available tools of international judicial co-operation to obtain the above information.

245. 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 130 where GRETA invites the Spanish authorities to consider adopting legislative measures to criminalise the use of services with the knowledge that the person is a victim of THB, as stipulated by Article 19 of the Convention.

246. Articles 390-394 of the CC criminalise the forgery of public, official and business documents and Articles 395-396 criminalise the forgery of private documents. Persons trading false identity documents without having taken part in their production are also punished[69] and knowingly using false identify documents is criminalised.[70] The Spanish authorities have indicated that retaining, removing, concealing, damaging or destroying the travel or identity document of another person are not autonomous offences and, depending on the case, they would be assimilated to offences involving harm, coercion or theft. **GRETA consider that the Spanish authorities should review the legislation in order to fully reflect the substantive provisions of Article 20 of the Convention regarding the criminalisation of acts relating to travel or identity documents.**

247. In the case of legal persons being responsible for THB, paragraph 7 of Article 177 bis of the CC provides that the punishment shall be a fine from three to five times the profit obtained. Further, pursuant to the rules established in Article 66 bis of the CC, the judges and courts may also impose the penalties established in sub-sections b) to g) of Article 33, paragraph 7, of the CC, namely:

- dissolution of the legal person;
- suspension of its activities for a maximum of five years;
- closure of premises and buildings for a maximum of 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;
- barring from obtaining public funding and subsidies, contracting with the public sector and enjoying tax or social security contributions benefits and incentives for a maximum of 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.

248. The penalties listed above may be extended to the whole organisation or parts of it. The temporary closure of facilities and buildings, suspension of activities and judicial control may be ordered by during the pre-trial investigation. The Spanish authorities have indicated that penalties have been imposed on legal representatives of companies in THB cases. None of the five judgments handed down to date under Article 177 bis of the CC have concerned legal entities.

249. The reform of the CC in 2010 included provisions on the seizure and confiscation of assets and proceeds from a crime (Article 127 of the CC), in compliance with EU Framework Decision 2005/212 on the confiscation of crime-related proceeds, instrumentalities and property. The third monitoring report on the implementation of the Action Plan to Combat THB for Sexual Exploitation refers to the need for training on property investigations for officers working in specialised police units. The report also indicates that specialised police training courses on money laundering and property investigations were organised in 2011. GRETA draws attention to the importance of identifying and seizing, as early as possible, and then confiscating assets and proceeds of the offence of THB.

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

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

251. According to paragraph 11 of Article 177 bis 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”.

69 The penalty is from six months to three years of imprisonment and a fine.

70 The penalty in this case is from six months to one year of imprisonment and a fine.

252. Section II-9 of Circular 5/2001 of the Prosecution Service specifies that it is difficult to establish the nature, scope and effects of the above-mentioned provision, but no offences are *a priori* excluded from it. The Circular 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).

253. In addition, as mentioned in paragraph 193, the Law and Regulation on Foreigners and the Framework Protocol establish the possibility of exempting victims of trafficking in an irregular situation from administrative liability. This exemption has to be requested by the authority with which the victim is co-operating and the Government Delegate of the province where the infringement file was opened decides on it. The Government Delegate also decides on the temporary suspension of the infringement proceedings or expulsion order concerning the victim. GRETA is concerned by the link made between exempting victims of trafficking from responsibility for their irregular presence in the country resulting from being trafficked and co-operation with the authorities. GRETA underlines that once a victim of trafficking is identified and his/her irregular situation is part of having been subject to THB, exemption of responsibility should not be conditional upon co-operation with the authorities. **GRETA urges 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**.

254. Despite the legal provisions and guidance to prosecutors, NGO reports suggest that the non-punishment clause is not effectively applied in practice. GRETA stresses that it is incumbent on States to ensure full and effective implementation of the non-punishment principle.[71] **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 5/2001 of the Prosecution Service, and draw attention to the non-punishment principle in the training provided to relevant professionals (in particular law enforcement officials, prosecutors and judges)**.

c. Investigation, prosecution and procedural law

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

256. According to Article 105 of the Criminal Procedure Law (CPL), public prosecutors must start *ex officio* any legal action they consider appropriate in THB cases, regardless of whether there is a complaint by a victim. According to Article 44 of the CPL, criminal proceedings are public, which means that all victims of a criminal offence or those having suffered damage, regardless of their nationality, can take legal action. While in some cases there may be exceptions to this principle, it is not possible in THB cases.

257. Further, pursuant to Article 125 of the Spanish Constitution and Article 19 of the Organic Law of the Judiciary, Spanish citizens may engage in "popular action" in the manner and with respect to

[71] See "Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking", published by the Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings in 2013, in particular recommendation 23. Available at: http://www.osce.org/cthb/101002

those criminal trials as may be determined by law. Pursuant to Article 270 of the CPL, Spanish citizens and NGOs may file a complaint exercising popular action regardless of whether they have suffered damage as a result of the offence or not. The Spanish Supreme Court admits the possibility that criminal proceedings may go forward on the sole basis of popular action, even in cases where the Prosecution Service or the legal action started by the victim do not concur with it.

258. Pursuant to Chapter X of the Framework Protocol, the police unit responsible for the investigation of THB cases must inform the Prosecution Service of the territory where the offence was detected and send them a copy of the initial statement and any additional information, notwithstanding the referral of the case to the competent court. The police statement must be delivered by the fastest means and include information on the interviews, statements and other official records that provide evidence of the existence of a THB offence, along with the forms recording that the victim was informed of his/her rights. The police statement should include any prior police interventions and/or allegations regarding the victim or the presumed trafficker, as well as the criminal record of the latter and any medical reports on injuries sustained by the victim. If the investigation relates to THB for the purpose of labour exploitation, the provincial Labour and Social Security Inspectorate or equivalent regional body must be notified and their co-operation requested.

259. The Framework Protocol also provides for the involvement of forensic doctors, at the request of the judicial authorities, in investigations into THB. Chapter XII establishes that "within the sphere of their operations, forensic doctors shall ensure that the interview and examination of the victim is completed in full on one single occasion, avoiding secondary victimisation and repeated interviews, tests or additional examinations". However, GRETA was informed that victims may be referred to forensic doctors with some delay. GRETA notes that a forensic medical examination at an early stage can be in the interest of the victim as well as be useful at a later stage when claiming compensation.

260. The Spanish Ombudsperson's report on THB highlights good police practices in Catalonia where an electronic form has been introduced to report information on THB cases, with a separate questionnaire for different forms of exploitation. Further, during police raids in Catalonia, possible victims of trafficking are not taken immediately to police stations but are looked after by NGOs for a few days. The Catalonian police consider that this practice results in better communication with possible victims, increased co-operation and efficacy of police action.

261. In Spain, the use of special investigation techniques needs authorisation from the Prosecution Service. The Spanish authorities have informed GRETA that the techniques used to investigate THB cases are the same as those used to investigate other serious offences and include postal and telephone interceptions, asset investigations, monitoring and surveillance operations, undercover agents, joint investigation teams and controlled deliveries of money and goods. The annual report of the Prosecution Service for 2011[72] mentions the need to promote certain investigative techniques, currently underused, such as phone tapping, surveillance of persons and assets, search of data bases and internet, of particular relevance to THB cases, the collecting and analysis of confidential information, parallel financial investigations, electronic surveillance and covert operations, mixed investigation teams and the use of informers. GRETA recalls the importance of special investigation techniques within the meaning of Recommendation Rec(2005)10 of the Committee of Ministers to Member States on "special investigation techniques" in relation to serious crimes including acts of terrorism.

[72] Annual report presented to the Government by the Chief Prosecutor Mr Eduardo Torres-Dulce Lifante, Madrid, 2012. Available (in Spanish only) at: www.fiscal.es/cs/Satellite?c=Page&cid=1242052134611&language=es&pagename=PFiscal/Page/FGE_memorias&selAnio=2011

262. Prior to the entry into force of Article 177 bis in December 2010, THB cases were addressed through offences related to irregular migration, smuggling of migrants, forced prostitution, or crimes against the rights of foreign workers. The above-mentioned annual report of the Prosecution Service for 2011 mentions that, as Article 177 bis of the CC entered into force in December 2010, criminal proceedings under this article were initiated in only one case in 2010, but 64 investigations for THB were opened in 2011 (92% of them concerned sexual exploitation and the rest labour exploitation and the exploitation of begging). In 2012, the Prosecution Service initiated 212 proceedings related to THB; 84% of them concerned trafficking for the purpose of sexual exploitation, 13.4% for the purpose of labour exploitation, and 2.5% for the purpose of begging.

263. The annual report of the Prosecution Service for 2011 states that four of the proceedings initiated for THB for the purpose of labour exploitation involved Eastern European workers exploited in agriculture as seasonal fruit-pickers. Another case relates to a North-African victim trafficked for the purpose of domestic servitude. The report of the Spanish Ombudsperson refers to a pending case of THB for sexual exploitation in Galicia some 130 women, mostly Brazilian. The defendants reportedly include members of the police forces and civil servants.

264. The Spanish authorities have indicated that the number of convictions for THB was 11 in 2009, five in 2010 and nine in 2011, all of them involving deprivation of liberty. According to the authorities, this data is the result of a case-by-case analysis and even if the convictions preceded the entry into force of Article 177 bis, they are "true cases of trafficking in human beings". The first judgments under Article 177 bis of the CC were published between the end of 2012 and April 2013 by the Provincial Courts of Barcelona and Madrid. Six men and three women were sentenced in criminal cases involving five victims of trafficking for the purpose of sexual exploitation (including two victims who were children when the offence was committed). The sentences, which range from six to 22 years of imprisonment, are still not final.[73]

265. The majority of the criminal proceedings initiated for THB are based on denunciation by the victims themselves, directly or through NGOs, after being detected by police forces during raids or checks in the places where they are exploited[74] This means that the victim's testimony is often the only effective evidence, which has serious implications for the final outcome of the case. The Prosecution Service has indicated that changes in the victims' testimony were common, due to fear of the traffickers and psychological pressure that they can exercise throughout the proceedings, as well as victims going missing due to mistrust of the police and judicial systems. Public prosecutors generally request the testimony of the possible victim as pre-constituted evidence (see paragraph 269).

266. **GRETA considers that the Spanish authorities should strengthen their efforts to ensure that crimes related to THB for all types of exploitation are investigated and prosecuted promptly and effectively.**

267. **Further, GRETA considers that there is need for continuing to improve the specialisation and training of judges, prosecutors, police investigators and lawyers regarding THB and the rights of victims of trafficking.**

[73] See judgment No. 66/2012BE of 26 November 2012, Barcelona Provincial Court; judgment No. 677 of 26 December 2012, Madrid Provincial Court.

[74] According to the Intelligence Centre against Organised Crime (CICO), 2,375 inspections were carried out in 2011 by the national police and security forces in places where prostitution takes place.

d. Protection of victims and witnesses

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

269. The Framework Protocol (paragraph XI.1). refers to the legal duty of the Prosecution Service to safeguard victims and the need to ensure that victims of human trafficking are informed of any legal proceedings which could affect their safety. Further, it establishes that public prosecutors must ensure that the statements given by victims during the investigation are properly recorded so that they can be considered valid as pre-constituted court evidence during the court hearing when there are reasonable doubts about the victim's presence at the court hearing itself.

270. Public prosecutors must apply for the protection measures included in Organic Law 19/94 on the Protection of Witnesses and Expert Witnesses in Criminal Proceedings and the use of any tool to help protect the victim of trafficking in the court hearing, such as the use of video-conferencing to testify. The competent judicial authority assesses the seriousness of the danger for witnesses and their families and decides accordingly on the measures to apply, such as keeping confidential the witness's name, address, workplace and profession, or any other information that might serve to identify him or her, using the court's address rather than the witness's own address, and using procedures to prevent victims from being visually identified when they appear in court. Organic Law 19/94 provides that law enforcement agencies, the Prosecution Service and the judicial authority will ensure that no pictures or recordings of the witnesses are taken, and that all photographic and video material breaching this prohibition is confiscated. The public prosecutor can authorise police protection during the proceedings (and even after the proceedings if serious risks persist), a change of identity and the provision of means to start a new life in a different place.

271. Article 4 of the Organic Law 19/94 stipulates that the competent judge or court will decide on the reasonable grounds for maintaining, modifying or removing all or some of the protective measures and on whether it is necessary to adopt new measures. Paragraph 3 of Article 4 states that if any of the parties ask, with reasonable grounds, for the identity of the witnesses, the competent judge or court will have to provide the name of the witnesses, while respecting other protective measures. The anonymity of witnesses is therefore guaranteed during the investigations and up until the trial hearing, as the rights of the defendant must also be preserved, including the right to know the names of the witnesses admitted to testify before the court.

272. The testimony given by victims of trafficking, whether they are protected witnesses or not, during the investigation phase has evidentiary value only if it is repeated at the hearing. That said, in case of impossibility for the victim to appear before the court at the hearing, the testimony given during the investigation must be read completely, as pre-constituted evidence, so that it can be contested by the parties.

273. The Prosecution Service has indicated that the 1994 Organic Law on the Protection of Witnesses does not adequately address the protection needs of victims and witnesses in THB cases. One of the first judgments on THB under Article 177 bis of the CC, published in November 2012 by Barcelona's Provincial Court (see paragraph 274), highlights the need to review and update this in order to guarantee the safety of those who co-operate with the authorities.[75]

[75] Available at: genderjusticejournal.wordpress.com/2013/04/12/trata-de-personas-cambios-legislativos-y-su-implementacion-en-espana/

274. GRETA is concerned by reports made by NGOs that, in practice, the protection of victims before and during trials is largely insufficient. It is claimed that contacts between victims and the defendants outside the courtroom are frequent, that the anonymity of victims is often not adequately ensured during the trials, and that there are concerns of data protection (names of victims appearing in the press). GRETA underlines that inadequate protection of victims will lead to their reluctance to testify or co-operate in other ways with the authorities.

275. The Spanish authorities have informed GRETA that child victims of trafficking must be protected in accordance with the Child's Protection Act, the Criminal Code and the Law and Regulation on Foreigners. The public institutions having the child's guardianship and the Prosecutor's Office can propose specific measures for the protection and care of child victims of trafficking during criminal proceedings.

276. **GRETA urges the Spanish authorities to ensure that victims and witnesses of human trafficking are effectively protected during the criminal proceedings and beyond, if necessary, in accordance with Article 28 of the Council of Europe Convention. To this end, the Spanish authorities should review the appropriateness of the current system for the protection of victims and witnesses of THB, both adults and children.**

5. Concluding remarks

277. GRETA welcomes the steps taken by the Spanish authorities to combat trafficking in human beings for the purpose of sexual exploitation, including the adoption of the National Action Plan to Combat Trafficking in Human Beings for Sexual Exploitation, the setting up of an Inter-Ministerial Monitoring Committee to evaluate its implementation, and the provision of funding for specialised organisations to provide assistance to victims of THB for the purpose of sexual exploitation. The introduction of the offence of THB in the Criminal Code in 2010, which covers different types of exploitation in line with the Convention, is also a positive development.

278. That said, a number of important challenges remain to be tackled through legislative, policy or practical measures in order to meet the requirements of the human rights-based approach outlined in paragraphs 45-53. Action to combat THB should address all victims of trafficking for all forms of exploitation, including through a comprehensive national action plan against THB. GRETA highlights the need to raise awareness of trafficking for the purpose of labour exploitation and child trafficking and strengthen co-ordination between the State and regional authorities, including the different police forces.

279. Certain aspects of the present anti-trafficking action in Spain raise concerns as to their potential for contravening the core human rights principles and values required by the Convention. Thus the Spanish authorities must review the identification procedure of victims of trafficking with a view to ensuring that possible victims 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. GRETA also stresses the need to adopt clear minimum standards of assistance for all victims of trafficking, regardless of their sex, age, nationality and type of exploitation.

280. Further, the rules and application of the recovery and reflection period should be reviewed to ensure that all possible victims of trafficking are systematically informed of the possibility to benefit from such a period. Efforts should also be strengthened to ensure that victims of trafficking can take full advantage of the right to be granted a temporary residence permit due to their personal situation or for co-operating with the authorities.

281. The Spanish authorities should ensure that victims or possible victims of trafficking are not forcibly removed from the country and that the assisted voluntary return scheme is adapted to their needs and takes due regard of their rights, safety and dignity.

282. Strengthening the effectiveness and expeditious investigations and prosecutions of THB-related offences is another area where further action is needed in order to apply the victim-centred approach promoted by the Convention.

283. All relevant professionals who may come into contact with possible victims of trafficking, including law enforcement officials, prosecutors, judges, labour inspectors and social workers, need to be continuously trained on the need to apply a human rights-based approach to action against THB on the basis of the Convention and the case-law of the European Court of Human Rights.

284. GRETA invites the Spanish authorities to keep it informed on a regular basis of the developments in the implementation of the Convention and looks forward to continuing the good co-operation in further efforts in achieving the purposes of the Convention.

Appendix I: List of GRETA's proposals

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

1. GRETA encourages the Spanish authorities to strengthen their human rights approach to combating THB in the next human rights plan, including by addressing THB as a serious violation of the human rights of victims of trafficking.

Definition of "trafficking in human beings"

2. GRETA considers that the Spanish authorities should include the means of "abduction" and "giving or receiving of payments or benefits to achieve the consent of a person having control over another person" in the legal definition of trafficking in human beings.

Comprehensive approach and co-ordination

3. GRETA urges the Spanish authorities to take steps to ensure that national and regional action to combat THB is comprehensive, in particular by:

- addressing all victims of trafficking for all forms of exploitation in the anti-trafficking legal and policy framework, while taking into account the gender-dimension of trafficking, including through a comprehensive national action plan against THB;

- increasing efforts to prevent and detect THB within Spain, as well as addressing the situation of Spain as a country of transit;

- strengthening prevention and protection measures that address the particular vulnerability of children to trafficking.

4. Further, GRETA urges the Spanish authorities to strengthen co-ordination and co-operation:

- between State and regional authorities, including between the National Police, Civil Guard and regional police forces;

- between all competent authorities and civil society, in particular by clarifying the modalities of the participation of civil society in the development, implementation and evaluation of anti-trafficking measures and policies in Spain (at state level and in the autonomous communities), and by including civil society in the monitoring process established by the Framework Protocol for the Protection of Victims of Trafficking.

5. GRETA also considers that the Spanish authorities should analyse the implications of having different legal bases for the identification, referral and assistance of victims of trafficking depending on whether they are EU or third-country nationals, as this may negatively affect their rights under the Convention.

6. GRETA invites the Spanish authorities to commission an independent evaluation of the Action Plan to Combat THB for Sexual Exploitation, as a tool for assessing the impact of its activities and for planning future policies and measures to combat THB.

7. Further, GRETA invites the Spanish authorities to consider appointing a national rapporteur or other mechanism for monitoring the anti-trafficking activities of public authorities and the implementation of national legislation requirements (see Article 29, paragraph 4, of the Convention and paragraph 298 of the Explanatory Report).

Training of relevant professionals

8. GRETA considers that the Spanish authorities should take further steps to provide specialised and regular training about THB to all relevant professionals, in particular national and regional law enforcement agents (including border police), labour inspectors, social workers, child protection officers, visa officers, asylum officials, judges and prosecutors. Such training should address THB as a serious violation of human rights and cover the rights of victims of trafficking, including the protection needs of child victims of trafficking. Future training programmes should be designed with a view to improving the knowledge and skills of relevant professionals to enable them to identify victims of trafficking, to assist and protect them, taking into consideration their gender and age, to facilitate compensation for victims, and to secure convictions of traffickers.

Data collection and research

9. GRETA urges 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, etc.). This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection, including when NGOs working with victims of trafficking are asked to provide information for the national database. The data collection system should contribute to the preparation, monitoring and evaluation of anti-trafficking policies.

10. GRETA considers that the Spanish authorities should continue conducting and supporting research on THB-related issues as an important source of information for future policy measures. Areas where further research is needed in order to shed more light on the extent of THB in Spain include trafficking for the purpose of labour exploitation, internal trafficking, child trafficking and the incidence of trafficking among irregular migrants and asylum seekers.

International co-operation

11. GRETA considers that the Spanish authorities should continue their efforts to strengthen international co-operation with governmental and non-governmental actors in order to prevent and combat all forms of THB, assist and protect victims of trafficking, and investigate and prosecute human trafficking cases.

12. Further, GRETA invites the Spanish authorities to evaluate the international co-operation activities carried out so far in order to focus future action on key priorities with a view to maximising the impact of the reduced financial resources.

Measures to raise awareness and discourage demand

13. GRETA urges the Spanish authorities to develop measures to raise awareness of THB for the purpose of labour exploitation. Information and education activities should also be taken to raise awareness about THB among Spanish nationals, including children. The Spanish authorities should plan future information and awareness-raising and education campaigns with the involvement of civil society, on the basis of research and impact assessment of previous measures, and focusing on the needs identified.

14. GRETA also urges 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;
- 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

15. GRETA invites the Spanish authorities to consider adopting legislative and other measures to criminalise the use of services provided by victims of trafficking, with the knowledge that the person is such a victim.

16. Further, GRETA invites the Spanish authorities to continue contributing to prevention activities to raise awareness of THB in the main countries of victims trafficked to Spain.

Border measures to prevent THB and measures to enable legal migration

17. GRETA urges 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, from a human rights and a victim-centred approach, to law enforcement officers, including border police, with clear instructions on how to proceed.

18. GRETA also considers that 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;

- 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 for sexual and labour exploitation, as well as to inform them of their rights and where to go for help and advice.

Identification of victims of trafficking in human beings

19. GRETA urges the Spanish authorities to review the identification procedure of victims of trafficking with a view to ensuring that possible victims 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, the Spanish authorities should:

- 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;

- ensure appropriate co-ordination and exchange of information between all relevant actors involved in the identification procedure;

- ensure that the indicators and other tools used for the identification of victims of trafficking cover all types of THB and that their application is duly monitored and evaluated;

- allow enough time for the identification of victims of trafficking, taking into account the traumatic experience suffered and the need for sufficient time to gather all the necessary information and decide on the identification;

- ensure the quality and availability of interpreters during the identification process, and provide the information document with the rights of victims of trafficking in a language that they can understand;

- inform in writing the persons concerned, in a language that they understand, about the outcome of the identification procedure;

- adopt a proactive approach to the identification of victims of trafficking for the purpose of labour exploitation, in particular in the sectors most at risk such as agriculture, construction, textile, restaurants, hotels and domestic work;

- improve the detection and identification of victims of trafficking among irregular migrants through a proactive approach which requires regular training on THB and the rights of victims for immigration, border police and asylum officers, including staff working at the CIEs and CETIs;

- take into account the special needs and circumstances for the identification of child victims of trafficking, which includes the setting up of a specific referral mechanism for children involving child specialists, child protection services, and specialised police and prosecutors.

Assistance to victims

20. GRETA considers that a specialisation of lawyers providing free legal assistance to victims and presumed victims of trafficking, not only in the case of sexual exploitation but all types of exploitation, should be reproduced in other parts of Spain.

21. GRETA urges the central and regional authorities in Spain to ensure that all victims of trafficking are provided with adequate support and assistance, from their identification through to their recovery, and in particular to:

- adopt minimum standards for assistance to all victims of trafficking, regardless of their sex, age, nationality and type of exploitation, and providing adequate funding to maintain these standards;

- ensure that safe and suitable temporary accommodation is provided to all victims of trafficking, adapted to their needs;

- ensure access to health services for all victims of trafficking in Spain;

- enable victims of trafficking lawfully resident in Spain to have access to the labour market, vocational training and education as a form of rehabilitation;

- ensure that undocumented foreign victims of trafficking have effective access to assistance measures by providing them with temporary identity documents;

- ensure that children victims of trafficking benefit from the assistance measures provided by the Convention, in a way which is tailored to their needs;

- provide specialised training to all professionals responsible for the provision of assistance and protection measures to victims of trafficking, including to lawyers giving free legal assistance to victims of trafficking;

- monitor the system of assistance to victims of trafficking and adapt it accordingly to ensure that it corresponds to the victims' needs.

Recovery and reflection period

22. GRETA urges 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 offered one 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 to recover 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. The Spanish authorities should also address the reasons why so few victims of trafficking apply for and are granted a recovery and reflection period.

23. Further, GRETA considers 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.

Residence permits

24. GRETA considers 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 granting a residence permit to victims of trafficking on the basis of their personal situation and for co-operation with the authorities;

- ensuring that the competent authorities are provided with updated information and receive adequate training to ensure a harmonised application of those criteria across Spain;

- setting a timeframe for the processing of applications for residence permits for victims of trafficking;

- 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.

25. Further, GRETA considers that the Spanish authorities should strengthen their efforts to ensure that measures taken to implement the Convention do not affect the rights of adult and child victims of trafficking under international human rights law, in particular regarding access to international protection and the respect of the principle of *non-refoulement*, in line with Articles 14(5) and 40(4) of the Convention.

Compensation and legal redress

26. GRETA urges 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.

27. GRETA considers 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.

28. Further, GRETA considers 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.

Repatriation and return of victims

29. GRETA urges the Spanish authorities to ensure that victims and possible victims of trafficking are not forcibly removed from the country and that the assisted voluntary return scheme is made available to them and adapted to their needs, with due regard for their rights, safety and dignity. This implies informing victims of trafficking about existing programmes, protecting them from re-victimisation and re-trafficking and, in the case of children, fully respecting the principle of the best interest of the child.

30. Further, GRETA considers that the Spanish authorities should take steps to develop co-operation with countries of origin of victims of trafficking in order to ensure proper risk assessment and safe return, as well as their effective reintegration.

Substantive criminal law

31. GRETA consider that the Spanish authorities should review the legislation in order to fully reflect the substantive provisions of Article 20 of the Convention regarding the criminalisation of acts relating to travel or identity documents.

Non-punishment of victims of trafficking in human beings

32. GRETA urges the Spanish authorities to remove the reference to collaboration with the authorities for victims of trafficking to be exempted from the responsibility derived from their irregular stay in Spain.

33. 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 5/2001 of the Prosecution Service, and draw attention to the non-punishment principle in the training provided to relevant professionals (in particular law enforcement officials, prosecutors and judges).

Investigation, prosecution and procedural law

34. GRETA considers that the Spanish authorities should strengthen their efforts to ensure that crimes related to THB for all types of exploitation are investigated and prosecuted promptly and effectively.

35. Further, GRETA considers that there is need for continuing to improve the specialisation and training of judges, prosecutors, police investigators and lawyers regarding THB and the rights of victims of trafficking.

Protection of victims and witnesses

36. GRETA urges the Spanish authorities to ensure that victims and witnesses of human trafficking are effectively protected during the criminal proceedings and beyond, if necessary, in accordance with Article 28 of the Council of Europe Convention. To this end, the Spanish authorities should review the appropriateness of the current system for the protection of victims and witnesses of THB, both adults and children.

Appendix II: List of public bodies and intergovernmental and non-governmental organisations with which GRETA held consultations

Public bodies

- Ministry of Ministry of Foreign Affairs and Co-operation
  - Spanish Agency for International Development Co-operation
  - Directorate General for Migration Issues
  - Human Rights Office
- Ministry of the Interior
  - Cabinet of the State Secretary for Security
  -
- Ministry of Health, Social Services and Equality
  - Government delegation for Gender-based Violence
  - Under-Directorate General for Children
- Ministry of Employment and Social Security
  - Directorate General for the Integration of Immigrants
  - Service for International Protection Programmes
  - Service for Special Programmes
  - Under-Directorate General for Inspection concerning Social Security, Irregular Economy and Immigration
  - Under-Directorate General for Co-ordination of Labour Relations issues, Prevention of Labour Risks and Equality Measures
- Ministry of Education, Culture and Sport
  - National Centre for Educational Innovation and Research
- Ministry of Industry, Energy and Tourism
  - State Secretariat for Tourism
- General Council for the Judiciary (CGPJ)
- Spanish Ombudsperson
- Spanish Federation of Provinces and Municipalities (FEMP)
- Autonomous Community of Madrid
  - General Directorate for Women
- Autonomous Community of Andalusia
  - Victims Assistance Service
  - Public Prosecution Service
  - Specialised Network of Legal Aid Lawyers on THB
  - Women's Institute
  - Department of Presidency and Equality
  - Department of Justice and Interior: DG of Gender-based Violence and Victims Assistance, DG of Migration Policies, DG of Juvenile Justice and Co-operation, DG of Interior, Emergency and Security
  - Department of Health and Social Welfare
- Autonomous Community of Catalonia
  - Department of Justice: Secretariat for Relations with the Judicial Administration and General Directorate of Criminal Law and Youth Justice
  - Department of Interior: Regional Police (*Mossos d'Esquadra*)
  - Department of Health: Technical commission on prostitution and THB for the purpose of sexual exploitation, and Programme for AIDS prevention and assistance
  - Department of Employment and Enterprise
  - Unit on Violence against women in Barcelona (Government Delegation)
  - Municipality of Barcelona
  - Catalonian Women's Institute
  - Catalonian Ombudsman
- Public Prosecution Service

- Co-ordination for Alien Issues
- Prosecution Service for Aliens Issues in Catalonia

Intergovernmental organisations

- International Organisation for Migration (IOM)
- UNHCR representative in Spain: ACNUR

Non-governmental organisations

- ACCEM (Spanish Catholic Commission for Migration Association)
- Amnesty International
- "Antena Sur" NGO network in Andalusia
- APRAMP (Association for the Prevention, Reintegration and Assistance of Prostituted Women)
- Caritas
- CC.OO. (*Comisiones Obreras,* trade union)
- CEAR (Spanish Commission for the Assistance of Refugees)
- CONFER (Spanish Confederation of Religious institutions)
- FAPMI- ECPAT Spain
- Hetaira
- Red Cross
- Progressive Women Foundation
- Cruz Blanca Foundation
- Tierra de Hombres Foundation
- IEPALA (Latin America and Africa Political Studies Institute)
- Médicos del Mundo
- Mujeres en Zona de Conflicto (Women in Conflict Areas)
- Hope Project (*Proyecto Esperanza*)
- Save the Children
- SICAR-Cat (Catalonian NGO network against THB)
- UGT (*Unión General de Trabajadores,* trade union)
- Villa Teresita
- Women's Link Wolrdwide

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 Spanish authorities on 29 July 2013 and invited them to submit any final comments. The Spanish authorities' comments, submitted on 13 September 2013, are reproduced hereafter.

The Spanish Government would like to express its gratitude to the Group of Experts on Action against Trafficking in Human Beings (GRETA) for their constructive report on the implementation by Spain of the provisions of the Council of Europe Convention on Action against Trafficking in Human Beings. In particular, it would like to thank Mr Helmut Sax and Ms Diana Tudorache, members of GRETA, as well as Ms Carolina Lasén Díaz and Mr Gerald Dunn, administrators at the Convention on Action against Trafficking in Human Beings, who made the evaluation visit to Spain.

The Spanish Government is also grateful to Ms Petya Nestorova, Executive Secretary of the Secretary of the Council of Europe Convention on Action against Trafficking in Human Beings.

The Spanish authorities take good note of the recommendations of the report and they consider it a good guide to improve their work. Nevertheless, these authorities would like to make the following comments:

MINISTERIO
DE SANIDAD, SERVICIOS SOCIALES
E IGUALDAD

SECRETARÍA DE ESTADO DE
SERVICIOS SOCIALES E IGUALDAD

Delegación del Gobierno para la
Violencia de Género

Subdirección General de Coordinación
Interinstitucional en Violencia de
Género

COMMENTS ON THE REPORT CONCERNING THE IMPLEMENTATION OF THE COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS (29TH JUNE 2013 REPORT).

COMMENTS TO THE REPORT

The Government Delegation against Gender-based Violence, in the scope of its competences, presents the following comments to the Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings:

- **Interministerial Monitoring Committee in charge of the monitoring and evaluation of the Comprehensive Plan to combat trafficking for sexual exploitation 2009-2012 (paragraph 17):**

  The Inter-ministerial Monitoring Committee in charge of the monitoring and evaluation of the National Action Plan against trafficking for sexual exploitation approved, in its meeting held on the 16th July 2013, the IV Annual Report on the implementation of the Plan, related to activities developed in 2012. The content of the report was examined by the Spanish Council of Ministers on its meeting of 6th September.

  For further information, the report is available in: http://www.msssi.gob.es/ssi/violenciaGenero/tratadeMujeres/planIntegral/home.htm

- **Monitoring Committee of the Framework Protocol for the Protection of Victims of Trafficking (paragraph 30):**

  Regarding the participation of specialized NGOs in the Monitoring Committee, the Government Delegation against Gender-based Violence informed them in the meeting of the Social Forum against trafficking for sexual exploitation (28th February 2013), that they were invited to submit their concerns and proposals regarding this matter to the Government Delegation (Chair and Secretary of the Social Forum and of the Monitoring Committee of the Framework Protocol) in order to include the issue in the Agenda of the Monitoring Committee meetings.

The above proposal was based on the agreement made by the Monitoring Committee members in its meeting of 7th June 2012, to give voice to the organisations specialized in assisting and protecting victims. The Committee also decided that, in order to receive information about concrete matters concerning these organisations, one or more specialized organisations could be invited to attend its meetings.

- **Legislation on access to public Health Care in Spain (paragraph 177):**

Spanish legislation on access to public Health Care has recently changed through the Royal Decree 576/2013, of 26th July, that establishes basic criteria to provide access to health care of people who are not beneficiaries of the National Health Care System. This regulation modifies the Royal Decree 1192/2012, of 3rd August, concerning the regulation of the conditions to be beneficiary of the National Health Care System financed with public funds.

This new regulation extends to victims of trafficking the access to free health care on the conditions of the basic common portfolio of health services throughout the National Health System regulated in Article 8 bis of Law 16/2003, of May 28th, not only access to emergency, maternity services and children medical care.

- **Free legal assistance to victims of trafficking (paragraph 178):**

The Royal Decree Law 3/2013, of 22nd February, recognizes, from its approval, free legal assistance for victims of gender violence and trafficking in all judiciary and administrative processes iniciated as a consequence of their victim condition and regardless of the economic situation of the victim.

The right to free legal assistance includes barrister and solicitor and judiciary taxes exception.

Madrid, September 12th 2013

MINISTERIO
DEL INTERIOR

DIRECCIÓN GENERAL DE POLÍTICA INTERIOR

SUBDIRECCIÓN GENERAL DE ASILO

COMMENTS ON GRETA'S FINAL REPORT

Title V of Law 12/2009 (dated October 30th), that regulates the right to asylum and to subsidiary protection, is devoted to minors and other vulnerable persons, in order to allow due consideration of the specific circumstances of applicants and beneficiaries of international protection who are in a situation of vulnerability, such as "minors, unaccompanied minors, disabled persons, elderly persons, expectant mothers, single-parent families with minors, persons having been subject to torture, rape or any other serious form of psychological, physical, or sexual violence, and **victims of trafficking in human beings**". Article 46, in particular, stipulates that, in the terms that shall be set through regulatory development, the specific circumstances of applicants and beneficiaries of international protection who are in a situation of vulnerability (among which victims of THB are expressly mentioned), shall be taken into account.

It must be noted that the Law includes the recognition of refugee status, alongside other causes of persecution, when there is a well-founded fear of **gender-motivated persecution**. In light of the prevailing circumstances in the country of origin, persons fleeing their countries of origin because of well-founded fears of suffering gender-motivated (and/or age-motivated) persecution are included in the Law although these situations alone cannot, by themselves, cause the refugee status to be recognized.

It is also important to underline the **role conferred to the UNHCR** throughout the procedure of determination of protection needs, which becomes an additional guarantee to the established system. It allows its participation, not only throughout the procedure, but at the moment of resolution of the dossiers, which is **a distinctive trait of the Spanish system**, unparalleled in comparable European countries.

Additionally**,** the international protection procedure includes, as a rule applicable to all cases, the applicant's inherent right to free legal assistance and to an interpreter, as well as the right to healthcare and to the specific social benefits of the different programmes and situations established in the Asylum Law. In every application for international protection, the specific situation of the applicant is taken into account, especially if he/she is considered to be in a situation of vulnerability, and in such instances, measures are taken to provide a differentiated treatment. The reinforcement of **guarantees in the process of granting international protection** is to be noted, in particular, through **interpretational assistance and free legal assistance**.

When in the application of the Framework Protocol for the Protection of Victims of Trafficking in Human Beings (from October 2011), indications are found that the person applying for international protection could be a victim of THB, the Asylum and Refugee Office, in carrying out the procedure, informs the General Immigration and Borders Police Division. The application for international protection is continued and processed until a decision is proposed and adopted.

For as long as their application is processed and studied, applicants are provided, if deprived of economic resources, of shelter and social services necessary to satisfy their basic needs, within the available programmes and specific services. They are as well documented as applicants for international protection, and their documents are renewed periodically while their application is studied, and they are authorized to work, after a period of six months from the moment of their application.

Spain **scrupulously respects the principle of "non refoulement" and permanence in its territory is guaranteed** to all applicants of international protection until their applications are decided upon.

Persons kept in Internment Centres for Foreigners, who are in process of expulsion, can seek apply for international protection in Spain, and they are released in case their application is admitted to procedure.

There is, therefore, no specific difficulty for victims of THB to apply for International protection, although this does not prejudge the resolution of their applications, in accordance with the 1951 Geneva Convention provisions and with the aforementioned Law 12/2009 currently in force, and with the provisions of the Council of Europe Convention on Action against Trafficking in Human Beings, with the legal modification brought by Organic Law 2/2009, which establishes the system of protection for victims of THB as well as the October 2011 Framework Protocol for the Protection of Victims of Trafficking in Human Beings.

Reference to epigraphs (213/214/215/217 in fine/219/236) of the report.

Madrid, August 2013

Centre for Intelligence against Organised Crime (CICO)

§94 (page 28, corresponding to §94, page 26, of the draft submitted in June). In its draft report, GRETA requested to know the aim of the information collected by the CICO and in particular if those data referred exclusively to cases of trafficking for the purpose of sexual exploitation. Upon perusal of the new wording of this section, the answer provided by this Centre is reiterated in the sense of stressing that, although the trafficking database collects only data related to sexual exploitation, it is ready to receive and make use of data related to human trafficking for the purpose of labour exploitation.

§98 (page 28), newly inserted into the final report. With regard to the inclusion of this new paragraph, the CICO clarifies that the discrepancy between the data provided by CICO, the Prosecution Service, and Labour and Social Security Inspectorate, is basically due to the different sources of their respective data. The CICO derives its data from police sources such as police reports and inspections related to trafficking for the purpose of sexual exploitation, whereas the Prosecution Service uses data from court proceedings and, lastly, the Labour and Social Security Inspectorate includes the cases of trafficking for the purpose of labour exploitation.

§154 (page 39, corresponding to §38, page 155 of the draft submitted in June). In the draft GRETA report indicated the disparity between the data provided by the CICO and by the Ombudsperson, who cites the CICO as the source, with regard to the number of victims, and requested clarification concerning the exact figure of victims of human trafficking. In this regard, and reiterating what was already answered by this Intelligence Centre, it is signalled that the figures offered by the Ombudsperson refer to the victims identified as a consequence of the opening of a police report in the presence of indicia of the crime of trafficking in human beings for the purpose of sexual exploitation. On the other hand, the figures mentioned in the GRETA report about victims detected in a risk situation (14.730 in 2011, citing the CICO as the source) refer to those victims detected on the occasion of inspection of establishments where prostitution takes place, and not as a consequence of a crime of human trafficking. In both instances, data are drawn off the CICO-managed database, but they are in no way comparable, since they refer to two different levels in human trafficking: on one the persons identified as victims of a crime of trafficking in human beings, and on the other those who are liable to be victims because they are in a risk situation, and who have been detected on the occasion of administrative inspections of establishment where prostitution takes place.