



# **GRETA**

Group of Experts on Action  
against Trafficking in Human Beings

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

First evaluation round

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## Preamble

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Executive summary

No victims of trafficking have been identified in Andorra as yet. During the evaluation of the implementation of the Convention by Andorra, the authorities were working on a draft law providing for an offence of human trafficking to be included in the Criminal Code. GRETA considers that it is crucial to adopt in internal law an offence of trafficking compliant with the Convention without delay.

Given the size of the country and its administration, there is currently no specialised authority on the fight against human trafficking. GRETA nonetheless calls on the Andorran authorities to establish co-ordination between the various actors that would be dealing with cases of trafficking in order to be fully operational if victims were to be identified.

Furthermore, the actors concerned (in particular the police, prosecutors and judges, labour inspectors and social workers) should be sensitised to human trafficking (definition, identification of victims, assistance and compensation of victims). Civil society (particularly NGOs and trade unions) and the public at large (including groups vulnerable to trafficking, such as children, women in situations of vulnerability and migrant workers) should also be informed about the risks of human trafficking.

GRETA considers that the Andorran authorities should also take all the necessary measures to make sure that assistance adapted to the needs of victims of trafficking can be provided in order to help them in their physical, psychological and social recovery (in particular, appropriate and secure accommodation, psychological and material assistance and counselling on their rights).

Moreover, GRETA calls on the Andorran authorities to provide in internal law for a recovery and reflection period that allows victims of trafficking to recover from the exploitative situation they were caught up in and take an informed decision on their possible co-operation with the investigation and prosecution authorities, in particular where the victims are not regularly in Andorra. The Andorran authorities should also provide in internal law for a renewable residence permit for victims of trafficking whose stay is necessary owing to their personal situation and for the purpose of their co-operation in the framework of the investigations or criminal proceedings. Finally, a specific framework for the return of victims of trafficking in their country of origin should also be put in place, in particular to ensure that a risk assessment on the possible return is carried out.

In addition to the introduction of a provision defining trafficking in internal law, the Andorran authorities should also provide for effective, proportionate and dissuasive sanctions against the perpetrators. The liability of legal persons should also be covered by law. Further, the Andorran authorities should examine measures that should be taken to secure compensation for victims of trafficking. In this respect, the confiscation of criminal assets linked to trafficking could contribute to it.

## I. Introduction

1. Andorra deposited the instrument of ratification of the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) on 23 March 2011. The Convention entered into force for Andorra on 1 July 2011.<sup>1</sup>

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

3. In accordance with Article 38 of the Convention, GRETA proceeded with the examination of the measures taken by Andorra 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 Andorra on 6 February 2013. The deadline for replying to the questionnaire was 1 June 2013. Andorra submitted its reply on 3 July 2013.

4. In preparation of the present report, GRETA used the reply to the questionnaire by Andorra, other information collected by GRETA and information received from civil society. In addition, an evaluation visit to Andorra took place from 27 to 29 November 2013, carried out by the following delegation:

- Ms Vessela Banova, member of GRETA;
- Mr Frédéric Kurz, member of GRETA;
- Mr Gerald Dunn, administrator, Secretariat of the Council of Europe Convention on Action against Trafficking in Human Beings.

5. During the visit, the GRETA delegation held meetings with the Minister of Justice and the Interior and representatives of his ministry, the Ministry of Health and Welfare, the Public Prosecutor's Office and the judiciary. The GRETA delegation also held talks with members of the Andorran Parliament (Consell General). These meetings took place in a spirit of close co-operation (see Appendix II).

6. The GRETA delegation held separate meetings with members of civil society, including the President of the Bar Association, as well as with a representative of the UNICEF office in Andorra. GRETA is grateful for the information provided by them.

7. In the context of the evaluation visit to Andorra, the GRETA delegation visited a shelter for women who are victims of violence, which could also accommodate victims of trafficking in human beings should the need arise.

8. GRETA is grateful for the assistance provided by the contact person appointed by the Andorran authorities, Ms Isabel Orobitg, legal officer at the Ministry of Justice and the Interior.

9. The draft version of the present report was adopted by GRETA at its 19th meeting (17-21 March 2014) and was submitted to the authorities of Andorra for comments on 31 March 2014. The Andorran authorities' comments were received on 10 June 2014 and were taken into account by GRETA when drawing up the final evaluation report, which was adopted at its 20th meeting (30 June-4 July 2014).

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

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

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

10. To date, no victims of trafficking in human beings have been identified by the authorities and there have been no reports suggesting that there might have been any. According to the Andorran authorities, this is probably due to the principality's special geographical situation (there are only two access roads: one from Spain and the other from France) and the fact that Andorra is not part of the Schengen area, which means that its borders are permanently controlled. They have also stressed that the principality had a small population (76 246 inhabitants in 2012<sup>2</sup>) and territory (467.63 km<sup>2</sup>), which they believed would make it more difficult to conceal any instances of trafficking. However, some groups could potentially be more exposed to risks of trafficking such as domestic workers or seasonal workers.

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

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

11. At international level, in addition to the Council of Europe Convention on action against trafficking in human beings, Andorra ratified the United Nations Convention against transnational organised crime in 2011. Andorra also signed up to the United Nations Convention on the elimination of all forms of discrimination against women in 1997 and ratified its optional protocol in 2002. In addition, Andorra ratified the United Nations Convention on the rights of the child in 1996 and its optional protocol on the sale of children, child prostitution and child pornography in 2001. Furthermore, Andorra is party to several other Council of Europe conventions in the criminal law field which are relevant to action against trafficking.<sup>3</sup>

12. Regarding the national legal framework established in Andorra for action against trafficking in human beings, the Criminal Code does not contain a provision criminalising human trafficking within the meaning of Article 4 of the Convention yet (see paragraph 25). The Andorran authorities have referred to several Criminal Code provisions whose subject-matter bears some similarities with trafficking, in particular on trafficking in organs, tissues, cells or human gametes (Article 121), slavery (Article 134), pimping (Article 152) and "trafficking in persons for the exploitation of their work" (Article 252). The Andorran authorities have also referred to the Law on immigration, dealing with conditions of entry, movement, stay and establishment as relevant in that it covers irregular migration and would enable the law enforcement agencies to avoid trafficking situations from occurring (for example through border controls and quotas for migrant workers).

#### **b. National Strategies and Action Plans**

13. At present, Andorra has no national strategy or action plan covering trafficking in human beings and there are currently no plans to introduce any.

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<sup>2</sup> Andorran Government Statistics department: [www.estadistica.ad](http://www.estadistica.ad)

<sup>3</sup> The European Convention on mutual assistance in criminal matters, the European Convention on extradition and the Convention on the transfer of sentenced persons.



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

14. The Andorran authorities have stated that there was no specialised structure for action against trafficking within the administration, given the limited number of staff which reflected the real needs of a state the size of Andorra. The public actors who, under present arrangements, would be required to intervene in a case of trafficking were the Borders and Foreigners Service of the police (for identification and investigation purposes), the Minister of Justice and the Interior (for the issue of exceptional stay permits), the Public prosecutor's office and courts (for judicial investigation and prosecution), and the Ministry of Health and Welfare (for assistance).

15. Several NGOs work to protect the rights of vulnerable persons such as women in need of protection or assistance (Associació de Dones d'Andorra) and migrants (Caritas Andorra, Andorran Red Cross). There are also a number of trade unions and a federation of trade unions (Federation of trade unions of Andorra or USDA).

16. Regarding the protection of children in difficulty, UNICEF has an office in Andorra which runs projects abroad but also takes action locally to promote the rights of the child.

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

#### 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

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

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

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

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

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

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

<sup>6</sup> See: *Siliadin v. France*, application No. 73316/01, judgment of 26 July 2005, ECHR 2005 VII; *C.N. and V. v. France*, application No. 67724/09, judgment of 11 October 2012, and *C.N. v. United Kingdom*, application No. 4239/08, judgment of 13 November 2012.

<sup>7</sup> Such as the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the United Nations Convention on the Rights of the Child and the Optional Protocol thereto on the sale of children, child prostitution and child pornography, and the United Nations Convention on the Elimination of All Forms of Discrimination against Women.

21. The Andorran authorities have pointed out that, under Article 5 of the Constitution, the Universal Declaration of Human Rights is applicable in Andorra. The Constitution also enshrines the physical and moral integrity, freedom and security of persons as well as their freedom of movement as fundamental rights. The Convention is integrated into the Andorran legal system from the moment of its publication in the official bulletin of laws and decrees.

22. There is a special procedure for ensuring respect of the fundamental rights recognised in the constitution. When a complaint, even a verbal one, is lodged with a judge, the judge convenes the parties concerned and examines their respective arguments. The procedure does not exceed 30 days and, upon its completion, a decision is handed down within five days. The decision may be appealed against before the regional court, which has 30 days in which to rule.

23. In addition, applications for constitutional review to guarantee the rights set out in the Constitution are also possible before the Constitutional Court.

b. Definitions of “trafficking in human beings” and “victim of THB” in Andorran law

i. *Definition of “trafficking in human beings”*

24. 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.

25. As mentioned above (paragraph 12), Andorra's Criminal Code does not contain a definition of THB within the meaning of the Convention. Nevertheless, the Andorran authorities have mentioned a draft law aimed at amending the country's legislation through the introduction of a definition of the offence of trafficking, complying with the Convention, in the course of 2014. In their comments on the draft report, the Andorran authorities have indicated that the draft law includes an offence of trafficking for the purpose of sexual exploitation, one of trafficking for the purpose of slavery, servitude and forced labour, and another offence of trafficking for the purpose of organ removal. GRETA draws attention to the fact that the list of types of exploitation provided for under Article 4 of the Convention is not exhaustive and that it is important that, given the rapidly evolving nature of trafficking, the offence of trafficking in internal law can be interpreted so as to cover new types of exploitation. **GRETA would like to be kept informed of the progress of the draft law.**

26. In the absence of a trafficking offence, the Andorran authorities have pointed out that there were a number of related offences that would make it possible, in their view, to prosecute the perpetrators of acts of trafficking. The Criminal Code makes provision for an offence of “trafficking in persons for the exploitation of their work” in Article 252, punishing anyone involved, for the purpose of gaining profit, in the recruitment or transportation of irregular migrants passing through or arriving in Andorra. GRETA notes that, despite its title, neither exploitation nor means are mentioned in the provision in question, which therefore has more to do with migrant smuggling than trafficking in human beings. There are also offences of trafficking in organs, tissues, cells or human gametes, pimping and trafficking in children with a view to altering their filiation.

27. Finally, there is a definition of slavery in Article 134 of the Criminal Code, which stipulates that “slavery shall be taken as meaning the situation where a person exercises any or all of the powers attached to the right of ownership, such as buying, selling, lending or exchanging, over another person”.<sup>8</sup>

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<sup>8</sup> Unofficial translation.

28. The Andorran authorities have argued that these different offences would make it possible, depending on the facts of a given case, for criminal responsibility to be established for the conduct or actions referred to in Article 4 of the Convention. Even so, GRETA emphasises that, while these offences may share some common ground with trafficking in human beings within the meaning of the Convention, they nevertheless relate to phenomena that are separate and different from it.

29. Under Article 119 of the Criminal Code, consent obtained illegally and the consent of minors or the mentally impaired or that of their legal representatives are not considered valid.

30. **GRETA urges the Andorran authorities to adopt a provision defining the offence of trafficking in human beings in line with the requirements of Article 4 of the Convention without delay.**

*ii. Definition of “victim of THB”*

31. 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.

32. The term “victim” is not defined in Andorran law but corresponds in practice to any person having suffered damage or harm resulting from a criminal offence.

33. The question of the definition of the term “victim of trafficking in human beings” is examined in more detail in the sections of the present report covering identification of victims and the measures of assistance available to them; there are also several proposals from GRETA on this point.

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

*i. Comprehensive approach and co-ordination*

34. One of the aims of the Convention is to design a comprehensive framework for the protection of and assistance to victims and witnesses. To be effective, any national action to combat THB must be comprehensive and multi-sectoral, and 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).

35. The Andorran authorities have stated that, in the absence of recognised cases of trafficking, there was currently no specific or ad hoc co-ordination around the issue of THB. They have explained that trafficking was not perceived as a threat in Andorra, as illustrated by the fact that no victim had been identified to date. However, they have emphasised that, given the small size of the administration and the contacts that could easily be established within it, co-ordination could be swiftly and informally put in place.

36. GRETA notes that there is an action protocol for cases of domestic violence which defines the roles of the authorities, with the setting up of a specialised department within the Ministry of Health and Welfare (see paragraph 70), and includes an official agreement with civil society. It considers that it would be beneficial to establish a similar framework for human trafficking, determining the responsibilities of each department, so that swift action could be taken in the event of any THB victims being identified.

37. For a comprehensive approach to trafficking in human beings, GRETA stresses the need to cater for the different types of trafficking that may arise, whether for sexual exploitation, labour exploitation or other purposes. NGO representatives have indicated that, while it is *a priori* difficult for an employer to hide a worker, given the size of the country, it is equally difficult for a worker suffering from difficult working conditions to openly complain, as he/she risks being ostracised given the limited size of the labour market in Andorra. Additionally, GRETA notes that several of its delegation's interlocutors in Andorra mentioned potential risks specifically involving domestic workers, particularly in homes outside urban centres.

**38. GRETA considers that the Andorran authorities should establish, in consultation with civil society, co-ordination between the different actors (for example, through an action protocol) that would be involved in the event of a trafficking case being identified.**

*ii. Training of relevant professionals*

39. There is no THB-related training for the different Andorran actors who might come into contact with potential trafficking victims. However, in 2012 and 2013, all staff of the Borders and Foreigners Service of the Andorran police received training in Spain, which comprised a module on trafficking in human beings (including on indicators for identifying victims, information gathering, and *modus operandi* of traffickers for sexual exploitation and labour exploitation), from the Central service of the Spanish units tasked with combating illegal immigration and document forging networks (UCRIF). The Andorran authorities have indicated that such training will take place again in 2015 and be attended by all members of the Borders and Foreigners Service, including 20 new recruits.

**40. Given the link there could be between the lack of training and identifying victims of trafficking, GRETA considers that the Andorran authorities should ensure that all the professionals concerned (law enforcement agency officials, judges and prosecutors, labour inspectors, lawyers, social workers, child welfare professionals, medical staff and other groups concerned) are sensitised to THB (in particular the definition of human trafficking, indicators of human trafficking, distinguishing THB from migrant smuggling, detection of vulnerable groups, as well as on identification, assistance and compensation of victims), and that NGOs and trade unions are also sensitised.**

*iii. Data collection and research*

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

42. At present, no authority is designated to collect statistics on THB victims in Andorra. Furthermore, GRETA is unaware of any research regarding risks of trafficking in the principality.

**43. GRETA encourages the Andorran authorities to:**

- **consider how data on victims of trafficking in human beings (disaggregated by gender, age, type of exploitation, country of origin and/or destination) would be collected, having due regard to their right to personal data protection;**
- **support research into THB-related questions.**

*iv. International co-operation*

44. 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).

45. The Andorran authorities have stated that there are no specific instruments serving as a legal basis for international co-operation in the area of trafficking in human beings. They have referred to the European Convention on Mutual Assistance in Criminal Matters and the United Nations Convention against Transnational Organised Crime as providing a framework for international co-operation. At present there is no international co-operation between Andorra and other countries in any THB cases.

46. Andorra has contributed to several anti-trafficking projects run by the Organization for Security and Co-operation in Europe (OSCE). In 2010, for example, Andorra allocated 15 000 euros to a fund for the prevention of trafficking in children without parental protection in the Republic of Moldova.

47. **Whilst welcoming the co-operation already pursued with Spain in the area of training for police officers (see paragraph 39), GRETA encourages the Andorran authorities to develop such partnerships, including with other countries, particularly with regard to training relevant actors (see also paragraph 40).**

48. **Moreover, GRETA invites the Andorran authorities to continue supporting initiatives aimed at the prevention of trafficking in human beings in countries of origin.**

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

49. 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).

50. In accordance with the Convention, measures to discourage demand for the services of victims of trafficking, especially women and children, should be understood as a positive obligation on Parties to adopt and reinforce such measures as regards THB for the purpose of any form of exploitation (see paragraph 108 of the Explanatory Report of the Convention). As it is stated in the Recommended Principles and Guidelines on Human Rights and Human Trafficking, strategies aimed at preventing THB shall address demand as a root cause of trafficking.<sup>9</sup>

- a. Measures to raise awareness, social, economic and other initiatives in favour of persons vulnerable to trafficking in human beings and measures to discourage demand

51. To date, the Andorran authorities have not carried out any awareness-raising initiatives as they consider that the problem has not yet reached the principality. Nor have they identified groups vulnerable to THB needing measures to empower them. GRETA points out that there are groups which are traditionally more vulnerable to trafficking in human beings, such as children, women in need of protection and assistance or migrant workers. Furthermore, some sectors of the economy are generally considered as presenting a higher risk to trafficking, such as the construction, catering and domestic work sectors.

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<sup>9</sup> 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](http://www.ohchr.org/Documents/Publications/Traffickingen.pdf)

52. There is an independent human rights institute (Institut de Drets Humans d'Andorra), which has been responsible since 2013 for organising annual seminars on human rights and could contribute to building awareness among the law professionals and students attending those seminars.

53. Regarding prevention measures at school, the compulsory programme of the Andorran education system curriculum includes specific reference to combating all types of discrimination, including on grounds of gender.

**54. GRETA considers that the Andorran authorities should carry out initiatives to raise awareness of trafficking in human beings and the different forms of exploitation it entails, aimed at the general public (including in schools), civil society and the economic sectors traditionally exposed to trafficking (see paragraph 51).**

**55. Moreover, GRETA invites the Andorran authorities to consider what measures might be envisaged for groups vulnerable to trafficking, particularly children, women in need of protection and assistance or migrant workers.**

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

56. Andorran territory can be entered only by roads from Spain and France. The border crossing points are permanently controlled by the Borders and Foreigners Service of the Andorran police, which also carries out immigration checks within the territory. It co-operates closely with its Spanish and French counterparts. Its staff have received training from the Spanish police which included a section on trafficking in human beings (see paragraph 39).

57. As Andorra is not part of the Schengen area, it has signed conventions with Spain and France on the entry, movement and stay of nationals of those two countries and third country nationals. A convention has also been signed with Portugal with respect to Portuguese nationals.

58. Pursuant to the Decree of 17 October 2012 on the Department of the interior of the Ministry of Justice and the Interior, the department informs any foreign nationals wishing to reside and/or work in Andorra of their rights in respect of immigration. It does so through leaflets summarising the relevant legislation depending on the type of permission for immigration required: residence and work, residence and seasonal work, residence or border working. Andorra's embassies inform anyone making inquiries of the conditions of entry and residence and forward any requests to the Ministry of Foreign Affairs. In addition, the Ministry of Justice and the Interior has set up a website grouping together all the relevant information; the site is in Catalan but is intended to be made available in Spanish, French, English and Portuguese in due course.<sup>10</sup>

59. Furthermore, GRETA notes the lack of internal legislation on asylum seekers and refugees, as well as measures to protect unaccompanied minors and child refugees.<sup>11</sup> It draws the Andorran authorities' attention to the fact that these categories are usually considered to be vulnerable to trafficking.

**60. GRETA considers that the Andorran authorities should ensure that the police officers of the Borders and Foreigners Service use in practice indicators enabling them to detect victims of THB (see also paragraph 64).**

<sup>10</sup> [www.immigracio.ad](http://www.immigracio.ad)

<sup>11</sup> United Nations Committee on the Rights of the Child, Concluding observations on the second periodic report of Andorra, adopted by the Committee at its 61st session (17 September-5 October 2012), document CRC/C/AND/CO/2.

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

61. Andorra issues a passport as the sole document valid for the identification and movement of its nationals in strict compliance with the recommendations of the International Civil Aviation Organization (ICAO). As part of their initial training, all members of the police receive general training on detecting forged or falsified travel and identity documents. All staff assigned to the Borders and Foreigners Service and Immigration Service as well as civil servants of the Ministry of Justice and Interior follow further training in this field; the last training took place in 2013.

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

a. Identification of victims of trafficking in human beings

62. 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.

63. The Andorran authorities have stated that identification would be initiated by the police on the basis of information supplied by the victim, a third party or other public authorities (such as the labour inspectorate). Furthermore, were a case of trafficking to be detected during a police investigation, the police would launch the identification process. Were suspicions to arise in the course of an investigation, the Public Prosecutor's Office or the competent judicial body would order that identification be initiated. The same would apply if the information came from an international communication sent to the public prosecutor or judicial body.

64. The police officers of the Borders and Foreigners Service who received training from their Spanish counterparts were provided with the indicators used by the Spanish border police to identify THB victims (see paragraphs 39 and 60).

65. For the time being, the inspectors of the labour inspectorate have not received any training and do not use indicators to help them detect or identify potential trafficking victims. They act on their own initiative or upon denunciation and inspect any establishment where a professional activity is undertaken, irrespective of the type of contract. They may carry out joint inspections with Borders and Foreigners Service staff in cases where, over and above the labour legislation offences falling within their remit, it is suspected that workers irregularly present on the territory are being employed. Domestic work does not come within the mandate of the labour inspectorate as laid down in law, and labour inspectors cannot inspect private homes without authorisation, except where these premises are the headquarters of a company. GRETA underlines that there should be a framework making it possible to control the working conditions of domestic workers, and identify possible victims of trafficking among them. This is all the more important as several interlocutors have raised the possibility that trafficking of domestic workers could occur.

66. GRETA recalls that the issue of identification is of fundamental importance. It is vital for the State to ensure that an effective system for proactive identification of victims of trafficking is put in place, irrespective of their nationality and immigration status. Many trafficked people do not always identify themselves as "victims" and are not aware of the legal meaning behind the term. Therefore, the onus of identification lies with the authorities. At the same time, 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.



67. **GRETA urges the Andorran authorities to adopt such legislative or other measures as may be necessary to proactively identify trafficking victims and refer them to specialised assistance, providing for the use of operational tools (such as indicators) for detecting possible victims and involving the different actors likely to come into contact with victims, particularly law enforcement officials, labour inspectors and NGOs.**

b. Assistance to victims

68. 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.

69. At present Andorra has no special framework for providing assistance to victims of trafficking in human beings. The Andorran authorities have indicated that, where applicable, assistance could be arranged on an ad hoc basis by the Ministry of Health and Welfare, which was competent for assisting individuals in precarious situations or need of protection and assistance. In their comments on the draft report, the Andorran authorities have indicated that victims of trafficking could go to one of the eight crisis centres existing throughout Andorra. These centres can transmit on the same day a request for emergency social services, which include accommodation in a hotel (with which the authorities have an agreement) and free meals. Emergency social services can include the travelling costs to France or Spain if one of them is the country of origin of the person concerned. It can also cover emergency medical needs. The persons concerned will also be referred to the free consultation service of the Bar Association of Andorra. These services fall under the Council of Ministers Decree on social services as amended on 16 February 2011.

70. By way of comparison, there is a framework for assisting victims of domestic violence. The Andorran authorities have presented a number of assistance measures, which could be adapted in the event of a trafficking victim. The Ministry of Health and Welfare deals with situations of domestic violence to which women can fall victim. An action protocol specifying the different roles of stakeholders has been established to deal with this type of situation. A dedicated department was set up in 2006 within the ministry; the Domestic Violence Department consists of a legal officer, a psychologist and a social worker and deals with around 200 cases per year. An agreement has been concluded with the NGO Dones d'Andorra, which has a social mediator. Cases of violence may be reported to the Domestic Violence Department by various actors. Furthermore, domestic violence victims are allocated financial assistance enabling them to cover their needs and save up some money so that they can become independent. They also receive counselling.

71. The authorities provide victims of domestic violence with all the information they require to exercise their rights on any administrative steps to be taken in a language that they understand. Under an agreement concluded with the Bar Association of Andorra, free legal assistance may be provided if they have insufficient resources. It is the task of the examining judge to notify victims of their procedural rights when the examination of a case is begun.

72. The Domestic Violence Department has a flat located at an undisclosed address that can be used to house victims of domestic violence and, were the case to arise, women victims of trafficking in human beings. The GRETA delegation was able to view these premises – a recent, fully equipped flat – during the visit. Victims of violence may stay there for up to nine months. Agreements have also been concluded with hotels for the temporary accommodation of victims of domestic violence who are at risk (usually from a few days up to one month); the staff of these hotels are trained accordingly. In their comments on the draft report, the Andorran authorities have indicated that women victims of trafficking could benefit from the services available to women victims of domestic violence as these services are meant to be provided more generally to all women victims of violence.

73. Were a male victim of trafficking in human beings to require assistance, he would be referred to the emergency social services operating in the seven parishes making up the principality.

74. In their comments on the draft report, the Andorran authorities have specified that outside the opening hours of the crisis centres and shelters for women victims of domestic violence, women victims of trafficking can call an emergency phone number (“181”) at any time. In addition, all victims, irrespective of gender, can go to a police station or a hospital emergency service. In such cases, a social worker on duty, who is fully authorised to trigger immediately emergency social services, will come to assist the victim.

75. As regards children, an accommodation centre for children in need of protection and assistance is in operation. For the time being, co-operation with civil society is pursued within the framework of specific projects, and contact is otherwise on an informal basis. GRETA believes that the child welfare services should be made aware of and trained in the specific issue of child victims of human trafficking. It further notes that there is no legislation or strategy specifically on child protection.<sup>12</sup>

76. GRETA takes note of the action protocol for victims of domestic violence, on which a similar framework for trafficking victims could be modelled. This would require an adequate level of awareness and training on the part of the different public bodies and civil society so that the specific characteristics of victims of trafficking, including children, are fully catered for (see paragraph 40).

**77. GRETA urges the Andorran authorities to adopt such legislative or other measures as may be necessary to provide assistance to victims of human trafficking (women, men and children) and help them with their physical, psychological and social recovery (in particular suitable safe accommodation, access to emergency medical care, counselling and material assistance, as well as advice and information on their rights in a language understood by the victim) in accordance with Article 12 of the Convention. This entails awareness-raising and training for the actors concerned, including the NGOs (see also paragraph 40).**

c. Recovery and reflection period

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

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<sup>12</sup> United Nations Committee on the Rights of the Child, Concluding observations on the second periodic report of Andorra, adopted by the Committee at its 61st session (17 September-5 October 2012), document CRC/C/AND/CO/2.

79. Current Andorran legislation does not provide for a recovery and reflection period for victims of THB. Nor does it make any exceptions regarding expulsions from the territory of persons irregularly present, even if an identification procedure has been initiated in respect of the person concerned. However, the Minister of Justice and the Interior may grant a temporary residence permit in view of an individual's special circumstances (see paragraph 82).

**80. GRETA urges the Andorran authorities to provide in law for a recovery and reflection period for victims of trafficking in human beings in conformity with Article 13 of the Convention and to ensure that no deportation takes place from the moment the identification process is started.**

d. Residence permits

81. 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.

82. Andorran legislation contains no specific provisions relating to residence permits for victims of trafficking. The Andorran authorities have stated that the Minister of Justice and the Interior could decide to grant a temporary residence permit where an individual's precarious circumstances are brought to his or her attention by the authorities. This is not covered by the Law on immigration, which deals with temporary residence permits linked to a professional activity and family reunification.

**83. GRETA considers that the Andorran authorities should provide in law for the issue of a renewable residence permit to trafficking victims in cases where the competent authority considers that their stay is necessary owing to their personal situation and/or where the competent authority considers that their stay is necessary for the purpose of their co-operation in connection with an investigation or criminal proceedings, in accordance with Article 14 of the Convention.**

e. Compensation and legal redress

84. 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 that they can understand.

85. Under Article 94 of the Criminal Code, anyone found guilty of a criminal offence also bears civil liability, compensating the victim for any damages or injury suffered. There is no fund for paying out compensation to victims in cases where it is impossible to obtain compensation from the perpetrator(s) of the offence.

86. Following the Law on Justice and the Decree on Legal Assistance in Criminal Proceedings of 1 March 2000, as interpreted by domestic courts, free legal assistance is granted to persons who have no means and need the assistance of a lawyer in order to defend their rights and interests before domestic courts. It would therefore be available to victims of trafficking without means.

**87. GRETA urges the Andorran authorities to adopt legislative or other measures necessary to guarantee compensation for victims of human trafficking, including compensation from the State when compensation cannot be secured from the perpetrator.**

f. Repatriation and return of victims

88. 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 should 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.

89. Andorra has no framework for the repatriation of THB victims specifying the different authorities competent for organising returns in collaboration with the authorities of the country of origin and the procedures for those returns. Expulsion from the territory by administrative resolution does not guarantee a return to the country of origin. An Andorran victim in a third country could request assistance from the authorities for their repatriation to Andorra.

90. **GRETA considers that the Andorran authorities should provide for a specific framework for the return of THB victims to their country of origin, which should preferably be voluntary and needs to be carried out with due regard for the victims' safety and dignity – *inter alia*, through an assessment of the risks they face if they return to their country – while also respecting the non-refoulement principle, in accordance with Article 40(4) of the Convention.**

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

a. Substantive criminal law

91. 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).

92. As previously mentioned (see paragraphs 12 and 25), in its current form the Andorran Criminal Code does not provide for the offence of trafficking in human beings. According to the Andorran authorities, a law whose draft is currently being examined is to remedy this shortcoming before the end of 2014.

93. Andorran law does not contain a criminal offence punishing the act of knowingly using the services of a trafficking victim, as provided for in Article 19 of the Convention. **GRETA invites the Andorran authorities to consider the possibility of criminalising the use of services which are the object of exploitation resulting from THB, with the knowledge that the person is a victim of trafficking.**

94. The Criminal Code punishes the removal (Article 374), damaging and destruction (Article 441) of documents issued by public authorities. Article 374 provides for a sentence of alternative detention (measure restricting freedom for a maximum duration of six months, constituting an alternative to imprisonment) and Article 441 for a prison sentence of between three months and three years.

95. Under Article 24 of the Criminal Code, only physical individuals may be held criminally liable. However, Article 71 provides for ancillary penalties applicable to legal persons, including the dissolution of companies and the suspending of a company's activities.

96. According to Article 30(7) of the Criminal Code, repeat offending is considered as an aggravating circumstance. Repeat offending occurs in cases where, at the time of committing the offence, the perpetrator has been sentenced by judgment not subject to appeal for an offence with a corresponding penalty that is equal or greater or for more than one offence with a lower penalty; in all cases, only offences of the same kind may constitute repeat offences. For some offences, such as pimping and all offences committed as part of an organised gang, previous convictions abroad for acts constituting the same offences in Andorra's Criminal Code are assimilated to previous convictions within Andorra.

97. **GRETA urges the Andorran authorities to adopt legislative measures:**

- **establishing trafficking in human beings as a criminal offence;**
- **providing for effective, proportionate and dissuasive sanctions for the Perpetrators of the offence of trafficking in human beings in conformity with Article 23(1);**
- **establishing as a criminal offence the aiding and abetting of the intentional committing of a THB offence and an attempt to commit such an offence, in conformity with Article 21;**
- **allowing for the possibility of holding legal persons criminally liable for the offences provided for in the Convention, in conformity with Article 22;**
- **providing for the confiscation of criminal assets linked to human trafficking, in accordance with Article 23(3).**

98. Furthermore, GRETA urges the Andorran authorities to ensure that the following circumstances are regarded as aggravating circumstances in the determination of the penalty for the offence of human trafficking: endangering the life of the victim deliberately or by gross negligence; the fact that the victim is a child; the fact that the offence was committed by a public official in the performance of their duties; and the fact that the offence was committed within the framework of a criminal organisation, in conformity with Article 24.

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

99. 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.

100. The circumstances excluding criminal liability in Andorran law include acting under the influence of insurmountable fear (Article 27 of the Criminal Code). There is no case-law on this point as of yet. GRETA is concerned that the criteria of "insurmountable fear" might set too high a threshold which could make it difficult to apply the non-punishment principle to a number of victims even though they have been involved in unlawful activities while compelled by traffickers.

101. **GRETA invites the Andorran authorities to examine whether Article 27 of the Andorran Criminal Code, as it stands, would allow the non-punishment of trafficking victims for participating in illegal activities where they were forced to do so, in compliance with Article 26 of the Convention, and to envisage raising awareness among judges and prosecutors of the principle of non-punishment.**

c. Investigation, prosecution and procedural law

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

103. A criminal procedure may be initiated by the victim lodging a complaint, in which case the judicial authorities will consider whether it is appropriate to launch a prosecution. The public prosecutor may also decide whether or not a prosecution should be launched.

104. The investigating judge is competent for all criminal matters and does not need to have a case referred to him or her by the prosecutor's office. After investigation, it is for the public prosecutor to bring the case to court, with the possibility of a claim for damages.

105. Article 14 of the Criminal Code allows associations to take part in court proceedings but only in order to defend the collective interests they seek to uphold.

106. Articles 76, 77 and 87 of the Code of Criminal Procedure provides for the use of special investigation techniques (search of property, wiretapping, interception of electronic and postal communications) for investigations into serious offences, which will include trafficking once that offence has been laid down in the Criminal Code.

107. Under Article 116 of the Code of Criminal Procedure, investigating judges can order the seizure and sequestration of any assets (for example, financial assets, tangible and intangible assets, movable and immovable property, legal documents, titles or instruments, including in digital form, which establish a right of ownership or interests on the assets in question, such as banking assets or credits, bills of exchange and letters of credit) concerning which there are sufficient objective elements indicating that they are the direct or indirect result of the criminal offence. According to Article 70 of the Criminal Code, when the court decision finding the trafficker guilty is handed down, the competent court must order the confiscation of the criminal assets, the benefits deriving from them and from any assets into which they have been transformed. If the criminal assets at issue cannot be localised or repatriated from abroad, the courts can order the confiscation of equivalent assets.

d. Protection of victims and witnesses

108. 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.

109. In Andorran, during the investigation, the investigating judge may order special measures to protect the victim. Witnesses may be afforded protection by a restraining order against the accused during the investigation phase. The accused may be immediately imprisoned for any breach of it (Article 110.2 d and Article 111 of the Code of Criminal Procedure). GRETA believes that while such a measure may prove effective against traffickers operating on their own, it might not work in cases where a network or individuals other than the accused may be behind acts of intimidation or reprisals.

110. At present, the only means of avoiding close contact between the victim and the accused is the installation of a mobile partition in the courtroom during proceedings. However, an amendment to the Criminal Code will allow the use of audiovisual transmission from another courtroom. To date, the presence of the victim has been required during hearings. The conditions in which victims make statements were regarded as potentially problematic by some of the delegation's interlocutors; *in camera* sittings are very rare. Moreover, everyone must use the same entrance and exit to the courtroom.

111. Under Article 423 of the Criminal Code, influencing or seeking to influence witnesses or persons reporting offences through the use of violence or intimidation is punishable by between one and four years in prison.

112. **GRETA considers that the Andorran authorities should ensure that their national legislation would make it possible to take all necessary steps to provide effective and appropriate protection for victims and witnesses of trafficking from possible reprisals or intimidation during and after investigations (such as surveillance measures, physical protection, videoconferencing, anonymity during the investigation), in conformity with Articles 28 and 30 of the Convention.**

## 5. Concluding remarks

113. GRETA underlines the human rights-based and victim-centred approach that underpins the Convention. It therefore invites the Andorran authorities to take full account of it when preparing their anti-trafficking legislation and policies.

114. The protection of victims of trafficking, including through proactive identification and assistance adapted to their needs, should be at the heart of anti-trafficking measures. Similarly, measures must be taken to protect victims from reprisals and intimidation during and after investigations and criminal proceedings against the traffickers. Considering that the victims' most fundamental rights have been violated during their exploitation, making compensation effectively available to them is also crucial.

115. Legislative measures should also be taken to offer victims of trafficking the possibility of enjoying a recovery and reflection period of at least 30 days. This minimum period constitutes an important guarantee for victims to allow them to escape the influence of traffickers and, for instance, recover from their wounds and any physical assault and psychological trauma. Providing in law for the possibility of delivering a residence permit on grounds of the personal situation of a victim who is not in position to co-operate with the investigation or prosecution authorities also contributes to a better protection of the most vulnerable victims. In addition, the possibility of not imposing penalties on victims for their involvement in unlawful activities they have been compelled to carry out is also essential.

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

117. GRETA invites the Andorran authorities to keep it informed on a regular basis of 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**

### **Definition of trafficking in human beings**

1. GRETA urges the Andorran authorities to adopt a provision defining the offence of trafficking in human beings in line with the requirements of Article 4 of the Convention without delay.

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

2. GRETA considers that the Andorran authorities should establish, in consultation with civil society, co-ordination between the different actors (for example, through an action protocol) that would be involved in the event of a trafficking case being identified.

### **Training of relevant professionals**

3. Given the link there could be between the lack of training and identifying victims of trafficking, GRETA considers that the Andorran authorities should ensure that all the professionals concerned (law enforcement agency officials, judges and prosecutors, labour inspectors, lawyers, social workers, child welfare professionals, medical staff and other groups concerned) are sensitised to THB (in particular the definition of human trafficking, indicators of human trafficking, distinguishing THB from migrant smuggling, detection of vulnerable groups, as well as on identification, assistance and compensation of victims), and that NGOs and trade unions are also sensitised.

### **Data collection and research**

4. GRETA encourages the Andorran authorities to:
- consider how data on victims of trafficking in human beings (disaggregated by gender, age, type of exploitation, country of origin and/or destination) would be collected, having due regard to their right to personal data protection;
  - support research into THB-related questions.

### **International co-operation**

5. Whilst welcoming the co-operation already pursued with Spain in the area of training for police officers, GRETA encourages the Andorran authorities to develop such partnerships, including with other countries, particularly with regard to training relevant actors.

6. Moreover, GRETA invites the Andorran authorities to continue supporting initiatives aimed at the prevention of trafficking in human beings in countries of origin.

### **Measures to raise awareness, social, economic and other initiatives in favour of persons vulnerable to trafficking in human beings and measures to discourage demand**

7. GRETA considers that the Andorran authorities should carry out initiatives to raise awareness of trafficking in human beings and the different forms of exploitation it entails, aimed at the general public (including in schools), civil society and the economic sectors traditionally exposed to trafficking.

8. Moreover, GRETA invites the Andorran authorities to consider what measures might be envisaged for groups vulnerable to trafficking, particularly children, women in need of protection and assistance or migrant workers.



## **Border measures to prevent THB and measures to enable legal migration**

9. GRETA considers that the Andorran authorities should ensure that the police officers of the Borders and Foreigners Service use in practice indicators enabling them to detect victims of THB.

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

10. GRETA urges the Andorran authorities to adopt such legislative or other measures as may be necessary to proactively identify trafficking victims and refer them to specialised assistance, providing for the use of operational tools (such as indicators) for detecting possible victims and involving the different actors likely to come into contact with victims, particularly law enforcement officials, labour inspectors and NGOs.

## **Assistance to victims**

11. GRETA urges the Andorran authorities to adopt such legislative or other measures as may be necessary to provide assistance to victims of human trafficking (women, men and children) and help them with their physical, psychological and social recovery (in particular suitable safe accommodation, access to emergency medical care, counselling and material assistance, as well as advice and information on their rights in a language understood by the victim) in accordance with Article 12 of the Convention. This entails awareness-raising and training for the actors concerned, including the NGOs.

## **Recovery and reflection period**

12. GRETA urges the Andorran authorities to provide in law for a recovery and reflection period for victims of trafficking in human beings in conformity with Article 13 of the Convention and to ensure that no deportation takes place from the moment the identification process is started.

## **Residence permits**

13. GRETA considers that the Andorran authorities should provide in law for the issue of a renewable residence permit to trafficking victims in cases where the competent authority considers that their stay is necessary owing to their personal situation and/or where the competent authority considers that their stay is necessary for the purpose of their co-operation in connection with an investigation or criminal proceedings, in accordance with Article 14 of the Convention.

## **Compensation and legal redress**

14. GRETA urges the Andorran authorities to adopt legislative or other measures necessary to guarantee compensation for victims of human trafficking, including compensation from the State when compensation cannot be secured from the perpetrator.

## **Repatriation and return of victims**

15. GRETA considers that the Andorran authorities should provide for a specific framework for the return of THB victims to their country of origin, which should preferably be voluntary and needs to be carried out with due regard for the victims' safety and dignity – inter alia, through an assessment of the risks they face if they return to their country – while also respecting the non-refoulement principle, in accordance with Article 40(4) of the Convention.

## **Substantive criminal law**

16. GRETA invites the Andorran authorities to consider the possibility of criminalising the use of services which are the object of exploitation resulting from THB, with the knowledge that the person is a victim of trafficking.

17. GRETA urges the Andorran authorities to adopt legislative measures:

- establishing trafficking in human beings as a criminal offence;
- providing for effective, proportionate and dissuasive sanctions for the Perpetrators of the offence of trafficking in human beings in conformity with Article 23(1);
- establishing as a criminal offence the aiding and abetting of the intentional committing of a THB offence and an attempt to commit such an offence, in conformity with Article 21;
- allowing for the possibility of holding legal persons criminally liable for the offences provided for in the Convention, in conformity with Article 22;
- providing for the confiscation of criminal assets linked to human trafficking, in accordance with Article 23(3).

18. Furthermore, GRETA urges the Andorran authorities to ensure that the following circumstances are regarded as aggravating circumstances in the determination of the penalty for the offence of human trafficking: endangering the life of the victim deliberately or by gross negligence; the fact that the victim is a child; the fact that the offence was committed by a public official in the performance of their duties; and the fact that the offence was committed within the framework of a criminal organisation, in conformity with Article 24.

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

19. GRETA invites the Andorran authorities to examine whether Article 27 of the Andorran Criminal Code, as it stands, would allow the non-punishment of trafficking victims for participating in illegal activities where they were forced to do so, in compliance with Article 26 of the Convention, and to envisage raising awareness among judges and prosecutors of the principle of non-punishment.

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

20. GRETA considers that the Andorran authorities should ensure that their national legislation would make it possible to take all necessary steps to provide effective and appropriate protection for victims and witnesses of trafficking from possible reprisals or intimidation during and after investigations (such as surveillance measures, physical protection, videoconferencing, anonymity during the investigation), in conformity with Articles 28 and 30 of the Convention.

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

### Public bodies

- Ministry of Justice and the Interior
  - Minister of Justice and the Interior
  - Co-ordinator of Legal Affairs
  - Director of Police
  - Director of the Department of Immigration
  - Director of the Department of Labour
- Ministry of Foreign Affairs
  - Directorate of Multilateral Affairs and Co-operation
- Ministry of Health and Well-being
  - Department of Social Affairs
- Public Prosecutor's Office
  - General Public Prosecutor
  - Deputy Public Prosecutor
- Andorran Courts
  - 1st Instance Court (Tribunal de Batlles)
  - Court of Appeal (Tribunal Superior)
- Parliament (Consell General)
  - Committee on Legislative and Internal Affairs

### International Organisations

- UNICEF Andorra

### Non-governmental Organisations

- Human Rights Institute of Andorra (IDHA)
- Caritas andorrana
- Dones d'Andorra

## Letter from the Andorran authorities sent in response to GRETA's report



Govern d'Andorra  
Ministeri de Justícia i Interior

Escaldes-Engordany, le 12 septembre 2014

Madame,

En réponse à votre lettre, datée du 18 juillet 2014, nous vous informons que les autorités andorranes ne souhaitent pas soumettre de commentaires concernant le rapport du GRETA sur l'Andorre (GRETA (2014)16).

Cordialement,

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke.

Isabel Orobítg  
Agent de Liaison  
Ministère de la Justice et de l'Intérieur