



G R E T A
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 Montenegro

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Preamble

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

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

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

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

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

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

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

I. Introduction

1. The first evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings ("the Convention") by Montenegro took place in 2011-2012. Following the receipt of Montenegro's reply to GRETA's first questionnaire on 30 August 2011, a country evaluation visit was organised from 14 to 18 November 2011. The draft report on Montenegro was examined at GRETA's 13th meeting (19-23 March 2012) and the final report was adopted at GRETA's 14th meeting (25-29 June 2012). Following the receipt of the Montenegrin authorities' comments, GRETA's final report was published on 13 September 2012.¹

2. In its first evaluation report, GRETA noted that the Montenegrin authorities had taken a number of legislative and organisational steps to prevent and combat trafficking in human beings. GRETA noted as a positive development the conclusion of a Memorandum of Co-operation between State institutions and non-governmental organisations (NGOs) on action against human trafficking, which defined the responsibilities of each body and established operational procedures for handling human trafficking cases. However, GRETA stressed that all signatories of the Memorandum should effectively fulfil their responsibilities and considered that co-ordination with civil society needed to be strengthened. GRETA urged the Montenegrin authorities to improve the identification of victims of trafficking through the adoption of a proactive approach by law enforcement officials, social workers, labour inspectors and other relevant actors. Further, GRETA stressed that a recovery and reflection period of at least 30 days should be specifically defined in law, and that victims should be systematically informed of the possibility to use such a period. Moreover, given that no victims of trafficking had received compensation from the perpetrators, the authorities were encouraged to set up a State compensation scheme accessible to victims of trafficking. GRETA also considered that there was a need for improving the knowledge and sensitivity of judges, prosecutors, investigators and lawyers about human trafficking and the rights of victims, and urged the Montenegrin authorities to ensure that crimes related to human trafficking are investigated and prosecuted effectively.

3. On the basis of GRETA's report, on 13 November 2012 the Committee of the Parties to the Convention adopted a recommendation to the Montenegrin authorities, requesting them to report back on the measures taken to comply with this recommendation by 13 November 2014.² The report submitted by the Montenegrin authorities was considered at the 15th meeting of the Committee of the Parties (5 December 2014). The Committee of the Parties decided to transmit the authorities' report to GRETA for consideration and to make it public.³

4. On 5 January 2015, GRETA launched the second round of evaluation of the Convention in respect of Montenegro by sending the questionnaire for this round to the Montenegrin authorities. The deadline for submitting the reply to the questionnaire was 5 June 2015. Montenegro submitted its reply on 2 June 2015.⁴

¹ Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Montenegro, GRETA(2012)9, available at:

<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680631f72>

² Recommendation CP(2012)9 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Montenegro, adopted at the 8th meeting of the Committee of the Parties on 13 November 2012, available at: <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680631f4c>

³ Report submitted by the Montenegrin authorities on measures taken to comply with Committee of the Parties Recommendation CP(2012)9 on the implementation of the Convention on Action against Trafficking in Human Beings, available at: <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680631f71>

⁴ Reply by Montenegro to the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties, second evaluation round, available at: <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680631f75>

5. In preparation of the present report, GRETA used the reply to the questionnaire by the Montenegrin authorities, the above-mentioned report submitted by them to the Committee of the Parties, and information received from civil society. An evaluation visit to Montenegro took place from 12 to 15 October 2015 in order to hold meetings with relevant governmental and non-governmental actors, collect additional information and examine the practical implementation of adopted measures. The visit was carried out by a delegation composed of:

- Mr Mihai Șerban, member of GRETA;
- Ms Rita Theodorou Superman, member of GRETA;
- Mr Markus Lehner, Administrator in the Secretariat of the Convention.

6. During the visit, the GRETA delegation met the National Co-ordinator for the Fight against Trafficking in Human Beings, Mr Zoran Ulama, officials from the Ministry of the Interior, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Labour and Social Welfare, the Ministry of Health, the Ministry of Education, the Ministry of Human and Minority Rights, judges from the Supreme Court, prosecutors, Members of Parliament and representatives of the Office of the Ombudsman of Montenegro.

7. In the course of the visit, the GRETA delegation visited the State-funded shelter for victims of trafficking and the Centre for children and juveniles "Ljubovic" in Podgorica.

8. Separate meetings were held with representatives of NGOs and officials of the International Organization for Migration (IOM), the Organization for Security and Co-operation in Europe (OSCE), the United Nations Children's Fund (UNICEF) and the United Nations High Commissioner for Refugees (UNHCR).

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

10. GRETA wishes to place on record the co-operation provided by the Montenegrin authorities and in particular by the contact person appointed by the Montenegrin authorities to liaise with GRETA, Ms Daliborka Mugoša, Senior Adviser at the Office for the Fight against Trafficking in Human Beings.

11. The draft version of the present report was approved by GRETA at its 25th meeting (7-11 March 2016) and was submitted to the Montenegrin authorities for comments on 1 April 2016. The authorities' comments were received on 31 May 2016 and have been taken into account by GRETA when considering and adopting the final report at its 26th meeting (4-8 July 2016). The final report covers the situation up to 8 July 2016; developments since that date are not taken into account in the following analysis and conclusions. The conclusions summarise the progress made since the first report, the issues which require immediate action and the other areas where further action is needed (see pages 39-43).

II. Main developments in the implementation of the Convention by Montenegro

1. Emerging trends in trafficking in human beings

12. In the period following the first evaluation by GRETA, 15 victims of trafficking in human beings (THB) were identified in Montenegro (nine in 2012, one in 2013, two in 2014, and three in 2015). All victims were female; eight of them were children. Ten of the identified victims were Montenegrin citizens or internally displaced persons from Kosovo* with Montenegrin residence; seven of them were trafficked within Montenegro and three to Serbia. The other five victims were foreign citizens trafficked to Montenegro (two from Bosnia and Herzegovina, two from "the former Yugoslav Republic of Macedonia" and one from Kosovo*). Eight victims were subjected to sexual exploitation, four to forced marriage and three to forced begging; one of the victims was also exploited for the purpose of domestic servitude. There have been no identified cases of THB for the purpose of labour exploitation, despite concerns around the situation of seasonal workers from neighbouring countries who are employed in the tourism and construction sectors.

13. In Montenegro, a person remains a "potential" victim of trafficking until there is a final conviction for a THB offence. However, unlike the situation at the time of the first evaluation by GRETA, the above-mentioned figures of identified victims include also persons for whom there were reasonable grounds to believe that they are victims of trafficking, including those identified by centres for social work.

2. Developments in the legal framework

14. Since the first evaluation by GRETA, the Montenegrin authorities have made several modifications to the Criminal Code (CC). Section 444 of the CC which criminalises trafficking in human beings was amended by adding "conclusion of an unlawful marriage" and "slavery or acts similar to slavery" to the forms of exploitation. Further, the list of aggravating circumstances was expanded to include commission of THB by a public official in the performance of his/her duties and deliberately or by gross negligence endangering the victim's life. Moreover, the irrelevance of the victim's consent to the intended exploitation was specifically included. The scope of section 445 of the CC ("Trafficking in children for adoption") was also expanded to include children up to the age of 18. In section 142 of the CC, a new paragraph was inserted defining the term "victim". These amendments are discussed in greater detail in later parts of this report (see paragraphs 135-141).

15. The new Law on Foreigners which entered into force on 1 January 2015 contains provisions relevant to the status of trafficking victims, in particular a 90-day recovery and reflection period for victims of THB (see paragraphs 120-126).

16. In September 2015, a law on the confiscation of property acquired through criminal activity was adopted, aiming at enabling the authorities to conduct more efficient seizure and confiscation of assets (see paragraph 130). The Law on Compensation of Damages for Victims of Violent Crimes was adopted in July 2015, but its entry into force has been postponed until Montenegro's accession to the European Union (see paragraph 129).

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

3. Developments in the institutional framework

17. The Office for the Fight against Trafficking in Human Beings, which is headed by the National Anti-trafficking Co-ordinator, is responsible for co-ordinating the activities of public bodies and NGOs in the implementation of the National Anti-trafficking Strategy and Action Plans. After having been moved to the Ministry of the Interior in 2012, the Office was re-positioned within the General Secretariat of the Government of Montenegro in 2013. It was given an additional staff post and currently employs six civil servants.

18. The Working Group on monitoring the implementation of the National Anti-trafficking Strategy, which is chaired by the National Co-ordinator, comprises representatives of relevant ministries, law enforcement bodies, judiciary and international organisations present in Montenegro. Following a call for expression of interest by NGOs to become members of the Working Group, the Director of the NGO "Montenegrin Women's Lobby" was appointed as a full member of the Working Group by a Government decision of 3 February 2013.

19. A revised Memorandum of Co-operation⁵ between State institutions and NGOs on action against human trafficking, which defines their respective responsibilities and sets up operational procedures, was signed on 18 October 2013. In addition to the previous signatories, the memorandum was signed by the Supreme Court, the Centre for Child and Family Support in Bijelo Polje, the Red Cross of Montenegro and four more NGOs. The composition of the co-ordination body established under the Memorandum, which is composed of the contact persons appointed by all the signatories, was extended accordingly. This co-ordination body is in charge of monitoring the implementation of the Memorandum and providing guidelines for its improvement. The co-ordination body has to be convened at least twice a year and its Chair can convene additional meetings when needed, for example when a victim of trafficking is identified. For example, in 2015 there were three ordinary meetings of the co-ordination body and five extraordinary meetings. At a meeting held on 9 May 2016, the co-ordination body made plans for the organisation of round tables with the aim of familiarising the local authorities signatories of the Memorandum on Co-operation with the procedures envisaged by the Memorandum in the areas of prevention, prosecution and protection of victims. Round tables have been scheduled in all municipalities in the course of 2016 and 2017. The first round table was held on 19 May 2016 in Bijelo Polje.

20. The Office for the Fight against Trafficking in Human Beings is obliged to submit consolidated biannual reports on the implementation of the Memorandum of Co-operation to the Working group for monitoring the implementation of the National Strategy. Two such reports have been submitted to the Government as an addendum to the report on monitoring the implementation of the National Anti-trafficking Strategy. These reports are published on the Government's website.

21. A new police unit for the fight against trafficking in human beings was set up within the Department for the Fight against Organised Crime and Corruption of the Police Directorate, comprising three police officers dealing exclusively with THB cases.

22. In 2013 the Ministry of Labour and Social Welfare set up the Council for the Rights of the Child whose main task is to monitor the implementation of the National Plan of Action for Children (2013-2017) as well as to fulfil other tasks in the area of the protection of the children's rights. Alongside relevant ministries and civil society organisations, the Office for the Fight against Trafficking in Human Beings is represented in the Council for the Rights of the Child.

⁵ See paragraphs 26-29 of GRETA's first report on Montenegro.

4. National Strategy and Action Plans

23. On 13 September 2012, the Government of Montenegro adopted a National Strategy for combating trafficking in human beings for the period 2012-2018. The strategy defines six focus areas: prevention and education; identification of victims of trafficking in human beings; assistance, protection and reintegration of victims; efficient prosecution; international co-operation; and co-ordination and partnership. According to the authorities, the strategy's objectives were defined in the light of the recommendations of relevant international actors, including the UN Committee on the Rights of the Child, UN Committee on the Elimination of Discrimination against Women (CEDAW) and the US Department of State Trafficking in Persons Report.

24. The Strategy is implemented through Action Plans (biannual or annual). At the time of GRETA's second evaluation visit, Montenegro was implementing the 2015 National Action Plan which was adopted by the Government on 29 January 2015. It contained 74 activities most of which were being implemented in co-operation with international organisations and NGOs and were partially funded by foreign donors.

25. The Office for the Fight against Human Trafficking, in co-operation with relevant public bodies and NGOs, organised consultations on the preparation of the National Action Plan for 2016, which was discussed and adopted at a Government session on 11 February 2016.⁶ The new action plan is divided into six key areas, which mirror those of the National Strategy (see paragraph 23).

26. The implementation of the National Strategy and Action Plans is monitored by the Working Group on monitoring the implementation of the National Strategy, which submits biannual reports to the Government. However, GRETA notes that there is no external evaluation or monitoring of the implementation of the National Strategy and Action Plans. Such an independent monitoring, which can be provided by a National Rapporteur or other independent mechanism, follows from the human rights-based approach to anti-trafficking action underpinning the Convention. GRETA is of the view that the key features of National Rapporteurs' mechanisms within the meaning of Article 29, paragraph 4, of the Convention should be the ability to critically monitor the efforts and effectiveness of all state institutions, including national co-ordinators, in the anti-trafficking field and to that end maintain a constant exchange with civil society, the research community and other relevant stakeholders. A structural separation between these monitoring functions and executive functions makes possible an objective evaluation of the implementation of anti-trafficking legislation, policy and activities, identification of lacunae and shortcomings, and the formulation of comprehensive legal and policy recommendations. Therefore, GRETA considers that the Montenegrin authorities should examine the possibility of designating as a National Rapporteur a separate organisational entity or an already existing independent mechanism which would monitor the anti-trafficking activities of State institutions and make recommendations (see Article 29, paragraph 4, of the Convention and paragraph 298 of the Explanatory Report).

27. The Montenegrin authorities have referred to other strategic policy documents relevant for action against THB, in particular the National Action Plan for the "Decade of Roma Inclusion 2005-2015" (see paragraph 69) and the National Action Plan for Achieving Gender Equality (2013-2017).

⁶ <http://www.antitrafficking.gov.me/en/sections/action-plan/161226/Government-adopted-Action-Plan-For-The-Implementation-Of-The-Strategy-For-Fight-Against-Trafficking-In-Human-Beings-for-2016.html>

5. Training of relevant professionals

28. In its first report, GRETA considered that the Montenegrin authorities should improve the skills, knowledge and sensitivity of relevant professionals as regards THB and noted that future training programmes should be designed to improve the identification of victims of trafficking, to assist and protect them, and to secure convictions of traffickers.

29. The 2015 National Action Plan contained activities aimed to strengthen the capacity of law enforcement and judicial authorities in order to improve proactive identification of victims of trafficking and efficient prosecution and conviction of offenders; to strengthen the capacity of labour inspection services and the employment agency as regards preventing and detecting THB; to sensitise social workers and health-care staff so that they can actively participate in prevention activities, identification, assistance and protection of victims of trafficking; to sensitise education professionals and include awareness on trafficking in school and extra-curriculum activities; to inform diplomatic and consular staff of THB; and to strengthen the capacity of local authorities to combat THB.

30. The main public institutions offering training on THB are the Human Resources Management Authority⁷, the Judicial Training Centre, the Police Academy and the Bureau of Education Services. Many of the training activities are organised in partnership with international organisations (OSCE, IOM, UNICEF, UNHCR). A number of NGOs also organise training on THB-related issues for relevant professionals.⁸ By way of example, Terre des Hommes organised training and educational workshops in the framework of the regional project "Monitoring of children returned from EU countries".

31. THB is included in the training programme at the Police Academy in Danilovgrad. The modules on THB which are offered on an annual basis include an eight-hour course for police cadets, a two-day training for officers of the Criminal Police Department, and a four-hour course for border police officers. In the period 2013-2015, these courses addressed trafficking for the purpose of labour exploitation; combating sexual exploitation during the summer season; strengthening the capacity of law enforcement agencies to identify victims of THB among the Roma population; interviewing child victims of human trafficking; and co-operation between the police and prosecutors in the successful prosecution of THB cases. For border police officers, a training programme on prevention and identification of THB was set up in co-operation with OSCE (see paragraph 83).

32. The Judicial Training Centre provides in its annual work programme a training course on the most important criminal offences, with a focus on organised cross-border crime, which includes THB. In 2013 and 2014, such training sessions were held for 60 and 84 judges and prosecutors respectively. On 22 to 25 September 2015, the Judicial Training Centre, in co-operation with the Office for the Fight against Trafficking in Human Beings and UNODC and with financial support from the US Department of State, organised a seminar for eight judges and eight prosecutors on "Protection of trafficked persons in criminal proceedings". Further, a conference took place on 18-19 November 2015 in Budva in co-operation with OSCE and the US Department of State on the topic of cybercrime, which included a module on human trafficking. Other training activities in the area of organised crime and corruption have included modules on the protection of victims of THB in criminal proceedings.

⁷ The Human Resources Management Authority is in charge of developing, organising and implementing training for all civil servants of state administration bodies.

⁸ For more details on training activities see the reply by the Montenegrin authorities to GRETA's questionnaire for the second evaluation round and the related Annex which specifically addresses training activities, both available at the Council of Europe's Anti-Trafficking website: <http://www.coe.int/en/web/anti-human-trafficking/montenegro>

33. Since 2013, the Human Resources Management Authority has conducted training for staff who may come into contact with victims of trafficking, such as labour inspectors, health-care staff, employment agency staff, police officers and staff working at the centre for asylum seekers. In 2014, three training sessions were held by the Human Resources Management Authority on the topic "Strengthening skills for early identification of potential cases of THB in Montenegro". The first one took place in Podgorica and was attended by 38 local government officials and councillors from the central region of the country. The second one was organised in Bijelo Polje and was attended by 17 local government officials and councillors from the northern region. The third one took place in Budva and gathered 15 local government officials and councillors from the southern part of Montenegro. In 2015, the Human Resources Management Authority held a one-day training session entitled "Strengthening skills for early identification of potential cases of THB in Montenegro with special emphasis on multiagency co-operation". Participants included five health-care workers, five representatives of the Centre for asylum seekers, five labour, health and safety inspectors, five police officers, five employees of the Employment Agency and one NGO representative. A second seminar was held in September 2015. It was attended by 19 participants (three health-care workers; five representatives of the Employment Agency; three representatives of the Police Directorate; five labour, health and safety inspectors; two representatives of the Centre for Child and Family Support Bijelo Polje and one NGO representative).

34. Further, the Human Resources Management Authority offers twice a year training for representatives of local authorities. Between April and July 2015, three seminars were held on "Strengthening awareness on THB and trafficking in children at the local level" for 38 councillors and officials of the local authorities.

35. At the time of GRETA's evaluation visit, the Human Resources Management Authority was in the process of finalising a Practical Handbook for combating THB and trafficking in children, which includes indicators and practical advice on identifying victims of THB. This handbook is still in the drafting phase. GRETA would like to be kept informed on the development of this handbook.

36. In order to prepare the introduction of the topic of THB in the subject civic education in the school curriculum of all primary and secondary schools in Montenegro, the Bureau for Educational Services started in 2012 a teacher training programme which was funded by UNICEF. A handbook for teachers on methods of transferring knowledge on THB was developed and circulated in 2015. A total of 70 teachers of civic education (out of some 240 civil education teachers in the country) have already been trained.

37. The newly established Institute for Social and Child Protection is in the process of developing a training-of-trainers programme, supported by UNICEF, with the aim of creating structures which will provide training to social and child protection officers on THB-related issues. Four training activities have taken place in 2015-2016 on the topic of child trafficking, child marriage and forced begging, attended by officers of centres for social work, police officers, prosecutors, judges, staff of children's homes and NGOs. Employees of the centres for social work and health-care professionals have participated in training offered by other state institutions or NGOs on the identification of victims of THB and the guardianship system.

38. Diplomatic and consular staff are annually briefed about the situation of THB in Montenegro. Before diplomatic and consular officials are posted abroad they have a meeting with the National Anti-trafficking Co-ordinator.

39. GRETA welcomes the training on THB provided to different categories of professionals and considers that the Montenegrin authorities should pursue their efforts to train relevant professionals on human trafficking and victims' rights, in particular police officers, labour inspectors, social workers, child care professionals, legal guardians for children, prosecutors, judges and medical staff.

6. Data collection and research

40. In its first evaluation report, GRETA considered that, for the purpose of preparing, monitoring and evaluating anti-trafficking policies, the Montenegrin authorities should 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).

41. As explained in GRETA's first report, the Office for the Fight against THB compiles data via the Tripartite Committee composed of representatives of the Supreme State Prosecutor's Office, the Supreme Court and the Police Directorate concerning victims of THB and the investigation, prosecution and court proceedings in THB cases. Further, the Office receives data from the State-funded shelter for victims of trafficking. The Office keeps unified records of cases of human trafficking, the number of complaints, indictments and judgments (with a breakdown into sex, age and nationality), as well as on presumed victims of trafficking (with an indication of sex, age, type of exploitation and country of origin).

42. In the context of reforms of the social and child protection system, the Montenegrin authorities have developed a new methodology and software for collecting data on children who are assisted by the social and child protection system, which was introduced in 2013 by the Ministry of Labour and Social Welfare, centres for social work and local services.

43. GRETA invites the Montenegrin authorities to pursue their efforts to maintain a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical data from all main actors on measures to protect and promote the rights of victims as well as on the investigation, prosecution, convictions and compensation in human trafficking cases. This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection.

44. The Office of the Ombudsman of Montenegro has conducted in recent years three studies on the exploitation of children in Montenegro. These studies took place in the framework of a regional project on "Improving the status of children in order to protect them from all forms of exploitation." The project was carried out by the regional network of Ombudsmen for Children of South East Europe with the support of the NGO Save the Children. The three studies addressed the issues of child begging, protection of children from sexual exploitation, and child abuse via the Internet.⁹ The results of these studies and the recommendations formulated (see paragraphs 60 and 110) were discussed by the Montenegrin Parliament.

45. Further, in 2013-2014, the IOM conducted a survey entitled "Needs assessment: trafficking in human beings in the Western Balkans", with the participation of relevant bodies responsible for the fight against human trafficking in Albania, Bosnia and Herzegovina, Kosovo*, "the former Yugoslav Republic of Macedonia", Montenegro and Serbia.¹⁰

⁹ Available (in Montenegrin) at: <http://ombudsman.co.me/djeca/index.php>.

¹⁰ Report available at: <https://publications.iom.int/books/needs-assessment-human-trafficking-western-balkans>.

46. GRETA considers that the Montenegrin authorities should strengthen their efforts to conduct and support research on THB-related issues, paying particular attention to THB in the tourist and construction sectors.

III. Article-by-article findings

1. Prevention of trafficking in human beings

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

47. In its first report, GRETA welcomed the efforts by the Montenegrin authorities in the area of awareness raising and considered that future actions should be designed in the light of an assessment of previous measures.

48. Raising awareness about THB has continued to be a key part in the preventive action taken by the Montenegrin authorities. The activities are implemented in partnership with NGOs, international organisations and foreign donors.

49. The campaign "Stop Trafficking in Human Beings" mentioned in the first report is continuously carried out, including broadcasts on several television channels, which also promote the state-funded SOS hotline for victims of trafficking (11 66 66). As part of the campaign, information materials were produced and distributed. Posters with the SOS hotline for victims of human trafficking were displayed at all border crossings. Further, promotional materials were distributed in tourist areas during the summer season. NGOs and other civil society actors are involved in the promotion of the hotline for victims of trafficking in their information leaflets, brochures and through their websites.

50. Various awareness-raising actions take place annually on the occasion of 18 October, the EU Anti-trafficking Day. The Red Cross of Montenegro, for example, organises conferences, distributes flyers and cards to the general public and on public transport and organises workshops and presentations in schools, as well as public performances aimed at various target groups.

51. In 2014 the Ministry for Human and Minority Rights, in co-operation with the NGO "Centre for Women's Rights" and the UNDP Office in Montenegro, implemented the campaign "16 days of activism against violence against women", which also raised awareness of human trafficking. Activities included a round table on ways to establish an effective system of prevention and protection of children and young people from violence; the broadcasting of a video entitled "Avoid my fate" about child, early and forced marriages; public classes for high school students; and the development of brochures in Montenegrin, Albanian and Roma languages with the details of institutions that victims can contact.

52. The Montenegrin authorities have also organised or supported measures that aim at raising awareness among the Roma, Ashkali and Egyptian (RAE) communities about THB (see paragraphs 61 and 70). The National Action Plans provide for such activities, with a focus on the problem of the worst forms of child labour and the conclusion of child, early and forced marriages.

53. GRETA considers that the Montenegrin authorities should continue to carry out information and awareness-raising campaigns on different forms of THB. Future awareness-raising measures should be designed in light of the assessment of previous measures and be focused on the needs identified. Special attention should be paid to raising awareness of THB for the purpose of sexual and labour exploitation during the tourist season.

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

54. The Montenegrin authorities have referred to legislative measures relevant for preventing THB for the purpose of labour exploitation, such as section 224 of the CC which criminalises the deliberate violation of labour legislation or a collective agreement and section 133 of the Law on Foreigners pursuant to which a fine shall be imposed on employers who employ or use the work of a foreigner residing irregularly in Montenegro, with the knowledge that the foreigner does not have a temporary residence and work permit.

55. A significant number of migrant workers come to Montenegro from neighbouring countries (Serbia, Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia", Albania, Romania), for seasonal work during the summer, particularly in the hotel and restaurant sector, as well as in the construction industry. Foreign workers often work in hard physical jobs, with irregular employment status and without social protection. The previous Law on Foreigners had loopholes which opened the way for abuse by employers, as there were separate procedures for issuing work permits and residence permits to seasonal workers, and a change of employer was not possible. The new Law on Foreigners, adopted in 2015, merged the two procedures for issuing temporary residence and work permits, and made possible the change of employer. According to GRETA's interlocutors, this legislative change has significantly reduced the room for abuse. The Ministry of the Interior and IOM have produced a brochure informing foreign workers about their rights in Montenegro. It is distributed by the police and at border crossing points. It is also handed out to foreign workers together with the residence and work permits.

56. As mentioned in GRETA's first report, a Protocol on Co-operation was signed by the Office for the Fight against Trafficking in Human Beings and the Union of Employers of Montenegro in 2011, which envisages joint action on informing employers and employees about THB. The Protocol defines joint activities on raising awareness of the general public about THB for the purpose of labour exploitation. However, no such activities have taken place in the reporting period.

57. GRETA commends the steps taken in Montenegro to prevent trafficking for the purpose of labour exploitation and considers that these efforts should be intensified, in particular by:

- raising awareness of the risks of human trafficking for the purpose of labour exploitation, aimed in particular at vulnerable groups and migrant workers in the tourism and construction sector;
- working closely with the private sector, in line with the Guiding Principles on Business and Human Rights.¹¹

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

58. Awareness-raising on THB has been provided to school children as part of a civic education lesson at all primary and secondary schools to mark the EU Anti-trafficking Day (18 October). From the school year 2015-16 THB is included in the subject civic education as part of the regular school curriculum. As noted in paragraph 36, a training programme for teachers was organised and a handbook for teachers on methods of transferring knowledge on THB in primary and secondary schools was developed and distributed in 2015.

¹¹

http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

59. GRETA's first report referred to the "Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism", prepared by the Office for the Fight against Trafficking in Human Beings together with the OSCE. It has been signed by 244 companies from the tourism sector which undertake to comply with the standards laid down in it to prevent child trafficking and exploitation of children in the sector of tourism.

60. The Montenegrin Ombudsman has prepared a flyer containing advice for children and their parents about safe use of the Internet, which was distributed with the support of a private telecommunications company. Further, as noted in paragraph 44, the Ombudsman's Office carried out in 2013 research on child abuse via the Internet in the framework of the project "Improving the status of children in order to protect them from all forms of exploitation".¹² The research noted that there were occasional reports, usually just orally, about abuse via the Internet, and concluded that there were no sufficient mechanisms to report, discover and punish such cases. Following the report, the Ombudsman's Office held a set of workshops with parents, teachers and children in order to educate and promote safe use of the Internet and draw attention to possible abuse of children through information technologies. GRETA commends the involvement of the Ombudsman's Office in anti-trafficking activities. Further, the Ministry for Information Society and Telecommunications and Telenor Ltd. implement the project "Conquer Internet, Surf Wisely", which aims to develop children's skills in safe use of the Internet. In addition, the android application 'Surf Smart' has been developed. In order to teach children about the safe use of the Internet, the Ministry of Education has prepared quizzes entitled 'Show what you know' which are adapted to primary school children and have become an integral part of the project 'Surf Smart'. Further, the Ministry of Education in co-operation with the company Microsoft continues to implement a project on the installation of software for filtering content on school computers.

61. The Ministry for Human and Minority Rights has organised a range of activities with a view to preventing child, early and forced marriages. By way of example, in co-operation with the Centre for Roma Initiatives, the Ministry organised a two-day seminar for representatives of the Police Directorate, prosecutors, judges, centres for social work and NGOs on legal mechanisms in the fight against child, early and forced marriages. In this regard, workshops for juveniles were organised and individual discussions were held at the Konik I and II camps¹³ and a documentary was shown in Niksic, Berane and Podgorica. Further, individual meetings with a general practitioner and gynaecologist were held with Roma girls and their mothers to inform them about health risks and reproductive health.

62. In 2013-14, the Government of Montenegro, with assistance from UNICEF and UNDP and financial support from the European Union, conducted an awareness-raising campaign entitled "Every child needs a family" which was intended to increase the number of foster parents in Montenegro, reduce the number of children in institutions and raise awareness of the right of every child to grow up in a family environment. The centres for social work and the municipalities implemented the campaign. Interested citizens and potential foster parents were provided with detailed information on fostering and the campaign was supported by prominent persons, print media and eight television stations. By the end of 2014 the number of children in non-kinship foster families increased threefold (there were 42 such families).

¹² "The Abuse of Children on the Internet", Report of the Ombudsman of Montenegro, Podgorica, March 2013.

¹³ After the outbreak of the conflict in Kosovo*, more than 4 000 members of the RAE population fled to Montenegro and were placed in the collective centre Konik - Vrela Ribnička on the outskirts of Podgorica.

63. From 2010 to 2013, the Government of Montenegro and UNICEF ran the campaign “It’s about ability” to address the social exclusion and discrimination of children with disabilities, which was joined by more than 100 partners from the international community, media, government, civil society and private sector. According to UNICEF, the latest evaluation survey conducted in December 2013 showed that the knowledge, attitudes and practices of Montenegrin citizens towards inclusion of children with disabilities were consistently improving.

64. In its first report, GRETA urged the Montenegrin authorities to ensure the registration of all children at birth as a preventive measure against trafficking. The Montenegrin authorities stated in this regard that in recent years, women from the Konik camps usually gave birth in a hospital where they are registered. However, the Council of Europe Commissioner for Human Rights in his 2014 report on Montenegro noted that many children from the RAE communities remain unregistered, either due to their parents’ lack of awareness of the importance of civil registration or the parents’ lack of regularised civil status in the country, which prevents them from registering their children.¹⁴ In cases of birth at home, registration is only legally possible within 30 days of the birth. In this context, GRETA welcomes the amendments to the Law on Non-Contentious Proceedings, which came into force in April 2015 and introduced a simplified court procedure for determining the time and place of birth in order to regulate status. The law is expected to accelerate the process of late birth registration and enable the persons concerned to obtain personal identity documents. The procedure can be initiated by a person having a legal interest or the person’s legal guardian and it is exempted from fees. In their comments on the draft GRETA report, the Montenegrin authorities have indicated that the analysis of the situation at the health care facility in the Konik camps, where the largest number of Roma are registered, shows that only in very rare cases the parents do not know the date of birth of the newborn. When it is not possible to determine the date of delivery (e.g. the woman gave birth at home), mothers can give an indicative delivery date which will be entered in the birth certificate. Since February 2016, a doctor from the Health Centre in Podgorica is designated as the co-ordinator of activities in the project for IDPs from the RAE population, with the task of promoting their health, improving communication between health workers and the Roma community, providing access to health insurance and encouraging preventive examinations.

65. GRETA notes the concerns expressed by the UN Human Rights Committee¹⁵ about the persistence of child labour and forced begging among the RAE community. In their comments on the draft GRETA report, the Montenegrin authorities have referred to the new Strategy for Social Inclusion of Roma and Egyptians in Montenegro (2016-2020), which includes prevention of forced begging, combating THB and prevention of child marriages among the areas of attention.

66. GRETA considers that the Montenegrin authorities should continue and strengthen their efforts to prevent child trafficking, paying particular attention to children from the RAE communities and unaccompanied children, by sensitising and training child protection professionals and raising awareness through education. Prevention in respect of child, early and forced marriages should also continue.

¹⁴ Report by Nils Muiznieks, Council of Europe Commissioner for Human Rights, following his visit to Montenegro, from 17 to 20 March 2014, CommDH(2014)13, para. 52, available at: <https://wcd.coe.int/ViewDoc.jsp?id=2202711&Site=COE>.

¹⁵ See document CCPR/C/MNE/CO/1, paragraphs 17, 19.

d. Social, economic and other initiatives for groups vulnerable to THB (Article 5)

67. In its first report, GRETA considered that measures for groups vulnerable to THB should be strengthened and urged the Montenegrin authorities to secure the registration for social services of all persons from vulnerable groups, both as a prevention measure and in order to avoid re-trafficking.

68. Measures envisaged by the Montenegrin government to promote gender equality are laid down in the National Action Plan for Achieving Gender Equality 2013-2017. The subject of gender equality was added to the compulsory training programme for teachers in order to be included in the subject civic education taught in primary and secondary schools. Montenegro ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence on 22 April 2013.

69. According to the latest census, there are approximately 8 300 Roma, Ashkali and Egyptians (RAE) living in Montenegro. Reports suggest that the enrolment of RAE children in education has improved, but access to health-care services remains problematic, informal employment prevails and children are particularly exposed to child labour (see also paragraph 65).¹⁶ In order to improve the situation of the RAE communities and their inclusion in society, the Government of Montenegro adopted an Action Plan for the implementation of the "Decade of Roma Inclusion 2005-2015". This plan concerns both domiciled and displaced members of the RAE communities residing in Montenegro and covers the areas of education, health, employment and housing. At the 28th meeting of the Steering Committee of "The Decade of Roma Inclusion 2005-2015" held on 14-15 September 2015 in Sarajevo, a new programme entitled "Integration of Roma 2020" was launched. It is designed as a mechanism for regional co-operation in order to strengthen institutional structures, processes, policies and activities undertaken at national and local level. Montenegro is a signatory to this initiative together with five other countries of the Western Balkans (Bosnia and Herzegovina, Serbia, Croatia, "former Yugoslav Republic of Macedonia", Albania) and Turkey. The Initiative for "Integration of Roma 2020" is co-financed by the European Union and the Open Society Foundation, and is being implemented under the framework of the Regional Cooperation Council. Further, the new Strategy for Social Inclusion of Roma and Egyptians in Montenegro (2016-2020) addresses the issues of THB and child marriages.

70. The Montenegrin authorities have referred to a number of activities targeting the RAE communities. By way of example, a preventive programme entitled "Take care of yourself!" about reproductive health risks related to child, early and forced marriages targeted Roma girls and their mothers. Another project entitled "Take care of women" addressed domestic violence, early marriages and human trafficking in the Roma community. Workshops and film shows were organised in the Konik camps to discuss Roma customary law and arranged child marriages. The anti-trafficking campaign "Two Little Girls" has continued to be rolled out in primary schools and at the Konik camps. Another project was entitled "Prevention and education of children and young people at risk from the RAE population and consequences of drug addiction and begging". Further, some awareness activities have targeted men from the Roma community (e.g. the showing of the documentary "Male attitudes to women in the Roma community").

71. The NGO Montenegrin Women's Lobby organises workshops, self-support groups, individual discussions, peer education, round tables, forums, seminars and conferences to raise awareness of particularly vulnerable categories, such as women and children from the RAE communities.

¹⁶ See Concluding Observations of the UN Human Rights Committee in 2014.

72. The problems related to the situation of displaced persons and persons without documentation have been described in GRETA's first report and by other Council of Europe bodies, for example ECRI and the Commissioner of Human Rights.¹⁷ Several initiatives have been launched by the Montenegrin authorities, international organisations and civil society to improve their situation and decrease their vulnerability, including to THB. The Government adopted a National Strategy for resolving the problems of refugees and displaced persons. The strategy provided for the possibility for displaced persons to apply for the status of "foreigner with permanent residence", which entitles them to access social rights and public services. The deadline for submission of requests expired on 31 December 2014. GRETA was informed that the documentation required in order to apply for this status is very difficult to obtain for many of the persons concerned. The Ministry of the Interior co-operates with UNHCR in this regard and has concluded an agreement with Kosovo* which aims at providing displaced persons from Kosovo* with identity papers. To this end, mobile teams from Kosovo* came to Montenegro, in particular to the Konik camps. Further, the amendments made to the Law on non-contentious procedures (see paragraph 64) could help displaced persons to obtain required documentation.

73. While acknowledging the efforts already made, GRETA considers that the Montenegrin authorities should take additional measures to strengthen prevention of human trafficking through social, economic and other measures for vulnerable groups. This should include measures to combat gender inequality, stereotypes and gender-based violence, to facilitate access of the RAE communities to education, the job market and health services, and to regularise the situation of displaced persons.

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

74. GRETA notes that while trafficking in human beings for the purpose of organ removal as defined by the Convention and organ trafficking as defined by Articles 4 to 8 of the Council of Europe Convention against Trafficking in Human Organs¹⁸ are distinct crimes, they share similar root causes, such as shortage of organs to meet demand for transplantation and poor economic and other conditions that put persons in a vulnerable position. Therefore, measures to prevent organ trafficking can help prevent trafficking for the purpose of organ removal and the reverse is also true.¹⁹ Among the necessary preventive measures, GRETA underlines the importance of a robust and transparent domestic system for the removal and transplantation of human organs and the need for training of health-care professionals. GRETA also stresses the importance of conducting a thorough investigation of each case where there is information or suspicion of trafficking for the purpose of organ removal, paying attention to the abuse of the vulnerability of the "donor" and ensuring that "donors" are treated as victims of trafficking in human beings.

75. In Montenegro, trafficking in human beings for the purpose of organ removal is penalised under section 444 of the CC. Further, illicit activities such as operations or trade in relation to human body parts are criminalised under section 294 ("Unlawful transplantation of human body parts"), section 295 ("Unlawful extraction of human body parts for transplantation"), section 295a ("Trafficking in human body parts") and section 295b ("Advertising of trading of human body parts") of the CC. GRETA notes that Montenegro has not signed the Council of Europe Convention against Trafficking in Human Organs.

¹⁷ Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Montenegro, 17 to 20 March 2014 (see footnote 14), para 31 and following; European Commission against Racism and Intolerance (ECRI), Report on Montenegro (fourth monitoring cycle), CRI(2012)5, para. 80 and following, available at: https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Montenegro/Montenegro_CBC_en.asp.

¹⁸ Opened for signature on 25 March 2015 in Santiago di Compostela, Spain.

¹⁹ See "Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs", Joint Council of Europe/United Nations Study (2009), in particular pages 55-56; "Trafficking in human beings for the purpose of organ removal in the OSCE region: Analysis and Finding", OSCE Occasional Paper No. 6 (2013).

76. Organ transplantation is governed by the 2009 Act on Removal and Transplantation of Human Body Parts for the Purposes of Medical Treatment. It stipulates that body parts may be removed from a living donor only for the purpose of medical treatment of a recipient, provided there is no suitable body part of a dead donor or any other form of medical intervention available. Donors have to be at least 18 years old, with full legal capacity, and must give their written consent. The consent can be withdrawn before the beginning of the intervention. Before the removal of body parts, appropriate medical examinations to minimise physical and psychological risks to the donor must be conducted.

77. Pursuant to the Law on Health Care, organ transplantation may be carried out only in certified medical institutions. Two sets of regulations outline transplant procedures from dead and from living donors. Organ transplantations in Montenegro started in 2012 and kidney and heart transplants have taken place. No suspicious cases of THB for the purpose of organ removal have been detected so far. The Ministry of Health has reported a number of training activities for health-care professionals involved in organ transplantation and other medical professionals with a view to sensitising them to human trafficking for the purpose of organ removal. Two one-day seminars (in March and September 2015) on human trafficking were attended by health workers. In November 2015, the Ministry of Health published an "Information handbook for health workers on human trafficking", with indicators for early identification of victims of trafficking and recommendations of the World Health Organisation.²⁰

78. GRETA welcomes the efforts made to sensitise health-care professionals to THB for the purpose of organ removal and invites the Montenegrin authorities to continue these efforts through providing regular training of medical professionals involved in organ transplantations and other relevant professionals.

f. Measures to discourage demand (Article 6)

79. The Montenegrin authorities have referred to section 444, paragraph 7, of the CC, which criminalises the use of services of a person known to be a victim of trafficking. As explained in paragraph 55, the new Law on Foreigners harmonised the procedures for granting a residence and work permits, thereby reducing the possibility of employers to exert pressure on employees.

80. The authorities have indicated that some of the awareness-raising activities referred to in earlier paragraphs, such as the organisation of seminars, public campaigns, television and radio programmes, public lectures, have aimed, *inter alia*, to discourage demand for the services of trafficked persons. One such example is a campaign conducted to promote the principles of the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism (see paragraph 59). Further, the NGO Montenegrin Women's Lobby conducts awareness-raising targeting potential clients of sexual services. As regards other activities implemented by NGOs through various projects which contribute, *inter alia*, to discouraging demand, see paragraphs 49, 51 and 71.

81. GRETA considers that the Montenegrin authorities should strengthen their efforts to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with civil society and the private sector, including the tourist industry.

²⁰ [Informatior za zdravstvene radnike o trgovini ljudima \(novembar 2015\)](http://www.mzdravlja.gov.me) available at: www.mzdravlja.gov.me

g. Border measures (Article 7)

82. In its first report, GRETA considered that the Montenegrin authorities should make further efforts to detect cases of THB in the context of border control, introduce a checklist to identify potential THB-related risks during the visa application system, and provide regular training to border police officers, with a view to improving their capacity to detect potential victims of trafficking. Further, GRETA invited the Montenegrin authorities to consider carrying out information campaigns to alert potential foreign victims of THB-related risks, in co-operation with countries of origin.

83. The Office for the Fight against Trafficking in Human Beings, the Border Police Department and the OSCE Mission to Montenegro have developed a two-year training programme for Montenegrin border police officers, based on the Frontex training module on THB for the border police. In 2014, 260 border police officers were trained in the first cycle of the programme, and the remaining officers were expected to be trained in 2015. In the period 2014-2015 a total of 36 field trainings for 499 border police (of whom 20 were women) were organised on the fight against human trafficking as part of a programme run by FRONTEX. Further, in the period 18 March to 26 April 2016 the third training cycle took place and 91 border police officers (4 of whom were female officers) were trained in the municipalities of Podgorica, Niksic, Pljevlja, Bijelo Polje, Berane, Bar and Herceg Novi. GRETA welcomes this training programme.

84. Further, a document containing indicators for the identification of potential victims of THB for sexual exploitation, labour exploitation and exploitation for the purpose of forced begging was developed in co-operation between the Office for the Fight against Trafficking in Human Beings, the OSCE and NGOs, and was forwarded to all border crossings in Montenegro.

85. On the basis of the 2011-2016 Strategy and Action Plan for integrated border management, whose main objective is to implement the EU *acquis* in this field, joint teams of the border police, the customs administration, the administration for sanitary, veterinary and phytosanitary inspection were set up in Montenegro. The teams meet every day at the local level and once in a month at the regional level. The aim of this joint action is an effective border control to prevent and combat all types of cross-border crime, including human trafficking. Further, the Montenegrin border police carry out joint patrols with their counterparts from Bosnia and Herzegovina, Serbia and Albania, as foreseen in an agreement between these countries. GRETA was informed that no victims of THB have been detected at Montenegro's borders.

86. GRETA notes the comments made in the 2015 EU Enlargement report on Montenegro concerning the need to further improve the capacity to deal with mixed migration flows, paying particular attention to vulnerable groups and children.

87. While welcoming the efforts to improve the capacities of border police officers to detect and identify victims of trafficking, GRETA considers that the Montenegrin authorities should step up their efforts to detect potential victims at border crossings, including among asylum seekers.

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

a. Identification of victims of THB (Article 10)

88. In its first evaluation report, GRETA urged the Montenegrin authorities to strengthen multi-agency involvement in victim identification and to provide frontline staff with operational indicators. Moreover, GRETA stressed the need to ensure that law enforcement officials, social workers, labour inspectors and other relevant actors adopt a more proactive approach and increase their outreach work to identify potential victims of trafficking.

89. The Memorandum of Co-operation in the fight against THB, which sets up operational procedures for identifying and assisting victims of THB, was reviewed and updated in 2013 (see paragraph 19). Signatories to the Memorandum are the Supreme Court, the State Prosecutor's Office, the Ministry of the Interior, the Ministry of Health, the Ministry of Labour and Social Welfare, the Ministry of Education, the Office for the Fight against Trafficking in Human Beings, the Centre for children and family protection in Bijelo Polje, the Red Cross of Montenegro and six NGOs. The Memorandum contains an Annex for each signatory describing its role and tasks in the prevention of THB, identification, assistance and prosecution.

90. A Co-ordination Body for monitoring the implementation of the Memorandum was set up, composed of representatives of the signatories. Besides holding regular meetings, it has to be convened *ad hoc* whenever a potential victim of THB is identified. Each partner organisation has appointed a contact person. The officer nominated as contact person by the Police Department is reachable 24 hours a day via mobile phone to provide support to other signatories of the Memorandum.

91. In July 2013 the Office for the Fight against Human Trafficking and the OSCE developed a list of indicators for the early identification of victims of human trafficking. The list contains both general indicators and specific indicators for identifying victims of trafficking for the purpose of sexual exploitation, labour exploitation, child victims and persons trafficked for begging. There is also a special list of indicators to be used by employees of the health-care sector. The indicators were printed in the form of cards and distributed to representatives of all relevant bodies, including police and border police officers, social workers, labour inspectors, health-care staff, local authorities' staff, and staff working at airports and railway stations.

92. All signatories of the Memorandum of Co-operation may carry out the initial identification of potential victims of THB, but they are obliged to contact the police which remains the only body entitled to formally identify a person as a potential victim. GRETA notes that the Montenegrin authorities continue to use the term "identified victim of trafficking" only in cases where there is a final conviction for THB. All persons who are recognised as victims of THB by the police are assigned the status of "potential victim of THB". The status of "potential victim", however, gives the person concerned rights to assistance and protection, including a recovery and reflection period, which is comparable to the status of a formally identified victim of trafficking in other jurisdictions.

93. The SOS hotline for victims of trafficking is operated by the NGO Montenegrin's Women's Lobby with funding from the Office for the Fight against Trafficking in Human Beings. The toll-free hotline can be reached around the clock. In case of reports of possible trafficking situations, the hotline operators inform the police. However, only in one case hitherto has this led to the identification of a victim of THB. The hotline operators are usually not informed by the police about the follow up which was given to a report they transmitted. In 2014, the hotline received 395 calls, 10 of which concerned potential victims of trafficking.

94. GRETA notes that NGOs are not always involved from the very beginning when the police detect potential victims, but only get to know that there is a case when the victim is brought by the police for accommodation or assistance.

95. The specialised police anti-trafficking unit regularly checks premises where THB could occur, in particular as concerns sexual exploitation, and establishes contacts with persons that could be victims. According to the police, many possible cases of trafficking for the purpose of sexual exploitation are prosecuted as cases of mediation in prostitution due to the lack of proof and reluctance of the victims to act as witnesses.

96. As regards the identification of THB for the purpose of labour exploitation, an important role is foreseen for the Labour Inspectorate. GRETA was informed that there are 36 labour inspectors, of whom 27 control compliance with labour laws and nine monitor health and safety regulations, and that all of them have received training on THB and have been provided with indicators. Labour inspectors focus in particular on the sectors of construction, commerce, transport, catering and agriculture. According to the authorities, labour inspectors co-operate closely with immigration police officers and perform joint inspections of high-risk business premises (e.g. construction sites, restaurants, night clubs). In addition to its regular activities, the Labour Inspectorate carries out intensified controls during the summer and winter tourist seasons when a lot of seasonal workers are hired. GRETA was informed that labour inspectors verify whether the accommodation and provision of food to seasonal workers are adequate, in particular in the construction sector. In 2014-15, labour inspectors identified breaches of the labour and/or immigration legislation in some 1000 cases. In 60% of the cases, Montenegrin nationals were concerned. No worker was younger than 18 years and no case raised suspicion of THB. When irregularities are found, labour inspectors give three days to the employers to regularise the employment.

97. The asylum procedure lies within the responsibility of the Ministry of the Interior, while the Centre for Asylum Seekers is under the authority of the Ministry of Labour and Social Welfare. The asylum centre staff has attended training on identification of potential victims of THB among asylum seekers, but no such cases have been detected so far. In their comments on the draft GRETA report, the Montenegrin authorities indicated that in 2015 a total of 1 009 asylum seekers were registered at the Centre for Asylum Seekers in Montenegro (787 men, 51 boys, 144 women and 27 girls). There were no unaccompanied minors. In the first four months of 2016, the Centre registered 55 asylum seekers (50 men, four women and one accompanied girl). Irregular migrants and asylum seekers whose applications have been rejected are placed in an immigration holding centre while their return to the country of origin is organised.

98. GRETA welcomes the updating of the Memorandum of Co-operation which has reinforced the multi-agency approach to victim identification and notes that the possibility of initial identification by all signatories of the memorandum is a step towards a more proactive identification. GRETA also welcomes the development and distribution of indicators for identifying victims of trafficking for different types of exploitation. However, GRETA is concerned that the number of identified victims remains very low and in particular no victims for the purpose of labour exploitation are identified.

99. GRETA urges the Montenegrin authorities to take additional steps to ensure that all victims of trafficking are identified as such and can benefit from the assistance and protection measures contained in the Convention, in particular by:

- ensuring that law enforcement officials, social workers, NGOs and other relevant actors adopt a more proactive approach and increase their outreach work to identify victims of human trafficking for the purpose of sexual exploitation;
- further sensitising relevant officials, in particular labour inspectors, prosecutors and judges, about THB for the purpose of labour exploitation and the rights of victims in order to proactively identify victims of trafficking, paying particular attention to migrant workers;
- paying increased attention to detecting victims of trafficking among asylum seekers and persons placed in the immigration holding centre;
- strengthening multi-disciplinary co-operation between all relevant partners.

b. Assistance measures (Article 12)

100. The system of providing assistance to victims of trafficking in Montenegro laid down in the 2007 Memorandum on Co-operation which was described in GRETA's first evaluation report has not changed significantly following the 2013 revision of the Memorandum. The signatories of the Memorandum undertake to provide assistance to potential victims of trafficking regardless of whether they co-operate in the investigation or participate in criminal proceedings. Each signatory is assigned specific assistance tasks in the annexes to the memorandum. NGOs play a central role in the provision of assistance to victims and potential victims, including accommodation, psychological, social and legal support, information on victims' rights and assistance with their reintegration into society.

101. In line with the Memorandum, the centres for social work are tasked with the elaboration of individual plans of assistance and protection in co-operation with other signatories of the Memorandum, as well as assessing the socio-economic status of the victim as a basis for allocating a one-time cash aid as foreseen by the Law on Social and Child Protection. The amount of the one-time cash aid is determined by the Centre for Social Work depending on the personal needs of the victim.

102. As explained in GRETA's first report, victims of trafficking are entitled to medical care. The revised Memorandum of Co-operation clarifies that the costs for their treatment are covered by the Health Insurance Fund of Montenegro. If the potential victim is a citizen of a state with which Montenegro has signed a bilateral agreement on social insurance, the costs are covered in accordance with that agreement. In all other cases, the costs of health protection are covered by the Office of for Fight against the Human Trafficking.

103. Since 2004, the NGO Montenegrin Women's Lobby has run a shelter for victims of trafficking, which is the only facility of this kind in the country. The Government of Montenegro fully funds the expenses that are necessary for the functioning of the shelter through the budget of the Office for the Fight against Trafficking in Human Beings. This includes the rent of the facility and other related expenses, as well as expenditures for food, clothing, shoes, toiletries, medicines and wages for the staff of the NGO Montenegrin Women's Lobby who are employed at the shelter. As already mentioned in the first report, the State shelter was relocated to new premises in 2012.

104. The GRETA delegation visited the shelter for victims of trafficking, which is located in a house on the outskirts of Podgorica and offers good living conditions. It can accommodate up to 10 persons (women, men and children). A social worker is present on the premises around the clock. At the time of the visit, no victim was hosted in the shelter. According to information provided by staff, the number of presumed victims of trafficking accommodated at the shelter was six in 2011, 13 in 2012, two in 2013, two in 2014 and four in 2015. There have been no male victims of trafficking assisted in the shelter since 2005. The shelter is semi-open, i.e. when the police brings a victim to the shelter they inform the shelter staff about the individual risk faced by this victim and whether he/she may leave the shelter accompanied or unaccompanied.

105. Staff of the shelter support the victims' rehabilitation but have limited means for reintegration measures. Victims are offered craft and jewellery workshops and IT courses. With the exception of a small one-time grant for the jewellery course, no funds were available for these activities. As the majority of the victims are from socially vulnerable groups and are illiterate, there are few possibilities to find a job for them when they finally leave the shelter. In their comments on the draft GRETA report, the Montenegrin authorities have indicated that in mid-2015 the Office for the Fight against Trafficking in Human Beings approved additional funding for the purchase of equipment and materials necessary for the implementation of reintegration programmes at the shelter and a separate room within the shelter was equipped for holding workshops.

106. In the reply to the questionnaire, the Montenegrin authorities refer to a Protocol on co-operation signed by the Union of Employers of Montenegro and the Office for the Fight against Trafficking in Human Beings which provides, *inter alia*, for assistance to victims of trafficking in the reintegration process, as regards employment opportunities for victims of human trafficking. However, there have been no cases of employment of victims of human trafficking on the basis of the said Protocol.

107. GRETA considers that the Montenegrin authorities should take additional steps to facilitate the reintegration of victims of trafficking into society, including by providing them with vocational training and assistance to find employment, and ensure by the provision of adequate resources for assisting them in their integration.

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

108. The legal framework for assisting children in need is provided by the Law on Social and Child Protection which was adopted in June 2013. According to the authorities, its provisions have been harmonised with the obligations of the UN Convention on the Rights of the Child, in particular by incorporating the principle of the best interests of the child and the principle of respect for the views of the child.

109. The identification procedure for child victims of trafficking is in general the same as for adult victims. It follows the rules laid down for each partner organisation in the Memorandum of Co-operation which means that the initial identification can be made by all signatories, but they are obliged to contact the police which is entitled to perform formal identification. The police has to inform the competent centre for social work in case of identification of a child victim.

110. An Ombudsman report on the phenomenon of children in street situations found that many of these children were begging, some were sexually abused, and there was a particular vulnerability to trafficking. The report highlighted deficiencies in the awareness of this phenomenon among public officials and the co-ordination between the relevant authorities. Despite the presence of Albanian children involved in begging during the tourist season, GRETA did not receive information about attempts to identify possible victims of THB among them. In their comments on the draft GRETA report, the Montenegrin authorities have referred to work carried out by the police to inspect places where persons beg. If children are found begging the police would act in co-operation with centres for social work and inform the competent Prosecutor's Office. Since 2012, joint police patrols together with police officers from Albania, Croatia, Italy, Serbia and "the former Yugoslav Republic of Macedonia" have taken place during the tourist season. In 2014 a joint training for the staff of joint patrols was held with a focus on identifying victims of human trafficking, especially children. Further, the Protocol on the Fight against Trafficking in Human Beings concluded between the National Anti-trafficking Co-ordinators of Montenegro and Albania provides for an annual meeting of these bodies at which the topic of child begging during the tourist season is considered.

111. The mechanisms of assistance and protection for child victims of human trafficking are similar to the ones for adult victims. Children are accommodated in the shelter for victims of human trafficking (see paragraph 103) together with adult victims. In cases of child victims of trafficking who are unaccompanied and whose parents cannot be found, the responsible centre for social work appoints a social worker as a legal guardian. An individual work plan adjusted to the child's age, interests and abilities is developed by the centre for social work. The education authorities organise enrolment of child victims in the education system. The child has access to health care and a one-time cash aid is granted (see paragraphs 101-102). In each case, the co-ordination body of the Memorandum of Co-operation meets, considers all aspects and agrees which follow-up is in the best interests of the child.

112. The Co-ordination Body considered four cases of child victims of THB between the end of 2014 and April 2015. These cases concerned Roma girls who were identified as victims of trafficking for the purpose of forced marriage by social workers, in co-operation with the police. In one of the cases, a medical doctor reported the girl as a victim of violence, whereupon she was identified as a potential victim of human trafficking by a social worker. All girls were accommodated and received assistance in the shelter for victims of human trafficking in Podgorica, in co-ordination between the Office for the Fight against Trafficking in Human Beings, the centres for social work and the police. One victim was returned to Kosovo*, in co-operation with the Kosovo* police. The other three were placed with relatives because their parents had been involved in concluding the forced marriages. The families where they are placed are under intensified supervision by the competent centres for social work which also develops individual plans for their rehabilitation and social integration. However, according to the Montenegrin authorities, these cases were not qualified as THB by the Prosecutor's Office.

113. If the age of the victim is not known but there are reasons to believe that he/she has not reached 18, there is a presumption that the victim is a child and he/she benefits from appropriate assistance measures until the age is determined during the identification process. There does not appear to be a standardised procedure for age assessment. Police officers interview the presumed child in the presence of a representative of the centre for social work and a psychologist. The assessment of the victim's age is carried out by specialists in forensic medicine, anthropologists, specialists in anatomy or biologists dealing with anthropometry. GRETA invites the Montenegrin authorities to review the age assessment procedures, ensuring that the best interests of the child are effectively protected and taking into account the Convention on the Rights of the Child and General Comment No. 6 of the Committee on the Rights of the Child.²¹

²¹ General Comment No. 6 Treatment of unaccompanied and separated children outside their country of origin, Committee on the Rights of the Child, Thirty-ninth session, 17 May - 3 June 2005:

114. Unaccompanied children are placed in the Centre for children and juveniles "Ljubovic", which was visited by the GRETA delegation. It is under the responsibility of the Ministry of Labour and Social Welfare. This semi-open institution holds a mixture of children with different profiles and needs: children who have committed crimes or misdemeanours, neglected, abandoned or abused children in need of special psycho-therapeutic treatment, as well as unaccompanied foreign minors. This mixing of different profiles has been subject to criticism, including by the Montenegrin Ombudsman, and the CPT has recommended that the mixing of different categories of children, with different profiles and needs, be addressed in a coherent manner.²² At the time of GRETA's visit, the establishment was accommodating three girls and five boys, none of whom was a victim of trafficking. The Centre had a total of 38 employees, of whom 19 were engaged in educational work with different profiles such as social workers, psychologists, pedagogues and special education teachers. In July 2015 the centre's staff took part in training on prevention of human trafficking, including information on trafficking for the purpose of forced begging and early/forced marriage, and one of the employees had a certificate for identification of victims of THB. Identified child victims of trafficking would be accommodated in the shelter for victims of THB (see paragraphs 103).

115. According to the Centre's staff, 37 unaccompanied foreign minors have been placed in the Centre since 2013, the majority originating from Serbia, Kosovo*, Albania and Syria. They usually spent two to three days at the Centre, occasionally up to two weeks. In the period January 2012 - April 2016, a total of 10 unaccompanied minors applied for asylum in Montenegro (none of them in 2015-2016). The centre for social work is responsible for appointing legal guardians to asylum-seeking children and the Ministry of the Interior relocates them to an asylum reception centre. Children's requests for asylum are given priority and decisions have to be issued within 30 days. In 2015, the Ministry of Labour and Social Welfare adopted Guidelines for the treatment of unaccompanied migrant minors. The Centre for Asylum Seekers aims to strengthen capacity of its staff dealing with unaccompanied minors and members of other vulnerable groups by conducting continuous training.

116. GRETA urges the Montenegrin authorities to take further steps to improve the identification and assistance of child victims of trafficking, and in particular to:

- ensure that relevant actors take a proactive approach and increase their outreach work to identify child victims of THB by paying particular attention to children in street situations, children from the RAE communities and unaccompanied minors;
- provide adequate support and services which are adapted to the needs of child victims of trafficking, including appropriate accommodation, access to education and vocational training;
- provide further training to stakeholders (police, centres for social work, NGOs, health-care and education professionals) as well as guidance for the identification of child victims of THB;
- promote a multi-disciplinary approach between all partners involved.

<http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf>

²² Report to the Government of Montenegro on the visit to Montenegro carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 15 to 22 September 2008, CPT/Inf (2010) 3, para. 138, available at: <http://www.cpt.coe.int/en/states/mne.htm>

d. Protection of private life (Article 11)

117. The Memorandum of Co-operation on action against human trafficking between public institutions and NGOs provides for measures to respect the privacy and identity of potential victims of trafficking by its signatories.

118. The Office for the Fight against Trafficking in Human Beings has harmonised its collection and storage of personal data with the Law on Protection of Personal Data and has adopted a corresponding Rulebook, in co-operation with the Agency for Protection of Personal Data. This process concerned, *inter alia*, data of victims and potential victims of trafficking, including those which are hosted at the shelter for the victims of human trafficking.

119. In order to protect the identity and privacy of victims of trafficking, police officers use initials in data exchanges with other parties, limit access to the victims and escort them to designated locations such as shelters or hospital. The Montenegrin authorities have indicated that statements given by law enforcement officials to the media do not include any information on persons identified as victims or potential victims of trafficking.

e. Recovery and reflection period (Article 13)

120. In its first evaluation report, GRETA urged the Montenegrin authorities to introduce the recovery and reflection period provided for in Article 13 of the Convention in law, to ensure that trafficked persons are systematically informed of the possibility to use a recovery and reflection period, and to be effectively granted such a period.

121. The new Law on Foreigners (in force since 1 January 2015) introduced a recovery and reflection period for victims of human trafficking in section 52 ("Period of reflection"), which reads as follows:

"An alien who is assumed by the police to be a victim of the criminal act of human trafficking has the right to decide within 90 days whether to co-operate in criminal proceedings or whether to join the prosecution or be a witness in the proceedings (period of reflection). The police determine whether the alien is a victim of the crime of human trafficking, in co-operation with the authorities, NGOs and other relevant organisations that are dealing with prevention, reporting and prosecution of offenders and protection of victims of human trafficking. Where a child is concerned, the police will co-operate with the centre for social work."

122. GRETA welcomes the introduction in law of a recovery and reflection period which is longer than the minimum of 30 days envisaged in the Convention. According to the authorities, persons granted a recovery and reflection period have access to the same assistance measures as identified victims of trafficking. GRETA considers that the Montenegrin authorities should take steps to ensure the effective implementation of the new provision on the recovery and reflection period by issuing clear instructions to officers performing identification to systematically inform all possible victims of trafficking of the possibility to benefit from such a period and stressing that the recovery and reflection period should not be made conditional on the victim's co-operation and should be granted it whenever there are reasonable grounds to believe that the person concerned is a victim of trafficking, i.e. before the identification procedure has been completed.

f. Residence permits (Article 14)

123. In its first report, GRETA urged the Montenegrin authorities to ensure that victims of THB can take full advantage of the right to be granted a renewable residence permit.

124. The provision on temporary residence permits on humanitarian grounds for victims of THB is stipulated in Article 50 of the new Law on Foreigners, according to which:

“A temporary residence permit for humanitarian reasons can be granted to:

- 1) an alien who is assumed to be the victim of the crime of trafficking in persons;
- 2) a child who has been abandoned or is a victim of organised crime or is for any other reason without parents or unaccompanied (...)

The temporary residence permit for humanitarian reasons shall be issued on the basis of adequate evidence from international organisations, NGOs or public authorities that provide the alien referred to in paragraph 1 with assistance and protection or the evidence of a competent state authority confirming that the alien co-operates in disclosing criminal acts.”

125. GRETA welcomes the fact that a residence permit can be granted independently of the victim’s co-operation with the law enforcement authorities. According to the Montenegrin authorities, no residence permits were issued to foreign victims of THB in the reporting period because they all had regular residence status in Montenegro when they were identified as victims.

126. GRETA considers that the Montenegrin authorities should ensure that victims of THB can take full advantage of the right to be granted a renewable residence permit and the right to seek and enjoy asylum, in line with the UNHCR’s Guidelines on the application of the Refugees Convention to victims of trafficking.²³

g. Compensation and legal remedies (Article 15)

127. In its first evaluation report, GRETA urged the Montenegrin authorities to step up their efforts to provide information to victims of THB about their right to compensation and ways to access it, and to ensure that victims have effective access to legal aid in this respect. Further, GRETA encouraged the Montenegrin authorities to set up a State compensation scheme accessible to victims of THB, as envisaged by the draft Law on Compensation for Damages to Victims of Crime.

128. As explained in the first report, a victim of trafficking has the right to free legal aid, pursuant to the Law on Free Legal Aid, and can file a claim for compensation in criminal or civil proceedings. According to the authorities, victims of trafficking are informed about their rights at the shelter for victims of human trafficking in a manner adapted to their age and their capacity to understand their rights. GRETA was informed that no victim of trafficking has filed a claim for compensation from the perpetrators. The NGO Centre for Women’s Rights is currently conducting a study of court decisions in human trafficking cases which will examine, *inter alia*, the issue of compensation.

²³ [UNHCR, Guidelines on International Protection: The application of Article 1A\(2\) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking, HCR/GIP/06/07, 7 April 2006](#)

129. The Law on Compensation for Damages to Victims of Violent Crimes was adopted on 1 July 2015. It foresees that compensation for physical and psychological damage as well as for loss of earnings will be provided by the State when it cannot be obtained from the perpetrator. The crime has to be reported to the police or the Prosecutor's Office. Compensation is envisaged in cases where the victim suffered a serious bodily injury or serious impairment of his/her physical and mental health, or died. Citizens of Montenegro, citizens of State Parties to the European Convention on the Compensation of Victims of Violent Crimes, citizens of Council of Europe and EU member states with permanent residence in Montenegro, as well as EU nationals and persons lawfully residing in the EU, are eligible for compensation under the law. The compensation covers the costs of health care, loss of earnings and funeral expenses. If the criminal act caused incapacity for work, a lump sum not exceeding 10 average monthly net earnings would be paid. The procedure for compensation has to be initiated by a written request to the Ministry of Justice not later than six months from the date of the offence. A commission will be set up by the Government to decide on compensation awards. Compensation can be awarded before the initiation of judicial or other proceedings if it is necessary for the timely elimination of harmful consequences for the physical and psychological health of the victim. Following the payment of compensation to the victim or his/her dependents all rights relating to the perpetrator of the offence are transferred to the State up to the amount of compensation paid. Considering that the availability of State compensation is a requirement under Article 15, paragraph 4, of the Convention, GRETA is concerned that the Law on Compensation for Damages to Victims of Violent Crimes will only enter into force when Montenegro accedes to the EU.

130. There have been no seizures or confiscations of traffickers' assets since the first evaluation by GRETA. The authorities have referred to a case from 2010 where the court ordered temporary measures against defendants in a human trafficking case. However, the final judgment convicted the accused of mediation in prostitution instead of THB and rejected the prosecution's demand for confiscation of proceeds. In this context, the authorities have referred to the new Law on Confiscation of Property Acquired through Criminal Activity, which is expected to enable more efficient temporary and permanent seizure of assets.

131. GRETA urges the Montenegrin authorities to take steps to facilitate and guarantee access to compensation to victims of THB, including children, and in particular to:

- ensure that all victims of human trafficking, regardless of nationality and residence status, are eligible for state compensation, by bringing into force the Law on Compensation for Damages to Victims of Violent Crimes without further delay;
- enable victims of trafficking to exercise their right to compensation, by building the capacity of legal practitioners to support victims to claim compensation;
- include victim compensation into training programmes for law enforcement officials, prosecutors and judges;
- make full use of the existing legislation on the freezing and forfeiture of assets to secure compensation to victims of trafficking.

h. Repatriation and return of victims (Article 16)

132. The return of victims of trafficking to their country of origin is co-ordinated by the Office for the Fight against Trafficking in Human Beings, in co-operation with the Police Directorate and, in the case of child victims, centres for social work. The procedure is initiated when a victim of THB, after having been provided with assistance in the shelter, expresses the wish to return to his/her country of origin. The Office for the Fight against Trafficking in Human Beings informs the responsible counterpart in the receiving country and clarifies the situation as regards the victim's adequate protection, accommodation and reintegration. A risk assessment is conducted before organising the return.

133. In the period 2012-2015, two victims of THB were repatriated from Montenegro to their countries of origin (a 14-year old child to Kosovo* and a 48-year old woman to Bosnia and Herzegovina). In the same period, three child victims were repatriated to Montenegro from Serbia. There were no recorded cases of the return of THB victims to Montenegro against their will.

134. GRETA considers that the Montenegrin authorities should continue to ensure that the return of victims of THB is preferably voluntary and is conducted with due regard to their rights, safety and dignity, including the right to non-refoulement (Article 40(4) of the Convention), and in the case of children, by fully respecting the principle of the best interests of the child. The Montenegrin authorities should give full consideration to the UNHCR's Guidelines on the application of the Refugees Convention to trafficked people²⁴ and their possible entitlement to asylum when deciding upon applications for asylum of persons who are at risk of being re-trafficked or otherwise persecuted should they be obliged to return to their State of origin or residence.

3. Substantive criminal law

a. Criminalisation of THB (Article 18)

135. As noted in paragraph 14, in 2013 the Criminal Code provisions related to THB were amended. The amended paragraphs 1, 3 and 9 of section 444 of the CC read as follows:

“(1) Anyone who by force or threat, deceit or keeping in delusion, by abuse of authority, trust, relationship of dependency or the vulnerability of another person, or by withholding identification documents, or by giving or receiving money or other benefit, for the purpose of obtaining the consent of a person having control over another, recruits, transports, transfers, hands over, sells, buys, mediates in sale, hides or keeps another person for exploitation of work, submission to servitude, commission of crimes, slavery or acts similar to slavery, prostitution or other form of sexual exploitation, begging, pornographic use, entering into unlawful marriage, removal of a body part for transplantation, or use in armed conflicts, shall be punished by imprisonment for a term of one to 10 years. (...)

(3) If the offence referred to in paragraph 1 is committed against a minor or by a public official in the performance of his/her official duties or with the intent of endangering the life of one or more persons, the perpetrator shall be punished by imprisonment of at least three years. (...)

(9) The consent of the victim against whom the offence from paragraph 1 to 3 of this section has been committed does not vitiate that criminal offence.”

²⁴ [UNHCR, Guidelines on International Protection: The application of Article 1A\(2\) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking, HCR/GIP/06/07, 7 April 2006](#)

136. The amendments to the CC expanded the list of exploitative purposes by including “slavery and practices similar to slavery”, “other forms of sexual exploitation” and “entering into unlawful marriage”. The Montenegrin authorities have clarified that the term “unlawful marriage” covers forced and child marriages. GRETA notes that the list of forms of exploitation goes beyond those specifically mentioned in the Convention, which reflects new trends.

137. GRETA notes that abduction as one of the means for committing trafficking in human beings is still missing from section 444 of the CC. The Montenegrin authorities have indicated that abduction is defined as a separate criminal offence under section 164 of the CC and that if the offence of trafficking in human beings is committed by means of abduction, there would be a concurrence of offences.

138. The list of aggravating circumstances has been expanded to include the offence being committed by an official in discharging his/her duties and deliberately or by gross negligence endangering the victim’s life. Moreover, section 444 of the CC now explicitly states the irrelevance of the victim’s consent to the intended exploitation. GRETA welcomes the steps taken by the Montenegrin authorities to implement the recommendations made in the first report.

139. As mentioned in the first evaluation report, section 445 of the CC criminalises “Trafficking of children for adoption”. Following GRETA’s recommendations, the Montenegrin legislator expanded the scope of section 445 of the CC by increasing the age of children covered by this provision from 14 up to the age of 18, in line with the Convention. Section 445 of the CC is now entitled “Trafficking in minors for adoption” and henceforth reads as follows:

“(1) Anyone who abducts a minor for adoption in contravention of current regulations or whoever adopts such a person or mediates in such adoption or whoever for that purpose buys, sells or hands over another minor or transports, provides accommodation for or hides such a minor, shall be punished by imprisonment for a term of one to five years.

(2) Anyone who deals with activities referred to in paragraph 1 of this Article or participates in their organised commission together with several other persons, shall be punished by imprisonment for a minimum term of three years.”

140. In its first report, GRETA held that the definition of “victim of THB” was too narrow and recommended to review the definition. As a consequence, a new paragraph 11 introduced a general definition of the term “victim” in section 142 of the CC which reads as follows: “The victim is a person who, by an unlawful act which the law prescribes as a criminal offence, has been caused physical or mental pain or suffering, property damage or violation of human rights and freedoms.” GRETA welcomes the inclusion of the definition of victim in the Criminal Code.

141. In its first report, GRETA noted that “keeping back (withholding)” of identity documents is one of the means for committing THB pursuant to section 444 of the CC, and that sections 412 to 415 of the CC criminalise the falsification of documents. However, GRETA noted that other actions mentioned under Article 20 of the Convention were not specifically penalised under the Montenegrin CC. The Montenegrin authorities have stressed that section 444, paragraph 1, of the CC (“withholding identification documents”) is interpreted broadly. Furthermore, if the forging of documents is used as an instrument for committing THB, other provisions of the CC which criminalise the falsification of documents (sections 412 to 415) would be used concurrently with section 444.

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

142. As explained in the first report, the known use of services of victims of trafficking was criminalised in 2010 with the insertion of paragraph 7 into section 444 of the CC, pursuant to which "anyone who uses the services of a person known to be the victim of the offence referred to in paragraph 1 of this section shall be punished with imprisonment from six months to five years." According to section 444, paragraph 8, of the CC, the offender is liable to imprisonment from three to 15 years if the victim is a child. There have been no convictions under this provision.

c. Corporate liability (Article 22)

143. The legal situation has not changed since GRETA's first evaluation. The Law on Criminal Liability of Legal Entities stipulates that a legal entity shall be liable for a criminal offence committed by a person acting on behalf of the legal entity within the power of his/her authority with the intent of acquiring some benefit for that legal entity. The legal entity is liable even if that person's action was contrary to the legal entity's business policy or orders. Further, the legal entity is liable for a criminal offence even if the responsible person who committed the offence has not been convicted of it. As possible sanctions, legal entities can be fined and/or closed down. Security measures can also be imposed. The Montenegrin authorities have indicated that no criminal cases implicating legal entities in THB offences have been recorded to date. GRETA invites the Montenegrin authorities to examine the reasons for the absence of cases of application of the corporate liability provisions to human trafficking cases.

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

144. At the time of the first evaluation, there was no specific provision in Montenegrin law stipulating that victims of THB are not to be punished for their involvement in unlawful activities, to the extent that they have been compelled to do so. The Montenegrin authorities had referred to the general provisions of the Criminal Code, in particular section 26, which describes the conditions under which the existence of a criminal offence or the presence of guilt are excluded.²⁵ GRETA recommended in its first report to explicitly lay down in law the principle of non-punishment for victims of THB. The Montenegrin authorities have reiterated that the general provisions of the CC are sufficient to implement the non-punishment provision of the Convention. There are no examples of relevant case law.

145. In order to guarantee the application of the non-punishment provision, GRETA urges the Montenegrin authorities to take additional measures including the adoption of a specific legal provision and/or the development of guidance for relevant professionals on the scope of the non-punishment provision. Reference is made in this context to the recommendations on non-punishment for legislators and prosecutors contained in the paper issued by the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings in consultation with the Alliance against Trafficking in Persons Expert Co-ordination Team.²⁶

²⁵ See paragraph 185 of GRETA's first report.

²⁶ Available at <http://www.osce.org/secretariat/101002?download=true>.

4. Investigation, prosecution and procedural law

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

146. A new Unit for Fight against Trafficking in Human Beings was set up within the Department for the Fight against Organised Crime Corruption of the Police Directorate, comprising three police officers dealing exclusively with THB cases. The Unit co-operates closely with police officers in local police departments responsible for THB offences. Police officers deployed at local level have undergone periodic training on the topic of human trafficking and further training will be organised.

147. According to the authorities, given the specificities of investigating THB and other related crimes, special investigative techniques are almost always applied. Pursuant to section 158 of the Code of Criminal Procedure (CPC), special investigation techniques can be used when the suspected crime is punishable by imprisonment of 10 years or more. This is the case for trafficking in human beings (section 444 of the CC), trafficking in minors for adoption (section 445 of the CC) if the offence is committed in an organised manner by several persons, and slavery and transportation of enslaved persons (section 446 of the CC).

148. The available special investigation techniques are listed in section 157 of the CPC and the competence to order such measures in section 159 of the CPC. The measures listed in section 157, paragraph 1, of the CPC have to be ordered in writing by the investigative judge and include: secret surveillance and recording of telephone conversations, other telecommunications, or private conversations held in private or public premises or places; taking photographs and video recording in private premises; and secret supervision and technical recording of persons and objects. The measures listed in section 157, paragraph 2, of the CPC have to be ordered in writing by a prosecutor and include: simulated purchase of objects or persons and simulated giving and taking of bribes; supervision of transport and delivery of objects of criminal offence; recording conversations with the consent of one of the interlocutors; use of undercover agents.

149. In cases where a suspicion exists that certain Internet contents are connected to the commission of THB, there is the possibility, by means of a court order or by directly addressing the administrator of the relevant website, to carry out adequate checks and block the site. A unit to combat cybercrime was established in 2015 within the Ministry of the Interior. If on a specific website there is an illegal content which implies a potential criminal offence, police officers may contact the Ministry of Information Society in order to close the website. The institution in charge of reporting to take-down and remove the illegal content is the National Computer Incident Response Team (CIRT) which is responsible to the Assistant Minister of Information Society and Telecommunications.²⁷

150. Pursuant to section 90 of the CPC and section 113 of the CC, the prosecution is empowered to conduct financial investigations in case of reasonable suspect of committing a crime against humanity or other values protected by international law, which includes trafficking in human beings (section 444 of the CC). According to the authorities, no financial investigations have been conducted so far in cases related to THB.

151. Amendments related to cross-border legal assistance were made to the Law on Mutual Legal Assistance in 2013 which introduced the legal basis for the setting-up of Joint Investigation Teams (JIT). However, no JITs have been set up so far in human trafficking cases.

²⁷ For more details, see Swiss Institute of Comparative Law, Comparative Study on Blocking, Filtering and Take-Down of Illegal Internet Content, Lausanne, 20 December 2015, Montenegro (pp.490-498)
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168065553c>

152. GRETA was informed that the Supreme Court President and the presidents of all other courts have decided that THB cases would be given priority. This means that after their reception by the court and assignment to a judge they would be dealt with immediately and the main hearing would be scheduled in the shortest period possible. According to the Supreme Court, this decision is applied in practice. Examples were given of one case at the High Court in Bijelo Polje in 2012 and one at the Basic Court of Ulcinj in 2014 where the time periods between indictment and final conviction were respectively 217 and 188 days.

153. According to data provided by the Police Directorate, there were two investigations for THB in 2012, three in 2013, four in 2014 and one in 2015. As regards the number of prosecutions initiated for THB, there was one in 2013 and another one in 2014. The number of convictions for THB was one in 2012, six in 2013, and one in 2014. The penalties ranged from two years to six years and 10 months of imprisonment. In their comments on the draft GRETA report, the Montenegrin authorities have indicated that according to data provided in respect of four convictions under section 444 of the CC, the competent courts delayed the start of the imprisonment (in the first case, for two months; in two other cases, for nine months; and in the fourth case, for two months), but in all four cases the convicted served imprisonment.

154. In GRETA's first report, reference was made to the so-called "Aphrodite" case, which involved 13 potential victims of human trafficking for the purpose of sexual exploitation in two night clubs and resulted in indictments of 16 persons for THB or related offences.²⁸ The prosecution qualified the case as THB because it held that the perpetrators had abused the vulnerable position of the victims, and in one case the victim was a minor. However, the first instance court convicted the accused for criminal association and mediation in prostitution. This decision was appealed by the prosecution, but both the Appeal Court and the Supreme Court upheld the first instance convictions. Three police officers who worked as security guards in the night clubs were convicted for misuse of office in the first instance, but were finally acquitted because the internal regulations of the police did not clearly spell out that they were not allowed to work as security guards. The prosecutor's motion for seizure of property in this case was turned down by the court.

155. GRETA was informed that cases of THB often are investigated, prosecuted and brought to court as other offences (e.g. mediation in prostitution, section 210 of the CC) that are easier to prove, but carry lower penalties (a maximum penalty under section 210 if the CC is one year imprisonment), as illustrated by the above-mentioned case.

156. In its first evaluation report on Montenegro, GRETA paid particular attention to the case "S.Č." as it raised issues related to a number of the provisions of the Convention.²⁹ A joint Council of Europe/OSCE expert assessment in 2003 showed that this case of alleged trafficking in human beings had been mishandled at various stages by different actors and asked for an independent inquiry into these shortcomings. GRETA expressed concern that despite all the evidence collected during the investigation, the prosecution was dropped and the case was never taken to court. On the other hand, in 2011 a criminal case was opened against S.Č. for giving false testimony. GRETA understands that at the end of 2014 S.Č. was sentenced by the High Court in Podgorica to one year's imprisonment. The trial was conducted in her absence.³⁰

²⁸ See paragraph 193 of GRETA's first report.

²⁹ See paragraphs 195-200 of GRETA's first report.

³⁰ See also the statement by Amnesty International: <https://www.amnesty.org/en/documents/eur66/006/2014/en/>.

157. GRETA notes that since the first evaluation, no steps have been taken to reopen the initial case. According to the Prosecution Office, the initial criminal proceedings were against four persons for the offence of mediation into prostitution, with additional charges against one person for trafficking in human beings. The accusations for mediation into prostitution have reached the statute of limitation. As concerns the charges for human trafficking, criminal proceedings can be reopened if there is new evidence.

158. As concerns the conviction of S.Č. for giving false testimony, GRETA was informed that the reason for holding the trial in S.Č.'s absence was that otherwise the statute of limitations would have been reached for her alleged offence. GRETA notes that S.Č. was acquitted twice by the Basic Court of Podgorica before the High Court assigned the case to another judge at the Basic Court, who convicted S.Č. and imposed a suspended sentence. This judgement was appealed again, and the High Court changed the sentence to one year without suspension.³¹ This is the minimum judgement for automatically issuing an international arrest warrant. According to the authorities, this judgement could only be appealed if S.Č. came back to Montenegro.

159. GRETA is seriously concerned by reports from civil society actors about the trial of S.Č. and the final verdict, which can deter victims of trafficking from attempting to break the criminal chain and request help from state institutions, and therefore impede Montenegro's longer-term anti-trafficking efforts. GRETA recalls the recommendations made in its first report on Montenegro, in particular the need to improve the knowledge and sensitivity of judges, prosecutors, investigators and lawyers about human trafficking and the rights of victims, and to overcome entrenched negative attitudes and prejudices vis-a-vis victims of trafficking.

160. GRETA urges the Montenegrin authorities to:

- take measures to ensure that THB cases, including those involving public officials, are investigated proactively, prosecuted successfully and lead to effective, proportionate and dissuasive sanctions, including by sensitising prosecutors and judges to the rights of victims of THB and encouraging the development of specialisation among prosecutors and judges to deal with THB cases;
- provide specialised training to investigators and prosecutors to reinforce financial investigations and the confiscation of criminal assets;
- make every effort to investigate and prosecute cases of THB under section 444 of the CC which carries heavier penalties than section 210 of the CC.

b. Protection of witnesses and victims (Article 28 and 30)

161. As explained in GRETA's first report, protection measures for witnesses and victims of THB are stipulated by the Law on Witness Protection and the Criminal Procedure Code (CPC). The CPC stipulates that the protection of witnesses includes hearing of witnesses under pseudonym and hearing with the assistance or technical devices (protective wall, voice simulators, devices for transmission of image and sound). Criminal courts provide for a victim and witness support service which assists the victim or witness, for example by preventing possibilities of physical assault or insults on the court premises prior to and after the trial.

³¹ The Montenegrin NGOs Human Rights Action, Women's Safe House and Women's Rights Centre summarised the proceedings that led to S.Č.'s conviction. The document is available at: <http://www.hraccion.org/?p=7897>.

162. Witness protection can also be provided outside criminal proceedings, in accordance with the Law on Witness Protection. It also provides for the protection of the witness' relatives. The Witness Protection Unit of the Police Directorate referred to two cases of extra-judicial protection of witnesses in THB cases who are not included in the Witness Protection Programme. In the first case, which dates back to in 2009, extra-judicial protection measures were applied on three occasions for a victim of human trafficking: for a testimony in the High Court in Bijelo Polje, for an act of identification in the Security Centre in Bijelo Polje and for a hearing at the Basic Court in Rožaje. In 2014, officials of the Unit used extra-judicial protection measures for a victim from Bosnia and Herzegovina who was attending hearings at the Basic Court in Ulcinj.

163. GRETA considers that the Montenegrin authorities should make full use of the available measures to protect victims and witnesses of THB and to prevent intimidation during the investigation and during and after the court proceedings.

c. Jurisdiction (Article 31)

164. The Montenegrin Criminal Code applies to an offender who is not a citizen of Montenegro if he/she commits a criminal offence against a Montenegrin national outside the territory of Montenegro. Further, Montenegro's criminal jurisdiction applies to a person who is not a citizen of Montenegro and who commits an offence against a foreign national outside Montenegro, under the condition that the law of the country in which the crime was committed provides for a penalty of at least four years of imprisonment if the offender was caught in Montenegrin territory but not extradited to a foreign country. The criminal legislation of Montenegro also applies to a Montenegrin citizen who commits a criminal offence abroad if he/she is found on the Montenegrin territory or extradited to Montenegro. The relevant provisions of the CC are Articles 135, 136 and 137.

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

a. International co-operation (Article 32)

165. In its first report, GRETA invited the Montenegrin authorities to continue exploring possibilities for international co-operation in the fields of protecting and assisting victims of THB, and the investigation and prosecution of trafficking cases.

166. In 2014 the National Anti-trafficking Co-ordinators of Montenegro and Kosovo* signed a Protocol on co-operation on the fight against human trafficking and enhancing identification, notification, referral, co-operation in criminal matter, and voluntary return of the victims and potential victims of trafficking. A Protocol on co-operation was also signed in 2014 with Albania. The preparation of a similar protocol with Serbia was underway.

167. Further, in 2012, a Joint Declaration of the National Anti-trafficking Co-ordinators South Eastern European countries was signed on strengthening the Transnational Referral Mechanism (TRM) and co-operation in human trafficking cases. The National Anti-trafficking Co-ordinator of Montenegro is a member of MARRI (Migration, Asylum, Refugees Regional Initiative) network to combat trafficking established in June 2011.³²

³² <https://www.bordairpol.mk>

168. Montenegro has implemented a number of regional THB-related projects in co-operation with international organisations. For example, the Centre for Judicial Training of Montenegro, in co-operation with UNODC, organised a regional workshop in May 2014 in Budva for contact persons nominated by the South-Eastern European Judicial Training institutions. In 2014, the Office for the Fight against Trafficking in Human Beings participated in a regional survey on human trafficking conducted by IOM and organised a media promotion on the results of this project. In December 2015, the Office for the Fight against Trafficking in Human Beings and the Council of Europe organised a two-day regional workshop on "Promoting the protection of the rights of victims" in Budva which was attended by 27 representatives of seven Western Balkan countries, including national anti-trafficking co-ordinators, judges, prosecutors, police officers and NGOs. The topics for the workshop were access to compensation for victims of THB and the non-punishment provision.

169. Montenegro has continued to conclude multi- and bilateral agreements on judicial co-operation in criminal matters, for example with Bosnia and Herzegovina on extradition (2013) and with "the former Yugoslav Republic of Macedonia" on legal assistance in civil and criminal matters and on mutual execution of court decisions in criminal matters (2014). The bilateral co-operation of the Supreme State Prosecutor Service with many of its foreign counterparts is based on agreements concluded between the relevant services.

170. Co-operation at the police level is carried out on the basis of bilateral agreements, through Interpol or the Southeast European Law Enforcement Centre (SELEC). The Police Directorate of Montenegro is a member of the SELEC's work group in the fight against human trafficking and illegal migration. In 2014, Montenegro concluded an operational Agreement on co-operation with Europol.

171. GRETA invites the Montenegrin authorities to pursue and strengthen international co-operation with a view to preventing human trafficking, assisting victims of trafficking, and investigating and prosecuting human trafficking offences.

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

172. The revised Memorandum of Co-operation has been signed by six NGOs and the Red Cross of Montenegro. All signatories are represented in the Co-ordination Body set up by the Memorandum. Further, since 2013, one NGO representative is a full member of the Working Group for monitoring the implementation of the Strategy for the fight against human trafficking and the accompanying action plans (see paragraph 18). According to the authorities, relevant NGOs are consulted during the drafting stage of strategic documents concerning the fight against THB.

173. Further, the Ministry for Human and Minority Rights and the NGO Centre for Roma Initiatives signed a Memorandum of Co-operation in the areas of preventing domestic violence and child and temporary marriages.

174. As mentioned previously (see paragraph 56), in 2011 the Office for the Fight against Trafficking in Human Beings and the Union of Employers of Montenegro signed the Protocol on co-operation, which provides for information of employees, raise awareness of the general public about THB.

175. GRETA considers that the Montenegrin authorities should continue building strategic partnerships with civil society actors and the private sector with the aim of achieving the purposes of the Convention.

IV. Conclusions

176. Since the adoption of GRETA's first report on Montenegro in March 2012, progress has been made in a number of areas.

177. The Montenegrin authorities have further developed the legal framework for combating trafficking in human beings, in line with GRETA's recommendations. In particular, additional forms of exploitation were added to the definition of THB in the Criminal Code, the list of aggravating circumstances was expanded, and the irrelevance of the victim's consent to the intended exploitation was specifically stipulated.

178. Another welcome development is the updating of the Memorandum of Co-operation between State institutions and NGOs on action against THB and the expansion of the list of signatories, thereby reinforcing the multi-agency approach to victim identification, including the possibility of initial identification by all signatories of the memorandum.

179. The involvement of NGOs in the development and co-ordination of anti-trafficking policy has also improved. Since 2013, the Working Group monitoring the implementation of the National Action Plan includes an NGO representative and several additional NGOs are represented in the co-ordination body under the Memorandum of Understanding.

180. Efforts have been made to provide training to relevant professionals and to expand the categories of staff targeted. The training is often carried out in co-operation with NGOs and international organisations and, whenever possible, a multi-stakeholder approach is promoted.

181. In the area of prevention of THB, a number of awareness-raising activities have been run by the authorities in partnership with international organisations and NGOs. GRETA commends the inclusion of information on the risks of THB in the school curricula and the involvement of the Ombudsman's Office in the prevention of the exploitation and trafficking of children.

182. Another positive development concerns legislative changes to the procedures for granting residence and work permits which limit the risk of abuse by employers.

183. The Montenegrin authorities have adopted a number of policy documents and actions plans in the area of gender equality and for the social inclusion of Roma and Egyptians which have the potential of preventing THB by tackling the root causes of this phenomenon. Other preventive activities have targeted displaced persons and persons without documentation.

184. Further, GRETA welcomes the fact that the new Law on Foreigners provides for a recovery and reflection period of up to 90 days for victims of trafficking and the possibility of granting a temporary residence permit to victims independently of their co-operation with law enforcement authorities.

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

Issues for immediate action

- GRETA urges the Montenegrin authorities to take additional steps to ensure that all victims of trafficking are identified as such and can benefit from the assistance and protection measures contained in the Convention, in particular by:
 - ensuring that law enforcement officials, social workers, NGOs and other relevant actors adopt a more proactive approach and increase their outreach work to identify victims of human trafficking for the purpose of sexual exploitation;
 - further sensitising relevant officials, in particular labour inspectors, prosecutors and judges, about THB for the purpose of labour exploitation and the rights of victims in order to proactively identify victims of trafficking, paying particular attention to migrant workers;
 - paying increased attention to detecting victims of trafficking among asylum seekers and persons placed in the immigration holding centre;
 - strengthening multi-disciplinary co-operation between all relevant partners (paragraph 99).
- GRETA urges the Montenegrin authorities to take further steps to improve the identification and assistance of child victims of trafficking, and in particular to:
 - ensure that relevant actors take a proactive approach and increase their outreach work to identify child victims of THB by paying particular attention to children in street situations, children from the RAE communities and unaccompanied minors;
 - provide adequate support and services which are adapted to the needs of child victims of trafficking, including appropriate accommodation, access to education and vocational training;
 - provide further training to stakeholders (police, centres for social work, NGOs, health-care and education professionals) as well as guidance for the identification of child victims of THB;
 - promote a multi-disciplinary approach between all partners involved (paragraph 116).
- GRETA urges the Montenegrin authorities to take steps to facilitate and guarantee access to compensation to victims of THB, including children, and in particular to:
 - ensure that all victims of human trafficking, regardless of nationality and residence status, are eligible for state compensation, by bringing into force the Law on Compensation for Damages to Victims of Violent Crimes without further delay;
 - enable victims of trafficking to exercise their right to compensation, by building the capacity of legal practitioners to support victims to claim compensation;
 - include victim compensation into training programmes for law enforcement officials, prosecutors and judges;
 - make full use of the existing legislation on the freezing and forfeiture of assets to secure compensation to victims of trafficking (paragraph 131).

- In order to guarantee the application of the non-punishment provision, GRETA urges the Montenegrin authorities to take additional measures including the adoption of a specific legal provision and/or the development of guidance for relevant professionals on the scope of the non-punishment provision (paragraph 145).
- GRETA urges the Montenegrin authorities to:
 - take measures to ensure that THB cases, including those involving public officials, are investigated proactively, prosecuted successfully and lead to effective, proportionate and dissuasive sanctions, including by sensitising prosecutors and judges to the rights of victims of THB and encouraging the development of specialisation among prosecutors and judges to deal with THB cases;
 - provide specialised training to investigators and prosecutors to reinforce financial investigations and the confiscation of criminal assets;
 - make every effort to investigate and prosecute cases of THB under section 444 of the CC which carries heavier penalties than section 210 of the CC (paragraph 160).

Further conclusions:

- GRETA considers that the Montenegrin authorities should examine the possibility of designating as a National Rapporteur a separate organisational entity or an already existing independent mechanism which would monitor the anti-trafficking activities of State institutions and make recommendations (see Article 29, paragraph 4, of the Convention and paragraph 298 of the Explanatory Report) (paragraph 26).
- GRETA welcomes the training on THB provided to different categories of professionals and considers that the Montenegrin authorities should pursue their efforts to train relevant professionals on human trafficking and victims' rights, in particular police officers, labour inspectors, social workers, child care professionals, legal guardians for children, prosecutors, judges and medical staff (paragraph 39).
- GRETA invites the Montenegrin authorities to pursue their efforts to maintain a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical data from all main actors on measures to protect and promote the rights of victims as well as on the investigation, prosecution, convictions and compensation in human trafficking cases. This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection (paragraph 43).
- GRETA considers that the Montenegrin authorities should strengthen their efforts to conduct and support research on THB-related issues, paying particular attention to THB in the tourist and construction sectors (paragraph 46).

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- GRETA considers that the Montenegrin authorities should continue to carry out information and awareness-raising campaigns on different forms of THB. Future awareness-raising measures should be designed in light of the assessment of previous measures and be focused on the needs identified. Special attention should be paid to raising awareness of THB for the purpose of sexual and labour exploitation during the tourist season (paragraph 53).
 - GRETA commends the steps taken in Montenegro to prevent trafficking for the purpose of labour exploitation and considers that these efforts should be intensified, in particular by:
 - raising awareness of the risks of human trafficking for the purpose of labour exploitation, aimed in particular at vulnerable groups and migrant workers in the tourism and construction sector;
 - working closely with the private sector, in line with the Guiding Principles on Business and Human Rights (paragraph 57).
 - GRETA considers that the Montenegrin authorities should continue and strengthen their efforts to prevent child trafficking, paying particular attention to children from the RAE communities and unaccompanied children, by sensitising and training child protection professionals and raising awareness through education. Prevention in respect of child, early and forced marriages should also continue (paragraph 66).
 - While acknowledging the efforts already made, GRETA considers that the Montenegrin authorities should take additional measures to strengthen prevention of human trafficking through social, economic and other measures for vulnerable groups. This should include measures to combat gender inequality, stereotypes and gender-based violence, to facilitate access of the RAE communities to education, the job market and health services, and to regularise the situation of displaced persons (paragraph 73).
 - GRETA welcomes the efforts made to sensitise health-care professionals to THB for the purpose of organ removal and invites the Montenegrin authorities to continue these efforts through providing regular training of medical professionals involved in organ transplantations and other relevant professionals (paragraph 78).
 - GRETA considers that the Montenegrin authorities should strengthen their efforts to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with civil society and the private sector, including the tourist industry (paragraph 81).
 - GRETA considers that the Montenegrin authorities should step up their efforts to detect potential victims at border crossings, including among asylum seekers (paragraph 87).
 - GRETA considers that the Montenegrin authorities should take additional steps to facilitate the reintegration of victims of trafficking into society, including by providing them with vocational training and assistance to find employment, and ensure by the provision of adequate resources for assisting them in their integration (paragraph 107).
 - GRETA invites the Montenegrin authorities to review the age assessment procedures, ensuring that the best interests of the child are effectively protected and taking into account the Convention on the Rights of the Child and General Comment No. 6 of the Committee on the Rights of the Child (paragraph 113).

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- GRETA considers that the Montenegrin authorities should take steps to ensure the effective implementation of the new provision on the recovery and reflection period by issuing clear instructions to officers performing identification to systematically inform all possible victims of trafficking of the possibility to benefit from such a period and stressing that the recovery and reflection period should not be made conditional on the victim's co-operation and should be granted it whenever there are reasonable grounds to believe that the person concerned is a victim of trafficking, i.e. before the identification procedure has been completed (paragraph 122).
 - GRETA considers that the Montenegrin authorities should ensure that victims of THB can take full advantage of the right to be granted a renewable residence permit and the right to seek and enjoy asylum, in line with the UNHCR's Guidelines on the application of the Refugees Convention to victims of trafficking (paragraph 126).
 - GRETA considers that the Montenegrin authorities should continue to ensure that the return of victims of THB is preferably voluntary and is conducted with due regard to their rights, safety and dignity, including the right to non-refoulement (Article 40(4) of the Convention), and in the case of children, by fully respecting the principle of the best interests of the child. The Montenegrin authorities should give full consideration to the UNHCR's Guidelines on the application of the Refugees Convention to trafficked people and their possible entitlement to asylum when deciding upon applications for asylum of persons who are at risk of being re-trafficked or otherwise persecuted should they be obliged to return to their State of origin or residence (paragraph 134).
 - GRETA invites the Montenegrin authorities to examine the reasons for the absence of cases of application of the corporate liability provisions to human trafficking cases (paragraph 143).
 - GRETA considers that the Montenegrin authorities should make full use of the available measures to protect victims and witnesses of THB and to prevent intimidation during the investigation and during and after the court proceedings (paragraph 163).
 - GRETA invites the Montenegrin authorities to pursue and strengthen international co-operation with a view to preventing human trafficking, assisting victims of trafficking, and investigating and prosecuting human trafficking offences (paragraph 171).
 - GRETA considers that the Montenegrin authorities should continue building strategic partnerships with civil society actors and the private sector with the aim of achieving the purposes of the Convention (paragraph 175).

Appendix

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

Public bodies

- Office for the Fight against Trafficking in Human Beings
- Police Directorate
- Ministry of the Interior
- Ministry of Justice
- Ministry of Foreign Affairs and European Integration
- Ministry for Human and Minority Rights
- Ministry of Health
- Ministry of Labour and Social Welfare
- Ministry of Education
- Supreme State Prosecutor's Office
- Supreme Court
- Office of the Protector of Human Rights and Freedoms (Ombudsman) of Montenegro

Intergovernmental organisations

- International Organization for Migration (IOM)
- Organization for Security and Co-operation in Europe (OSCE)
- United Nations Children's Emergency Fund (UNICEF)
- Office of the United Nations High Commissioner for Refugees (UNHCR)

NGOs and other civil society organisations

- Human Rights Action
- Montenegrin Women's Lobby
- Red Cross of Montenegro

Government's Comments

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

GRETA engaged in a dialogue with the Montenegrin 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 Montenegrin authorities on 22 July 2016 and invited them to submit any final comments. The comments of the Montenegrin authorities, submitted on 14 September 2016, are reproduced hereafter.



Crna Gora

DECENLIJA
OBNOVE
NEZAVISNOSTI
HILJADU GODINA
DRŽAVNOSTI
2016



Da je vječna Crna Gora

**Government of Montenegro
General Secretariat
Office for Fight against Trafficking in Human Beings**

Ref. No: 16-479/16

Podgorica, 14 09 2016

**COUNCIL OF EUROPE
EXECUTIVE SECRETARY OF THE COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST
TRAFFICKING IN HUMAN BEINGS
Ms Petya Nestorova**

**Subject: Comments to the Final Draft of the II GRETA Report on Implementation of the CoE
Convention on Action against Trafficking in Human Beings**

Dear Ms Nestorova,

With utmost attention we received the final Draft of the GRETA II Report on the Implementation of the Convention on Action against Trafficking in Human Beings in Montenegro in relation to which we undertook certain activities on coordination the submission of any comments and provide GRETA with the best possible information in relation to the implementation of the CoE Convention on Action against human trafficking for this reporting period.

In accordance with the above, please find attached comment to the part of the Final Draft of GRETA II Report of Montenegro.

Hereby I wish to confirm the readiness and openness of the Government of Montenegro to continue successful cooperation with the Expert Group GRETA for the effective implementation of the CoE Convention on Action against Trafficking in Human Beings in Montenegro.

Yours sincerely,



**HEAD OF OFFICE / NATIONAL COORDINATOR
FOR FIGHT AGAINST TRAFFICKING IN HUMAN BEINGS
ZORAN ULAMA**

COMMENT(S) FROM GOVERNMENT OF MONTENEGRO TO THE FINAL DRAFT OF THE II GRETA REPORT ON MONTENEGRO

Comment from the MNE Government Office for fight against Trafficking in Human Beings to the Paragraph 37 of the II GRETA Evaluation Report on Montenegro:

Newly established Institute for Social and Child Protection is in the process of accreditation of training programs for professional workers on topic of fight against trafficking in human beings. Meanwhile, in cooperation with the Government Office for fight against trafficking in human beings and the Institute for social and child protection along with support of UNICEF representation to Montenegro was implemented six-month Project on the topic “Strengthening capacities of institutions in the area of fight against children trafficking, forced child marriages and child begging”. In the framework of this project two advisors in the Government Office for fight against human trafficking who are trainers licensed by the Institute for social and child protection in area of fight against child trafficking, begging and forced child marriages delivered 10 two-day training attended by a total of 159 representatives of institutions and NGOs (38 representatives of centres for social work, 36 representatives of police, 21 representatives of the prosecution, 24 representatives of the court, 16 representatives of the local self-governments, 6 representatives of the Daily centres, 9 representatives of the NGOs, 2 representatives of the children home “Mladost”, Bijela, 2 representatives of the Red Cross of Montenegro, and 1 representative of the Resource Centre. Of the total number of participants, 23 of them further attended the final three-day training designed as a form of specialized training at which dealt with resolving specific cases of human trafficking by presenting case studies from national and international practise.

Also, employees to the centres for social work and health-care professionals participated in training organized by other public institutions or NGOs on the topic “Identification of human trafficking victims and the guardianship system”.