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# **GRETA**

Group of Experts on Action  
against Trafficking in Human Beings

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

First evaluation round

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## Preamble

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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## Executive summary

Ukraine has taken a number of important steps to develop the legal and institutional framework for combating trafficking in human beings. The legal framework has evolved over the years in the light of the country's international commitments and includes a comprehensive anti-trafficking law adopted in 2011. Since 1999, several national anti-trafficking programmes have been adopted. The current programme addresses all principal areas relevant to action against trafficking and envisages the participation of NGOs and international organisations in the implementation of specific activities. GRETA notes that the funds earmarked for the implementation of the national anti-trafficking programme do not cover the forecasted expenditure and stresses that securing funding from the budget will be indispensable for the implementation of the programme.

An Interdepartmental Council was set up to supervise the implementation of the national programme, but GRETA notes with concern that it has not met since 2010. The day-to-day co-ordination of anti-trafficking action is entrusted to the Ministry of Social Policy where a Division for Combating Trafficking in Human Beings was set up. Specialised police units to combat human trafficking have also been established throughout the country. GRETA urges the Ukrainian authorities to enhance co-ordination of anti-trafficking activities by ensuring the effective and regular functioning of the Interdepartmental Council and the co-ordinating councils set up at *oblast* level. GRETA also asks the authorities to further develop co-ordination with civil society actors engaged in anti-trafficking action and to increase the involvement of NGOs and trade unions in the planning and implementation of national policy.

Since 2010, there has been a significant increase in the number of Ukrainian victims of trafficking for the purpose of labour exploitation. The current anti-trafficking system in Ukraine is tailored to the perception of Ukraine being solely a country of origin and only a few foreign victims of trafficking have been formally identified. Further, insufficient attention is paid to trafficking within Ukraine. GRETA urges the Ukrainian authorities to strengthen action to combat trafficking for the purpose of labour exploitation, to pay increased attention to identifying foreign victims of trafficking in Ukraine, and to take steps to address internal trafficking.

GRETA welcomes the efforts made in Ukraine to raise awareness among the general public and specific groups targeted due to their vulnerability to human trafficking. GRETA considers that the Ukrainian authorities should design future awareness-raising measures in the light of the assessment of previous measures, focussing on the needs identified. Further, GRETA urges the authorities to enhance their efforts to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with NGOs, trade unions, international organisations and the private sector.

The difficult economic situation in the country and the scarcity of job opportunities increase the vulnerability of the rural population to trafficking. GRETA is deeply concerned by the negative consequences of the current crisis in Ukraine on anti-trafficking activities and the growing number of internally displaced persons, who represent a group vulnerable to human trafficking. GRETA urges the Ukrainian authorities to strengthen prevention through social and economic empowerment measures for groups vulnerable to trafficking and to continue their efforts to ensure the registration of all children at birth as a preventive measure against trafficking.

A formal procedure for the identification of victims of trafficking was introduced in 2012. GRETA welcomes its adoption and the fact that identification does not depend on the victim's cooperation with the law enforcement authorities. However, GRETA notes that identification relies on the victims themselves applying for identification. GRETA urges the Ukrainian authorities to ensure that all professionals who are likely to come into contact with potential victims are fully aware of the identification procedure and receive periodic training to enable them to identify victims of trafficking. It is also necessary to improve the identification of victims among unaccompanied foreign minors and to take steps to address the problem of disappearance of unaccompanied foreign children.

GRETA welcomes the adoption of standards aimed at ensuring the quality of the services provided to victims of trafficking and underlines that when the provision of assistance is outsourced to NGOs, the ultimate responsibility for ensuring the availability and quality of assistance remains with the State. GRETA urges the Ukrainian authorities to ensure that all assistance measures provided for in law are guaranteed in practice and that all victims of trafficking, including children, have effective access to it.

Ukrainian legislation does not contain a provision establishing a recovery and reflection period for persons in respect of whom the authorities have reasonable grounds to believe they are victims of trafficking. GRETA urges the Ukrainian authorities to ensure that the recovery and reflection period, as provided for in Article 13 of the Convention, is specifically defined in law, together with all the measures of protection and assistance envisaged. Further, GRETA calls on the authorities to ensure that victims of trafficking can benefit from the right to obtain a renewable residence permit, including when they are unable to co-operate with the authorities but need to remain in the country owing to their personal situation.

Despite the existence of legal possibilities, victims of trafficking in Ukraine do not have effective access to compensation. GRETA asks the authorities to enable victims of trafficking to exercise their right to compensation by ensuring their effective access to legal aid and by including compensation into training programmes for law enforcement officials and the judiciary. Further, GRETA urges the Ukrainian authorities to set up a State compensation scheme accessible to victims of trafficking.

GRETA urges the Ukrainian authorities to develop the training and specialisation of investigators, prosecutors and judges with a view to ensuring that human trafficking offences are effectively investigated and prosecuted, leading to proportionate and dissuasive sanctions. Further, GRETA asks the authorities to make full use of the measures available to protect victims and witnesses of trafficking, including children, and to take additional measures to ensure that victims of trafficking are adequately informed of their rights and existing remedies.

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## I. Introduction

1. Ukraine deposited the instrument of ratification of the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) on 29 November 2010. The Convention entered into force for Ukraine on 1 March 2011.<sup>1</sup>

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

3. In accordance with Article 38 of the Convention, GRETA proceeded with the examination of the measures taken by Ukraine to implement the provisions set out in the Convention. The “Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties – first evaluation round” was sent to Ukraine on 1 February 2013. The deadline for replying to the questionnaire was 1 June 2013. Ukraine submitted its reply on 25 June 2013.

4. In preparation of the present report, GRETA used the reply to the questionnaire by Ukraine, other information collected by GRETA and information received from civil society. In addition, an evaluation visit to Ukraine took place from 21 to 25 of October 2013, carried out by the following delegation:

- Ms Alina Braşoveanu, 1st Vice-President of GRETA;
- Mr Helmut Sax, 2nd Vice-President of GRETA;
- Mr David Dolidze, Administrator at the Secretariat of the Convention on Action against Trafficking in Human Beings;
- Ms Claudia Lam, Administrator at the Secretariat of the Convention on Action against Trafficking in Human Beings.

5. During the visit, the GRETA delegation held meetings with officials from relevant ministries and public agencies, judges, prosecutors, members of Parliament, the Ukrainian Parliament Commissioner for Human Rights and the Office of the Ombudsman for Children under the President of Ukraine. In Donetsk and Odessa, the GRETA delegation met members of the regional interdepartmental councils for family, gender equality, demographic growth, prevention of family violence and combating trafficking in human beings. These meetings took place in a spirit of close co-operation (see Appendix II).

6. The GRETA delegation held separate meetings with representatives of non-governmental organisations active in combating trafficking in human beings and other representatives of civil society, including the Federation of Trade Unions of Ukraine and the Ukrainian Bar Association. Further, meetings were organised with the following intergovernmental organisations present in Ukraine: the International Organization for Migration (IOM), the Organization for Security and Co-operation in Europe (OSCE) and the Office of the United Nations High Commissioner for Refugees (UNHCR). GRETA is grateful for the information provided by them.

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

7. In the context of the evaluation visit to Ukraine, the GRETA delegation visited a medical rehabilitation centre for victims of human trafficking run by IOM in co-operation with the Ukrainian authorities. Further, in Donetsk and Odessa, the delegation visited regional medical psychology centres and regional centres for social psychological assistance, which can assist and accommodate victims of trafficking as well as persons vulnerable to trafficking.

8. GRETA is grateful for the valuable assistance provided by the contact person appointed by the Ukrainian authorities, Ms Olena Farymets, Head of the Division for Combating Trafficking in Human Beings at the Ministry of Social Policy's Department for Gender Policy, Combating Trafficking and Protection of the Rights of Deported Persons.

9. The draft version of the present report was adopted by GRETA at its 19th meeting (17-21 March 2014) and was submitted to the Ukrainian authorities for comments on 3 April 2014. The comments were received on 3 June 2014 and were taken into account by GRETA when drawing up the final evaluation report, which was adopted at the 20th meeting (30 June - 4 July 2014).

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

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

10. Ukraine is primarily a country of origin of victims of trafficking in human beings (THB), but also to some extent a country of destination and transit. Since 2000 the IOM office in Ukraine, in co-operation with NGOs providing assistance to victims of THB, has been collecting data concerning identified victims which, in the absence of a centralised national data collection system, was used by the Ukrainian authorities in their reply to GRETA's questionnaire. According to IOM statistics, the number of identified victims of THB was 1 085 in 2010, 823 in 2011, 945 in 2012 and 929 in 2013. The vast majority of the victims were Ukrainian nationals (1 077 in 2010, 804 in 2011, 889 in 2012 and 900 in 2013), the Russian Federation, Poland and Turkey being the main countries of destination. While in 2010 and 2011 the majority of the identified victims were women (respectively 64% and 58%), in 2012 and 2013 the number of male victims prevailed (respectively 56% and 55%). As regards children, there were 123 identified victims in 2010, 70 in 2011, 63 in 2012 and 23 in 2013.

11. Since 2010, a significant increase in THB for the purpose of labour exploitation has been observed. This type of exploitation affected 56% of the identified victims in 2010, 70% in 2011, 80% in 2012 and 89% in 2013. Trafficking for the purpose of sexual exploitation accounted for 36% of the identified victims in 2010, 24% in 2011, 13% in 2012 and 8% in 2013. As regards other forms of exploitation, 10 persons were trafficked for the purpose of organ removal in 2010 and four in 2012. There have been cases of internal trafficking, i.e. within Ukraine (114 identified victims in 2010, 79 in 2011, 139 in 2012). There is a shared opinion among national and international experts working in Ukraine that internal trafficking for labour exploitation, forced begging and forced criminality is considerably higher than the figures suggest.

12. Ukraine has been experiencing serious political, social and economic problems which have negative repercussions on the fight against THB. On 21 November 2013, the Cabinet of Ministers of Ukraine took a decision to suspend preparations to sign an Association Agreement with the European Union. This served as a starting point for massive protests which led to the ousting of the then-President and the installation of an interim government in February 2014. At the time of writing this report, the situation in Ukraine remains unsettled, following the annexation of Crimea by the Russian Federation and the ongoing armed conflict in Donetsk and Luhansk regions. GRETA is deeply concerned by the negative consequences of the current crisis in Ukraine on anti-trafficking activities and the growing number of internally displaced persons, including women, children and persons with disabilities, who represent a group vulnerable to human trafficking.<sup>2</sup>

<sup>2</sup> The Council of Europe Commissioner for Human Rights, who met a number of displaced persons from Crimea and the Donetsk and Luhansk regions during his visit to Ukraine in June 2014, refers to estimates by UNHCR according to which there are currently more than 34 000 internally displaced persons from different regions of Ukraine and the number is rising daily. See [http://www.coe.int/en/web/commissioner/-/ukraine-crucial-to-pursue-police-and-judicial-reforms-and-address-needs-of-displaced-persons?redirect=http%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Fcommissioner%2Fnews%3Fp\\_p\\_id%3D101\\_INSTANC\\_E\\_easZQ4kHrFrE%26p\\_p\\_lifecycle%3D0%26p\\_p\\_state%3Dnormal%26p\\_p\\_mode%3Dview%26p\\_p\\_col\\_id%3Dcolumn-1%26p\\_p\\_col\\_count%3D1#easZQ4kHrFrE](http://www.coe.int/en/web/commissioner/-/ukraine-crucial-to-pursue-police-and-judicial-reforms-and-address-needs-of-displaced-persons?redirect=http%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Fcommissioner%2Fnews%3Fp_p_id%3D101_INSTANC_E_easZQ4kHrFrE%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D1#easZQ4kHrFrE)

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

### a. Legal framework

13. At the international level, in addition to the Council of Europe Convention on Action against Trafficking in Human Beings, Ukraine is Party to the United Nations Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (both of which it ratified in 2004). Ukraine is Party to the UN Convention on the Rights of the Child (ratified in 1991) and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (ratified in 2003), the Convention on the Elimination of All Forms of Discrimination against Women (ratified in 1981) and its Optional Protocol (ratified in 2003), as well as the following conventions elaborated under the International Labour Organisation (ILO), relevant to combating human trafficking: Convention concerning Forced or Compulsory Labour (No. 29), Convention concerning the Abolition of Forced Labour (No. 105) and Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182). Further, Ukraine is Party to a number of Council of Europe conventions in the criminal field which are relevant to action against THB.<sup>3</sup>

14. Ukrainian legislation in the field of action against THB has evolved over the years in the light of the country's international commitments. The offence of trafficking in human beings was first introduced in the Criminal Code (CC) in 1998. The current Criminal Code, adopted in 2001, criminalises THB as a separate offence in Article 149. Further, a comprehensive law covering all aspects of the fight against THB was adopted in 2011, the Law on Combating Trafficking in Human Beings (hereafter, Anti-Trafficking Law). It defines the competences of the Cabinet of Ministers and other public bodies in the fight against THB and provides for measures to prevent THB, prosecute traffickers, assist victims of THB and pursue international co-operation.

15. In the last two years Ukraine has undergone important legislative changes, including the entry into force of a new Criminal Procedure Code (CPC) on 20 November 2012, which significantly changed the criminal justice system and the roles of investigators, prosecutors, judges and lawyers. In addition to the CPC, the Ukrainian authorities have referred to the following legal acts as being relevant to action against THB:

- Law on Operative-Investigative Activity;
- Law on Ensuring Safety of Persons Involved in Criminal Proceedings;
- Law on the Enforcement of Judgments and Application of the Case Law of the European Court of Human Rights;
- Law on Social Services;
- Law on Social Work with Families, Children and Youth;
- Law on Employment of the Population;
- Law on the Legal Status of Foreigners and Stateless Persons;
- Law on Immigration;
- Law on Securing Equal Rights and Opportunities for Women and Men;
- Law on the Protection of Childhood;
- Law on Bodies and Services for Children's Affairs and Special Institutions for Children;
- Law on the Nationwide Programme 'National Action Plan to Implement the UN Convention on the Rights of the Child' for the Period until 2016.

<sup>3</sup> In particular the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse; the European Convention on Mutual Assistance in Criminal Matters and its Additional Protocols; the European Convention on Extradition and its Additional Protocols; and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

16. Further, the following secondary legislative acts are relevant to action against THB:
- Order No. 432 of 19 August 2013 of the Ministry of Social Policy “On Approval of the Guidelines for the Provision of Social Services to Victims of Trafficking in Human Beings”;
  - Order No. 458 of 30 July 2013 of the Ministry of Social Policy “On Approval of the Standards for the Provision of Social Services to Victims of Trafficking in Human Beings”;
  - Decree No. 417 of 23 May 2012 of the Cabinet of Ministers of Ukraine “On Approval of the Procedure for the Declaration of the Status of a Victim of Trafficking in Human Beings”;
  - Decree No. 350 of 21 March 2012 “On Approval of the State Targeted Social Programme for Combatting Trafficking in Human Beings for the Period until 2015”;
  - Decree No. 783 of 22 August 2012 of the Cabinet of Ministers of Ukraine “On Approval of the Procedure for Interaction of Agents for Combating Trafficking in Human Beings”;
  - Decree No. 660 of 25 July 2012 of the Cabinet of Ministers of Ukraine “On Approval of the Procedure for Payment of a One-Time Benefit to Victims of Trafficking in Human Beings”;
  - Decree No. 389 of 6 April 2011 of the President of Ukraine “On the Status of the Ministry of Social Policy of Ukraine”;
  - Decree No. 608 of 12 May 2004 of the Cabinet of Ministers of Ukraine “On Approval of a Model Regulation of a Centre for Social-Psychological Assistance”;
  - Decree No. 87 of 28 January 2004 of the Cabinet of Ministers of Ukraine “On Approval of a Model Regulation of a Centre for Social-Psychological Rehabilitation of Children”;
  - Decree No. 565 of 9 June 1997 of the Cabinet of Ministers of Ukraine “On a Model Regulation of a Children’s Shelter of the Service for Children’s Affairs”.

b. National Strategies and Programmes

17. The first national programme to prevent trafficking in women and children was adopted by the Ukrainian Government in 1999.<sup>4</sup> Subsequently, the Ukrainian authorities adopted the “Comprehensive programme to combat trafficking in human beings (2002-2005)” and the “State Programme to combat trafficking in human beings (2007-2010)”. Measures to combat trafficking in human beings are also included in the “National action plan to implement the United Nations Convention on the Rights of the Child”, approved by the Ukrainian Parliament in March 2009, and the “National Plan to Implement the European Union visa liberalisation action plan”, approved by Presidential Decree of 22 April 2011.

18. The current national anti-trafficking programme (2013-2015) was approved by the Cabinet of Ministers on 21 March 2012 and contains measures aimed at:

- improving the legislation for combatting THB;
- creating a united monitoring system and evaluating the efficiency of measures carried out at the national level;
- enhancing the capacity of professionals to combat THB and provide assistance to victims;
- preventing THB among the general public and vulnerable groups;
- reinforcing law enforcement measures in regard to persons who commit or abet crimes related to THB;
- providing assistance to victims of THB.

19. The bodies responsible for the implementation of the 2013-2015 programme include the Ministries of Social Policy, Internal Affairs, Foreign Affairs, and Education and Science, the State Security Service, the Administration of the State Border Guard Service, the National Agency for the State Service, the Council of Ministers of the Autonomous Republic of Crimea, the administrations of the different *oblast*, and the Kyiv and Sevastopol city administrations.<sup>5</sup>

<sup>4</sup> Decree No. 1768 of the Cabinet of Ministers of Ukraine of 25 September 1999.

<sup>5</sup> According to the administrative division of Ukraine, it is composed of one Autonomous Republic (Crimea), 24 *oblast*, 490 *rayon* (regions) and two cities with special status (Kyiv and Sevastopol).

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

20. In the course of the evaluation visit, GRETA's attention was drawn to the on-going administrative reform in Ukraine, initiated by Presidential Decree "On Optimisation of the System of Central Government Bodies" of 9 December 2010. This reform affects the main actors concerned with developing and implementing policies on combatting trafficking in human beings at different levels. In the course of the reform, the Ministry for Family, Youth and Sport, which used to be the co-ordinating authority for combatting THB, was disbanded and many of its structural units were merged with the Ministry of Social Policy, which has become the national anti-trafficking co-ordinating body since 2012.

#### a. Interdepartmental Council

21. The Interdepartmental Council for Family, Gender Equality, Demographic Growth, Prevention of Family Violence and Combatting Trafficking in Human Beings (hereinafter, the Interdepartmental Council) is a consultative body of the Cabinet of Ministers. It is chaired by the Minister of Social Policy and includes as members the Deputy Ministers of Health, Education and Science, Justice, Finance, Economic Development and Trade, Internal Affairs, Foreign Affairs, Agricultural Policy and Food, and Culture, as well as the Deputy Heads of the State Service for Emergency Situations, the Security Service, the State Committee for Television and Radio Broadcasting, and the State Service for Statistics. Further, the Parliament Commissioner for Human Rights, the Vice-President of the Academy of Sciences and the Vice-President of the Academy of Pedagogical Sciences are invited to participate in the Interdepartmental Council. The NGO La Strada Ukraine has full membership of the Interdepartmental Council. In addition, the Interdepartmental Council may include experts, scientists, representatives of enterprises, institutions, civil society organisations, foundations and international organisations. The composition of the Interdepartmental Council is approved by the Minister of Social Policy.

22. The Interdepartmental Council is in charge of supervising the implementation of national action plans and strategies in the areas listed in its title, including THB. It makes proposals for improving the functioning of the national and local authorities, examines proposals by the authorities, academic institutions and civil society organisation, and participates in the preparation of national programmes, laws and regulations. The Council also approves reports to UN bodies concerning gender equality, combating domestic violence and elimination of all forms of discrimination against women. The decisions of the Interdepartmental Council are advisory and may be made binding when reflected in decrees of the Cabinet of Ministers. The Ministry of Social Policy provides technical support and functions as the secretariat of the Interdepartmental Council.

23. The Interdepartmental Council is expected to meet at least three times a year, but GRETA was informed that its last meeting took place in 2010. According to the Ukrainian authorities, a meeting was scheduled in July 2014, but it was cancelled due to the events taking place in Ukraine. The next meeting of the Interdepartmental Council should be held before the end of 2014.

24. The Interdepartmental Council is replicated at *oblast* level by interdepartmental councils composed of representatives of the branches of the respective Ministries, *oblast* state administrations and agencies involved in the implementation of anti-trafficking measures. According to information provided by the Ukrainian authorities in their comments on the draft GRETA report, such co-ordinating councils have been set in all *oblast* of Ukraine. Their competences include gender-related and family issues, prevention and combating domestic violence and THB. The co-ordinating councils are supposed to meet on a quarterly basis and can meet more frequently in case of need.

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b. Ministry of Social Policy

25. Under the national anti-trafficking programme for 2013-2015, the task of co-ordinating activities in the field of action against THB has been assigned to the Ministry of Social Policy. Within this Ministry, there is a Division for Combating Trafficking in Human Beings at the Department for Gender Policy, Combating Trafficking and Protection of the Rights of Deported Persons, which is responsible for the day-to-day co-ordination of anti-trafficking activities. The Division has five staff members. The Ministry of Social Policy is also responsible for the formal identification of victims of THB, including granting the status of a victim (see paragraphs 131 and following).

26. On 25 March 2013 the Ministry of Social Policy set up a working group to review problematic issues arising during the implementation of the national policy on combatting trafficking in human beings and improving the regulatory framework in this area (see paragraph 58).

c. Local authorities

27. The state administration bodies at *oblast* and *rayon* levels have a co-ordinating role in the implementation of anti-trafficking activities. Pursuant to the 2011 Anti-Trafficking Law, victims of THB should submit an application to the local state administration, which is responsible for providing them with assistance and protection and referring the application to the Ministry of Social Policy. In addition, local state administrations are tasked with collecting statistical information concerning victims of THB and transmitting this information to the Ministry of Social Policy.

d. Specialised police units

28. The administrative reform referred to in paragraph 20 has led to changes in the specialised law enforcement agencies. The Department for Combating Cybercrime and Trafficking in Human Beings of the Ministry of the Interior, which had been set up in 2004, was transformed into a unit and placed under the Ministry's Criminal Investigation Department, resulting in a significant decrease of staff. However, it was re-established as a Department for Combating Trafficking in Human Beings on 30 August 2013. At the time of GRETA's evaluation visit, it had 22 staff and the recruitment of further staff was on-going. Similar directorates have been set up at the *oblast* and *rayon* levels with the task of combating THB. It is envisaged to employ a total of 700 specialised anti-trafficking police officers throughout Ukraine, with 50 to 60 officers being deployed on anti-trafficking tasks in each city with a population of more than one million persons. In their comments on the draft GRETA report, the Ukrainian authorities have confirmed that such directorates have been set up at each Main Directorate of the Ministry of the Interior at the *oblast* level, as well as in Kyiv.

e. NGOs, other civil society actors and international organisations

29. NGOs have played a vital role in anti-trafficking action in Ukraine through awareness-raising, training of relevant professionals (e.g. police officers, social workers, medical doctors, lawyers, and teachers) and providing assistance to victims of trafficking. By way of example, the International Women's Rights Centre "La Strada Ukraine", which has been active in the anti-trafficking field since 1997, conducts research, carries out preventive activities, provides assistance to victims of THB, prepares reports on the implementation of the national anti-trafficking programme and issues recommendations for improving anti-trafficking policy. La Strada Ukraine operates a toll-free telephone hotline for victims and potential victims of THB.

30. The All-Ukrainian Coalition of NGOs for Combating Trafficking in Human Beings, consisting of 28 NGOs from different parts of the country, carries out awareness-raising activities for the general public and target groups such as school children, students, people in areas in difficult economic situation, migrant workers, etc. They also provide training on THB to different professionals.

31. Ukrainian trade unions participate in preventing and combating THB through their participation in the drafting of laws, regulations and proposals for protecting the rights of Ukrainian workers seeking employment abroad, and foreign migrant workers coming to Ukraine, as well as the provision of information on their rights and assistance in the conclusion of labour contracts and collective agreements. On 16 May 2013 the Federation of Trade Unions of Ukraine signed a co-operation protocol with three major Italian trade unions: the Confederation of Trade Unions of Italian Workers, the General Confederation of Italian Workers and the Italian Labour Union. The protocol envisages co-operation as regards the observance of international and national labour standards and regulations, informing migrant workers on health and safety in the workplace, promoting integration of migrant workers and their families in host countries, and improving their working conditions to prevent exploitation. In addition, the Trade Union of Education and Science Workers of Ukraine concluded in January 2013 a co-operation agreement with the Federation of Trade Unions of Workers in Tourism, Trade, Private Security Companies and Social Workers of Rome, which envisages promotion of legal channels for labour migration, prevention of THB and the exploitation of migrant workers, as well as strengthening the protection of their social and economic rights.

32. The IOM office in Ukraine has been central in providing assistance to victims of THB. As of 2000, it has provided direct assistance to over 10 000 victims of THB, including financial support and legal aid, medical and psychological assistance, counselling, and vocational training. The IOM office also operates a Medical Rehabilitation Centre for victims of THB (see paragraph 154-155). Further, it carries out awareness-raising activities in co-operation with Ukrainian NGOs and other international organisations, co-operates with law enforcement agencies with a view to improving their capacity to investigate THB offences, enhance co-operation with other countries and develop an effective witness protection system.

33. The activities of the OSCE office in Ukraine in the area of combating THB focus on awareness-raising, increasing the effectiveness of prosecutions and facilitating the provision of assistance to victims. This includes capacity-building and provision of training to judges, law enforcement officials, medical practitioners, social workers, lawyers, consular officials, journalists and NGO representatives. In co-operation with the Ukrainian authorities, the OSCE office developed a pilot national referral mechanism (NRM) in Donetsk and Chernivtsi *oblast* in 2009.

34. The UNHCR office in Ukraine, in the context of its main task of ensuring protection to persons seeking international protection, co-operates with the authorities and the IOM office in the identification and referral of victims of THB among asylum seekers.

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

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

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

35. Article 1(1)(b) of the Convention establishes as one of its purposes the protection of the human rights of the victims of trafficking. Further, Article 5(3) includes the obligation for Parties to promote a human rights-based approach in the development, implementation and assessment of the policies and programmes to prevent THB. The Explanatory Report on the Convention states that the main added value of the Convention is its human rights perspective and focus on victim protection. In the same vein, the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking emphasise that “the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims”.<sup>6</sup>

36. THB constitutes an offence to the dignity and fundamental freedoms of the human being and thus a grave violation of human rights. GRETA emphasises the obligations of States to respect, fulfil and protect human rights, including by ensuring compliance by non-State actors, in accordance with the duty of due diligence. A State that fails to fulfil these obligations may, for instance, be held accountable for violations of the European Convention on Human Rights and Fundamental Freedoms (the ECHR). This has been confirmed by the European Court of Human Rights in its judgment in the case of *Rantsev v. Cyprus and Russia*, where the Court concluded that THB within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the European Convention on Human Rights<sup>7</sup> (which prohibits slavery, servitude and forced or compulsory labour). The Court further concluded that Article 4 entails a positive obligation to protect victims or potential victims, as well as a procedural obligation to investigate trafficking.<sup>8</sup>

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

38. GRETA wishes to stress the need for States to also address THB as a form of violence against women and to take account of gender-specific types of exploitation, as well as the particular situation of child victims of trafficking, in line with the relevant international legal instruments.<sup>9</sup>

<sup>6</sup> Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

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

<sup>8</sup> See: *Siliadin v. France*, application No. 73316/01, judgment of 26 July 2005, ECHR 2005 VII; *C.N. and V. v. France*, application No. 67724/09, judgment of 11 October 2012, and *C.N. v. United Kingdom*, application No. 4239/08, judgment of 13 November 2012.

<sup>9</sup> Such as the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the United Nations Convention on the Rights of the Child and the Optional Protocol thereto on the sale of children, child prostitution and child pornography, and the United Nations Convention on the Elimination of All Forms of Discrimination against Women.

39. According to the Ukrainian authorities, the fact that access to assistance for victims of THB is not conditional on their co-operation with the law enforcement authorities and participation in criminal proceedings (as stipulated in Article 16 of the Anti-Trafficking Law) indicates that THB is viewed not just as a criminal offence, but also as a human rights violation. In accordance with Article 17 of the Law on the Enforcement of Judgments and Application of the Case-Law of the European Court of Human Rights, courts in Ukraine should use the case-law of the Court as a source of law. The principles of the fight against THB listed in Article 3 of the Anti-Trafficking Law include respect for the human and civil rights and freedoms of victims of THB and non-discrimination on the basis of their race, political, religious and other beliefs, gender, ethnic and social origins, welfare status, place of residence, language or other characteristics.

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

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

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

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

42. Article 149 of the Ukrainian CC, entitled “Trafficking in human beings or other unlawful agreement in respect of a person”, reads as follows:

1. “Trafficking in human beings or other unlawful agreement in respect of a person, as well as recruitment, transportation, harbouring, transfer or receipt of a person, committed for the purpose of exploitation by means of deception, blackmail or abuse of a person’s position of vulnerability, is punishable by deprivation of liberty for a term of three to eight years.

2. Any such actions as provided for by paragraph 1 committed in respect of a minor (up to 18 years of age) or perpetrated upon two or more persons, or repeatedly, or by a group of persons as a result of prior conspiracy, or by an official through the abuse of authority, or by a person upon whom the victim was dependent materially or otherwise, or committed in combination with violence that is not endangering the life or health of the victim or his/her close relatives, or in combination with threats of such violence, is punishable by deprivation of liberty for a term of five to twelve years, with or without the forfeiture of property.

3. Any such actions as provided for by paragraphs 1 or 2 committed in respect of a child up to 14 years of age, or by an organised group, or in combination with violence that is endangering the life or health of the victim or his/her close relatives, or in combination with threats of such violence, or committed by an organised group, or if causing grave consequences, are punishable by deprivation of liberty for a term of eight to fifteen years, with or without the forfeiture of property.”<sup>10</sup>

<sup>10</sup> Unofficial translation provided by the Ukrainian authorities.

43. The notes 1, 2 and 3 to Article 149, which constitute an integral part of that provision, explain the concepts of “exploitation” and “vulnerable condition” as well as the irrelevance of the use of means when the offence is committed against a child. “Exploitation” is defined in note 1 as “all forms of sexual exploitation, use in pornography businesses, forced labour or services, slavery or practices similar to slavery, servitude, involvement in debt bondage, extraction of organs, experimentation over a person without his/her consent, adoption for commercial purposes, forced pregnancy, involvement into criminal activity, use in armed conflicts, etc.”<sup>11</sup> The Ukrainian authorities have indicated that “forced begging” is covered by Article 149 as it is considered a form of forced labour and the previously mentioned list of forms of exploitation is not exhaustive. The authorities have referred to case law in this respect. One case concerned a man who was convicted by the Chudniv District Court in Zhytomyr *oblast* under Article 149, paragraph 3, of the CC for trafficking two women and their children to Poland for the purpose of forced begging. In another case, which at the time of writing was before the Ivano-Frankivsk City Court, a woman was charged under Article 149, paragraph 3, of the CC for having transferred her daughter to be used for begging in exchange for the sum of UAH 5 000.

44. Note 2 to Article 149 defines vulnerable condition as “the status of a person, due to his/her physical or mental peculiarities or external conditions, that divests or abridges his/her ability to comprehend his/her commission or omission of an act or to manage his/her actions, to make his/her own decisions according to his/her will, to maintain adequate resistance to violent or other illegal actions, as well as concurrence of severe personal, family or other circumstances.”<sup>12</sup>

45. A definition of THB is also provided in Article 1 of the Anti-Trafficking Law adopted in 2011, as follows: “conclusion of an unlawful agreement the object of which is a human being, as well as recruitment, transportation, harbouring, transfer or receipt of a human being for purpose of his/her exploitation, including sexual, by means of deception, fraud, blackmail, abuse of a person’s position of vulnerability or by use of force or threat of use of force, with abuse of power or economic or other dependence of the victim on another person, which is considered a crime under the Criminal Code of Ukraine.”<sup>13</sup> In their comments on the draft GRETA report, the Ukrainian authorities have indicated that amendments to the Anti-Trafficking Law were being prepared in order to bring its provisions closer to the Council of Europe Anti-Trafficking Convention. **GRETA invites the Ukrainian authorities to align the two definitions of THB in national law with a view to ensuring that they cover all the concepts in Article 4 in a manner consistent with the principles of the Convention.**

46. Concerning the means, GRETA notes that “fraud” is not specifically mentioned in Article 149 of the CC, and “abduction” and “giving or receiving payments or benefits to achieve the consent over a person having control over another person” are not included in either Article 149 of the CC or Article 1 of the Anti-Trafficking Law. The Ukrainian authorities have indicated that “fraud” is covered by the term “deception” in Article 149, paragraph 1, of the CC, which is defined as the communication of false information to the victim or concealing information the communication of which would have a significant impact on the victim’s behaviour. As regards “abduction”, it constitutes a separate offence under Article 146 of the CC. The authorities have argued that as “abduction” is always accompanied by violence, which is one of the means for committing THB referred to in Article 149 of the CC, it would also be covered by this term. Concerning “giving or receiving payments or benefits to achieve the consent over a person having control over another person”, according to the authorities, this would be covered by Article 149, paragraph 2, of the CC, which refers to THB committed by a person on whom the victim was materially or otherwise dependent and can include achieving the consent of that person by giving or receiving payments or benefits.

<sup>11</sup> Unofficial translation provided by the Ukrainian authorities.

<sup>12</sup> Unofficial translation provided by the Ukrainian authorities.

<sup>13</sup> Unofficial translation.

47. Pursuant to Article 4(b) of the Convention, the consent of the victim is irrelevant where any of the means set forth in the definition of THB have been used. The irrelevance of the consent of a victim of THB to exploitation is not specified in Article 149 of the CC. According to the Ukrainian authorities, the consent of a person to the intended or actual exploitation would not affect his/her identification as a victim of THB. In their comments on the draft GRETA report, the Ukrainian authorities have provided examples from case law in which responsibility for committing THB was established even when the victim had given his/her consent. One case considered by the Khmelnytsky City District Court in 2013 concerned a person who was convicted under Article 149, paragraph 2, of the CC and sentenced to 5 years and 5 months' imprisonment for misleading two women who agreed to the proposed terms of their employment, but were subsequently subjected to sexual exploitation. Nevertheless, **GRETA considers that spelling out the irrelevance of the consent of the victim to the intended exploitation could improve the implementation of the anti-trafficking provisions and provide victims with greater confidence in self-reporting.**

48. For further analysis of the definition of THB and related offences from a substantive criminal law perspective, see paragraphs 188-193.

*ii. Definition of "victim of THB"*

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

50. Article 1 of the Anti-Trafficking Law defines victim of THB as "any natural person who has been subjected to trafficking in human beings and who has been declared a victim thereof in accordance with the provisions of this law." This entails the need to satisfy the requirements of Article 15 of the Anti-Trafficking Law, as well as those of the Decree "On Approval of the Procedure for the Declaration of the Status of a Victim of Trafficking in Human Beings", which involve the person applying for victim status, a mandatory interview with the local state administration, completing a special questionnaire, and the Ministry of Social Policy taking a decision on granting the status of victim.

51. Pursuant to Article 55 of the CPC, "a victim in criminal proceedings may be a natural person who has sustained moral, physical or material damage as a result of a criminal offence, as well as a legal person that has sustained a material damage." The CPC provides victims of crimes with specific rights and envisages certain protection measures, which are described in paragraph 207.

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

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

*i. Comprehensive approach and co-ordination*

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

54. The legal and policy framework in the field of action against THB in Ukraine, outlined above, is intended to cover all victims of THB subjected to different types of exploitation, both transnationally and nationally, whether or not connected with organised crime. The measures included in the national anti-trafficking programme for 2013-2015 address all principal areas relevant to action against THB (see paragraph 18). Further, the programme envisages the participation of NGOs and international organisations working on THB issues in Ukraine in the implementation of specific activities.

55. The funding envisaged for the implementation of the national programme for 2013-2015 is 7 393 184 UAH (approximately 604 313 euros), of which 2 996 616 UAH is to be provided by the State budget and 1 514 833 UAH from the local authorities' budgets. The remaining 2 881 735 UAH (approximately 178 300 euros) is to be covered by donors and external funding. **GRETA notes that the state and local funds earmarked for the implementation of the national programme do not cover the entire forecasted expenditure and stresses that securing funding from the budget will be indispensable for the implementation of the anti-trafficking programme.** The Ukrainian authorities have informed GRETA that on 1 March 2014 the Cabinet of Ministers adopted a resolution "On Saving Public Funds and Prevention of Budget Losses". Pursuant to it, the Ministry of Social Policy drafted a resolution of the Cabinet of Ministers "On Amending the National Programme for Combating Trafficking in Human Beings for the Period until 2015" with the aim of ensuring an efficient use of public funds and adapting the programme of activities according to the real possibilities of the state budget. The amount of state funding for the implementation of the national programme will be determined on an annual basis.

56. GRETA notes with concern that the Interdepartmental Council has not met since 2010. As explained in paragraph 25, the task of co-ordinating day-to-day anti-trafficking activities is assigned to the Ministry of Social Policy's Division for Combating Trafficking in Human Beings. However, the existence of this specialised division cannot substitute the Interdepartmental Council which is called upon to supervise the implementation of the national programme and propose decisions which become binding on all relevant Ministries and agencies.

57. Due to the ongoing administrative reform, interdepartmental councils in charge of THB issues were not functioning in all *oblast* at the time of GRETA's visit. According to representatives of NGOs, there was a lack of a unified approach to the setting up of interdepartmental councils and lack of staff trained on issues related to THB. According to the comments provided by the Ukrainian authorities on the draft GRETA report, as of 1 January 2014, all *oblast* (except for Ivano-Frankivsk), as well as the city of Kyiv, have approved regional programmes and action plans which include measures for combating THB.

58. According to information provided by the Ukrainian authorities, the working group set up by the Ministry of Social Policy (see paragraph 26) met in July 2013 to discuss draft amendments to the OSCE Action Plan for Combating Trafficking in Human Beings, which was approved on 6 December 2013 during the Ukrainian Chairmanship of the OSCE. The working group plans to meet again in the second quarter of 2014 to examine the draft Cabinet of Ministers resolution "On Approval of the Procedure and Criteria for Monitoring the Activities of Agents for Combatting Trafficking in Human Beings" and discuss ways of improving the legislation in the field of THB and the provision of services to victims of THB. Further, in co-operation with La Strada Ukraine, the Ministry has developed indicators for monitoring the implementation of this law and the national programme.<sup>14</sup> To supervise the implementation of the national programme, the Ministry of Social Policy has carried out visits to different *oblast* in order to check on the activities of relevant local stakeholders. These visits provided an assessment of the implementation of state policy on combating trafficking in human beings. Following these visits, the Ministry of Social Policy addressed recommendations to the *oblast* concerned on how to improve the implementation of the national anti-trafficking programme. In addition, the Ministry of Social Policy performs bi-annual monitoring of the implementation of the national programme and submits its findings to the Ministry of the Economy and the Cabinet of Ministers.

<sup>14</sup> The indicators are set out in the publication entitled "Monitoring State Policy on Combating Trafficking in Human Beings".

59. As mentioned in paragraph 29, NGOs in Ukraine play a crucial role in anti-trafficking action. La Strada Ukraine has full membership of the Interdepartmental Council. According to NGO representatives, co-operation with the Ministry of Social Policy is rather good. However, this co-operation should be further formalised, especially when it comes to providing services to victims of THB. The involvement of NGOs in the work of the interdepartmental councils at the *oblast* level is reportedly not always done in a satisfactory manner. Further, obtaining funds from the *oblast* budgets for training and prevention activities carried out by NGOs is apparently difficult.

60. According to information provided by representatives of public bodies and NGOs, even though trafficking for the purpose of labour exploitation has been on the rise in recent years, the labour inspectorate and trade unions are not sufficiently involved in combating THB for labour exploitation and the identification of victims of this form of THB. Neither the Anti-Trafficking Law nor the two decrees regulating the identification of victims of THB and the interaction of competent authorities envisage any tasks for the labour inspectorate. According to representatives of the police and the Prosecutor's Office, there is a lack of training and expertise to detect cases of THB for labour exploitation (see also paragraph 139).

61. The current anti-trafficking system in Ukraine is tailored to the perception of Ukraine being solely a country of origin. However, cases involving foreign nationals trafficked to Ukraine have been documented by IOM and NGOs and there were reportedly cases of possible foreign victims of THB being deported without being identified. GRETA was informed that six foreign victims of THB were formally identified by the Ministry of Social Policy in 2013-2014.

62. At present the anti-trafficking response of Ukraine does not focus sufficiently on internal THB. A number of cases involving women trafficked within Ukraine for sexual exploitation have been documented by NGOs. There are also reports of THB for labour exploitation involving Ukrainian nationals in clothing production sweatshops in Odessa *oblast* and illegal coal mining in Donetsk *oblast* (the so-called "*kopanki*"<sup>15</sup>). The Ukrainian authorities have confirmed that there have been cases of women from rural areas being trafficked to cities for the purpose of sexual or labour exploitation, as well as cases of sale of children, mostly in Western Ukraine (Zakarpattia, Lviv and Chernivtsi *oblast*). La Strada Ukraine and IOM have conducted a campaign addressing demand leading to internal trafficking. However, this form of THB is not addressed in a comprehensive manner in the national programme for 2013-2015. As noted in paragraph 12, the emergence of a new group vulnerable to THB, internally displaced persons, creates new challenges for the authorities (see also paragraph 115).

63. Ukraine's anti-trafficking measures show a lack of attention to the Roma community as a group vulnerable to trafficking, while GRETA was informed that the situation of Roma in Ukraine raises particular concerns as regards human trafficking (see paragraphs 113-114).

**64. GRETA urges the Ukrainian authorities to enhance co-ordination of anti-trafficking activities by ensuring the effective and regular functioning of the Interdepartmental Council and the interdepartmental councils at the *oblast* level. While the Ministry of Social Policy has been designated as the national co-ordinating body on action against THB, GRETA considers that the establishment of the post of National Co-ordinator supported by a dedicated office can be instrumental for strengthening co-ordination.**

**65. GRETA also considers that the authorities should further develop co-ordination between public bodies and civil society actors engaged in anti-trafficking action, and increase the involvement of NGOs and trade unions in the planning and implementation of national policy, for example by encouraging the conclusion of Memoranda of Understanding.**

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<http://www.businessweek.com/articles/2013-11-27/ukraines-illegal-coal-mines-lure-desperate-workers>

66. **GRETA invites the Ukrainian authorities to introduce a periodic independent evaluation of the national anti-trafficking programme as a tool for assessing the impact of the activities and for planning future policies and measures to combat THB, and to consider establishing an independent National Rapporteur or designate another existing independent mechanism for monitoring the anti-trafficking activities of State institutions (see Article 29, paragraph 4, of the Convention and paragraph 298 of the Explanatory Report).**

67. **Further, GRETA urges the Ukrainian authorities to take further steps to ensure that national action to combat THB is comprehensive, and in particular to:**

- **strengthen action to combat THB for the purpose of labour exploitation by involving labour inspectors, trade unions, employment agencies, businesses and civil society in a joint platform and improving the identification of and assistance to victims of THB for the purpose of labour exploitation;**
- **pay increased attention to identifying foreign victims of trafficking in Ukraine, including among unaccompanied minors, irregular migrants and asylum seekers;**
- **address the particular vulnerability to trafficking of persons from groups affected by unfavourable social and economic conditions;**
- **take steps to address internal trafficking.**

*ii. Training of relevant professionals*

68. Considerable efforts and resources have been dedicated in Ukraine to training relevant professionals on issues relating to THB. Training and professional development of all stakeholders involved in preventing trafficking, identifying victims and providing assistance to them is among the main tasks of the national anti-trafficking programme for 2013-2015. In order to prepare qualified personnel to combat THB, the Ministry of Social Policy issued Order No. 508 of 1 August 2013 "On Approval of the Training Programme for Specialists in Providing Assistance to Victims of Human Trafficking".

69. Since 2009 the Ministry of Social Policy, with the support of the OSCE office in Ukraine, has carried out 600 seminars, 234 training sessions and 170 special courses (lectures and practice sessions) on combatting THB in different parts of the country. By way of example, in Donetsk *oblast*, 108 trainers and 144 civil servants were trained, in Chernivtsi *oblast*, 75 trainers and 124 civil servants. During the first nine months of 2012 eight training sessions involving 169 persons were organised in Vinnytsia *oblast*, six sessions involving 109 persons in Khmelnytsky *oblast*, 10 sessions involving 200 persons in Luhansk *oblast*, and two sessions involving 40 participants in Kharkiv *oblast*.

70. The Institute for Further Training of Civil Servants conducts four times a year trainings to enhance the professional level of specialists working in centres of social services for family, children and youth. The training programmes include topics related to combatting trafficking in human beings and providing assistance to victims. GRETA was informed that in 2013 some 3 568 staff providing assistance, rehabilitation and social reintegration services to victims of THB received training on issues related to THB, including representing the interests of victims, assistance in obtaining legal aid, maintaining standards in providing social services and securing the confidentiality of personal data.

71. Prosecutors receive training on THB at the National Academy of Prosecutors. According to legislation, prosecutors should renew their skills through training once every five years. The topic of THB is among the priority subjects and is included in the training curriculum of future prosecutors, as well as in the re-training programme for acting prosecutors. Training materials include a handbook entitled "Prosecutor's activities to combat crimes related to human trafficking and illegal transplantations of organs and tissues", published in 2013, and "Criminal law provisions in Ukraine for protection against exploitation", published by the National Academy of Prosecutors in 2014.

72. In April 2012 the Ministry of Internal Affairs conducted training on THB for 12 participants at the National Academy of Internal Affairs and in 2013 for 26 participants in the National Academy's Institute for Postgraduate Education, and for 30 participants in the Kharkiv National University of Internal Affairs. In addition, 60 employees of the territorial police units participated in a series of workshops entitled "Capacity building of law enforcement agencies in identifying and investigating human trafficking cases" in Odessa and Ivano-Frankivsk, held in September and October 2013. In 2013 a number of handbooks and guidelines on THB were published.<sup>16</sup> Further, with the support of the IOM office in Ukraine, an interactive training course for law enforcement officials in detecting and investigating THB offence is being developed.

73. The NGO La Strada Ukraine also provides training to law enforcement officers, social workers, labour inspectors and other specialists working in the anti-trafficking area. For instance, in 2010 La Strada Ukraine, in co-operation with partners from Georgia and Armenia, conducted training for law enforcement officers and social workers, which involved a distance learning course on prevention of human trafficking and illegal migration, followed by sending 37 law enforcement officials and NGO lawyers to a seven-day training course in Tbilisi. In October 2010, a training course for social workers in the anti-trafficking and irregular migration areas was conducted in the town of Chakvi, Georgia, with the participation of 35 officials from the State Social Service for Family, Children and Youth of Ukraine, as well as representatives of the regional authorities for family, children and youth and NGOs. This training focussed on social work with adult and child victims of THB, including behaviour models and the occurrence of post-traumatic stress disorders among such victims, as well as management techniques for dealing with such cases.

74. In 2010-2012 La Strada Ukraine, in co-operation with the All-Ukrainian network against commercial sexual exploitation of children, conducted 10 training sessions for police officers specialised on child issues and social workers on interviewing child victims of trafficking and sexual offences and providing them with assistance. A total of 154 specialists from Kyiv, Odessa, Lviv, Kharkiv, Zhytomyr and Crimea were trained, with funding from UniCredit Foundation and ECPAT-Netherlands. Further, in 2010 five training sessions were organised by La Strada Ukraine for teachers working in the vocational training system, covering some 580 teachers. In addition, 49 new anti-trafficking trainers were trained in co-operation with the Ministry of Education and Science. In 2013, La Strada Ukraine, together with the Ministry of Social Policy, conducted 10 training sessions for some 600 staff on implementing standards of social services to trafficked persons. Overall, La Strada Ukraine has provided training through its national trainer's network in 13 *oblast*, covering 90 106 professionals in the educational and social fields and 221 971 school children. The budget for these training activities was 32 415 euros.

75. GRETA welcomes the efforts made in Ukraine to provide training to professionals involved in preventing and combating THB. GRETA notes that training activities have been largely led by NGOs and international organisations. The administrative reform mentioned in paragraph 20, the significant turnover of staff and the setting up of specialised anti-trafficking structures have increased the need for regular training of relevant professionals.

**76. GRETA considers that the Ukrainian authorities should take further steps to provide periodic training on THB and the rights of victims to all relevant professionals (such as law enforcement officials, prosecutors, judges, labour inspectors, child protection specialists, social workers and medical professionals). Future training programmes should be designed with a view to improving the knowledge and skills of relevant professionals which enable them to identify victims of trafficking for different forms of exploitation, to assist and protect them, to facilitate compensation for victims, and to secure convictions of traffickers.**

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<sup>16</sup> For example, "Activities of law enforcement bodies of Ukraine in combating trafficking aimed at labour exploitation" by the Kharkiv National University of Internal Affairs, "Detection and investigation of crimes related to human trafficking" by the Didorenko Luhansk State Law Institute, "Special aspects of identifying and documenting criminal offences and criminal proceedings related to human trafficking and crimes against morality" by a group of authors from the Department for Combatting Human Trafficking Crimes of the Ministry of Internal Affairs and the National Academy of Internal Affairs.

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iii. *Data collection and research*

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

78. Since 2000 the IOM office in Ukraine has been collecting data on identified victims of THB, with input from partner NGOs providing assistance to victims of THB. The data is disaggregated according to sex, age, form of trafficking, type of exploitation and country of origin. Statistical data on THB offences is collected by the Ministry of Internal Affairs.

79. Pursuant to paragraphs 29 and 30 of the Procedure for Interaction of Agents for Combating Trafficking in Human Beings, which was adopted in 2012, the state administrations at *rayon* level should keep statistical information concerning victims identified within their jurisdiction and transmit it to the *oblast* state administrations on a quarterly basis. The aggregated statistics should be sent to the Ministry of Social Policy semi-annually, using a special form developed by the Ministry. The Ministry of Social Policy has the task of collating the statistical information concerning identified and assisted victims of THB in Ukraine. However, the system for collecting data is not yet operational. GRETA notes that the UN Committee on the Rights of the Child (CRC) in its Concluding observations in respect of Ukraine adopted at its 56th session (17 January - 4 February 2011), was “gravely concerned at the lack of statistics, disaggregated by age, sex and ethnic and socio-economic origin, on child victims of sexual exploitation and human trafficking.”<sup>17</sup>

80. The Law on the Protection of Personal Data safeguards the right to privacy with regard to the processing of personal data. In June 2012 the Ministry of Social Policy issued Order No. 366 “On Approval of the Forms for Application for the Status of a Victim of Human Trafficking, the Application Register, the Non-Disclosure Slip, the Registration Card of a Presumed Victim and the Register of Victim Status Certificates”, which stipulates that officials in charge of establishing victim status must comply with the Law on the Protection of Personal Data and respect the confidentiality of the information obtained during interviews and processing of documents. However, according to representatives of NGOs, despite the fact that Article 3(3) of the Anti-Trafficking Law establishes the confidentiality of information concerning victims of THB as one of the main principles of combating THB, this principle is not always respected.

**81. For the purpose of preparing, monitoring and evaluating anti-trafficking policies, GRETA urges the Ukrainian authorities to develop and maintain a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical information from all main actors, including NGOs involved in victim identification and assistance, and allowing disaggregation (concerning sex, age, type of exploitation, country of origin and/or destination, etc.). This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection.**

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<sup>17</sup> Committee on the Rights of the Child, 56th session, Concluding observations on Ukraine, CRC/C/UKR/CO3-4.

Available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&TreatyID=10&TreatyID=11&DocTypeID=5](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&TreatyID=10&TreatyID=11&DocTypeID=5)

82. As regards research on THB, in 2010-2012 La Strada Ukraine carried out six studies.<sup>18</sup> It also produced a monitoring report on the implementation of the national anti-trafficking programme until 2010 and analyses of the compliance of Ukrainian legislation with the Council of Europe Anti-Trafficking Convention.

83. Further, in 2012 a joint study entitled “Trafficked at sea: The exploitation of Ukrainian seafarers and fishers” was published by the IOM and the NEXUS Institute. It refers to 46 Ukrainian men trafficked within the seafaring and fishing sectors between 2005 and 2010, of whom 38 were trafficked to Russia, seven to Turkey and one to South Korea. In addition, in September 2013 the IOM carried out a survey with the aim of exploring the awareness of Ukrainians on different forms of THB. According to this survey 9% of respondents claimed that they, their relatives or friends had faced situations or attempts of THB (6% concerned THB for forced labour, 2% sexual exploitation, and 1% other forms of exploitation).

**84. GRETA considers that the Ukrainian authorities should conduct and support research on THB-related issues as an important source of information for the evaluation of current programmes and for planning future policy measures. Areas where more research is needed in order to shed light on the extent and new trends of human trafficking in Ukraine and inform policy makers include trafficking for the purpose of labour exploitation, trafficking of foreign nationals to Ukraine for different types of exploitation, trafficking for the purpose of removal of organs and trafficking within Ukraine.**

*iv. International co-operation*

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

86. In Ukraine, co-operation with other countries in combating THB is based on a number of laws and by-laws. Pursuant to Article 28 of the Anti-Trafficking Law, agents involved in combating trafficking in human beings are authorised to conclude agreements on co-operation and establish direct contacts with the respective authorities of foreign states and international organisations. Section IX of the CPC is devoted to international co-operation in criminal proceedings and contains provisions regulating issues of extradition, transfer of proceedings, legal assistance, as well as recognition and enforcement in Ukraine of judgments delivered by foreign courts. Article 544 of the CPC enables the Ukrainian authorities to provide international legal assistance or any other co-operation upon request from another state, even in the absence of a treaty with that state, including on the basis of reciprocity.

87. Article 8 of the Law on the Police envisages co-operation with the respective authorities of other states and international police organisations. The police must, within its powers, fulfil requests from the law enforcement agencies of other states or international police organisations. Pursuant to Article 16 of the Law of Ukraine on the Security Service of Ukraine, in the performance of its duties the Security Service of Ukraine may establish contacts with the security bodies of foreign states and interact with them. Further, Article 5(1) of the Law of Ukraine on Operative-Investigative Activity envisages co-operation in operative-investigative field between ministries, other central executive government bodies and state authorities that have operational units with their counterparts in foreign countries.

<sup>18</sup> “Ukrainian Greece: reasons, problems and perspectives”, “Legal system of Ukraine and its correspondence to the international law in the sphere of preventing trafficking and, in particular, child trafficking”, “Implementation of the programs on human trafficking in the institutes of further teacher’s education”, “Realisation of the rights of victims of trafficking for compensation in Ukraine”, “Analyses of the existing practices of identification of victims of trafficking in the countries participants of ARIADNE”, “Child sex-tourism in Ukraine: attempt of situational analysis”.

88. Co-operation is also based on international and regional agreements concluded within the Commonwealth of Independent States (CIS)<sup>19</sup>, Interpol and Europol.<sup>20</sup> Further, Ukraine has concluded bilateral agreements relevant to international legal assistance in criminal matters with a number of countries.<sup>21</sup> These agreements cover co-operation in matters such as extradition, transfer of criminal proceedings, enforcement of foreign criminal judgments, implementation of procedural acts such as handing of invitations to appear before a foreign court, interrogation of witnesses and court experts, crime scene investigation, search of premises and persons, seizure of tools and proceeds from crime, etc. They also regulate the application of special investigation techniques, such as secret surveillance, telephone tapping, controlled delivery, provision of simulated business services, using undercover agents, as well as the spontaneous provision of information without prior request and the establishment of joint investigation teams.

89. The Ukrainian authorities have also referred to agreements concluded with IOM, such as the Agreement on Co-operation between the Administration of the State Border Guard Service of Ukraine and IOM of 1 April 2005 and the Agreement on Co-operation between the Ministry of Internal Affairs and IOM of 14 September 2005.

90. According to representatives of the Ministry of Internal Affairs and the State Security Service, joint police operations to dismantle trafficking networks have been successfully conducted with German and Turkish law enforcement agencies. A network for trafficking in women from Ukraine via Poland to Germany for the purpose of sexual exploitation was dismantled in 2012 and a German national was sentenced by the Lutsk City Court to two years' imprisonment and his two accomplices to one year and eight months' imprisonment and one year, respectively. In another case, a Turkish national was convicted of THB and sentenced to five and a half years' imprisonment for trafficking women from Odessa *oblast* to Cyprus for the purpose of sexual exploitation.

91. GRETA welcomes the efforts of the Ukrainian authorities to develop international co-operation in the field of action against THB, which have so far focused on co-operation in criminal matters. **GRETA considers that the Ukrainian authorities should enhance international co-operation in the non-criminal field with a view to preventing THB and providing assistance to Ukrainian and foreign victims of trafficking.**

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<sup>19</sup> Agreement on Cooperation of the CIS Member States in Combating Trafficking in Persons, Human Organs and Tissues of 25 November 2005; Agreement on Information Exchange in Combatting Crime (within the CIS) of 22 May 2009; Agreement on Co-operation Between the Offices of Prosecutors General of the CIS Member States to Combat Trafficking in Persons, Human Organs and Tissues of 3 December 2009; Agreement on Co-operation Between the Ministries of Internal Affairs (Police) of the CIS Member States to Combat Trafficking in Human Beings of 17 September 2010;

<sup>20</sup> Agreement between the European Police Office and Ukraine on Strategic Co-operation of 4 December 2009.

<sup>21</sup> The Cabinet of Ministers of Ukraine concluded co-operation agreements, containing provisions relevant to combating THB with the governments of Czech Republic (30 June 1997), Poland (3 March 1999), Slovak Republic, Cyprus (16 February 2006), Bulgaria (25 September 2006), Lithuania (12 April 2007), Turkey (4 December 2009), Malta (9 July 2008), Germany (30 August 2010), Slovenia (11 October 2011). Further, Office of the Prosecutor General of Ukraine and concluded co-operation agreement with its counterpart of Chile (3 October 2008), Belarus (18 May 2010), Russian Federation (15 September 2010) and Kazakhstan (5 October 2011). Ministry of the Interior has similar agreements with ministries of the interior of Poland (12 March 1992), Romania (18 May 1992), Czech Republic (6 September 1993), Slovak Republic (14 October 1993), Bulgaria (18 April 1994), Vietnam (15 March 1995), Georgia (20 October 2011) and Kazakhstan (24 November 2011).

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

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

### a. Measures to raise awareness

93. A broad range of measures have been implemented in Ukraine by NGOs and intergovernmental organisations to raise awareness about THB among the general public and specific groups targeted due to their vulnerability to human trafficking. Most of these measures have been financed by foreign donors and NGOs.

94. In preparation for the final stage of the European Football Championship, hosted in 2012 by Ukraine and Poland (Euro 2012), the Ministry of Social Policy, in co-operation with the Ministry of Internal Affairs and the OSCE office in Ukraine, carried out an anti-trafficking information campaign in the form of banners placed on public transport in the cities hosting the tournament (Kyiv, Donetsk, Lviv and Kharkiv). Further, in the course of Euro 2012 an outreach campaign "Let's Do It Together" was implemented by the State Service for Youth and Sport in co-operation with the United Nations Children's Fund (UNICEF), the Joint UN Programme on HIV/AIDS (UNAIDS), the UN Population Fund (UNFPA), the German Society for International Co-operation (GIZ), La Strada Ukraine and other organisations. This campaign aimed at promoting healthy and responsible behaviour among children and youth, prevention of violence and sexual exploitation, and combating human trafficking and racial discrimination. The campaign was promoted by Ukrainian sports and show-business celebrities such as Andriy Shevchenko, Ani Lorak, Gaytana and Vitaliy Virastuyk. Around 50 000 copies of printed cards and posters were disseminated during this campaign. As the result of publicising the national toll-free hotline on prevention of trafficking during Euro 2012, the number of calls increased considerably from May 2010 to April 2012, with 19 457 calls registered.

95. Representatives of the Ministry of Social Policy regularly inform the general public about the legal framework for combatting THB, prevention of trafficking and irregular labour migration through various national and regional television and radio outlets in Kyiv, Dnipropetrovsk, Vinnytsia, Donetsk, Chernivsti and other *oblast*. As of 2012, representatives of the Ministry of Social Policy also provide consultations on THB via the national telephone hotline, which is operated by La Strada since 2005.

96. The State Security Service has also been involved in prevention activities. For example, in 2012, it produced 65 information items in media outlets, 9 radio reports, 12 web-articles and 4 film clips which were broadcast on television. The aim of these measures was to raise awareness about the means and methods used by criminals to recruit potential victims of THB.

97. In 2012, the Ministry of Culture carried out awareness-raising activities in libraries under the slogans "Free man to a free world" and "Trafficking in human beings is modern-time slavery". Library staff, together with representatives of the services for family, children and youth, gave lectures for school children during which THB and its manifestations in Ukraine were discussed.

98. The media has been involved in awareness-raising on THB. For instance, in 2011-2012 the National Television Broadcasting Company aired spots on trafficking in human beings during its news and primetime shows such as "Novyny" (News), "Pidsumky tyzhnia" (Week summary), "Pidsumky dnia" (Day summary) and "Adrenalin" (Adrenaline). It also discussed THB in programmes gathering large audiences, such as "Poriadok denniy" (Current agenda), "Vidkryta studiia" (Open studio) and "Tema dnia" (Topic of the day). Issues related to trafficking in human beings have also been regularly highlighted by state-owned printed periodicals and the Ukrinform National Agency.

99. In 2011-2012 an awareness-raising campaign entitled “Only Cars for Spare Parts” was organised by Caritas Ukraine, with support from regional administrations and NGOs in Vinnytsia, Zakarpattia, Ivano-Frankivsk, Mykolaiv, Rivne, Ternopi and Chernivtsi *oblast*, drawing attention to the problem of trafficking for the purpose of removal of organs. Other events were conducted to raise awareness about THB under the following slogans: “A person is not a commodity”, “Say NO to slavery”, “Rules of safe travel”, “Protect yourself against fraud”, “Combatting sexual exploitation of children in tourism”, “A trip abroad: pros and cons”.

100. The All-Ukrainian network against commercial sexual exploitation of children joined the ECPAT and Body Shop global petition campaign against child sex trafficking, a three-year campaign launched in 2009 with the aim of providing relief to child victims with the funds raised and triggering long-term policy change through engaging the public in awareness-raising and lobbying among decision makers. The petition calling for strengthening government action against trafficking in children for the purposes of sexual exploitation collected 55 736 signatures and was handed over to the Ukrainian Parliament on 5 October 2011.

101. In 2013 the Ministry of Social Policy carried out preparatory work for a large-scale information campaign to raise public awareness of human trafficking, including on the methods used by traffickers. The Ministry developed the layout for posters and booklets planned for distribution in 2014. In August and September 2013, at the initiative of the Ministry of Social Policy, the State Committee for Television and Radio Broadcasting aired on national television short video clips (“Exploitation of children is near you. You can stop it!” and “Human Trafficking. Recognise the danger in time”). The Ministry of Social Policy also participates in the production of another video clip entitled “Life for Sale”, which is being prepared for the MTV EXIT information-educational campaign. Further, in collaboration with the Council of Europe, the Ministry distributed a comic strip “You’re not for sale” in different parts of Ukraine. In the course of 2013 representatives of the Ministry of Social Policy participated in numerous training seminars, workshops and conferences devoted to action against THB, organised by different national and international actors.

102. GRETA welcomes the efforts made in Ukraine to raise general public awareness on human trafficking and to target specific groups. **GRETA considers that the Ukrainian authorities should continue their efforts to prevent THB and design future awareness-raising measures in the light of the assessment of previous measures, focussing on the needs identified. Awareness raising should target vulnerable groups and inform the general public of new trends in THB, such as trafficking for the purpose of labour exploitation, removal of organs and trafficking within Ukraine, and should engage all relevant professionals.**

b. Measures to discourage demand

103. In accordance with the Convention, measures to discourage demand for the services of victims of trafficking, especially women and children, should be understood as a positive obligation on Parties to adopt and reinforce such measures as regards THB for the purpose of any form of exploitation (see paragraph 108 of the Explanatory Report of the Convention). As it is stated in the Recommended Principles and Guidelines on Human Rights and Human Trafficking, strategies aimed at preventing THB shall address demand as a root cause of trafficking.<sup>22</sup>

104. According to the Ukrainian authorities, due to the fact that Ukraine is primarily a country of origin, efforts to prevent THB have been directed towards potential victims of THB rather than to users of services of victims of THB. Some measures to discourage demand have been taken in the field of education as part of lessons on preventing THB.

<sup>22</sup> Principle 4 of Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

105. In 2013, La Strada Ukraine, with the support of the IOM office in Ukraine, implemented a project aimed at discouraging demand, which targeted employers. Its aim was to promote legal employment and inform employers about the criminal responsibility for human trafficking. The campaign was carried out by means of an audio art, aired by two radio stations (Radio Era FM and the First National Radio Channel), a poster, an electronic banner and a video.

106. Ukrainian legislation does not establish as a criminal offence the use of services of a victim of THB with the knowledge that a person is a victim. **GRETA invites the Ukrainian authorities to consider establishing as a criminal offence the use of services which are the object of exploitation as defined in Article 4 of the Convention, with the knowledge that the person is a victim of trafficking in human beings.**

107. **Further, GRETA urges the Ukrainian authorities, in the light of the recent trends of trafficking of foreigners to Ukraine and trafficking within the country, to enhance their efforts to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with NGOs, trade unions, international organisations and the private sector.**

c. Social, economic and other initiatives for groups vulnerable to THB

108. The difficult economic situation in the country, especially its rural areas, and the lack of job opportunities drives a considerable part of the population out of their regions, often abroad, in search of income-generating activities. Persons in difficult economic situation may be susceptible to accept almost any offer of employment from unverified sources and without negotiating employment arrangements, which often makes them an easy prey for traffickers. The scarcity of employment opportunities in rural areas of Ukraine and the lack of information about legal ways of migration and employment, as confirmed by representatives of the authorities, the Parliament and NGOs, increase the vulnerability of the rural population to THB and need to be adequately addressed, *inter alia*, through appropriate economic and social initiatives.

109. The State Employment Service holds information, consulting and career guidance events for various groups of the population to inform them about the ways to access employment, including employment abroad, and raise awareness about the causes and consequences of trafficking. These events include seminars on general issues of employment, prevention of irregular labour migration and THB, and exploitation of child labour. Moreover, individual and group consulting sessions are held to discuss relevant issues regarding the risks of employment abroad and job placement through recruitment agencies. In the course of 2012, over 3 million people, including 1.3 million unemployed people registered in employment centres and nearly 1.7 million employed persons received advice from the State Employment Service. According to the State Employment Service, 86 700 Ukrainians were temporarily employed abroad in 2012.

110. Pursuant to a decision of the Cabinet of Ministers of 19 June 2013, the State Employment Service is the licensing authority for businesses providing intermediary services in foreign employment. The provision of such intermediary services is regulated by the Law on Licensing Certain Types of Economic Activity of 1 June 2000 as amended by Law on the Employment of the Population of 5 July 2012 and other legal acts. To obtain a license to provide intermediary services to persons seeking employment abroad, an agency must submit a contract with a foreign employer about intermediary services in finding employment abroad, a draft labour contract certified by the foreign employer, and a copy of the collective agreement concluded by the foreign employer and a trade union, or an official certificate from the foreign employer stating that no such contract has been concluded. As of 16 May 2014, there were 637 employment agencies with valid licenses registered in Ukraine. The State Employment Service carries out both planned and unplanned inspections, which in certain cases have led to licenses being revoked. Following a decision of the Cabinet of Ministers of In April 2014, the function of the licensing authority is to be given in the future to the Ministry of Social Policy.

111. According to a representative of the Parliamentary Commissioner for Human Rights, the current numbers on violence and trafficking in children do not reflect the actual situation in Ukraine for a number of reasons. First, there is insufficient awareness among the general public as regards trafficking in children. The lack of staff in law enforcement bodies and social services capable of identifying child victims is another important factor allowing for trafficking in children to go unnoticed. In addition, co-ordination and co-operation among the bodies which come across children in difficult circumstances is not efficient. A survey carried out by the Presidential Administration Office of the Ombudsman for Children in 2012 suggests that more than 56% of children were not aware of their rights as regards protection against sexual exploitation and trafficking.

112. The current policy concerning children without parental care is aimed at their de-institutionalisation and placing them with foster families or encouraging their adoption. According to the authorities, by 1 January 2013 there were about 80 000 children placed in foster families or establishments for foster care in the framework of the national programme to minimise the number of children in institutions. However, the state is yet to provide a comprehensive response to the needs of such children, including unaccompanied minors in an irregular migration situation.

113. GRETA was informed that a considerable number of persons from the Roma community, including children, were not registered in any official records and remained without identity documents, making them particularly vulnerable to trafficking. The Fourth Report of the European Commission against Racism and Intolerance (ECRI), published in 2012, notes that whereas according to the 2001 census<sup>23</sup> there were approximately 47 000 Roma in Ukraine, Roma organisations consider that a more accurate estimation would be approximately 400 000 persons. In their comments to the draft GRETA report the Ukrainian authorities referred to the project “Improving the Situation of the Roma in Ukraine through the Implementation of the Programme of Roma Socio-medical Mediators”, included in the Council of Europe’s Action Plan for Ukraine for 2011-2014, as well as the Action Plan for Implementing the Strategy for the Social Protection and Integration of the Roma Ethnic Minority into Ukrainian Society until 2020,<sup>24</sup> which contains measures to improve the protection and integration of the Roma population in the legal, medical and social spheres. In 2013, the Ministry of Social Policy granted the status of victim of THB to six Roma persons living in Zakarpattia *oblast*, who were referred to assistance and rehabilitation.

114. GRETA refers to the Concluding observations in respect of Ukraine adopted by the UN Committee on the Rights of the Child (CRC) at its 56th session, where the Committee urged Ukraine to “adopt positive incentives so as to ensure that free and compulsory birth registration is effectively made available to all children, regardless of ethnicity and social background. In this endeavour, the Committee recommends that the State party abolish any punitive fines for the failure of parents to register their children.”<sup>25</sup> According to information provided by the Ukrainian authorities in their comments on the draft GRETA report, Ukrainian legislation no longer envisages sanctions for non-registration of children at birth and the offices of civil registration are taking measures to promote birth registration among vulnerable groups, including the Roma community. However, GRETA is concerned by information that the registration of all children at birth, especially those from the Roma community, is still not secured.

<sup>23</sup> The population census planned for 2012 has not yet taken place.

<sup>24</sup> Approved by the Presidential Decree No. 201/213 of 8 March 2013.

<sup>25</sup> Committee on the Rights of the Child, 56th session, Concluding observations on Ukraine, CRC/C/UKR/CO3-4.

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[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&TreatyID=10&TreatyID=11&DocTypeID=5](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&TreatyID=10&TreatyID=11&DocTypeID=5)

115. GRETA notes that the Programme for Combatting Trafficking envisages measures to prevent THB among vulnerable groups of the population, such as children of migrant workers, orphans and other categories of children in need of social protection; persons involved in the worst forms of labour, including those who provide paid sexual services; persons seeking employment abroad; the unemployed; foreign nationals; stateless persons, including those who have applied in Ukraine for international protection. Furthermore, GRETA stresses the urgent need to address the situation of the growing number of internally displaced persons, who are vulnerable to THB.

**116. GRETA urges the Ukrainian authorities to strengthen prevention of THB through social and economic empowerment measures for groups vulnerable to THB. Such measures should be based on the identified root causes of THB (economic and social conditions, poverty, inadequate education, absence of employment opportunities) and should aim to decrease and ultimately eliminate these causes.**

**117. GRETA also urges the Ukrainian authorities to continue their efforts to ensure the registration of all children at birth as a preventive measure against trafficking.**

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

118. In Ukraine the responsibility for ensuring the security of the borders and combating illegal migration is entrusted to the State Border Guard Service (SBGS) and the State Security Service. The tasks of the SBGS relevant to combatting THB include operative activities to discover THB offences and their perpetrators, measures to prevent attempts to transport victims of THB, in particular involving the use of vehicles operated by commercial carriers, measures contributing to the searching of persons missing abroad and their return and rehabilitation, and co-operation with law enforcement bodies in Ukraine and neighbouring countries.

119. In 2012, the SBGS carried out 125 investigations on suspected trafficking offences detected at the border, of which 62 were reportedly successful. During this period, investigative units dismantled 34 criminal groups with a total of 82 members involved in the commission of THB offences and contributed to preventing the illegal transportation of 115 potential victims of THB. Following information provided by the SBGS, law enforcement authorities initiated 73 criminal cases and arrested 49 persons suspected of the commission of THB, as well as their accomplices, leading to the initiation of criminal proceedings against 64 suspects. Most of the potential victims were being trafficked for the purpose of sexual exploitation in the Russian Federation, Poland, Turkey, United Arab Emirates, Israel and Greece.

120. Officials of the SBGS working at border checkpoints inform travellers, especially young women and children who are exiting Ukraine, of the risks of THB. Consultations are also provided over a telephone hotline operated by the SBGS. Information booklets and cards with telephone numbers of Ukraine's diplomatic missions abroad and the number of the SBGS hotline are distributed at border checkpoints. The website of the SBGS ([www.dpsu.gov.ua](http://www.dpsu.gov.ua)) also contains information regarding the procedure for leaving and entering the territory of Ukraine. Further, the Administration of the SBGS has prepared video clips promoting regular migration which were broadcast by several television channels, and has published materials on this issue in the media.

121. As regards measures to promote legal migration, in 2012, national and regional public television and radio channels aired special programmes on labour migration, the rights of migrant workers, and means and methods used by traffickers. Regional printed media published articles discussing different aspects of job placement in Ukraine and abroad, the risks of labour migration and the problem of THB. An assessment of the impact of information campaigns and general awareness among the public concerning THB has been carried out by the IOM office in Ukraine. The results of surveys show that the number of persons who were aware that trafficking can occur both in Ukraine and abroad has increased from 61% in 2011 to 65% in 2013. The majority of those covered by the survey knew that a person of any age and sex may become a victim of trafficking for different types of exploitation.

122. During the evaluation visit, representatives of the SBGS informed GRETA that the identification of foreign victims of THB in Ukraine was one of the challenges faced by them in the absence of international agreements in this area with Syria, Afghanistan and other countries from outside European region. Currently the SBGS are applying special indicators designed to assist border guards to detect potential victims of THB, elaborated in co-operation with Frontex. GRETA notes that these indicators are aimed at identifying potential victims of THB among persons leaving Ukraine and not potential foreign victims entering the country. The Ukrainian authorities have indicated in their comments on the draft GRETA report that on 13 December 2013 the SBGS issued Order No. 126 "On the Organisation of the Application of Risk Profiles", containing the basic national risk profiles, including in the field of irregular migration. In 2013 the SBGS, in co-operation with Frontex, initiated drafting of a training manual entitled "Risk profiles and possible indicators of potential trafficking victims".

123. In cases where foreign nationals apply for a Ukrainian working visa, the Ukrainian consular authorities contact the employment centre to verify the information provided by the applicant with the future employer. They may also check the validity and authenticity of the work permit and an applicant may also be invited to an interview with the consul. Further, representatives of the Ministry of Foreign Affairs participate in information campaigns on legal ways of travelling and working in Ukraine. Information booklets on this subject are available in consulates of Ukraine abroad. The Ministry of Foreign Affairs has produced in co-operation with IOM an information leaflet entitled "You could be a victim of THB" which is disseminated in Ukrainian consulates. According to the Ukrainian authorities, the Consular Department of the Ministry collects quarterly statistics about Ukrainian victims detected abroad and assistance provided to them by the consulates. A special hotline is operating on a round the clock basis in consulates to receive notifications about persons abroad in situations of distress, including trafficking.

**124. While welcoming the measures taken by the Ukrainian authorities to prevent THB at the borders, GRETA considers that the Ukrainian authorities should make further efforts to improve the detection of THB cases in the context of border control, in particular of possible foreign victims entering Ukraine. For this purpose, the competent authorities should consider drawing up a list of indicators to facilitate detection of potential victims of THB among foreign nationals coming to Ukraine and unaccompanied minors and introduce a checklist to identify potential THB-related risks during the visa application process.**

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

125. Following the entry into force in December 2012 of the Law "On the single state demographic register and the documents that confirm Ukrainian citizenship, identity of a person or his/her special status" identity documents carrying biometrical information were introduced in Ukraine. In accordance with this law, the Cabinet of Ministers of Ukraine issued Decree No. 185 on 13 March 2013 entitled "Some issues in implementing the Law of Ukraine on the single state demographic register and the documents that confirm Ukrainian citizenship, identity of a person or his/her special status", which laid down the technical specification of documents containing contactless electronic information carriers and procedures for their issuance. The implementation of these regulations ensures the security and integrity of travel documents and personal identity cards and renders forgery of and tampering with such documents nearly impossible from the technical point of view.

126. Training to detect forged or counterfeit travel and identity documents is provided to SBSG staff during the basic training programme and during internships at the border. In addition, border guards regularly exchange information as regards methods used to falsify documents and indicators of forged documents with their counterparts in the European Union member States. There is no specific training provided to consular staff which would enable them to detect forged or counterfeit travel and identity documents.

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

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

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

128. Pursuant to the 2011 Anti-Trafficking Law, a formal procedure for the identification of victims of THB was introduced through the Decree No. 417 of the Cabinet of Ministers on “On Approval of the Procedure for the Declaration of the Status of a Victim of Trafficking in Human Beings” (hereinafter “Victim Status Procedure”), and the Decree No. 783 “On Approval of the Procedure for Interaction of Agents for Combating Trafficking in Human Beings” (hereinafter “Procedure for Interaction of Agents”), adopted respectively in May and August of 2012.

129. Article 13 of the Anti-Trafficking Law states that a national mechanism for interaction of relevant bodies involved in combating THB shall be established. Article 14 of the Law stipulates the rights of persons who consider themselves as victims of THB and submit an application to obtain victim status to the local state administration and/or to the local law enforcement body. Once the application is submitted and prior to the decision concerning victim status, such persons have the right to personal security, information concerning their rights in a language they understand, medical, psychological, legal and other assistance, and temporary placement in an institution providing assistance to victims of THB.

130. According to Article 15 of the Anti-Trafficking Law, an interview with the applicant and the filing of a special questionnaire prepared by the Ministry of Social Policy are compulsory components of the identification procedure. The interview is carried out by the responsible person in the local state administration. However, such an interview is not required if the applicant has already been identified as a victim of THB by the law enforcement authorities or the court, or has been recognised as a victim of THB by the relevant authorities of the country he/she is returning from. If holding an interview is not possible due to chronic mental illness, temporary mental disorder or the young age of the presumed victim, the questionnaire should be completed on the basis of personal observations of the responsible official, accounts of witnesses and other available data. Following the interview the official of the local state administration prepares the personal file of the applicant, verifies the accuracy of the information, and transmits the application to the Ministry of Social Policy. The overall time for examination of applications for victim status should not exceed one month from the day of the first interview.

131. The Ministry of Social Policy reviews the file and takes a decision on victim status without any contact with the applicant. The GRETA delegation was informed of a number of cases where victim status was refused due to the lack of certain documents from the file, such as a police report (the presence of which is not a mandatory requirement), or an incorrectly completed questionnaire. Further, according to representatives of NGOs, the fact that the certificate issued by the Ministry refers to the status of “victim of trafficking” is seen as problematic, as being labelled a “victim of trafficking” may have a deterrent effect on some of the trafficked persons. In their comments on the draft GRETA report the Ukrainian authorities have emphasised that the certificate ascertaining the status of a victim of THB is needed to provide them with financial assistance.

132. Pursuant to Article 20 of the Victim Status Procedure, the duration of the victim status may be up to two years, with a possibility of extension by the Ministry of Social Policy for up to one year. Officially identified victims are provided with a certificate confirming victim status. Refusals to grant the status of a victim of THB must be substantiated and can be appealed against in the administrative court.

133. According to NGOs met during the visit, while refusals to grant victim status may be reviewed by administrative courts, applicants are not systematically informed about the 30-day limit within which an appeal against a negative decision should be filed. It would appear that in some cases the refusals are not substantiated, which makes it more difficult to formulate an appeal against them. In some cases decisions of the Ministry of Social Policy on several applications were apparently communicated to all applicants concerned by one letter, thus revealing their names to one another, in violation of the obligation to protect personal data.

134. GRETA notes with satisfaction that in order to be identified as a victim of THB, neither the Anti-Trafficking Law nor the Victim Status Procedure requires co-operation with the law enforcement authorities. In cases where a potential victim is not willing to co-operate with the law enforcement agencies, the responsible structural unit should inform the local police department about the suspected commission of a THB offence and about the potential victim refusing to co-operate with the law enforcement authorities. However, in practice a person co-operating with the law enforcement authorities is more likely to receive the status of victim of THB from the Ministry of Social Policy.

135. The Victim Status Procedure establishes special rules for the identification of child victims of THB. The application has to be submitted by the child's legal representative or another person who has become aware that a child may be a victim of trafficking. The interview with the potential child victim must take place in the presence of the child's legal representative. Further, the presence of a psychologist or pedagogue and a lawyer is mandatory during the interview.

136. Since the introduction of the formal identification procedure, a total of 63 victims of THB (13 in 2012, 41 in 2013 and 9 in 2014) have been granted victim status by the Ministry of Social Policy, which remains a remarkably low number compared to the figures collected by IOM and its partner NGOs for the same period (see paragraph 10). Another 70 applications for victim status were rejected. GRETA notes that while the introduction of a formal procedure for identification of victims of THB in Ukraine is a welcome development, the current procedure seems to rely on the victims themselves applying for identification. The fact that a person needs to file an application and provide justification in order to be recognised as a victim of THB places a considerable burden of proof on persons who, in most cases, are emerging from very difficult circumstances and traumatising experiences of exploitation. Not all of them may be ready to step forward and request the status of victim of THB, or indeed be aware that they are victims of trafficking. In addition, GRETA notes the low number of officials processing applications of victims of THB at the Ministry of Social Policy (two persons).

137. During the evaluation visit the GRETA delegation was informed that the requirements set out in the Victim Status Procedure were not applied across Ukraine due to structural changes in different *oblast* and *rayon*, which also delayed the setting up of local state administration units responsible for its implementation. According to representatives of local authorities and NGOs, there is lack of trained staff and insufficient guidance concerning the identification procedure. The Ukrainian authorities have informed GRETA in their comments on the draft report that since the adoption of the Victim Status Procedure (May 2012), all local state administrations have designated respective structural units responsible for the procedure of victim identification. However, due to the reorganisation of local government bodies, this function was transferred several times to different structural units. According to the authorities, another problem is the scarcity of qualified personnel at the local level. To tackle this issue the Ministry of Social Policy has held a series of workshops, trainings and meetings in 2013. Further, the Ministry approved "Methodological Recommendations on Providing Social Services to Victims of Trafficking" and a training programme for staff assisting victims of trafficking, which is being implemented by the training centres for public servants.

138. GRETA has received reports according to which some 50 Moldovan nationals who were exploited in the agricultural sector in Kherson *oblast* were returned to their country without having been identified as victims of THB. Other reports concerned nationals of Kazakhstan, Vietnam, India, China and South Korea reportedly exploited in the agricultural sector in Ukraine. Further, representatives of the Parliamentary Committee for Human Rights referred to possible cases of trafficking of nationals from Uzbekistan, Pakistan and Azerbaijan, mostly in agriculture and construction work. As of 27 May 2014, six foreign nationals (four Pakistani, one Russian and one Moldovan) were granted victim status by the Ministry of Social Policy; five of them were subjected to forced labour and one to sexual exploitation.

139. GRETA was informed that the Labour Inspectorate does not have legal competence or practical capacity to detect and formally identify victims of THB. There are a total of 27 territorial labour inspectorates employing about 850 labour inspectors. The powers of labour inspectors extend to all sectors of the economy and entitle them to carry out both planned and unplanned inspections, but they do not have access to domestic households, unless the person working in that household is employed through a formal contract.

140. GRETA notes that the UN Committee on the Rights of the Child, in its Concluding observations in respect of Ukraine adopted by at its 56th session, expressed concern at the restrictions in access to the asylum procedure of unaccompanied and undocumented asylum-seeking children due to failure to appoint legal representatives to them, shortcomings with respect to their access to medical and psychological treatment and interpretation, as well as reports on detention of unaccompanied children, sometimes for several months, and deportations.<sup>26</sup> According to UNHCR, in 2013 the situation had improved and all unaccompanied children registered with UNHCR had a duly appointed legal representative.<sup>27</sup> However, concerns were raised as regards the practices of age verification and the lack of infrastructure to ensure unaccompanied children's access to education.

141. According to the regional services for children's affairs, 107 unaccompanied children were identified in 2012, including 94 children without identity documents. There was reasonable doubt as to the age of 67 of these children. 37 children were placed with families, 34 in institutions for the social protection of children and three in children's homes or boarding schools for orphans. 61 of the children later disappeared. The legal representatives of 91 children applied for international protection to the local bodies of the State Migration Service, but only two children were granted refugee status and nine the status of a person in need of additional protection.

142. To improve the social protection of unaccompanied foreign minors who apply for refugee status or international protection in Ukraine, the Ministry of Social Policy adopted on 10 September 2012 a new Regulation on Children's Homes and Boarding Schools for Orphans and Children Deprived of Parental Care. Further, the Ministry has provided guidance to regional services for children's affairs on the terms of placement and keeping of children in orphanages and boarding schools for orphans and children deprived of parental care and as regards special aspects of the social protection of unaccompanied minors.

<sup>26</sup> Committee of the Rights of the Child, Concluding Observations on Ukraine, 56th Session, paragraph 71.

<sup>27</sup> UNHCR, Ukraine as a Country of Asylum: Observations on the Situation of Asylum-seekers and Refugees in Ukraine, July 2013. Available at: <http://www.refworld.org/docid/51ee97344.html>

143. As regards the procedure for verifying the age of a person who may be a child, on 23 October 2013 the Ministry of Social Policy, in co-operation with the Ministry of Public Health and the Ministry of Education and Science, adopted an order “On the Examination of a Child Left Without Parental Care and in Need of Social Protection to Determine His or Her Age”. This order sets out the procedure and working methods for the commission responsible for age determination. The procedure for determining a child’s age consists of three stages: analysing available information about the child and the country of his or her origin, psychological assessment, and physiological assessment. Psychological assessment is carried out on the premises of psychological-medical-pedagogical counselling service by at least two specialists in social pedagogy, child psychology and social work with the involvement of independent experts. Physiological assessment is carried out by experts in paediatrics, paediatric endocrinology and paediatric dentistry and, if necessary, by a radiologist, based on markers that have the highest degree of correlation with biological maturation.

144. In case a victim of THB is a foreign national or a stateless person, the responsible unit notifies the territorial authority or department of the State Migration Service within two working days after a written application for victim status is submitted by the person concerned. If the person does not have documents confirming his/her nationality or country of permanent residence, the territorial authority or department of the State Migration Service sends an inquiry to the supposed country of origin of the person. The time needed to verify the identity and/or nationality of an undocumented foreigner who applies for victim status, as stipulated in Article 10, paragraph 3, of the Procedure for Interaction of Agents, read in conjunction with Article 12(2) of the Victim Status Procedure,<sup>28</sup> would depend on the speed and effectiveness of co-operation with the requested party.

145. There are two avenues for applying for asylum in Ukraine: lodging an application with the UNHCR office in Ukraine or lodging an application with the State Migration Service. When applying for asylum through the UNHCR office, the identification of potential victims of THB is carried out together with partner NGOs and, if such persons are identified, they are referred to the IOM for assistance, as was the case with three victims in 2013. According to the Ukrainian authorities, applications of foreigners and stateless persons for refugee status who claim to have been trafficked are treated by the territorial bodies of the State Migration Service with special attention and the processing of documents is made as soon as possible. If necessary, the State Migration Service officials refer victims to NGOs for psychological assistance. That said, GRETA notes that officials of the State Migration Service are not trained to screen asylum applications with a view to detecting possible victims of THB.

**146. While welcoming the adoption of a formalised procedure for the identification of victims of THB, GRETA urges the Ukrainian authorities to take further steps to ensure that all victims of trafficking are properly identified and can benefit from all the assistance and protection measures provided for under the Convention, and in particular to:**

- **ensure that all professionals who are likely to come into contact with potential victims of THB, including staff of the structural units of local state administrations, are fully aware of the victim identification and status procedure and receive periodic training to enable them to identify victims of THB;**
- **provide frontline staff with operational indicators, guidance and toolkits to be used in the identification process and train them to use these tools in order to ensure that they adopt a proactive and harmonised approach to detecting and identifying victims of trafficking; the indicators should be regularly updated in order to reflect the changing nature of human trafficking and types of exploitation;**
- **review the application of the Victim Status Procedure in order to reduce reliance on the victims themselves applying for identification;**

<sup>28</sup> Article 12(2) requires that an application for victim status submitted to the Ministry of Social Policy through the local state administration be accompanied with a copy of the personal identification document of the person who claims to be a victim of trafficking.

- **enhance the role of labour inspectors and other relevant professionals in the detection of THB for labour exploitation in Ukraine;**
- **improve the identification of victims of THB among unaccompanied foreign minors and take steps to address the problem of disappearance of unaccompanied foreign children by providing suitable safe accommodation and assigning adequately trained legal guardians;**
- **provide periodic training and guidance on the identification and protection of victims of THB to all persons involved in safeguarding children’s rights;**
- **improve the identification of victims of trafficking among asylum seekers, including through the provision of training and clear, binding procedures to be followed by State Migration Service officials.**

b. Assistance to victims

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

148. In Ukraine, the provision of assistance to victims of THB is carried out in accordance with the Anti-Trafficking Law, the Procedure for Interaction of Agents, the Victim Status Procedure, as well as other relevant regulations, in particular Order No. 432 of 19 August 2013 “On Approval of the Guidelines for the Provision of Social Services to Victims of Human Trafficking” and Order No. 458 of 30 July 2013 “On Approval of the Standards for the Provision of Social Services to Victims of Human Trafficking”. The latter order introduced three standards: for social services to prevent THB, for services aimed at the social (re)integration of victims, and for social services aimed at the (re)integration of child victims of trafficking.

149. Persons who apply for victim status are referred to the local centre for social services for family, children and youth in order to carry out an assessment of the victim’s needs and provide the initial assistance envisaged under Article 14 of the Anti-Trafficking Law.

150. Article 16 of the Anti-Trafficking Law sets out the following rights of victims of THB who have been recognised as such by decision of the Ministry of Social Policy: the right to personal security; the right to receive information on rights in a language the person can understand; medical, psychological, social, legal and other necessary assistance; temporary accommodation, if the victim so wishes, for up to three months, which may be extended if considered necessary by the local state administration, including for the purpose of participation in criminal proceedings; one-time financial grant, calculated on the basis of the minimum living standard (currently around 87 euros); assistance to find a job; access to education and professional training. Foreign nationals and stateless persons identified as victims of THB have also the right to interpreter’s services free of charge.

151. GRETA notes with satisfaction that Article 16(6) of the Anti-Trafficking Law states that the provision of assistance to victims of THB does not depend on their participation in criminal proceedings. Further, Article 14(5) of the Anti-Trafficking Law prohibits the holding in temporary detention facilities run by the State Migration Service of persons who request to be identified as victims of THB, except for cases envisaged by the law (which include detention during criminal proceedings as a preventive measure, pursuant to the CPC), or expelling them from Ukraine prior to the final decision concerning their application. GRETA is concerned that this might result in victims of trafficking being detained for migration-related or other offences which were the consequence of them being trafficked (see paragraph 196).

152. The access of victims of THB to assistance is provided through the national mechanism for interaction, as set out in the Procedure for Interaction of Agents. This mechanism was preceded by a pilot project entitled “Developing the National Mechanism for Interaction of Agents for Combating Trafficking in Human Beings in Ukraine”, implemented since 2009 by the Ministry of Social Policy with the support of the OSCE Office in Donetsk and Chernivtsi *oblast*. In 2012, the project was expanded to Vinnytsia, Luhansk, Kharkiv and Khmelnytsky *oblast*. In 2014 it is planned that six more *oblast* (Sumy, Kirovohrad, Volyn, Zhytomyr, Rivne, Kyiv) and the city of Kyiv will join the project. In addition, the IOM office in Ukraine is implementing, in co-operation with the Ministry of Social Policy, a similar project on the implementation of the national mechanism for interaction in other parts of Ukraine: the Autonomous Republic of Crimea (until 2014), Odessa, Ternopil, Lviv, Mykolaiv, Kherson, Zakarpattia, Zaporizhia and Ivano-Frankivsk *oblast*.

153. Once the person is officially identified as a victim of THB, the centre for social services for family, children and youth draws up a victim rehabilitation plan which is agreed by all the parties concerned, approved by the head of the centre for social services for family, children and youth, and accepted by the victim concerned.

154. In Ukraine, most of the victims of THB have been assisted by the IOM through its Medical Rehabilitation Centre, as well as partner NGOs who provide assistance to victims of THB. Since 2000 the IOM office in Ukraine has assisted a total of 10 255 victims of THB. GRETA was informed that 95% of victims who received assistance were identified by specialised NGOs. The assistance provided by NGOs includes legal consultation and representation by lawyers in criminal and civil court, medical care, psychological support, shelter, vocational training, and a small-grant programme to assist former victims of THB to set-up their own businesses.

155. In the course of evaluation the GRETA delegation visited the Medical Rehabilitation Centre which was opened in February 2002 and is operated by the IOM office in Ukraine, in co-operation with the Ministry of Health. The centre provides free-of-charge health care and psychological assistance to victims of THB. It can accommodate up to 14 people. The IOM provides the budget for all types of care provided at the centre, including medication, and covers the costs of transporting victims of THB detected in other parts of Ukraine to the centre. Since its opening, the centre has provided services to 2 241 victims of THB.

156. There are 21 centres of social-psychological assistance in Ukraine, each with capacity to accommodate up to 15 victims of THB, which provide urgent aid to victims (psychological, social, social-pedagogical, social-medical, legal and other services). The GRETA delegation visited the centre for social-psychological assistance in Odessa, which can accommodate up to 24 people (12 men and 12 women) in difficult life circumstances, including victims of THB, domestic violence and former convicts. The staff of the centre comprised two social pedagogues, two legal advisers and two psychologists, one of whom was specialised in working with victims of THB. The centre had accommodated seven victims of THB in 2012, including six men from Moldova who were exploited in construction and agriculture and one stateless woman. All victims were referred to the centre by NGOs. The staff of the centre stressed the need for training on THB issues and informed the GRETA delegation that such training will be included in the IOM pilot project on action against THB which was about to start in Odessa *oblast*.

157. The GRETA delegation also visited the centre for socio-psychological assistance and the medical-psychological centre of Donetsk *oblast*. The first one accommodates and assists women victims of violence, who may be accompanied by their children. Its staff included a lawyer and a social worker, both of whom had received training on issues related to THB. The second centre is specialised in assisting victims of violence and sexual abuse and can also accommodate victims of THB. No victims of THB were accommodated in these centres in 2012-2013.

158. Further, there are 742 social centres for family, children and youth throughout Ukraine, the aim of which is to assist vulnerable groups, including victims of THB. These centres evaluate the needs of victims, develop rehabilitation plans and co-ordinate their implementation, but do not provide accommodation.

159. As regards child victims of trafficking, they may be accommodated in 51 centres for social and psychological rehabilitation of children and 67 shelters for in-patient or out-patient care for children who have found themselves in difficult life circumstances. These shelters are required to provide children with social, psychological, pedagogical, medical, legal and other types of assistance.

160. During the evaluation visit the GRETA delegation was informed that in practice the provision of assistance to victims of THB was problematic due to lack of funding and shortage of trained staff. None of the regulatory documents contain provisions concerning the financing of the implementation of the Victim Status Procedure and the Procedure for Interaction of Agents. Article 30 of the Anti-Trafficking Law stipulates that the implementation of measures to combat THB and assist victims shall be funded from the state and local budgets, funds of enterprises, institutions and organisations, trade unions and foundations, voluntary contributions of legal entities and natural persons, and from other sources. According to the Ukrainian authorities, in 2013, the state budget allocated UAH 60 000 (approx. 3 715 euros) for the implementation of the national programme and UAH 44 900 (2 780 euros) for paying one-time financial benefits to the 34 persons having applied for it. In 2014, UAH 82 100 (5 080 euros) have been earmarked in the state budget for implementing the national programme and a further UAH 240 900 (15 000 euros) for one-time financial benefits. The expenditure from the local budgets was UAH 214 890 (13 300 euros) in 2013, while UAH 607 050 (37 570 euros) is earmarked for 2014.

161. GRETA welcomes the increase in public funding for assistance to victims of THB and the adoption of standards aimed at ensuring the quality of the services provided to victims of THB. GRETA underlines that when the provision of assistance to which victims of THB are entitled to under the Convention is outsourced to NGOs and other non-state actors, the ultimate responsibility to ensure the availability and quality of assistance, including adequate funding, remains with the State. **GRETA urges the Ukrainian authorities to take further measures to provide victims and potential victims of THB with adequate assistance and protection, and in particular to:**

- **ensure that all assistance measures provided for in law are guaranteed in practice and that all victims of THB, including children, have effective access to it;**
- **allocate the necessary human and financial resources, as appropriate, to all providers of assistance to victims of THB, including when such assistance is delegated to NGOs as service providers;**
- **guarantee the quality of the services delivered by all service providers, for instance by establishing a set of mandatory quality standards and an effective supervision of their observance.**

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c. Recovery and reflection period

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

163. Ukrainian legislation does not contain a provision establishing a recovery and reflection period for persons in respect of whom the authorities have reasonable grounds to believe they are victims of THB. According to the Ukrainian authorities, the period of up to one month provided for in Article 15(3) of the Anti-Trafficking Law to determine whether a person is a victim of THB should be understood as a period of recovery and reflection.<sup>29</sup> During this period possible victims of THB are entitled to basic assistance, including accommodation, and foreign victims cannot be removed from the country. Representatives of NGOs indicated that the period required for determining victim status application is in practice considered as a period for deciding whether to co-operate with the law enforcement authorities.

164. GRETA notes that the purpose of the recovery and reflection period is not clearly stated in the Anti-Trafficking Law as it is done in the Convention, i.e. to enable possible victims of trafficking to escape the influence of traffickers and/or to take an informed decision on co-operating with competent authorities. Further, even though Article 15(3) of the Anti-Trafficking Law states that the time for determining an application for victim status should not exceed one month, such decisions may be taken sooner. GRETA recalls that Article 13 of the Convention requires Parties to provide for a recovery and reflection period of at least 30 days. GRETA is concerned that the requirement of a minimum duration of the recovery and reflection period stipulated in the Convention, is not met in Ukraine.

165. According to Article 13 of the Convention, the recovery and reflection period should be provided as soon as there are reasonable grounds to believe that a person is a victim of THB. GRETA notes that in Ukraine, access to the assistance provided for in Articles 12 (1) and (2) of the Convention, which should apply during the recovery and reflection period, does not start from the moment when the authorities have reasonable grounds to believe that a person may be a victim of THB. Instead, Article 14 of the Anti-Trafficking Law applies only once the person submits an application for the victim status, which represents an additional requirement not included in Article 13 of the Convention.

**166. GRETA urges the Ukrainian authorities to ensure that the recovery and reflection period, as provided for in Article 13 of the Convention, is specifically defined in law and that all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention are made available during this period to persons for whom there are reasonable grounds to believe are victims of THB. It should be made clear that the recovery and reflection period should last at least 30 days and should not be conditional upon submitting an application for victim status or any other additional requirement.**

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<sup>29</sup> Article 15(3) of the Anti-Trafficking Law states: "The overall term for conducting the procedure for declaration of the status of a victim of trafficking in human beings may not exceed one month from the moment of conclusion of an interview with the person at the local state administration."

d. Residence permits

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

168. Pursuant to Article 16(2) of the Anti-Trafficking Law, a foreigner or a stateless person who has been granted the status of a victim of THB has the right to temporary stay in Ukraine for up to three months. This term may be extended, in particular for the purpose of his/her participation in criminal proceedings. The certificate confirming the victim status entitles the person to be registered at the place of his/her residence by territorial bodies of the central authority for migration issues.

169. Pursuant to Article 16(4) of the Anti-Trafficking Law, if the agents for combating THB have reasonable grounds to believe that the life, physical or mental health or freedom and integrity of a foreign national or a stateless person victim of THB will be threatened in case of his/her return to the country of origin after the expiry of the temporary residence permit, the duration of the status of victim of THB may be extended, allowing the person concerned to stay in Ukraine. Pursuant to Article 16(5) of the Anti-Trafficking Law, a person who has been allowed to stay in Ukraine due to circumstances described in the previous paragraph and has lived in Ukraine for three consecutive years after being officially identified as a victim of THB, has the right to receive a permanent residence permit according to the procedure established by law. The permanent residence permits are granted within the immigration quota set by the Cabinet of Ministers on an annual basis.

170. The State Migration Service issues residence permits, regularises the stay of applicants for victim status pending the decision of the Ministry of Social Policy, provides immigration permits to persons who have been in Ukraine as victims of THB for over three years, facilitates the repatriation of foreigners following their rehabilitation as victims of THB, and initiates the expulsion from Ukraine of foreign nationals involved in the commission of THB. There is no statistical information available on the number of victims of THB who were granted temporary or permanent residence permits.

171. During the evaluation visit, representatives of the State Migration Service informed GRETA about a conflict between the provisions of the Anti-Trafficking Law and the Immigration Law. While the Anti-Trafficking Law allows foreigners and stateless persons who were officially identified as victims of THB to remain in Ukraine, the certificate confirming the application for victim status provided to potential victims who applied to the Ministry of Social Policy is not included among the grounds for granting temporary stay in Ukraine in Article 4 of the Immigration Law. According to NGOs, in several cases this conflict in the legislation has resulted in a refusal to issue to persons who applied for victim status temporary residence permits, despite the provisions of Article 14(4) of the Anti-Trafficking Law. GRETA was informed by representatives of the State Migration Service that the authorities plan to amend the legislation and that staff of the State Migration Service have already been alerted to this aspect through trainings. GRETA notes that the second part of Article 2 of the Immigration Law states that if an international treaty ratified by the Ukrainian Parliament stipulates rules different from those in the Immigration Law, the international treaty takes precedence.

172. **GRETA urges the Ukrainian authorities to ensure that victims of trafficking can benefit from the right to obtain a renewable residence permit, including when they are unable to co-operate with the authorities but need to remain in the country owing to their personal situation.**

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e. Compensation and legal redress

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

174. Pursuant to Article 16(4) of the Anti-Trafficking Law, a formally identified victim of THB has the right to claim compensation for economic and moral damages from the persons who caused these damages through civil proceedings, in accordance with the procedure established by the Civil Code of Ukraine.

175. Pursuant to the CPC, the victim of any offence can claim damages within criminal proceedings. Under Article 128 of the CPC, a person who sustained material and/or moral damage as a result of a criminal offence or another socially dangerous act has the right to file a civil action against an accused in the course of criminal proceedings before the trial has commenced. According to Article 358, paragraph 1, point 7 of the CPC, the court must adjudicate on the civil action and, if it is successful, for what amount and according to which procedure. In case of appeal, the execution of the decision is postponed until the court of appeals has passed the final court judgment.

176. To ensure that compensation can be effectively provided to the victim, the investigating judge or the court may rule an "attachment of property", which means temporary deprivation of the suspect or accused of the right to dispose of certain property. According to the Ukrainian authorities, in 2013 law enforcement agencies initiated 267 criminal proceedings for THB offences and 96 indictments were submitted to courts. During the pre-trial investigation of these offences, attachment of property was ordered for the amount of UAH 767 369 (47 500 euros). Victims filed lawsuits for the amount of UAH 683 500 (42 300 euros).

177. However, in practice obtaining compensation for victims of trafficking is difficult to achieve, because convictions are appealed in higher instance courts, thus suspending the decision on compensation until the final judgment is delivered by courts of appeal. The Ukrainian authorities have not informed GRETA of any successful compensation claims by victims of trafficking. According to a study of court judgments in 61 cases of THB in 2011-2012 in 15 *oblast* of Ukraine carried out by the All-Ukrainian NGO Coalition, only five victims filed civil claims for compensation. Although the courts awarded compensation in some cases, it was never paid to the victims concerned. There is no efficient mechanism in place to ensure the enforcement within reasonable time of court decisions concerning compensation obtained through civil proceedings.

178. There is currently no possibility for victims of THB to obtain compensation from the State. In GRETA's view, the one-time financial grant referred to in paragraph 150 (approximately 87 euros at the time of writing the report) cannot be considered as compensation.

179. The Law on Free Legal Aid of 2 June 2011 establishes the right to receive free secondary legal aid.<sup>30</sup> However, GRETA notes that victims of THB are not expressly mentioned in Article 14 of this law, which lists the categories eligible for free legal aid. Legal assistance to victims of THB is usually provided by NGOs with the support of the IOM office in Ukraine, and involves the provision of necessary information, assistance in preparing lawsuits, consultations during pre-trial investigation and court representation. However, GRETA was informed by representatives of the Prosecutor's Office and NGOs that victims were unwilling to participate in criminal proceedings and claim their rights, which could be the result lack of adequate information on victims' rights and legal aid.

**180. GRETA urges the Ukrainian authorities to adopt measures to facilitate access to compensation for victims of trafficking, and in particular to:**

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

181. Further, bearing in mind that a very limited number of victims of trafficking are awarded compensation from the perpetrators, GRETA urges the Ukrainian authorities to set up a State compensation scheme accessible to victims of THB, regardless of their citizenship and residence status.

f. Repatriation and return of victims

182. Article 16 of the Convention requires Parties to establish repatriation programmes which aim at avoiding re-victimisation and involve relevant national or international institutions and NGOs, as well as to make efforts to favour the reintegration of victims into the society of the State of return. Parties must also make available to victims of trafficking contact information or structures that can assist them in the country of return, such as law enforcement offices, NGOs, legal professionals and social welfare agencies. The return of victims of trafficking must preferably be voluntary and needs to be carried out with due regard for the rights, safety and dignity of the person and for the status of any legal proceedings related to the fact that the person is a victim of THB. Furthermore a victim may not be returned where such action would be in contravention of the State's obligation of international protection, recognised in Article 40(4) of the Convention.

183. According to the Ukrainian authorities, pursuant to Articles 5 and 18 of the Anti-Trafficking Law, Ukrainian diplomatic missions provide assistance to Ukrainian victims of THB identified abroad in their return. They issue documents required for the return, provide consultation and legal advice, and take other necessary measures to facilitate return to Ukraine. Financial support can also be provided if the victim has no financial means to return to Ukraine. Diplomatic missions co-operate with international organisations and NGOs (e.g. IOM, La Strada Ukraine, Caritas Ukraine). A circular letter is published and disseminated to diplomatic and consular offices, providing guidance on the role of diplomatic and consular staff.

184. According to representatives of the Ministry of Foreign Affairs, a Ukrainian national identified as a victim of THB in a foreign country is automatically identified as such upon his/her return to Ukraine. However, representatives of NGOs informed GRETA that a victim returning to Ukraine needs to apply for victim's status in Ukraine, regardless of his/her recognition as a victim in the foreign country.

<sup>30</sup> Pursuant to Article 13.2 of the Law on Free Legal Aid, free secondary legal aid includes the following types of legal services: 1) defence from prosecution; 2) representation of the interests of persons that have a right to free secondary legal aid in the courts, other state agencies, self-governing authorities, and versus other persons; 3) drafting procedural documents.

185. In the course of the evaluation visit GRETA was informed of several instances of possible foreign victims of THB being expelled from Ukraine without being identified as such. Article 31 of the Law on the Legal Status of Foreigners and Stateless Persons provides the grounds for invoking the principle of *non-refoulement*, which include, *inter alia*, danger to the life or freedom of the person due to race, religion, nationality, citizenship, membership of a particular social group or political opinion, or facing torture or cruel, inhuman or degrading treatment or punishment. The actions of State Migration Service officials concerning forced expulsion during the decision making process are governed by Order No. 353/272/150 of 23 April 2012 "On Approval of the Instruction on Refoulement and Expulsion of Foreigners and Stateless Persons from Ukraine". However, GRETA notes that according to the UNHCR Observations on the Situation of Asylum-seekers and Refugees in Ukraine, published in 2013, there are significant shortcomings in providing international protection in Ukraine and failure to provide sufficient protection against *refoulement*.<sup>31</sup>

186. Under Article 19 of the Anti-Trafficking Law, once the rehabilitation of a foreign victim of THB is completed the person may be repatriated. While the detention or expulsion of persons who applied for victim status in Ukraine is prohibited under Article 14(5) of the Anti-Trafficking Law, there is no prohibition as regards the deportation of foreigners who have been granted victim status. In practice, the territorial bodies of the State Migration Service, when necessary, send a request to the person's country of origin to confirm his/her citizenship or residence status. Further, the territorial bodies of the State Migration Service, with the participation of other relevant agencies, NGOs and international organisations, provide to the person subject to repatriation information concerning the institutions which may assist him/her in the country of return.

187. **GRETA urges the Ukrainian authorities to take further steps to ensure that the return of victims of trafficking is conducted with due regard for their rights, safety and dignity and the status of related legal proceedings; this implies risk assessment before a person is sent back to his/her country, protection from retaliation and re-trafficking and, in the case of children, fully respecting the principle of the best interests of the child.**

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

##### a. Substantive criminal law

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

<sup>31</sup> UNHCR, Ukraine as a Country of Asylum: Observations on the Situation of Asylum-seekers and Refugees in Ukraine, July 2013. Available at: <http://www.refworld.org/docid/51ee97344.html>

189. Article 149 of the Ukrainian CC envisages from three to eight years' imprisonment for the basic offence of THB. The aggravating circumstances set out in paragraph 2 of Article 149 of the CC include trafficking in children, trafficking committed by two or more persons or by a group of persons with prior conspiracy, trafficking committed by an official through abuse of authority, all punishable by imprisonment for a term from five to 12 years). More aggravating circumstances are provided in paragraph 3 of Article 149 of the CC, namely trafficking committed in combination with violence, endangering the life or health of the victim or his/her close relatives, or in combination with threats of such violence, trafficking committed by an organised group, and trafficking causing grave consequences, all punishable by imprisonment for a term of eight to 15 years. When any of these aggravating circumstances are present the court may also order the forfeiture of property as a supplementary sanction. Although endangering the life of the victim by gross negligence is not specifically mentioned, the Ukrainian authorities have affirmed that can be considered as an aggravating circumstance to the extent that it results in grave consequences for the victim.

190. Ukrainian courts may take previous convictions into account when adjudicating on trafficking cases. In accordance with Article 9 of the CC, "a judgment passed by a foreign court may be taken into account where a citizen of Ukraine, a foreign national, or a stateless person have been convicted of a criminal offence committed outside Ukraine and have committed another criminal offence in the territory of Ukraine." Further, paragraph 2 of the same Article states that "pursuant to the first paragraph of this Article, the repetition of criminal offences, or a sentence not served, or any other legal consequences of a judgment passed by a foreign court shall be taken into account in the classification of any new criminal offence, determination of punishment, discharge from criminal responsibility or punishment." The exchange of information with foreign courts in criminal proceedings is carried out by the Ministry of Justice as part of international legal assistance in criminal matters. During the pre-trial investigation, international legal co-operation is carried out through the Prosecutor General's Office in accordance with the procedure defined by Chapter IX of the CPC and international treaties to which Ukraine is party

191. Ukrainian legislation criminalises the illegal appropriation, in any way, of a passport or other important personal identity document. Article 357 (3) of the CC states that "stealing, appropriation, or extortion of documents, stamps and seals, or acquiring them by fraud or abuse of office, or their damaging" is punishable by a fine of up to 50 tax-free minimum incomes or arrest<sup>32</sup> for a term of up to three months or restraint of liberty<sup>33</sup> for a term of up to three years.

192. During the evaluation visit, the GRETA delegation was informed by representatives of the Prosecutor's Office that amendments to the CC were adopted on 23 May 2013, introducing liability of legal persons for criminal offences, which were expected to enter into force in January 2014. The Ukrainian authorities have indicated in their comments to the draft GRETA report that these amendments to the CC do not concern the offence of trafficking in human beings. **GRETA urges the Ukrainian authorities to adopt such legislative and other measures as may be necessary to ensure that a legal person can be held liable for a criminal offence established in accordance with the Convention, as required under Article 22 of the Convention.**

193. As noted in paragraph 189, Article 149, paragraphs 2 and 3, of the CC provide for the possibility of forfeiture of property. Under Article 59 of the CC, the punishment of forfeiture consists of seizure of all, or a part of, property of a convicted person in favour of the State. An analysis of judicial practice in this respect suggests that the forfeiture may cover both the proceeds of crime and property not related to the offence in question. If the offence contains elements of money laundering, it may be qualified as a cumulative criminal offence under both Articles 149 and 209 of the CC. The Ukrainian authorities have referred to case law in this respect. In one case, the Khmelnytsky City District Court convicted a trafficker in 2011 and the car used him to transport victims across the border was forfeited in favour of the State. In another case from March 2010, the Kalush City District Court of Ivano-Frankivsk *oblast* sentenced a trafficker to five years' imprisonment and forfeiture of his property.

<sup>32</sup> Pursuant to Article 60 of the CC, "arrest consists in holding a convicted person in custody and shall be imposed for a term of one to six months."

<sup>33</sup> According to Article 61 of the CC, "restraint of liberty consists in holding a person in an open penitentiary institution without isolation from the society but under supervision and with compulsory engagement of the convicted person in work."

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

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

195. Ukrainian legislation does not contain a specific provision on non-punishment of victims of trafficking. Ukrainian courts may decide to discharge a person from criminal liability, in accordance with the provisions of Chapter IX of the CC.<sup>34</sup> Circumstances excluding criminal liability are laid down in Article 39 (extreme necessity) and Article 40 (physical or mental coercion) of the CC. As per Article 39(3) of the CC, “when preventing an imminent danger to a person or legally protected rights of that person or other persons, or public interests or interests of the state, a person shall not be criminally liable for exceeding the limits of extreme necessity where he/she could not, as a result of high excitement raised by the danger, evaluate whether the harm caused would be proportionate to danger.” One of the circumstances excluding criminal liability under Article 40, considered in conjunction with extreme necessity, is physical or psychological coercion which rendered the person unable to maintain control of his/her actions. According to information received from NGOs, no cases of victims of THB being punished for their involvement in unlawful activities have been documented in the course of research of court practice.

**196. GRETA considers that the Ukrainian authorities should take further steps to ensure compliance with Article 26 of the Convention through the adoption of a provision on non-punishment of victims of THB for their involvement in unlawful activities, to the extent that they were compelled to do so, or by issuing guidance to public prosecutors and migration officials on this issue. While the identification procedure is ongoing, possible victims of THB should not be punished for immigration-related violations.**

c. Investigation, prosecution and procedural law

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

198. According to the new CPC adopted in May 2012, prosecutors have the leading function in the investigation and should initiate it *ex officio*. Pursuant to Article 36(2-1) of the Criminal Procedure Code (CPC), public prosecutors have the right to start pre-trial investigation if the grounds specified in the CPC are present. Article 214 of the CPC provides that the public prosecutor or investigator must immediately, and no later than within 24 hours after submission of a report or information on the commission of a criminal offense, or after he/she has become aware about circumstances which indicate the commission of a criminal offence to initiate investigation and enter this information in the Integrated Register of Pre-Trial Investigations.

<sup>34</sup> In particular, Articles 17 “Voluntary renunciation in an unconsummated criminal offence”, 31 “Voluntary renunciation of accomplices” and 45 “Discharge from criminal liability in view of effective repentance”.

199. Action against THB is incorporated in the work of the organised crime division at general prosecutorial and oblast level. According to representatives of the prosecution, the entry into force of the new CPC triggered the need for specialised anti-trafficking prosecutors, as well as special trainings on the implementation of Article 149, which proves complicated to bring charges for and sometimes leads to prosecuting for other offences which are easier to prove,<sup>35</sup> such as illegal deprivation of liberty and serious harm to person's health.

200. Pursuant to Chapter 21 of the CPC, special investigation techniques may be used where information on a criminal offence and its perpetrator cannot be obtained otherwise in respect of grave crimes or crimes of special gravity, which include THB offences. During the preliminary investigation, courts (or investigating judges in appellate courts) grant consent to conducting covert investigative actions. The special investigative techniques include, *inter alia*, audio or video surveillance of a person or a place; interception, inspection and seizure of correspondence; collecting information from telecommunication networks and electronic information systems; inspecting publicly inaccessible places, the home or any other possession of a person; surveillance of an individual, an object or a place; controlled delivery.

201. Financial investigations can be carried out by the cybercrime unit of the police and the State Financial Monitoring Service of Ukraine, which can freeze accounts in case of suspicious transactions and collect evidence for transfer to the prosecution for further investigation. Pursuant to Article 98 of the CPC, money, valuables and other articles obtained as the result of a criminal activity are considered as material evidence and can be subject to an "attachment of property" decision by the court or investigating judge or a civil plaintiff in a civil action. According to the Ukrainian authorities, four criminal proceedings initiated for the offence of THB (two in 2013 and two in 2014) including money laundering are currently being investigated. The State Financial Monitoring Service is responsible for analysing information related to suspicion of laundering of proceeds of crime and may carry out financial investigation if such suspicion arises in cases of THB. However, no such investigations have been carried out so far.

202. According to the Ukrainian authorities, the Ministry of the Interior initiated 257 investigations into trafficking offences in 2010, 197 in 2011, 155 in 2012 and 130 in 2013. The number of convictions was 85 in 2010, 106 in 2011 and 46 in 2012. In 2013, first instance courts considered 50 criminal cases under Article 149 of the CC. According to judgments which entered into force, 65 persons were convicted under Article 149. All sentences were enforced, ranging from one to 10 years' imprisonment. A total of 31 persons convicted of THB offences were released on probation.

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<sup>35</sup> In particular, Article 303 entitled "prostitution or compelling to and engaging in prostitution", which, in the case of compelling to prostitution, envisages a fine equivalent to 500 to 1000 tax-free minimum incomes, or arrest for a term up to six months, or imprisonment from one to three-year term, and Article 304 "engaging minors in criminal activity", which prescribes restraint of liberty for up to five years, or imprisonment for the same term.

203. The results of monitoring by the All-Ukrainian NGO coalition of case-law of Ukrainian courts concerning Article 149 of the CC showed that a considerable number of convictions in THB cases have involved imprisonment sentences below the minimum envisaged by the legislation. As explained by the Ukrainian authorities in their comments on the draft GRETA report, this is due to a possibility envisaged by Article 69, paragraph 1, of the CC, which allows in the presence of multiple mitigating circumstances to apply a sanction of a lesser severity than the minimum envisaged by the article establishing the offence in question. Further, pursuant to Article 75 of the CC, the court, having regard to the gravity of an offence, the character of the culprit and other circumstances of the crime, may discharge the person on probation. The Ukrainian authorities have provided examples of THB cases where courts took into account multiple mitigating circumstances, such as absence of previous convictions, first criminal indictment, and the fact that the defendants admitted their guilt and sincerely repented the commission of the offence, and the victims not having any claims against the defendants. In these cases the courts either issued more lenient sentences than envisaged by Article 149 or put the convicted persons on probation. **While acknowledging the pertinence of mitigating circumstances, GRETA stresses the importance of sensitising judges to the grave violations of human rights which result from THB and the need to provide redress and protection for victims of THB.**

204. As regards child trafficking cases, special units have been set up at the prosecutor's offices at the *oblast* level with the task of informing all actors about the need for adopting a child-centred approach and special judges and prosecutors dealing with cases involving children will be appointed pursuant to the new CPC. GRETA was informed that the legislation does not prevent parents or adoptive parents who were involved in the commission of the offence from representing their children in legal proceedings. However, pursuant to Article 488, paragraph 3, of the CPC, when actions of a legal representative contradict the interests of a child he/she represents, the legal representative will be replaced by the decision of the investigator, prosecutor, investigating judge or court.

205. **GRETA urges the Ukrainian authorities to develop the training and specialisation of investigators, prosecutors and judges with a view to ensuring that human trafficking offences are effectively investigated and prosecuted, leading to proportionate and dissuasive sanctions.**

d. Protection of victims and witnesses

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

207. In accordance with Article 55 of the CPC, a victim in criminal proceedings is a natural person who has sustained moral, physical or material damage as a result of a criminal offence, as well as a legal person who sustained material damage. In criminal proceedings a victim may only be represented by a certified lawyer who has passed the Bar examination and obtained a lawyer's license.

208. In accordance with the Law “On Operative-Investigative Activity”, police departments should ensure the safety of court officials and employees of law enforcement bodies, persons providing assistance and facilitating operative-investigative activity, persons participating in criminal proceedings, members of their families and close relatives of these persons. The CPC, as well as the Law “On Securing the Safety of Persons Participating in Criminal Proceedings”, envisage a number of measures to ensure the safety of persons participating in criminal proceedings:

- personal guard and protection of residence and property;
- provision of special means of individual protection and notification about danger;
- use of technical means of monitoring and wiretapping telephone and other conversations and visual surveillance;
- replacement of documents and change of appearance;
- change of the place of work or study;
- transfer to a different place of residence;
- placement in a pre-school education institution or institutions and bodies for the social protection of the population;
- securing confidentiality of information about the person;
- closed court proceedings.

209. The Ukrainian authorities have indicated that the above provisions also apply to victims and witnesses of THB, along with measures envisaged by Articles 12, 14 and 16 of the Anti-Trafficking Law.

210. GRETA refers to the Concluding observations in respect of Ukraine adopted by the UN Committee on the Rights of the Child (CRC) at its 56th session, where “the Committee recommends that the State party ensure by law and in practice that all child victims or witnesses of crimes, e.g. child victims of abuse, domestic violence, sexual and economic exploitation, abduction and trafficking, and witnesses of such crimes, are provided with the protection required by the Convention.”<sup>36</sup> According to the Prosecutor General’s Office, prosecutors pay increased attention to the protection of children, including the observance by the competent authorities of their duties as regards representation of children and safeguarding their best interests.

**211. GRETA urges the Ukrainian authorities to make full use of the measures available to protect victims and witnesses of THB, including children, and to take additional measures to ensure that victims of trafficking are adequately informed of their rights and existing remedies and assisted during pre-trial and court proceedings.**

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<sup>36</sup> Committee of the Rights of the Child, Concluding observations on Ukraine, 56th Session.  
[http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.UKR.CO.3-4\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.UKR.CO.3-4_en.pdf)

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## 5. Concluding remarks

212. The legal and policy framework put in place by the Ukrainian authorities to prevent and combat THB provides a good basis for tackling this phenomenon from a human rights-based perspective. The involvement of civil society and the efforts to raise public awareness and train relevant professionals are positive features of Ukraine's anti-trafficking action.

213. While GRETA acknowledges the important steps taken in Ukraine to combat human trafficking so far, a number of challenges remain to be tackled through legislative, policy or practical measures in order to meet the requirements of the human rights-based and victim-centred approach outlined in paragraphs 35-38.

214. Additional measures should be taken to raise public awareness about THB and discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with civil society and the private sector. Improved prevention also calls for additional measures to address the root causes of THB. GRETA draws attention to the need for adapting the existing anti-trafficking policies to address emerging trends, such as the increase in THB for the purpose of labour exploitation, internal trafficking and the trafficking of foreign nationals, including children, to Ukraine.

215. Furthermore, GRETA stresses the importance of ensuring that all victims of trafficking are identified as such and can benefit from the assistance and protection measures provided for in Ukrainian law and the Convention. Efforts to proactively identify victims of THB need to be significantly increased. Securing adequate public funding for victim assistance and protection measures is indispensable for the sustainability of the assistance system. Efforts should also be strengthened to ensure that victims of trafficking have effective access to compensation.

216. Strengthening the effectiveness of investigations and prosecutions of human trafficking-related offences, with a view to securing proportionate and dissuasive sanctions, is another area where further action is needed in order to apply the human rights-based and victim-centred approach promoted by the Convention.

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

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

## Appendix I: List of GRETA's proposals

### Definition of “trafficking in human beings”

1. GRETA invites the Ukrainian authorities to align the two definitions of THB in national law with a view to ensuring that they cover all the concepts in Article 4 of the Convention in a manner consistent with the principles of the Convention.
2. GRETA considers that spelling out the irrelevance of the consent of the victim to the intended exploitation could improve the implementation of the anti-trafficking provisions and provide victims with greater confidence in self-reporting.

### Comprehensive approach and co-ordination

3. GRETA urges the Ukrainian authorities to enhance co-ordination of anti-trafficking activities by ensuring the effective and regular functioning of the Interdepartmental Council and the interdepartmental councils at the *oblast* level. While the Ministry of Social Policy has been designated as the national co-ordinating body on action against THB, GRETA considers that the establishment of the post of National Co-ordinator supported by a dedicated office can be instrumental for strengthening co-ordination.
4. GRETA also considers that the authorities should further develop co-ordination between public bodies and civil society actors engaged in anti-trafficking action, and increase the involvement of NGOs and trade unions in the planning and implementation of national policy, for example by encouraging the conclusion of Memoranda of Understanding.
5. GRETA invites the Ukrainian authorities to introduce a periodic independent evaluation of the national anti-trafficking programme as a tool for assessing the impact of the activities and for planning future policies and measures to combat THB, and to consider establishing an independent National Rapporteur or designate another existing independent mechanism for monitoring the anti-trafficking activities of State institutions (see Article 29, paragraph 4, of the Convention and paragraph 298 of the Explanatory Report).
6. Further, GRETA urges the Ukrainian authorities to take further steps to ensure that national action to combat THB is comprehensive, and in particular to:
  - strengthen action to combat THB for the purpose of labour exploitation by involving labour inspectors, trade unions, employment agencies, businesses and civil society in a joint platform and improving the identification of and assistance to victims of THB for the purpose of labour exploitation;
  - pay increased attention to identifying foreign victims of trafficking in Ukraine, including among unaccompanied minors, irregular migrants and asylum seekers;
  - address the particular vulnerability to trafficking of persons from groups affected by unfavourable social and economic conditions;
  - take steps to address internal trafficking.

### Training of relevant professionals

7. GRETA considers that the Ukrainian authorities should take further steps to provide periodic training on THB and the rights of victims to all relevant professionals (such as law enforcement officials, prosecutors, judges, labour inspectors, child protection specialists, social workers and medical professionals). Future training programmes should be designed with a view to improving the knowledge and skills of relevant professionals which enable them to identify victims of trafficking for different forms of exploitation, to assist and protect them, to facilitate compensation for victims, and to secure convictions of traffickers.

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### **Data collection and research**

8. For the purpose of preparing, monitoring and evaluating anti-trafficking policies, GRETA urges the Ukrainian authorities to develop and maintain a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical information from all main actors, including NGOs involved in victim identification and assistance, and allowing disaggregation (concerning sex, age, type of exploitation, country of origin and/or destination, etc.). This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection.

9. GRETA considers that the Ukrainian authorities should conduct and support research on THB-related issues as an important source of information for the evaluation of current programmes and for planning future policy measures. Areas where more research is needed in order to shed light on the extent and new trends of human trafficking in Ukraine and inform policy makers include trafficking for the purpose of labour exploitation, trafficking of foreign nationals to Ukraine for different types of exploitation, trafficking for the purpose of removal of organs and trafficking within Ukraine.

### **International co-operation**

10. GRETA considers that the Ukrainian authorities should enhance international co-operation in the non-criminal field with a view to preventing THB and providing assistance to Ukrainian and foreign victims of trafficking.

### **Measures to raise awareness**

11. GRETA considers that the Ukrainian authorities should continue their efforts to prevent THB and design future awareness-raising measures in the light of the assessment of previous measures, focussing on the needs identified. Awareness raising should target vulnerable groups and inform the general public of new trends in THB, such as trafficking for the purpose of labour exploitation, removal of organs and trafficking within Ukraine, and should engage all relevant professionals.

### **Measures to discourage demand**

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

13. Further, GRETA urges the Ukrainian authorities, in the light of the recent trends of trafficking of foreigners to Ukraine and trafficking within the country, to enhance their efforts to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with NGOs, trade unions, international organisations and the private sector.

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

14. GRETA urges the Ukrainian authorities to strengthen prevention of THB through social and economic empowerment measures for groups vulnerable to THB. Such measures should be based on the identified root causes of THB (economic and social conditions, poverty, inadequate education, absence of employment opportunities) and should aim to decrease and ultimately eliminate these causes.

15. GRETA also urges the Ukrainian authorities to continue their efforts to ensure the registration of all children at birth as a preventive measure against trafficking.

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

16. While welcoming the measures taken by the Ukrainian authorities to prevent THB at the borders, GRETA considers that the Ukrainian authorities should make further efforts to improve the detection of THB cases in the context of border control, in particular of possible foreign victims entering Ukraine. For this purpose, the competent authorities should consider drawing up a list of indicators to facilitate detection of potential victims of THB among foreign nationals coming to Ukraine and unaccompanied minors and introduce a checklist to identify potential THB-related risks during the visa application process.

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

17. While welcoming the adoption of a formalised procedure for the identification of victims of THB, GRETA urges the Ukrainian authorities to take further steps to ensure that all victims of trafficking are properly identified and can benefit from all the assistance and protection measures provided for under the Convention, and in particular to:

- ensure that all professionals who are likely to come into contact with potential victims of THB, including staff of the structural units of local state administrations, are fully aware of the victim identification and status procedure and receive periodic training to enable them to identify victims of THB;
- provide frontline staff with operational indicators, guidance and toolkits to be used in the identification process and train them to use these tools in order to ensure that they adopt a proactive and harmonised approach to detecting and identifying victims of trafficking; the indicators should be regularly updated in order to reflect the changing nature of human trafficking and types of exploitation;
- review the application of the Victim Status Procedure in order to reduce reliance on the victims themselves applying for identification;
- enhance the role of labour inspectors and other relevant professionals in the detection of THB for labour exploitation in Ukraine;
- improve the identification of victims of THB among unaccompanied foreign minors and take steps to address the problem of disappearance of unaccompanied foreign children by providing suitable safe accommodation and assigning adequately trained legal guardians;
- provide periodic training and guidance on the identification and protection of victims of THB to all persons involved in safeguarding children's rights;
- improve the identification of victims of trafficking among asylum seekers, including through the provision of training and clear, binding procedures to be followed by State Migration Service officials.

## **Assistance to victims**

18. GRETA urges the Ukrainian authorities to take further measures to provide victims and potential victims of THB with adequate assistance and protection, and in particular to:

- ensure that all assistance measures provided for in law are guaranteed in practice and that all victims of THB, including children, have effective access to it;
- allocate the necessary human and financial resources, as appropriate, to all providers of assistance to victims of THB, including when such assistance is delegated to NGOs as service providers;
- guarantee the quality of the services delivered by all service providers, for instance by establishing a set of mandatory quality standards and an effective supervision of their observance.

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### **Recovery and reflection period**

19. GRETA urges the Ukrainian authorities to ensure that the recovery and reflection period, as provided for in Article 13 of the Convention, is specifically defined in law and that all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention are made available during this period to persons for whom there are reasonable grounds to believe are victims of THB. It should be made clear that the recovery and reflection period should last at least 30 days and should not be conditional upon submitting an application for victim status or any other additional requirement.

### **Residence permits**

20. GRETA urges the Ukrainian authorities to ensure that victims of trafficking can benefit from the right to obtain a renewable residence permit, including when they are unable to co-operate with the authorities but need to remain in the country owing to their personal situation.

### **Compensation and legal redress**

21. GRETA urges the Ukrainian authorities to adopt measures to facilitate access to compensation for victims of trafficking, and in particular to:

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

22. Further, bearing in mind that a very limited number of victims of trafficking are awarded compensation from the perpetrators, GRETA urges the Ukrainian authorities to set up a State compensation scheme accessible to victims of THB, regardless of their citizenship and residence status.

### **Repatriation and return of victims**

23. GRETA urges the Ukrainian authorities to take further steps to ensure that the return of victims of trafficking is conducted with due regard for their rights, safety and dignity and the status of related legal proceedings; this implies risk assessment before a person is sent back to his/her country, protection from retaliation and re-trafficking and, in the case of children, fully respecting the principle of the best interests of the child.

### **Substantive criminal law**

24. GRETA urges the Ukrainian authorities to adopt such legislative and other measures as may be necessary to ensure that a legal person can be held liable for a criminal offence established in accordance with the Convention, as required under Article 22 of the Convention.

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

25. GRETA considers that the Ukrainian authorities should take further steps to ensure compliance with Article 26 of the Convention through the adoption of a provision on non-punishment of victims of THB for their involvement in unlawful activities, to the extent that they were compelled to do so, or by issuing guidance to public prosecutors and migration officials on this issue. While the identification procedure is ongoing, possible victims of THB should not be punished for immigration-related violations.

**Investigation, prosecution and procedural law**

26. While acknowledging the pertinence of mitigating circumstances, GRETA stresses the importance of sensitising judges to the grave violations of human rights which result from THB and the need to provide redress and protection for victims of THB.

27. GRETA urges the Ukrainian authorities to develop the training and specialisation of investigators, prosecutors and judges with a view to ensuring that human trafficking offences are effectively investigated and prosecuted, leading to proportionate and dissuasive sanctions.

**Protection of victims and witnesses**

28. GRETA urges the Ukrainian authorities to make full use of the measures available to protect victims and witnesses of THB, including children, and to take additional measures to ensure that victims of trafficking are adequately informed of their rights and existing remedies and assisted during pre-trial and court proceedings.

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

### **Public bodies**

- Ministry of Social Policy
- Ministry of Internal Affairs
- Ministry of Foreign Affairs
- Ministry of Health
- Ministry of Education and Science
- High Administrative Court
- Academy of Judges
- General Prosecutor's Office
- National Academy of Prosecutors
- State Border Guard Service
- State Migration Service
- State Security Service
- Parliament (*Verkhovna Rada*) of Ukraine
- Office of the Parliament Commissioner for Human Rights
- Office of the Ombudsman for Children under the President of Ukraine
- Interdepartmental councils for family, gender equality, demographic growth, prevention of family violence and combating trafficking in human beings in Donetsk and Odessa

### **Intergovernmental organisations**

- International Organization for Migration (IOM)
- Organization for Security and Co-operation in Europe (OSCE)
- United Nations High Commissioner for Refugees (UNHCR)

**Non-governmental organisations**

- All-Ukrainian NGO Coalition for Combating Trafficking in Human Beings
- Federation of Trade Unions of Ukraine
- La Strada Ukraine
- League of Professional and Businesswomen in Donetsk
- Ukrainian Bar Association
- Vera, Nadezhda, Lyubov

## **Government's comments**

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

GRETA engaged in a dialogue with the Ukrainian 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 Ukrainian authorities on 1 August 2014 and invited them to submit any final comments. The comments of the authorities of Ukraine, submitted on 9 September 2014, are reproduced hereafter.

### Final comments of the Ukrainian Authorities

Paragraph of the report	Comment/amendment
<p>Paragraph 12. GRETA is deeply concerned by the negative consequences of the current crisis in Ukraine on anti-trafficking activities and the growing number of internally displaced persons, including women, children and persons with disabilities, who represent a group vulnerable to human trafficking.</p>	<p>The Ministry of Social Policy of Ukraine understands the risks and threats arising in connection with the anti-terrorist operation in Ukraine, including the danger of increasing incidence of human trafficking both domestically and abroad.</p> <p>In response to the current situation, the Ministry has set up a working group to protect the rights of civilians, including women and children, during the anti-terrorist operation in the eastern regions of Ukraine.</p> <p>On 5 June 2014, a meeting of the working group was held. The group comprised representatives of the Secretariat of the Verkhovna Rada Commissioner for Human Rights, the Authorized Representative of the President of Ukraine for Children's Rights, as well as ministries, agencies and international and non-governmental organizations. At the meeting, representatives of the working group drafted an action plan aimed at protecting civilians, including women and children during the ongoing anti-terrorist operation in the eastern regions of Ukraine.</p> <p>Furthermore, the Ministry of Social Policy, jointly with the Ministry of Internal Affairs and the International Women's Rights Center "La Strada - Ukraine" and with the support of the OSCE Project Coordinator in Ukraine, designed and printed 1,000 stickers "Your safety rules" which are planned for distribution among people temporarily displaced from the area covered by the anti-terrorist operation. The stickers describe rules of safe behaviour aimed at protecting citizens from finding themselves in a trafficking situation in connection with the events taking place in Ukraine. A banner with a similar message, which is currently being designed, will be placed on the official site of the Ministry of Social Policy, other government bodies and international and non-governmental organizations and at other Internet portals.</p> <p>In order to prevent people from finding themselves in a trafficking situation, the Ministry of Social Policy of Ukraine has urged local state administrations to step up awareness-raising efforts about the risks of trafficking in human beings and ways to receive assistance for victims.</p> <p>The main results of the work done are as follows.</p> <p>In Lviv, Ternopil, Zaporizhia, Dnipropetrovsk, Odesa, Zakarpattia, Vinnytsia, Ivano-Frankivsk, Poltava, Rivne, Sumy and Khmelnytsky <i>oblasts</i>, leaflets, booklets and brochures are being distributed, providing information about the risks of human trafficking, the types of assistance provided to victims of THB and a list of institutions providing assistance and their contact information. Information materials are placed at railway and bus stations, public transport stops and in administrative offices and other crowded places, including the Displaced Persons Assistance Center in Dnipropetrovsk <i>oblast</i> and the Headquarters for Receiving Displaced Persons in Zaporizhia <i>oblast</i>.</p> <p>In Mykolaiv <i>oblast</i>, posters "You have the right to protection and assistance" and the booklet "Each victim has the right to assistance" were distributed in 309 village councils; social security, healthcare and education institutions; centers of social services for families, children and youth; services for children's affairs; employment centers; centers of social-psychological assistance; centers for social-psychological rehabilitation of children. This printed matter described the types of assistance available to victims of THB and contained a list of institutions, agencies, services and organizations providing assistance to victims complete with contact information.</p> <p>Information has been published on the websites of the Volyn, Vinnytsia, Lviv, Kyiv, Poltava, Rivne, Chernihiv, Zaporizhia, Dnipropetrovsk, Ternopil, Chernivtsi, Khmelnytsky and Sumy <i>oblast</i> state administrations to inform the population about the risks of becoming a victim of THB and ways of receiving assistance. Centers of social services for family, children and youth in the Dnipropetrovsk</p>

	<p><i>oblast</i> are carrying out an awareness campaign at railway stations and refugee assistance stations informing the population about assistance available to victims of THB and sharing contact information and addresses of institutions and organizations providing assistance.</p> <p>In Sumy <i>oblast</i>, local newspapers published information about the types of assistance and contact persons responsible for the VoT status procedure. On 27 June 2014, <i>Zhyttia Levedynshchyny</i>, a city district newspaper, carried the article “Avoid becoming a trafficking victim” in issue 26. On 1 July 2014, this topic was discussed at the <i>Svitanok</i> local radio station. Similar articles were published by the newspapers <i>Silski horyzonty</i> (Konotop raion), <i>Krolevetsky visnyk</i>, <i>Putyvlski vidomosti</i> and other mass media.</p> <p>Moreover, the Ministry of Social Policy appealed to the largest mobile operators in Ukraine with a request to assist in sending out free text messages to subscribers explaining the rules of safe behavior with regard to human trafficking. The Ministry actively cooperates with NGOs combating trafficking in human beings and is in constant contact with them over this problem.</p>
Paragraph 37	<p>Add: “Bodies of the Ministry of Internal Affairs are taking measures to ensure the investigation of trafficking crimes and bringing the perpetrators to justice. In 2014, the Single Register of Pretrial Investigations contained 137 criminal offenses involving facts of human trafficking. Following their investigation, only 5% (7 proceedings) were closed; indictments were submitted to court in 34 cases; proceedings were discontinued in 26 cases in the framework of international cooperation, in 10 cases due to the fact that the suspect was in hiding from the investigation and trial and in one more case due to a serious illness of the suspect. In other proceedings, the investigation is continuing.”</p>
Paragraph 57	<p>As of 1 September 2014, all <i>oblasts</i>, except Ivano-Frankivsk, adopted <i>oblast</i>-level programs and action plans that include anti-trafficking measures.</p>
Paragraph 58	<p>The working group plans to meet again in the second quarter of 2014 to discuss ways to improve legislation on combating THB and providing services to victims.</p>
Paragraph 69	<p>Amend as follows: “Since 2009, the Ministry of Social Policy with the support of the OSCE Project Coordinator in Ukraine, as part of the development of the national referral mechanisms in six regions, conducted 600 seminars, 234 training sessions and 170 special courses (lectures and practice sessions) on combating THB and assisting victims. For example, 108 trainers and 144 civil servants were trained in Donetsk <i>oblast</i> and 75 trainers and 124 civil servants in Chernivtsi <i>oblast</i>. In the course of 2012, 49 training sessions involving 1,208 participants were conducted in six regions of Ukraine. A total of 155 trainers and 1,053 civil servants were trained: 10 training sessions (242 participants) in Vinnytsia <i>oblast</i>, 7 training sessions (179 participants) in Khmelnytsky <i>oblast</i>, 7 training sessions (181 participants) in the Luhansk <i>oblast</i>, 11 training sessions (258 participants) in Kharkiv <i>oblast</i>, 8 training sessions (195 participants) in Donetsk <i>oblast</i> and 6 training sessions (153 participants) in Chernivtsi <i>oblast</i>. In 2013, 81 training sessions for 1,955 participants were conducted in six regions of Ukraine. A total of 229 trainers and 1,726 civil servants were trained: 8 training sessions (176 participants) in Vinnytsia <i>oblast</i>, 15 training sessions (390 participants) in Khmelnytsky <i>oblast</i>, 22 training sessions (529 participants) in Luhansk <i>oblast</i>, 21 training sessions (469 participants) in Kharkiv <i>oblast</i>, 10 training sessions (261 participants) in Donetsk <i>oblast</i> and 5 training sessions (130 participants) in Chernivtsi <i>oblast</i>. Also in 2013, in preparation for the expansion of the national mechanism, 17 training sessions (over 320 participants) were delivered in seven more <i>oblasts</i>, including one training session for <i>oblast</i>-level civil servants in Volyn, Zhytomyr, Kyiv, Kirovohrad, Rivne and Sumy <i>oblasts</i> each and in Kyiv. Ten training sessions were also conducted for civil servants in 10 city districts in Kyiv. Moreover, as part of continued efforts to strengthen the prosecution of human trafficking, the OSCE Project Coordinator in Ukraine held two regional</p>

	<p>roundtables in 2013 involving representatives of the Directorate for Combating Trafficking in Human Beings and Crimes Against Morality of the Criminal Investigation Department, the Chief Investigation Directorate of the Internal Affairs Ministry, the Prosecutor General's Office and the High Specialized Court of Ukraine for Civil and Criminal Cases, as well as more than 130 representatives of regional courts, <i>oblast</i>-level prosecutors' offices, <i>oblast</i>-level investigation units and <i>oblast</i>-level units for combating THB of the Internal Affairs Ministry from all regions of the country. Particular attention was paid to ensuring a coordinated focused on victim protection to prosecuting all forms of trafficking in human beings, including trafficking for labor exploitation, and to new trends, such as trafficking for organ removal. Attention was also paid to the special aspects of investigating and prosecuting trafficking crimes under the new Criminal Procedure Code of Ukraine. Jointly with the High Specialized Court of Ukraine for Civil and Criminal Cases, the OSCE Project Coordinator in Ukraine is working to sum up court practice in trafficking cases. In order to expand the range of agents involved in combating THB, the OSCE Project Coordinator in Ukraine, jointly with the Ministry of Internal Affairs and the Ministry of Healthcare of Ukraine, trained, in 2006-2012, district police officers and healthcare workers in detecting facts of human trafficking and providing assistance to victims. In order to ensure the sustainability of these efforts, the OSCE Project Coordinator in Ukraine finished, in 2014, drafting a specialized training course and a handbook on combating THB to be used by faculties for training public order specialists in the higher education institutions run by the Ministry of Internal Affairs. The draft was approved by the Ministry of Internal Affairs for trial use in the 2014-2015 academic year."</p>
<p>Paragraph 76. GRETA considers that the Ukrainian authorities should take further steps to provide periodic training on THB and the rights of victims to all relevant professionals (such as law enforcement officials, prosecutors, judges, labour inspectors, child protection specialists, social workers and medical professionals).</p>	<p>The curriculum of the National Academy of Prosecution of Ukraine has been developed with due consideration to issues related to combating trafficking in human beings. They are covered in lectures and practical sessions in the following academic disciplines: Issues in Qualification of Criminal Offenses, Procedural Management of Pre-Trial Investigation and Maintaining Public Prosecution for future prosecutors and prosecutors taking advanced training in order to enhance relevant knowledge and skills in conducting preliminary investigation and state prosecution in this category of criminal offenses. The Office of the Prosecutor General of Ukraine actively participates in seminars on these topics organized by international and non-governmental organizations (IOM and La Strada – Ukraine) and assists in ensuring the participation of the staff of regional prosecutors' offices in these activities.</p>
<p>Paragraph 83</p>	<p>Add: "Since 2007, the OSCE Project Coordinator in Ukraine has supported studies of court practice in cases of human trafficking (four such studies have been registered up to date), best practices in detecting child victims of THB (2012), social assistance to different categories of victims (2012) and legislative regulation of reproductive technologies, including surrogacy (2013)."</p>

Paragraph 88	<p>Add: "International treaties in criminal law to which Ukraine is party, laws on their ratification and the Criminal Code of Ukraine define the Prosecutor General's Office of Ukraine as the central body regarding requests for international cooperation in the course of preliminary investigation.</p> <p>As of today, Ukraine is party to over 60 bilateral and multilateral treaties on legal assistance and exploitation which regulate relations with more than 180 countries worldwide.</p> <p>The Office of the Prosecutor General of Ukraine has cooperated most intensively with such countries as the Russian Federation, Germany, Belarus, the Czech Republic, Armenia, Georgia, Italy and Lithuania.</p> <p>In 2012-2014, the Office of the General Prosecutor of Ukraine processed and sent to the competent authorities of foreign countries 18 requests from Ukrainian pretrial investigation bodies for international legal assistance in carrying out procedural actions in criminal proceedings in cases of human trafficking, i.e. criminal offenses under Article 149 of the Criminal Code of Ukraine. Six such requests were submitted in 2012, nine in 2013 and three in 2014.</p> <p>Two submissions were made to the competent foreign authorities by the Ukrainian pretrial investigation bodies requesting to transfer criminal proceedings in this category (both in 2012).</p>
Paragraph 94	<p>Amend as follows: "In preparation for the final stage of the European Football Championship, hosted in 2012 by Ukraine and Poland (Euro 2012), the Ministry of Social Policy, in co-operation with the Ministry of Internal Affairs and the OSCE Project Coordinator in Ukraine, carried out an anti-trafficking information campaign in the form of banners placed on public transport in the cities hosting the tournament (Kyiv, Donetsk, Lviv and Kharkiv). Moreover, at the request of the Ministry of Internal Affairs and the State Border Guard Service, the OSCE Project Coordinator in Ukraine supported the development and inclusion of points on combatting THB in the Action Plan of measures to implement the Integrated Concept of Ensuring Security, Law and Order during Euro 2012. In line with the Action Plan, English-language counter-trafficking information cards were prepared; 500,000 copies were disseminated among the visitors to EURO-2012 at border crossing points. Further, in the course of Euro 2012 an outreach campaign "Let's Do It Together" was implemented by the State Service for Youth and Sport in co-operation with the United Nations Children's Fund (UNICEF), the Joint UN Programme on HIV/AIDS (UNAIDS), the UN Population Fund (UNFPA), the German Society for International Co-operation (GIZ), La Strada – Ukraine and other organisations. This campaign aimed at promoting healthy and responsible behaviour among children and youth, prevention of violence and sexual exploitation, and combating human trafficking and racial discrimination. The campaign was promoted by Ukrainian sports and show-business celebrities such as Andriy Shevchenko, Ani Lorak, Gaytana and Vitaliy Virastuyk. Around 50,000 copies of printed cards and posters were disseminated during this campaign. As the result of publicising the national toll-free hotline on prevention of trafficking during Euro 2012, the number of calls increased considerably from May 2010 to April 2012, with 19,457 calls registered."</p>
Paragraph 95	<p>Amend as follows: "Representatives of the Ministry of Social Policy regularly inform the general public about the legal framework for combatting THB, prevention of trafficking and irregular labour migration through various national and regional television and radio outlets in Kyiv, Dnipropetrovsk, Vinnytsia, Donetsk, Chernivsti and other oblast. In particular, in cooperation with the OSCE Project Coordinator in Ukraine as part of developing the national referral mechanism in six regions of Ukraine (see paragraph 69), measures to increase public awareness of the existing mechanisms for victims of THB to obtain public assistance reached 1,966 persons. Since 2012, representatives of the Ministry of Social Policy have also provided consultations on THB via the national telephone hotline, which is operated by La Strada – Ukraine since 2005."</p>

Paragraph 101	Add: "Considering the new challenges and threats in the area of trafficking, the Ministry of Social Policy, in collaboration with the Ministry of Internal Affairs, IOM and La Strada – Ukraine, and with the support of the OSCE Project Coordinator in Ukraine, has prepared 1,000 copies of information stickers with trafficking prevention tips for citizens in the area of the anti-terrorist operation in 2014."
Paragraph 112. Regarding a lack of a comprehensive response to the needs of orphans and children without parental care placed in foster families.	Please note that a welfare benefit for orphans and children without parental care was introduced in 2006, as well as a financial provision from the state budget for educator parents and foster parents for providing social services in family-type children's homes and foster families. This welfare benefit is twice the minimum subsistence level set for children of the respective age; the financial provision is 70% of the minimum subsistence level set for children of the respective age and is paid for each child raised and each foster child regardless of pensions, alimony, monthly allowance or government aid received for each child raised or each foster child. The welfare benefit paid to guardians and caregivers to take care of orphans or children without parental care is also twice the minimum subsistence level set for children of the respective age.
Paragraph 117. Regarding birth registration of children	Even though the registration procedure is within the competence of the Ministry of Justice of Ukraine, please note that, under paragraphs 69 and 70 of the Procedure for the activity of institutions for child guardianship and care in protecting children's rights (approved by Cabinet of Ministers Regulation No. 866 on 24 September 2008), services for children's affairs are charged with document preparation for the birth registration of abandoned and found children, children left in maternity houses or other medical institutions and children whose mothers died or whose mothers' place of residence cannot be established.
Paragraph 123	Add: "In cooperation with the OSCE Project Coordinator in Ukraine, the Ministry of Social Policy, the Ministry of Internal Affairs, the Ministry of Foreign Affairs and the State Border Guard Service hold roundtables on combating trafficking on an annual basis for representatives of the consular services of foreign embassies in Ukraine."
Paragraph 133. It would appear that in some cases the refusals are not substantiated, which makes it more difficult to formulate an appeal against them. In some cases decisions of the Ministry of Social Policy on several applications were apparently communicated to all applicants concerned by one letter, thus revealing their names to one another, in violation of the obligation to	As it sends a letter to a local state administration with a refusal to grant VoT status, the Ministry of Social Policy necessarily provides a complete explanation of the grounds for its refusal with references to pertinent legislation and offers solutions. In addition, according to the law, the Ministry of Social Policy responds with VoT status refusal letters to local state administrations, rather than directly to applicants. According to the law, the local state administration must inform each applicant of the Ministry's decision by sending a separate letter rather than by providing a copy of the Ministry's letter. The Ministry is already working and taking appropriate action to resolve this problem, i.e. to eliminate violations by local state administrations and prevent breaches of the confidentiality principle.

protect personal data.	
Paragraph 134 However, in practice a person co-operating with the law enforcement authorities is more likely to receive the status of victim of THB from the Ministry of Social Policy.	A person co-operating with law enforcement agencies receives VoT status essentially automatically, with only the formal registration of the necessary documents. The documents regarding victims of THB who do not wish to co-operate with law enforcement agencies are considered and the information provided in them is checked for validity. The decision of the Ministry in this case depends on the completeness of information provided about the circumstances in which the individual has found himself or herself and the availability of confirmation documents (medical reports, travel documents, etc.). As of 1 September 2014, the Ministry of Social Policy granted VoT status to five individuals who did not co-operate with law enforcement agencies.
Paragraph 136	Update the statistics: Since the introduction of the formal identification procedure, a total of 70 victims of THB (13 in 2012, 41 in 2013 and 16 in 2014) have been granted victim status by the Ministry of Social Policy.
Paragraph 140. Regarding the practices of age verification and access to education for unaccompanied children	Please note that the following measures have been taken in order to protect the rights of unaccompanied foreign minors: <ul style="list-style-type: none"> <li>- a new Regulation on children's homes and general boarding schools for orphans and children without parental care was adopted (approved by Order No. 995/557 of the Ministry of Education, Science, Youth and Sport and the Ministry of Social Policy on 10 September 2012). Under this Regulation, unaccompanied foreign minors can be placed in the abovementioned institutions;</li> <li>- explanations and methodological recommendations have been given to the regional services for children's affairs about the conditions for the placement and accommodation of children (including unaccompanied children) in children's homes and general boarding schools for orphans and children without parental care;</li> </ul> Order No. 903/1464/711 "On the age verification of children without parental care who are in need of social security" of the Ministry of Health Care, the Ministry of Education and Science and the Ministry of Social Policy was adopted on 23 October 2013. The Order defines the age verification procedure for unaccompanied foreign minors.
Paragraph 141	Add: The Law of Ukraine "On Refugees and Persons in Need of Additional or Temporary Protection" has for the first time established at the legislative level that unaccompanied foreign minors have unrestricted access to the procedure of identification as a refugee or a person in need of additional protection. The legislation regulates the procedure for the appointment of a legal representative for unaccompanied minors, their temporary placement in state institutions for social protection of children or placement with a family and search for their parents, family members or other legal representatives. Currently, the issue of granting migrant children and unaccompanied children access to the procedure of identification as a refugee or a person in need of additional protection is completely settled. As of 1 July 2014, 35 unaccompanied children were provided protection in Ukraine, including 19 unaccompanied minors who were recognized as refugees and 19 were granted the status of a person in need of additional protection in Ukraine. Moreover, 33 cases of unaccompanied children are under consideration in the State Migration Service of Ukraine.

Paragraph 142	<p>Add the second paragraph:</p> <p>In order to ensure the optimal operation of an integrated system for the protection of refugees and the development of the national asylum system, including a comprehensive approach to the integration of refugees and persons in need of additional protection in Ukraine, the State Migration Service of Ukraine has developed the Action Plan for integrating refugees and persons in need of additional protection into Ukrainian society for the period until 2020 (approved by Cabinet of Ministers Order No. 605-r on 22 August 2012). The execution of the Action Plan involves 10 ministries, six central authorities and 24 regional state administrations.</p> <p>In order to create specialised centers for receiving and accommodating unaccompanied children, an order of the Ministry of Internal Affairs of Ukraine has been drafted and entitled “On approval of the Regulation on the reception and accommodation center for refugee children, children recognised as persons in need of additional protection and unaccompanied children who have applied for recognition as a refugee or a person in need of additional protection on the basis of the temporary refugee accommodation centers in Yahotyn, Kyiv oblast”.</p>
Paragraph 146. Regarding placement of unaccompanied foreign minors and appointing legal representatives to them.	<ul style="list-style-type: none"> <li>- Please note that the identification and placement of unaccompanied foreign minors and appointing legal representatives to them are regulated by the Instruction on the interaction of executive bodies in working with unaccompanied foreign minors who have applied to the competent authorities for the status of a refugee or a person in need of additional protection. The Instruction was approved on 7 July 2012 by Order No. 604/417/793/499/518 of the Ministry of Internal Affairs; the Ministry of Social Policy; the Ministry of Education, Science, Youth and Sport; the Ministry of Health Care and the Administration of the State Border Guard Service.</li> </ul>
Paragraph 152	<p>Amend as follows: “The access of victims of THB to assistance is provided through the national referral mechanism, as set out in the Referral SOPs. This mechanism was preceded by an assessment of needs and a pilot project entitled “Developing the National Referral Mechanism (NRM) in Ukraine”, implemented in 2009-2011 by the Ministry of Social Policy in cooperation with the OSCE Project Coordinator in Donetsk and Chernivtsi oblasts. Since 2012, a new project to extend the mechanism has been realized in Vinnytsia, Luhansk, Kharkiv and Khmelnytskyi oblasts. In 2014, six more oblasts (Sumy, Kirovohrad, Volyn, Zhytomyr, Rivne and Kyiv) and the city of Kyiv are to join the project (see paragraph 69). In addition, the IOM Mission in Ukraine has been implementing, in co-operation with the Ministry of Social Policy, a similar project on the implementation of the national referral mechanism in the Autonomous Republic of Crimea (until 2014), Odessa, Ternopil, Lviv, Mykolayiv, Kherson, Zakarpattia, Zaporizhzhia, and Ivano-Frankivsk oblasts.”</p>
Paragraph 159. Regarding shelters for children and centers for social and psychological rehabilitation of children	<p>Comprehensive professional care for children aged 3-18 who have found themselves in a difficult life situation (including child victims of THB) is provided by shelters for children run by the services for children’s affairs (a Model regulation on a shelter for children approved by Cabinet of Ministers Regulation No. 565 on 9 June 1997) and centers for social and psychological rehabilitation of children (a Model regulation on a center for social and psychological rehabilitation of children approved by Cabinet of Ministers Regulation No. 87 on 28 January 2004).</p> <p>As of 1 April 2014, 19 shelters for children and 87 centers for social and psychological rehabilitation of children operated in Ukraine.</p> <p>The centers not only provide comprehensive social, psychological, pedagogical, medical, legal and other types of assistance to children but also carry out psychological and pedagogical correction and rehabilitation in view of the individual needs of children, including child victims of different types of violence and child victims of THB.</p> <p>The main tasks of the centers are as follows:</p>

	<ul style="list-style-type: none"> <li>• ensuring social protection of admitted children</li> <li>• providing comprehensive social services</li> <li>• carrying out sociological and pedagogical correction in view of children's individual needs</li> <li>• facilitating children's return to their biological families</li> <li>• ensuring that children attend general schools or other education institutions or take individual lessons based on their individual needs and capabilities</li> <li>• helping children develop their own attitudes for overcoming the habits of asocial behavior</li> <li>• providing psychological and other types of assistance to the parents (or persons replacing them) of children accommodated in the center with the aim of returning children to their families</li> <li>• drafting recommendations on social and psychological adaptation of children to pedagogical and social workers and parents.</li> </ul> <p>A thorough analysis of the activities of institutions for social protection of children and the results of their work shows that shelters for children need to be reorganized into centers for social and psychological rehabilitation, because the latter have more resources for providing comprehensive assistance to children and helping reintegrate them into families. This reorganization is currently being intensively implemented.</p>
Paragraph 170	<p>A foreigner or a stateless person who has been granted VoT status is entitled to temporary stay in Ukraine for up to three months, which may be extended if necessary, in particular in connection with their participation as victims or witnesses in criminal proceedings (pursuant to paragraph 2, part 2, Article 16 of the Law of Ukraine "On Combating Trafficking in Human Beings" and Article 22 of the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons").</p> <p>In response to comments about the lack of statistical information on victims of THB who have been granted permanent residence, we inform that the first victims of THB in Ukraine were identified in 2011 and the first immigration quota for this category may be set for 2015 at the earliest.</p>
Paragraph 171	<p>Please note that paragraph 171 of the draft Report states that the certificate confirming the application for victim status provided to potential victims who applied to the Ministry of Social Policy is not included among the grounds for granting temporary stay in Ukraine in Article 4 of the Law "On Immigration". However, this legal norm regulates issuing an immigration permit, i.e., a permanent residence permit in Ukraine.</p> <p>Extensions to stay in the territory of Ukraine are granted to victims of THB pursuant to the requirements set out in paragraphs 6, 7 and 9 of the Procedure for extending the period of stay and extending or reducing the period of temporary stay of foreigners and stateless persons in the territory of Ukraine, approved by Cabinet of Ministers Regulation No. 150 on 15 February 2012.</p>
Paragraph 187. Regarding the return of foreign children to the country of their origin.	<p>Please note that, under the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" (part 6 of Article 25 and part 8 of Article 26), forceful return of a foreigner or stateless person to the place of his/her permanent residence is not applied as long as this person is under 18 years of age.</p>
Paragraph 192	<p>According to Ukrainian criminal law, criminal responsibility is individual, personal. This is defined in Article 18 of the Criminal Code of Ukraine under which the subject of a crime, including trafficking in human beings, is a sane natural person who has committed a crime at an age of criminal liability.</p> <p>In a case when a legal person is created for the purpose of committing illegal acts related to trafficking, this circumstance will be considered as a means of committing a crime by the natural person who created it and covered by the concept of "fraud". If the legal entity includes several natural persons involved in</p>

	crimes related to trafficking in human beings, their actions will be qualified under part two of Article 149 of the Criminal Code of Ukraine which defines the circumstance as “by prior conspiracy”. The degree of responsibility and punishment in such cases should be decided only for each person individually for the actually committed crime.
Paragraph 196	Section IX of the General Part and a number of special norms in the Special Part of the Criminal Code of Ukraine envisage grounds for exempting persons from criminal liability. If such grounds are found in the actions of victims of crimes related to trafficking, such persons will be exempt from criminal liability.
Paragraph 216	Add: “Bodies of the Ministry of Internal Affairs are taking measures to ensure the investigation of trafficking crimes and bringing the perpetrators to justice. In 2014, the Single Register of Pretrial Investigations contained 137 criminal offenses involving facts of human trafficking. Following their investigation, only 5% (7 proceedings) were closed; indictments were submitted to court in 34 cases; proceedings were discontinued in 26 cases in the framework of international cooperation, in 10 cases due to the fact that the suspect was in hiding from the investigation and trial and in one more case due to a serious illness of the suspect. In other proceedings, the investigation is continuing.”