

# HUMAN TRAFFICKING FOR THE PURPOSE OF LABOUR EXPLOITATION



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

Thematic Chapter of the 7th General Report  
on GRETA's Activities  
(covering the period from  
1 January to 31 December 2017)



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**French edition:**

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sur les activités du GRETA

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# Human trafficking for the purpose of labour exploitation

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## Executive summary

In the course of the first evaluation round of the Council of Europe Convention on Action against Trafficking in Human Beings, the Group of Experts on Action against Trafficking in Human Beings (GRETA) noted that a number of Parties to the Convention failed to acknowledge the existence or scale of human trafficking for the purpose of labour exploitation, and did not address it sufficiently in their policy and practice. Therefore, for the second round of evaluation of the Convention, GRETA decided to pay particular attention to measures taken by States Parties to prevent and combat trafficking for the purpose of labour exploitation. GRETA has dedicated a thematic section in the 7th General Report to the issue of trafficking for the purpose of labour exploitation, based on the country evaluation reports published until the end of 2017.

2017 saw the adoption of the landmark judgment of the European Court of Human Rights in *Chowdury and Others v. Greece*, in which the Court found for the first time a violation of Article 4 of the European Convention on Human Rights in respect of human trafficking for the purpose of labour exploitation. The judgment is an important contribution to European human rights law in recognising the complex and subtle forms of coercion that underpin trafficking for the purpose of labour exploitation.

The concept of “labour exploitation” in the context of trafficking in human beings is not defined as such in international legal instruments, but is taken to cover, at a minimum, forced labour or service, slavery or practices similar to slavery, and servitude. Different countries have different understanding of what constitutes exploitative labour conditions and what falls under the scope of trafficking in human beings. GRETA has noted that restrictive interpretations by courts of what constitutes human trafficking for the purpose of labour exploitation may result in acquittals or the cases being considered as labour law violations or exploitation which does not involve human trafficking.

The statistics included in GRETA’s country reports indicate that trafficking for the purpose of labour exploitation has been on the rise and has emerged as the predominant form of exploitation in some countries. While there are considerable variations in the number and proportion of labour trafficking victims among countries,

all countries indicate an upward trend of labour exploitation. These trends indicate the urgent need for closer co-operation between States, civil society, trade unions and the private sector. GRETA has highlighted the need for comprehensive legislation on trafficking for the purpose of labour exploitation, including recognition of the irrelevance of the victim's consent to the intended exploitation, and the need for heightened attention to the abuse of a position of vulnerability.

Trafficking for the purpose of labour exploitation occurs in the formal and informal economies, with migrant workers particularly at risk. Men constitute most of the identified victims of labour trafficking, in sectors as diverse as agriculture, construction, hospitality and fisheries. Women are also victims of trafficking for labour exploitation, often in the more isolated setting of domestic and care work. The possibility of trafficking occurring in diplomatic households is now well recognised, and GRETA's country reports have highlighted examples of good practice in prevention of such exploitation and in overcoming the barriers presented by state and diplomatic immunity claims.

The increasing precariousness of work, and the risks encountered by seasonal and migrant workers in particular, are documented in several of GRETA's country reports. The fisheries industry is recognised as posing particular challenges to the resourcing and functioning of inspectorates and other oversight bodies. GRETA's reports have highlighted steps being taken to strengthen preventive measures, yet the limited oversight of agricultural and other sectors contributes to difficulties in outreach to those often most at risk of exploitation. Limited resources for labour inspectorates, restrictions on collective bargaining and restricted access to channels for legal migration all contribute to labour trafficking.

GRETA has noted the need for strengthening the monitoring of employers registered in EU countries and recruiting "posted workers" to other EU countries with a view to preventing the economic exploitation of these workers. The licensing of employment and recruitment agencies and the monitoring of their activities is another tool for preventing trafficking for the purpose of labour exploitation.

Some cases of trafficking for labour exploitation concern businesses whose contractors and subcontractors exploit trafficked workers. GRETA's reports provide examples of measures to enhance the transparency of corporate supply chains which have been taken in some countries.

GRETA has welcomed the efforts to set up co-ordination bodies and specialised structures for combating human trafficking for the purpose of labour exploitation. However, GRETA has noted with concern that in some countries, trade unions are not yet recognised as a partner in anti-trafficking work and should be encouraged to participate in anti-trafficking co-ordination.

Training is being provided to a growing range of professionals to raise their awareness of indicators of human trafficking and to provide them with tools to detect vulnerable persons or those who are already subject to labour exploitation. Nevertheless, GRETA has noted that labour inspectors still lack skills and instructions on how to proceed once they have detected a potential victim of trafficking, which limits the number of victims detected and referred by labour inspectors. GRETA has stressed

the benefits of multidisciplinary training, which enables professionals from different agencies to exchange experience, create trust and build networks for addressing trafficking for labour exploitation together.

The identification of victims of trafficking for the purpose of labour exploitation is challenging and statistics available on identified victims do not reflect the actual scale of the phenomenon. GRETA has noted a gradual improvement in data collection, but there are still important gaps in many countries which make it difficult to discern clear trends. GRETA has stressed the need for developing and maintaining comprehensive and coherent statistics regarding victims, which should be collected from all main actors and allow disaggregation concerning sex, age, type of exploitation, country of origin and/or destination.

With a few exceptions, the countries evaluated by GRETA in the context of the second evaluation round have set up a National Referral Mechanism (NRM) for the identification of victims of trafficking and their referral to support and protection. However, the NRMs of many countries do not sufficiently involve agencies specialised in detecting trafficking for labour exploitation. GRETA has urged States Parties to pursue a proactive approach to the identification of victims of trafficking for the purpose of labour exploitation by encouraging regular and co-ordinated multi-agency inspections in the sectors most at risk. Further, GRETA has stressed the need for a multidisciplinary approach to the identification of victims of trafficking, which gives a formal role in the identification process to frontline actors such as NGOs, labour inspectors, social workers, health-care staff and other professionals which may come into contact with victims of trafficking.

The provision of assistance to victims of trafficking for the purpose of labour exploitation has specificities linked to the fact that the majority of these victims are men who may fear losing their jobs and any payments due, may feel responsible for what happened to them and not see themselves as victims. Providing support to victims of labour exploitation therefore requires an approach which addresses these particular factors. The availability of information on their rights, in languages the victims can understand, as well as qualified interpretation and specialised legal assistance, are crucial for building trust with the victims, helping them understand their situation and increasing the chances of successful investigation and prosecution. The second evaluation round has brought to light some improvements when it comes to assisting male victims of trafficking. However, in several countries, there are still no shelters or crisis centres providing assistance to male victims of trafficking. GRETA has urged States Parties to provide assistance, including safe accommodation, adapted to the specific needs of male victims of trafficking.

Access to information and to legal assistance remains a challenge for many victims of trafficking for the purpose of labour exploitation, and GRETA has highlighted the importance of ensuring that victims are not criminalised, and can secure access to compensation and effective legal redress.

GRETA's monitoring under the second evaluation round suggests that in several countries, some progress has been made in the area of compensation to victims of trafficking. Despite the positive examples, effective access to compensation remains out of reach for most trafficked people. In many countries, there is no recorded

information on any compensation received by victims of trafficking and several countries still lack State compensation schemes accessible to victims of trafficking. This amounts to a major failing of states in their duty to help trafficked people, and makes their rehabilitation all the more difficult.

In the majority of countries evaluated under the second evaluation round of the Convention, available statistical information on investigations, prosecutions and convictions in human trafficking cases was not disaggregated by form of exploitation. Nevertheless, it is clear that there have been few successful prosecutions and convictions for trafficking for the purpose of labour exploitation. Many States Parties have referred to difficulties regarding the prosecution of cases of trafficking for the purpose of labour exploitation. GRETA has recalled the positive obligation of States to investigate human trafficking, established by the European Court of Human Rights in its judgment in the case of *Rantsev v. Cyprus and Russia* and confirmed in *Chowdury and others v. Greece*.

## Introduction

Trafficking in human beings for the purpose of labour exploitation is one of the most challenging aspects of “modern-day slavery”. It is challenging on many accounts: because differences arise in practice in the interpretation and application of labour standards and in defining labour exploitation, because victims prefer not to lodge complaints or stand as witnesses as they are often dependent on their traffickers for work and housing, and not least because combating trafficking for the purpose of labour exploitation requires co-ordinated action between the State, civil society, trade unions and the private sector.

In the course of the first evaluation round (2010-2014), GRETA noted that a number of Parties to the Convention failed to acknowledge the existence or scale of human trafficking for the purpose of labour exploitation and did not address it sufficiently in their policy and practice. As a result, trafficking for labour exploitation remained largely invisible and the number of identified victims and successfully prosecuted cases was low. For the second round of evaluation of the Convention, GRETA decided to pay particular attention to measures taken by States Parties to prevent and combat trafficking for the purpose of labour exploitation.<sup>1</sup> By the end of 2017, GRETA had adopted 42 country reports under the first evaluation round and 25 country reports under the second evaluation round, which provide ample information on the measures taken by States Parties to the Convention in this area. GRETA has decided to dedicate a thematic section in the 7th General Report to the issue of trafficking for the purpose of labour exploitation, based on the country evaluation reports published so far.

GRETA refers to the landmark judgment of the European Court of Human Rights in the case of *Chowdury and Others v. Greece*, adopted on 30 March 2017, in which the Court found for the first time a violation of Article 4 of the European Convention on Human Rights (ECHR) in respect of trafficking for the purpose of labour exploitation.<sup>2</sup> The case was brought before the Court by a group of 42 Bangladeshi men who had worked at a strawberry farm in Manolada (southern Greece). The applicants did not have work permits, worked up to 12 hours per day under the supervision of armed guards and lived in makeshift shacks without toilets or running water. For several months, they did not receive the agreed wages and their employers threatened them that they would only receive wages if they continued to work. When a group of workers demanded their wages on 17 April 2013, one of the armed guards opened fire on them, seriously injuring 30 workers. Before this incident the Greek authorities had known for years about the circumstances under which thousands of workers lived and worked in strawberry farms around Manolada, due to media reports and an Ombudsman’s report which had been submitted to all relevant authorities and labour inspections, but no effective action to remedy the situation had been taken. Before the case reached the Court, the Patras Assize Court had acquitted the defendants - two employers, the guard who opened fire and an armed overseer - of the charge of trafficking in human beings, finding, in particular, that it had not been

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1. GRETA’s questionnaire for the second evaluation round contains a number of questions related to this issue: <http://rm.coe.int/16805ab825>

2. *Chowdury and Others v. Greece* (application No. 21884/15), judgement of 30 March 2017.

absolutely impossible for the workers to protect themselves and that their freedom of movement had not been compromised in that they had been free to leave their jobs. The European Court of Human Rights considered that a restriction on freedom of movement was not a condition *sine qua non* for establishing a situation as forced labour or human trafficking because a trafficking situation could exist in spite of the victim's freedom of movement. The Court saw the situation of the workers in Manolada as a case of human trafficking for the purpose of forced labour and concluded that there had been a violation of Article 4, paragraph 2, of the ECHR due to the failure of the Greek authorities to fulfil their positive obligations under this article to prevent human trafficking, to protect victims, to effectively investigate the offences committed, and to punish those responsible for human trafficking offences.

The Council of Europe Convention on Action against Trafficking in Human Beings had not entered into force in Greece at the time of the events, but this did not stop the Court from drawing on it in interpreting the positive obligations under Article 4 of the ECHR. The judgement highlights in paragraph 104 that "Article 4 of the Convention must be construed in the light of the Council of Europe's Anti-Trafficking Convention" and that the Court "is guided by that Convention and the manner in which it has been interpreted by GRETA", referring to GRETA's Fourth and Fifth General Reports and first-round evaluation reports on Spain and Italy. In the report on Italy, GRETA observed that the detection of victims of human trafficking for the purpose of labour exploitation was particularly complicated due to the significant size of the informal economy in certain sectors and the high numbers of irregular migrants working in them, in particular agriculture, construction and the textile industry. GRETA consequently urged the Italian authorities to take steps to reduce the vulnerability of irregular migrants to trafficking in human beings and invited them to study the implications of the immigration legislation for the identification and protection of victims of trafficking, and the prosecution of offenders.<sup>3</sup>

### **Criminalisation of human trafficking for the purpose of labour exploitation**

"Trafficking in human beings" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the 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, for the purpose of exploitation. Exploitation shall include, 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 (Article 4 (a) of the Convention).

The consent of a victim of "trafficking in human beings" to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used." (Article 4 (b) of the Convention).

3. GRETA 1<sup>st</sup> report on Italy, paragraphs 61 and 70.

The Council of Europe Convention on Action against Trafficking in Human Beings does not define “forced labour”, but the Explanatory Report refers to several relevant international instruments, such as the Universal Declaration of Human Rights (Article 4), the International Covenant on Civil and Political Rights (Article 8), the 1930 ILO Convention concerning Forced or Compulsory Labour (Convention No. 29), and the 1957 ILO Convention concerning the Abolition of Forced Labour (Convention No. 105).<sup>4</sup> Similarly, Article 4 of the ECHR prohibits forced labour, without defining it. The Explanatory Report to the Convention refers to case law of the European Court of Human Rights which has given a broad meaning to “forced labour”, encompassing “forced services”, and therefore there is no distinction to be made between the two concepts, from the standpoint of the ECHR.<sup>5</sup>

The concept of “labour exploitation” in the context of trafficking in human beings is not defined as such in international legal instruments, but is taken to cover, at a minimum, forced labour or services, slavery or servitude. GRETA notes that restrictive interpretations by courts of what constitutes human trafficking for the purpose of labour exploitation may result in acquittals or the cases being considered as labour law violations or exploitation which does not involve human trafficking.

Different countries have different understandings of what constitutes exploitative labour conditions and what falls under the scope of trafficking in human beings. For example, the criminalisation of trafficking in Belgium includes the purpose of “carrying out work or providing services in conditions contrary to human dignity”, which has a broader scope than the minimum list of exploitative purposes in the Convention.<sup>6</sup> In Germany, Section 232(1) of the Criminal Code (human trafficking) refers to, in addition to slavery, servitude or bonded labour, making a person work “under working conditions that are in clear discrepancy to those of other workers performing the same or a similar activity”.<sup>7</sup>

In the course of the first evaluation round, GRETA asked 10 countries to amend the national definition of trafficking in human beings in order to ensure that all forms of exploitation provided for by the Convention, and in particular forced labour or services, slavery or practices similar to slavery, and servitude, are covered. In response to GRETA’s first round recommendations, a number of countries have revised their criminal law provisions criminalising trafficking in human beings. GRETA’s second round reports provide details of the amended or new legislation which specifically addresses trafficking in human beings for the purpose of labour exploitation.

In France, Law no. 2013-711 of 5 August 2013 made a number of amendments to the definition of the offence of trafficking in human beings in Article 225-4-1 of the Criminal Code (CC), one of which was to include slavery, servitude and forced labour or services in the purposes of exploitation, in line with GRETA’s recommendations.

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4. Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, paragraph 89.

5. Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, paragraphs 90 and 92.

6. GRETA 2<sup>nd</sup> report on Belgium, paragraphs 169 and 173.

7. Before the German Criminal Code was amended in 2016, this definition appeared in Section 233. See GRETA 1<sup>st</sup> report on Germany, paragraph 43.

These purposes are also identified as stand-alone offences. Thus Article 225-14-1 of the CC defines “forced labour” as the act of forcing a person, through violence or threat, to carry out work without remuneration or for remuneration manifestly bearing no relation to the scale of the work carried out. Article 225-14-2 defines “servitude” as the act of subjecting a person whose vulnerability or dependence is obvious or known to the offender, on a habitual basis, to the offence provided for in Article 225-14-1 as an aggravated form of forced labour. Under the new Article 224-1 A of the CC, “slavery is the act of exercising one of the powers of the right of ownership over a person”. Article 224-1 B criminalises the exploitation of an enslaved person as the act of “committing a sexual assault against a person whose situation of slavery is obvious or known to the offender, sequestering that person or forcing them to carry out forced labour or forced service”. GRETA has welcomed the clarification brought by the new provisions, which come in addition to the already existing exploitation of “living and working conditions contrary to human dignity” defined in Article 225-14 of the CC.<sup>8</sup>

In Ireland, the Criminal Law (Human Trafficking) (Amendment) Act 2013 expanded the definition of the term “labour exploitation” to include forced begging, and defined the term “forced labour” as “work or service which is exacted from a person under the menace of any penalty and for which the person has not offered himself or herself voluntarily”, in line with the definition set out in ILO Convention No. 29 of 1930 on Forced or Compulsory Labour.<sup>9</sup>

In Portugal, Article 160 (trafficking in persons) of the CC was amended in August 2013 to include slavery, forced begging and the exploitation of other criminal activities among the forms of exploitation. However, “practices similar to slavery” and “servitude” were not included. According to the Portuguese authorities, Article 160 of the CC would in practice rarely apply in cases of slavery, practices similar to slavery and servitude due to the existence of a distinct offence of “slavery” in Article 159 of the CC (which does not require the use of any means and carries more severe penalties than human trafficking).<sup>10</sup>

In Poland, “servitude” is still not specifically mentioned as a type of exploitation in the definition of trafficking in human beings, despite GRETA’s recommendation to this effect. The Polish authorities have argued that, in the light of case law of the Constitutional Tribunal pertaining to the infringement of human dignity, in particular on the basis of Article 30 of the Polish Constitution<sup>11</sup> as well as the case law of the European Court of Human Rights, “servitude” is a form of abuse of human dignity and is covered by this term, which is included in the definition of human trafficking in Article 115, paragraph 22, of the Criminal Code.<sup>12</sup>

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8. GRETA 2<sup>nd</sup> report on France, paragraphs 20 and 228.

9. GRETA 2<sup>nd</sup> report on Ireland, paragraphs 14 and 189.

10. GRETA 2<sup>nd</sup> report on Portugal, paragraph 160.

11. Article 30 of the Polish Constitution states that the inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It is inviolable and its respect and protection is the obligation of public authorities.

12. GRETA 2<sup>nd</sup> report on Poland, paragraph 164.

GRETA has stressed that the offence of trafficking should expressly refer to forced labour, forced services, slavery and practices similar to slavery and servitude, notions that are well acknowledged in international law, including in the case law of the European Court of Human Rights regarding Article 4 of the ECHR. In *Siliadin v. France*, the Court found that the concept of “servitude” in Article 4 entails “a particularly serious form of denial of freedom”.<sup>13</sup> It includes, “in addition to the obligation to provide certain services to another ... the obligation on the ‘serf’ to live on the other’s property and the impossibility of changing his status”. The Court also recognised “domestic servitude” as a specific offence “which involves a complex set of dynamics, involving both overt and more subtle forms of coercion, to force compliance”.<sup>14</sup> As regards “practices similar to slavery”, four such practices are defined in Article 1 of the United Nations Supplementary Convention on the Abolition of Slavery.<sup>15</sup> In GRETA’s view, explicitly including “servitude” and “practices similar to slavery” among the forms of exploitation which constitute trafficking in human beings can contribute to the practical and effective protection against treatment contrary to the Council of Europe Convention on Action against Trafficking in Human Beings. Failure to do that may lead to difficulties in complying with the State’s positive obligations under Article 4 of the European Convention on Human Rights.

The **irrelevance of the victim’s consent** to the intended exploitation is not always explicitly stated in the national legal provisions criminalising trafficking in human beings. Victims of labour exploitation in particular may willingly accept the exploitation because they have no alternative to make a living or because they do not perceive it as exploitation. GRETA has noted that there are benefits in stating explicitly in legislation that consent is irrelevant to determining whether the crime of human trafficking has occurred. Setting out this pivotal principle in law could facilitate its use by investigators, prosecutors and judges when dealing with cases of human trafficking and help in obtaining a more consistent approach. Indeed, consent is an important factor at different stages of human trafficking cases, for instance: if victims refuse to self-identify as they consider that they consented to exploitation; when taking a decision on whether to investigate and prosecute a case as human trafficking where the victim apparently consented to exploitation; when deciding on the penalty for offenders where there are assertions of consent.<sup>16</sup> GRETA considers that stating explicitly the irrelevance of the consent of a victim of trafficking to the intended exploitation could improve the implementation of the anti-trafficking provisions and provide victims with greater confidence in self-reporting to NGOs and public authorities.

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13. See *Siliadin v. France*, application no. 73316/01, judgment of 26 July 2005, paragraph 123.

14. See *Siliadin v. France*, application no. 73316/01, judgment of 26 July 2005, paragraph 123; *C.N. and V. v. France*, application no. 67724/09, judgment of 11 October 2012; *CN v. UK*, application no. 4239/08, judgment of 13 November 2012.

15. United Nations Supplementary Convention on the Abolition of Slavery the Slave Trade and Institutions and Practices Similar to Slavery; the four mentioned forms of practices similar to slavery mentioned in the Convention are debt bondage, serfdom, the inheritance of widows and other sales of brides, and sale of children.

16. See UNODC Issue Paper, *The Role of Consent in the Trafficking in Persons Protocol*, United Nations, Vienna, 2014. Available at: [www.unodc.org/documents/human-trafficking/2014/UNODC\\_2014\\_Issue\\_Paper\\_Consent.pdf](http://www.unodc.org/documents/human-trafficking/2014/UNODC_2014_Issue_Paper_Consent.pdf)

In its second round evaluation reports, GRETA has paid particular attention to the manner in which national law and case law defines “**abuse of a position of vulnerability**”. In Georgia, for example, GRETA noted that the interpretation of “abuse of a position of vulnerability” (as a situation where, due to physical or mental disability, a person is unable to understand the existing situation and has no other option but to succumb to the violence applied to him/her) was more restrictive than that of the Convention. Paragraph 83 of the Explanatory Report of the Convention indicates that “by abuse of a position of vulnerability is meant abuse of any situation in which the person involved has no real and acceptable alternative to submitting to the abuse. The vulnerability may be of any kind, whether physical, psychological, emotional, family-related, social or economic. The situation might, for example, involve insecurity or illegality of the victim’s administrative status, economic dependence or fragile health. In short, the situation can be any state of hardship in which a human being is impelled to accept being exploited”. GRETA urged the Georgian authorities to bring the interpretation of the “abuse of a position of vulnerability”<sup>17</sup> into full conformity with the Convention.<sup>18</sup>

### Trends regarding trafficking for the purpose of labour exploitation

GRETA’s country-by-country reports show that in many States Parties, trafficking for the purpose of sexual exploitation is the predominant form of trafficking as far as identified victims are concerned. At the same time, trafficking for the purpose of labour exploitation has been on the rise and was the **predominant form of exploitation** in some countries (e.g. Belgium, Cyprus, Georgia, Portugal, Serbia, United Kingdom).<sup>19</sup> While there are considerable variations in the number and proportion of labour trafficking victims amongst the evaluated countries, all countries indicated an upward trend of labour exploitation over the years. For example, in Cyprus the proportion of identified victims of labour exploitation grew from one third of the total of identified victims in 2013, to two thirds in 2015. In the Republic of Moldova, the number of identified victims of trafficking for labour exploitation rose from 29% in 2011, to 44% in 2015.<sup>20</sup>

Labour trafficking takes different forms and occurs across various sectors, both in the formal and the informal economy. It concerns both women and men, but the number of identified male victims tends to be higher. For example, out of 296 victims of trafficking identified in Serbia in the period 2013–2016, 130 men were subjected to labour exploitation, as opposed to one woman.<sup>21</sup> Men are exploited primarily in agriculture, construction, the hospitality industry, manufacturing, fisheries and clean-

17. See also UNODC Guidance Note on “abuse of a position of vulnerability” as a means of trafficking in persons in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized.

18. GRETA 2<sup>nd</sup> report on Georgia, paragraph 162.

19. GRETA 2<sup>nd</sup> report on Belgium, paragraph 13; GRETA 2<sup>nd</sup> report on Cyprus, paragraph 12; GRETA 2<sup>nd</sup> report on Georgia, paragraph 13; GRETA 2<sup>nd</sup> report on Portugal, paragraph 14; GRETA 2<sup>nd</sup> report on Serbia, paragraph 12; GRETA 2<sup>nd</sup> report on the UK, paragraph 17.

20. GRETA 2<sup>nd</sup> report on Cyprus, paragraph 12; GRETA 2<sup>nd</sup> report on the Republic of Moldova, paragraph 14.

21. GRETA 2<sup>nd</sup> report on Serbia, paragraph 12.

ing services. Trafficking for the purpose of exploitation in domestic and care work more frequently concerns women and is more difficult to detect as it takes place in private households where victims can be subjected to a combination of labour and sexual exploitation, sometimes in the context of forced or sham marriages.<sup>22</sup> Cases of exploitation in diplomatic households which could amount to human trafficking have been brought to the attention of the authorities of some countries.<sup>23</sup>

Instances of child trafficking for the purpose of forced labour have also been identified, but in general there is not sufficient disaggregated data on the forms of exploitation and the sex of the children. In the majority of cases of trafficking for purposes other than sexual exploitation, identified child victims of trafficking were subjected to forced begging or exploitation of criminal activities. For example, in Serbia, out of the 94 identified child victims in the period 2013-2016, there were six girls trafficked for the purpose of labour exploitation, 12 girls and 10 boys trafficked for the purpose of forced begging, and three boys and one girl trafficked for the purpose of exploitation of criminal activities.<sup>24</sup>

Victims of trafficking for the purpose of labour exploitation are trafficked both transnationally and within their countries of origin or residence. In many countries, unemployment and a growing informal economy, together with a demand for cheap labour and services, are factors linked to labour trafficking. There exists a growing trend of recruitment via the Internet, including on social media, through which a larger number of potential victims can be targeted.

Statistics in GRETA's country evaluation reports are based on data provided by the national authorities, which come with a number of limitations. Many countries point to the fact that labour trafficking is harder to detect than trafficking for the purpose of sexual exploitation, which leads to fewer reported cases. The identification of victims of trafficking for the purpose of labour exploitation remains challenging and statistics available on identified victims do not reflect the actual scale of the phenomenon. GRETA has noted a gradual improvement in data collection, but there are still important gaps in many countries which make it difficult to discern clear trends. GRETA has stressed the need for developing and maintaining comprehensive and coherent statistics regarding victims, which should be collected from all main actors and allow disaggregation concerning sex, age, type of exploitation, country of origin and/or destination. This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection, including when NGOs working with victims are asked to provide information for the national database.

In the course of the first evaluation round, GRETA noted the lack of **research on trafficking for the purpose of labour exploitation** and the limited knowledge base for addressing this phenomenon. There has been a growing body of research on human trafficking for the purpose of labour exploitation in recent years. By way of example, GRETA's report on Austria refers to research carried out by the Ludwig

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22. Some countries, such as the UK, treat labour exploitation and domestic servitude as separate categories in the statistics on victims of trafficking.

23. GRETA 2<sup>nd</sup> report on Austria, paragraph 13; GRETA 2<sup>nd</sup> report on Belgium, paragraphs 15 and 63.

24. GRETA 2<sup>nd</sup> report on Serbia, paragraph 12.



Boltzmann Institute of Human Rights concerning labour exploitation in Austria's construction sector in the framework of the EU-project "Facilitating Corporate Social Responsibility in the Field of Human Trafficking".<sup>25</sup> Reports have been published on the prevention of forced labour in the Roma community in the Slovak Republic<sup>26</sup> and on labour exploitation in the region of Alentejo in Portugal.<sup>27</sup> The extent of labour exploitation in Armenia was studied in a research project commissioned by the OSCE Office in Yerevan.<sup>28</sup>



In Poland, the "Study on Demand Reduction Measures to Combat Trafficking in Human Beings for the Purpose of Labour Exploitation through Engagement of the Private Sector" was carried out with support of the Norway Grants Financial Mechanisms in 2016.

As part of the European Union and Council of Europe framework "Horizontal Facility for the Western Balkans and Turkey", research on trafficking for the purpose of labour exploitation was carried out and reports were published in Serbia and "the former Yugoslav Republic of Macedonia" in 2017.

The EU-funded project "ADSTRINGO: Addressing Trafficking in Human Beings for Labour Exploitation through Improved Partnerships, Enhanced Diagnostics and Intensified Organisational Approaches", led by the European Institute for Crime

25. GRETA 2<sup>nd</sup> report on Austria, paragraph 48.

26. GRETA 2<sup>nd</sup> report on the Slovak Republic, paragraph 51.

27. GRETA 2<sup>nd</sup> report on Portugal, paragraph 56.

28. GRETA 2<sup>nd</sup> report on Armenia, paragraph 43. OSCE, Forced Labour and Labour Trafficking in Armenia: Pilot Study (Summary), December 2015. Available at: <http://www.osce.org/yerevan/212571>

Prevention and Control (HEUNI), involved the publication of a report researching the methods of recruiting victims of forced labour and the role of employment agencies and employers in Lithuania, Estonia, Sweden and Finland.<sup>29</sup> As part of the same project, a study entitled “Trafficking for Forced Labour: Mechanisms of Formation and Effective Prevention” was published in 2014 by the Centre for Human Trafficking Studies of Warsaw University.<sup>30</sup>

The issue of labour exploitation of foreign migrant workers has been studied extensively in a number of research projects. For example, the Danish Centre against Human Trafficking (CMM) commissioned three research reports focusing on the vulnerability of migrant workers, by surveying three sectors - *au pairs*, agriculture and the cleaning industry - which employ largely foreign workers and where cases of forced labour were detected.<sup>31</sup> Further, a study on the situation of migrant victims of labour exploitation entitled “Participative Action Research on Severe Forms of Labour Exploitation” was carried out in Ireland with support from the European Union Agency for Fundamental Rights (FRA).<sup>32</sup>

In 2014 the Government Communication Office of Slovenia funded a research project entitled “Analysis of Trafficking in Human Beings for the Purpose of Labour Exploitation, Trafficking in Children, Forced Begging and Forced Criminality”.<sup>33</sup> Further, the Slovenian Ministry of Labour, Family, Social Affairs and Equal Opportunities commissioned research on “Child labour in Slovenia” which was published in 2017.<sup>34</sup> In “the former Yugoslav Republic of Macedonia”, a research report was published in 2014 with funding from the European Commission and the Oak Foundation entitled “Protecting Children on the Move”, which focuses on the intersections of child migration, street children and child labour.<sup>35</sup>

GRETA welcomes the research carried out by a variety of actors, often with the support of international organisations and donors, and considers that further research should be conducted on trafficking for the purpose of labour exploitation as an important source of information on problematic areas, the impact of prevention efforts and future policy measures.

## Policy and institutional framework for addressing trafficking for the purpose of labour exploitation

At the time of the first evaluation round, GRETA noted that many States Parties had failed to address trafficking for the purpose of labour exploitation in their national action plans and institutional structures set up to co-ordinate anti-trafficking action. GRETA therefore made recommendations to the national authorities of several countries aimed at ensuring that national action to combat human trafficking is

29. Available at: [http://heuni.fi/material/attachments/heuni/reports/6KZycU1Lj/HEUNI\\_report\\_75\\_15102013.pdf](http://heuni.fi/material/attachments/heuni/reports/6KZycU1Lj/HEUNI_report_75_15102013.pdf)

30. GRETA 2<sup>nd</sup> report on Poland, paragraph 51.

31. GRETA 2<sup>nd</sup> report on Denmark, paragraph 44.

32. GRETA 2<sup>nd</sup> report on Ireland, paragraph 48.

33. GRETA 2<sup>nd</sup> report on Slovenia, paragraph 40.

34. GRETA 2<sup>nd</sup> report on Slovenia, paragraph 41.

35. GRETA 2<sup>nd</sup> report on “the former Yugoslav Republic of Macedonia”, paragraph 49.

comprehensive, in particular by paying increased attention to human trafficking for the purpose of labour exploitation and adopting a national action plan addressing all types of exploitation.<sup>36</sup>

The second evaluation round shows that developments aimed at countering trafficking for the purpose of labour exploitation have occurred since the first evaluation by GRETA in many countries, through the development of new, **comprehensive national strategies or action plans**, the enlargement of existing co-ordination bodies and/or the setting up of additional structures or agreements.

By way of example, in Malta, the Third National Action Plan against Trafficking in Human Beings (2015-2016) had a strong focus on action against trafficking for the purpose of labour exploitation, manifested by activities to train officials and raise awareness among various stakeholders and potential victims about the risks of labour exploitation.<sup>37</sup>

In Belgium, the third National Action Plan (2015-2019) envisages measures to raise awareness of human trafficking in sectors where economic exploitation may take place, in particular the hospitality industry (hotels, restaurants, cafes), construction, agriculture, manufacturing and fisheries. Priority is given to projects developed jointly with trade unions with a view to finding effective ways of transmitting information in order to prevent human trafficking, e.g. the production of a brochure for asylum seekers and an information file for work visa applicants. In addition, preparatory work has been initiated to sensitise the banking sector to transactions that might conceal trafficking.<sup>38</sup>

In Austria, in addition to the two working groups which were operating within the Task Force on Combating Human Trafficking at the time of GRETA's first evaluation, dealing respectively with child trafficking and prostitution, a third working group on trafficking for the purpose of labour exploitation was set up in December 2012. It is chaired by the Federal Ministry for Labour, Social Affairs and Consumer Protection and comprises representatives of nine federal ministries (including officials from the Finance Police and the Labour Inspectorate), social partner organisations, the administrations of the *Länder*, as well as the Men's Health Centre MEN VIA. The working group has focused on the construction, agriculture, forestry and domestic work sectors, posted workers, temporary agency work, wage and social dumping, false self-employment, and access to the labour market. Further, it has developed indicators for the identification of victims of trafficking for the purpose of labour exploitation.<sup>39</sup>

In Albania, the National Anti-Trafficking Co-ordinator, the Director of the Labour Inspectorate and the Director General of the National Police signed an agreement in October 2014 on co-operation for identifying cases of forced labour and trafficking for the purpose of labour exploitation. The agreement provides for the setting up of mixed inspection groups at the national and local levels.<sup>40</sup>

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36. See, for example, GRETA 1<sup>st</sup> report on Spain, paragraph 79; GRETA 1<sup>st</sup> report on Sweden, paragraph 61; GRETA 1<sup>st</sup> report on Malta, paragraph 65; GRETA 1<sup>st</sup> round report on Azerbaijan, paragraph 54.

37. GRETA 2<sup>nd</sup> report on Malta, paragraph 25.

38. GRETA 2<sup>nd</sup> report on Belgium, paragraph 57.

39. GRETA 2<sup>nd</sup> report on Austria, paragraphs 24-25.

40. GRETA 2<sup>nd</sup> report on Albania, paragraphs 25 and 98.



In **Denmark**, a governmental interdisciplinary task force was established to strengthen efforts to combat trafficking for forced labour and improve identification and referral of victims. It includes the Danish Centre against Human Trafficking (CMM), the National Police, the Customs and Tax Administration (SKAT), the Working Environment Authority, the Agency for Labour Market and Recruitment, and the Danish Immigration Service (DIS).

In Slovenia, the Inter-ministerial Working Group for Combating Trafficking in Human Beings was enlarged at the end of 2015 to include representatives of the Financial Administration, the Slovenian Association of Free Trade Unions and more representatives of the Ministry of Labour, Family and Social Affairs.<sup>41</sup>

In Belgium, there are periodic consultation meetings involving prosecutors specialised in human trafficking cases, labour inspectors, social inspectors and specialised police anti-trafficking units.<sup>42</sup>

However, in Croatia, GRETA noted with concern that the Ministry of Labour, to which the Labour Inspectorate is subordinated, was not part of the National Committee for Combating Human Trafficking or its Operational Team, in spite of its potential role in detecting victims of human trafficking. There were no objectives in the National Action Plan to specifically address trafficking for labour exploitation, and neither the Labour Inspectorate nor trade unions were mentioned in the action plan as partners in anti-trafficking efforts. Further, while reference is made to training in the tourism industry, where there are existing risks of trafficking, no action was planned in other at-risk sectors, such as agriculture and construction.<sup>43</sup>

GRETA has welcomed the efforts to set up **co-ordination bodies and specialised structures for combating human trafficking for the purpose of labour exploitation**, as well as a multi-agency approach promoting engagement with civil society, trade unions and businesses. However, GRETA notes with concern that in some countries, trade unions are not yet recognised as a partner in anti-trafficking work. Trade unions have the capacity to promote the prevention of trafficking for the purpose of labour exploitation and should be encouraged to participate in anti-trafficking co-ordination.

The complexity of issues related to trafficking for the purpose of labour exploitation requires a multidisciplinary approach at national and international level. GRETA refers to the manual for experts on multidisciplinary co-operation against trafficking in human beings for labour exploitation, published by the Government of the Netherlands in January 2016 as a result of the joint project “TeamWork!” also involving Luxembourg, Slovakia and Malta, which provides practical advice for the agencies which encounter trafficking at different stages of the process and how they can undertake joint or complementary activities to effectively combat this phenomenon.<sup>44</sup>

41. GRETA 2<sup>nd</sup> report on Slovenia, paragraph 50.

42. GRETA 1<sup>st</sup> report on Belgium, paragraph 27.

43. GRETA 2<sup>nd</sup> report on Croatia, paragraphs 24 and 30.

44. Available at: <https://www.government.nl/documents/publications/2016/01/18/manual-for-experts-on-multidisciplinary-cooperation-against-trafficking-in-human-beings-for-labour-exploitation>

## Prevention of trafficking for the purpose of labour exploitation

### Awareness raising and training

**Raising awareness** of trafficking for labour exploitation, how to avoid it and where to look for assistance is important as many people still lack information about this phenomenon. GRETA's country evaluation reports provide examples of a variety of awareness-raising measures and training initiatives by national authorities, in partnership with civil society and international organisations, with a view to preventing human trafficking for the purpose of labour exploitation. The awareness-raising activities have targeted the general public as well as specific groups, such as young people seeking employment, migrant workers and asylum seekers.



In **Belarus**, a telephone hotline number for safe migration and anti-trafficking was established in 2011. In 2013-2014 the Public Association "Gender Perspectives" implemented a campaign entitled "Ask while you're here" to inform persons planning to travel abroad about safe travel abroad, legal employment and behaviour in crisis situations. Further, the campaign entitled "Going abroad? – Call!" produced billboards and flyers distributed at educational institutions and territorial social service centres.

In **Poland**, an awareness-raising project on safe migration and protection against trafficking for Polish emigrants was implemented in 2014 by the NGO La Strada Foundation together with the organisation Fairwork from the Netherlands, the Association of Polish Women in the Netherlands and the Institute of Technology and Education of Koszalin Technical University.

In **Slovenia**, the NGO Slovenian Philanthropy has organised annual projects funded by the Government Communication Office as part of which migrant workers, other workers and the general public were informed of the risks of trafficking in human beings and how to recognise human trafficking situations. In 2015, eight field visits were carried out to inform workers on the ground, and co-operation was established with trade unions, social work centres, regional units of the Employment Service, regional associations of the Red Cross, as well as with the Austrian, German and Italian Embassies in Slovenia and the Slovenian-German Chamber of Commerce.

However, very few countries have reported the carrying out of **impact assessment** following awareness campaigns. In Portugal, a national campaign on labour exploitation, focusing particularly on the agriculture sector, was assessed via an online questionnaire, in which 59% of participants declared having noticed the campaign, particularly on TV, and 95% of those surveyed considered the campaign to be useful.<sup>45</sup> In Romania, two impact assessments found that awareness-raising campaigns on labour trafficking had reached a large number of beneficiaries, including potential victims, but labour exploitation remained a relatively less known form of human trafficking.<sup>46</sup> GRETA has stressed the importance of impact assessment

45. GRETA 2<sup>nd</sup> report on Portugal, paragraph 62.

46. GRETA 2<sup>nd</sup> report on Romania, paragraph 49.



of awareness-raising initiatives to evaluate whether knowledge has increased and behaviour changed, and in order to plan future campaigns and other activities.

**Educational institutions** can increase information on awareness of human trafficking amongst children and young people by including human trafficking in their curricula, as well as by developing specific tools for teachers. For example, in Serbia, a training programme “Protection of children against human trafficking in education” was implemented by the Ministry of Education, Science and Technological Development, the Centre for the Protection of Victims of Trafficking and UNITAS Humanitarian Fund, and a manual for the education system was published in 2016.<sup>47</sup> In France, the NGO Comité contre l’esclavage moderne (CCEM) participates in raising awareness in schools of the dangers of trafficking for the purpose of labour exploitation through workshops and presentations.<sup>48</sup>

**Training** is being provided to a growing range of professionals to raise their awareness of indicators of human trafficking and to provide them with tools to detect vulnerable persons or those who are already subject to labour exploitation. Nevertheless, GRETA’s reports note with concern that labour inspectors still lack skills and instructions on how to proceed once they have detected a potential victim of trafficking, which limits the number of victims detected and referred by labour inspectors.



In France, a working group on the training of professionals in contact with victims of labour exploitation was set up in 2014, bringing together representatives of the Central Office for Combating Illegal Labour (OCLTI), the Central Office for the Fight against Itinerant Delinquency, the Directorate General of Labour, Directorate General of the National Gendarmerie and Directorate General of the National Police.

47. GRETA 2<sup>nd</sup> report on Serbia, paragraph 31.

48. GRETA 2<sup>nd</sup> report on France, paragraph 89.

In Serbia and “the former Yugoslav Republic of Macedonia”, labour inspectors are provided with training as part of a project entitled “Preventing and combating THB for the purpose of labour exploitation – the role of labour inspectors and market inspectors”, implemented by the Council of Europe as part of the EU-Council of Europe Programmatic framework “Horizontal Facility for the Western Balkans and Turkey”.

GRETA stresses the benefits of multidisciplinary training, which enables professionals from different agencies to exchange experience, create trust and build networks for addressing trafficking for labour exploitation together. The professionals targeted for such training should include labour inspectors, tax and customs authorities, police officers, prosecutors, judges, border guards, migration officials, consular staff, social workers, local/municipal government officials, NGOs, trade unions, private employment agencies and companies.

### **Targeted prevention for groups at risk**

The Convention requires Parties to establish and/or strengthen effective policies and programmes to prevent trafficking in human beings, in particular for persons vulnerable to trafficking. Vulnerability to exploitation and trafficking is determined by a combination of factors, many of which are structural and are linked to economic, labour and immigration policies.

**Migrant workers**, especially seasonal and irregular migrant workers, as well as asylum seekers who have no access to the labour market, are particularly vulnerable to human trafficking for the purpose of labour exploitation. In the previously mentioned case *Chowdury and Others v. Greece*, the third-party intervention of the International Trade Union Confederation noted that migrant workers are a disproportionately vulnerable group as they lack power and status in society, and that migrant workers in an irregular situation have weak access to remedies in cases of conflict, and lack protection against deportation.<sup>49</sup>

GRETA refers to European Commission against Racism and Intolerance (ECRI) General Policy Recommendation No. 16 on safeguarding irregularly present migrants from discrimination, which states that safeguards should be established to ensure that irregularly present migrants who are victims of crime are aware of their rights, are able to report to law enforcement authorities and access justice and remedies without the risk of the sharing of their personal data or other information with immigration authorities for the purposes of immigration control and enforcement.<sup>50</sup> The European Social Charter (ESC) together with the European Committee on Social Rights’ (ECSR) jurisprudence put forth standards for the protection of vulnerable groups, such as migrant workers and their families.

GRETA notes that national immigration and labour laws can influence the vulnerability of migrant workers. **Legislative changes** have been made in some countries with the aim of preventing labour exploitation of foreign migrant workers. For example, in Ireland, where employing a third-country national without the State’s permission

49. *Chowdury and Others v. Greece* (application No. 21884/15), judgement of 30 March 2017.

50. ECRI, General Policy Recommendation No. 16 by the on safeguarding irregularly present migrants from discrimination, paragraph 33

is an offence for both the third-country national and the employer concerned, the Employment Permits (Amendment) Act was enacted on 27 July 2014 with a view to addressing the deficiencies identified by the case of *Hussein v. The Labour Court*.<sup>51</sup> The Act provides that it is a defence for the foreign national charged with working without an employment permit where he/she can show that all reasonable steps to comply with the requirement to have an employment permit were taken by him/her. The Act also stipulates that the Minister may take a civil action on the foreign national's behalf for compensation for work done or services rendered, as well as responsibility for the cost of such action.

In Austria, the 2011 Act against Wage and Social Dumping introduced wage control and administrative fines for employers. However, there are reportedly difficulties in enforcing this law against non-compliant employers as most of the posted workers come from foreign countries (e.g. Bulgaria and Romania) and the employers are not based in Austria.<sup>52</sup>

In Italy, Law No. 199 of 29 October 2016 "Provisions to counter the phenomena of undeclared employment, exploitative labour in agriculture and the realignment of wages in the agricultural sector" amended Article 603-bis of the CC ("illegal brokering and labour exploitation, so-called "*caporalato*"), making it punishable by between one and six years' imprisonment (or up to eight years' imprisonment if a worker is subjected to violence or threats) and a fine from 500 to 1 000 Euros in relation to each worker concerned. It also introduced administrative responsibility of legal entities and compulsory forfeiture of money, goods and profits. It is possible for workers who are victims of offences under this law to apply for and obtain a payment from the State anti-trafficking fund.

Prevention practices include the **provision of information to labour migrants** both pre- and post-departure so that they can make informed decisions about migrating, as well as the establishment of drop-in centres for irregular migrant workers in destination countries. For example, in Georgia, GRETA was informed about two pilot projects on migration aimed at establishing legal and safe channels of labour migration, one with Germany and the other with Poland and Estonia, which decreased the vulnerability of migrant workers to exploitation and trafficking.<sup>53</sup>



In Austria, a drop-in and counselling centre for undocumented workers, UNDOK, was established in June 2014. It is run by an association of trade unions, the Chamber of Labour, the Austrian National Student Union and civil society organisations. Persons working in Austria without a residence and/or work permit who are not paid the agreed wage or are harmed by their employers in any other way are provided with basic counselling about issues of labour law and social security, as well as assistance with administrative procedures. Leaflets with information for undocumented migrants have also been issued in a variety of

51. The case *Hussein v. The Labour Court & Anor* [2015] IESC 58 concerned an irregular migrant who worked for a number of years in an ethnic restaurant and could not benefit from protections under employment law because his employment contract was unlawful, due to his failure to have an employment permit.

52. GRETA 2<sup>nd</sup> report on Austria, paragraph 64.

53. GRETA 2<sup>nd</sup> report on Georgia, paragraph 74.

languages. UNDOK co-operates actively with organisations supporting victims of trafficking. Further, the PRO-GE Trade Union, in co-operation with UNDOK, and the NGOs LEFÖ-IBF and MEN VIA, launched an information campaign for seasonal workers in 2015.

In Ireland, the NGO Migrant Rights Centre Ireland (MRCI) runs a drop-in centre for migrants in Dublin.<sup>54</sup> To inform migrants arriving in Portugal about human trafficking, the Immigration and Borders Service (SEF) issued a leaflet available in five languages.<sup>55</sup> In Poland, a hotline and website aimed at increasing third-country nationals' awareness of their rights and obligations in Poland were promoted through advertisements in the media, leaflets distributed by border guard officers and universities, aimed at foreign students.<sup>56</sup>

In Finland, the Finnish Immigration Service and the Joutseno and Oulu Reception Centres for Asylum Seekers implemented a project in 2012-2014 to develop the system of services for vulnerable asylum seekers (Hapke Project), in which the target group included victims of human trafficking. The project created a leaflet for asylum seekers ("Working in Finland"), which provides information on labour rights and the help available. The original leaflet was modified to cover all immigrants and is available in 16 languages.<sup>57</sup>



**In Bulgaria**, "labour attaches" have been appointed in countries where many Bulgarian nationals seek employment. The network of labour attaches has been gradually expanded. It provides information and advice to Bulgarian citizens working abroad, linking them to local services. Further, the Employment Agency of the Ministry of Labour and Social Assistance provides information on its website about licensed employment agencies which offer work abroad, to prevent trafficking for labour exploitation.

In the UK, the Gangmasters Licensing Authority (GLA) prepared a leaflet on workers' rights in 18 languages which provides information on the national minimum wage, hours of work, annual leave, payslips, deductions from wages, health and safety, as well as terms and conditions of contracts. It also indicates employers' obligations and organisations to contact for support.<sup>58</sup>

**Domestic and care workers** are particularly vulnerable to exploitation due to the fact that in many countries the development of the private domestic and care market has been mostly uncontrolled, there are gaps in the labour legislation, and private households are usually not subject to labour inspections without a search warrant.

In Cyprus, according to the staff of the Office of the Commissioner for Administration and Human Rights, there are some 30,000 migrant women employed as domestic workers. Until recently, domestic workers were obliged to work a certain time with the same employer, but a ministerial decision simplified the procedures for changing

54. GRETA 2<sup>nd</sup> report on Ireland, paragraph 74.

55. GRETA 2<sup>nd</sup> report on Portugal, paragraph 73.

56. GRETA 2<sup>nd</sup> report on Poland, paragraph 71.

57. GRETA 1<sup>st</sup> report on Finland, paragraph 101.

58. GRETA 2<sup>nd</sup> report on the UK, paragraph 94.

employers and removed the minimum time requirement. The Commissioner has received many complaints about severe exploitation of domestic workers, but complaints lodged by domestic workers tend to be treated as a disagreement between employer and employee. From 2011 to 2014, 11 cases of suspected human trafficking among domestic workers were investigated by the Cypriot police, leading to 17 persons being identified as victims of trafficking.<sup>59</sup>

In Austria, workers categorised as “self-employed” are particularly at risk of trafficking and other forms of labour exploitation. There are reportedly some 25 000 self-employed nurses, carers and other workers in Austria, including 1 000 self-employed domestic workers, who have no access to social protection and fall outside the safeguards of labour laws.<sup>60</sup>

Home care is one of the fastest-growing sectors in Ireland and a high proportion of home care workers are migrants. There are no legal channels of migration into Ireland to work in the home care sector. In 2015 NGO Migrant Rights Centre Ireland (MRCI) examined the trends in the home care sector and migrant workers’ position, organised a series of participative workshops with migrant home care workers, and published a report which refers to poor working conditions, lack of regulation and concerns regarding the quality of care.<sup>61</sup> Further, the recruitment of *au pairs* into sub-standard domestic work jobs has been identified by the MRCI as a growing problem. Following a series of inspections in 2016 and 2017, 16 *au pair* recruitment agencies were registered. The Workplace Relations Commission (WRC) published a leaflet entitled “Employment Rights of Domestic Workers in Ireland”.<sup>62</sup>

In the UK, GRETA was concerned that the new overseas domestic worker system weakened the position of migrant domestic workers and carried the risk of increasing human trafficking for the purpose of domestic servitude. In 2015, 75 allegations of domestic servitude were recorded by the London Metropolitan Police, 10 of which concerned diplomatic households. An independent review of the overseas domestic workers visa system commissioned by the government was published in December 2015. The review’s first key conclusion was that “the existence of a tie to a specific employer and the absence of a universal right to change employer and apply for extensions of the visa are incompatible with the reasonable protection of overseas domestic workers while in the UK”.<sup>63</sup> The second key conclusion was that mandatory group information meetings should be instated for all overseas domestic workers who remain in the UK for more than 42 days to enable victims of abuse to be identified or to self-identify and to empower them to take steps to leave their abusive employers, offering them support to do so. GRETA asked the UK authorities to remove the existing link between visas for overseas domestic workers and their employers, thus allowing them to change employers without their immigration status being affected.<sup>64</sup>

59. GRETA 2<sup>nd</sup> report on Cyprus, paragraph 47.

60. GRETA 2<sup>nd</sup> report on Austria, paragraph 65.

61. Available at: <http://www.mrci.ie/wpcontent/uploads/2015/09/Migrant-Workers-in-the-Home-Care-Sector-Preparing-for-the-Elder-Boom-in-Ireland.pdf>

62. GRETA 2<sup>nd</sup> report on Ireland, paragraphs 68-70.

63. Ewins J, “Independent Review of the Overseas Domestic Workers Visa” (2015), p.5. Available at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/486532/ODWV\\_Review\\_-\\_Final\\_Report\\_\\_6\\_11\\_15\\_.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486532/ODWV_Review_-_Final_Report__6_11_15_.pdf)

64. GRETA 2<sup>nd</sup> report on the UK, paragraphs 100-102 and 107.

In Norway, 13 of the 90 cases of forced labour or services reported in 2015 concerned *au pairs*. The *Au Pair Centre* run by NGO Norwegian People's Aid was opened in 2013 to provide information and advice to *au pairs* and host families. The centre published a handbook with advice for *au pairs* and host families in May 2015.<sup>65</sup> Labour inspectors are not mandated to inspect the working conditions of *au pairs* as they are not considered as employed under Norwegian law. GRETA has asked the Norwegian authorities to review the regulations concerning *au pairs* to ensure that they are not subject to abuse.<sup>66</sup>

As home to a large diplomatic community, Austria has taken a lead in developing safeguards against trafficking of **private domestic staff in diplomatic households**.<sup>67</sup> Other countries which have adopted specific regulations and guidance concerning the employment of domestic workers in diplomatic households include Belgium,<sup>68</sup> France,<sup>69</sup> Ireland,<sup>70</sup> Switzerland<sup>71</sup> and the UK.<sup>72</sup> In the second evaluation report on the UK, GRETA asked the authorities to ensure that work contracts of domestic workers employed in diplomatic households are with diplomatic missions rather than individuals.<sup>73</sup>



In **Switzerland**, employment contracts of domestic workers in diplomatic households must follow a model contract and be signed before the person's arrival in Switzerland. Contracts are checked by consular officials during an individual interview which must take place to obtain a visa to enter Switzerland. During the interview, domestic workers are informed about their rights and obligations, and standards of working conditions. Once the domestic workers are in Switzerland, they can meet officials from the Federal Department of Foreign Affairs during which they are informed that they can contact the authorities in case of difficulties with their employers. During both interviews, officials must make sure in particular that they have fully understood the terms of their work contract. They can turn to the Federal Department of Foreign Affairs or the office of the mediator (*bureau de l'amiable compositeur*) which has been set up in Geneva to resolve conflicts involving persons benefiting from diplomatic privileges and immunities.

Another sector at risk for human trafficking for the purpose of labour exploitation is the **fishing industry**. In Ireland, following reports of alleged abuses of migrant workers on board Irish fishing vessels, the Atypical Working Scheme (AWS) for Seafishers was launched in February 2016. It provides that employees will be guaranteed, at a minimum, the national minimum wage and statutory terms and conditions in

65. Available at: <https://www.npaid.org/Our-Work/Refugees-and-Integration/Welcome-to-Au-Pair-Center-On-Equal-Terms/Handbook>

66. GRETA 2<sup>nd</sup> report on Norway, paragraphs 50-51.

67. GRETA 1<sup>st</sup> report on Austria, paragraph 73; GRETA 2<sup>nd</sup> report on Austria, paragraph 85.

68. GRETA 2<sup>nd</sup> report on Belgium, paragraph 63.

69. GRETA 2<sup>nd</sup> report on France, paragraph 84.

70. GRETA 2<sup>nd</sup> report on Ireland, paragraph 75.

71. GRETA 2<sup>nd</sup> report on Switzerland, paragraph 11.

72. GRETA 2<sup>nd</sup> report on the UK, paragraph 101.

73. GRETA 2<sup>nd</sup> report on the UK, paragraph 107.

accordance with national law, which will be underpinned by the requirement for employers to provide a legally binding contract of employment. Applications must be made by the employer who has a suitable vacancy and has identified an employee to fill that vacancy. There have been a number of operational interventions in the fisheries industry, one of which led to the identification of a victim of human trafficking. While welcoming the development of this regulatory scheme, GRETA noted that it created a dependency on the employer for the related visa application and asked the Irish authorities to review the application of the AWS with a view to ensuring that it contains sufficient safeguards against trafficking and exploitation of fishermen.<sup>74</sup>

GRETA refers to the ILO Work in Fishing Convention No. 188 (2007), which entered into force on 16 November 2017 and sets out standards of decent work on fishing vessels, including regulation of the recruitment process, minimum requirements enforceable through labour inspections and investigation of complaints by fishers. The Convention's standards also aim to play a preventative role regarding forced labour, child labour, human trafficking and other abuses in the fishing industry.<sup>75</sup>

**Persons from Roma communities** are often affected by poverty, unemployment and inadequate access to services, rendering them vulnerable to human trafficking. Targeted prevention activities have been carried out in respect of Roma communities in different States Parties to the Convention. For example, in the Slovak Republic, the project "Strengthening of joint measures in the prevention of forced labour of the Roma community and the development of reference mechanism" produced a film, information materials and a booklet for employers in order to increase the awareness about forced labour.<sup>76</sup> In Bulgaria, an initiative conducted by the Dutch Embassy and the Roma NGO Amalipe aimed to inform Roma communities of the possibilities for regular migration and the risks behind irregular migration into the Netherlands.<sup>77</sup>

GRETA has stressed the need for measures to strengthen the prevention of trafficking through social, economic and other measures for groups vulnerable to trafficking, including outreach work in Roma communities.

GRETA refers to the UN Committee on the Rights of the Child General Comment No. 21 (2017) on children in street situations, which notes that **children in street situations** may be victims of trafficking for sexual or labour exploitation or be particularly vulnerable to such forms of human trafficking.

In Bosnia and Herzegovina, the majority of identified victims of trafficking have been children, primarily from the Roma community, who work in street situations. Six day centres operate around the country, offering assistance to children in street situations, including mobile teams for outreach work which are involved in the National Referral Mechanism.<sup>78</sup>

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74. GRETA 2<sup>nd</sup> report on Ireland, paragraphs 68-70 and 79.

75. Available at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C188](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188)

76. GRETA 2<sup>nd</sup> report on the Slovak Republic, paragraph 60.

77. GRETA 2<sup>nd</sup> report on Bulgaria, paragraph 103.

78. GRETA 2<sup>nd</sup> report on Bosnia and Herzegovina, paragraphs 54 and 56.

To identify the needs of, and provide assistance to, children in street situations in Georgia, a special working group was set up under the Co-ordination Council, as well as mobile groups under the Ministry of Labour, Health and Social Affairs.<sup>79</sup>

GRETA has called on the national authorities of States Parties to ensure a protective environment for children in street situations and unaccompanied or separated children, and to strengthen the capacity and resources of child protection professionals to prevent child trafficking for all forms of exploitation.

## Labour laws and inspections

The enforcement of labour law standards as a means of preventing trafficking for the purpose of labour exploitation has received attention from the International Labour Organization (ILO).<sup>80</sup> Labour legislation and workplace inspections, including on health and safety, compliance with labour standards and revenue laws, play an important role in deterring instances of human trafficking for forced labour and identifying possible victims. Effective regulation of labour supply and workers' rights, including the protection of unionisation of workers, are also important for preventing human trafficking. The extension of the scope of labour protection over all sectors of the economy and over undocumented workers is essential for preventing vulnerable workers from exploitation and human trafficking.

GRETA's reports pay particular attention to the mandate, resources and training of **labour inspectors**, their collaboration with specialised anti-trafficking agencies (e.g. through joint inspections and joint training and events) and their involvement in National Referral Mechanisms for victims of trafficking. GRETA has noted that in many countries, labour inspectors lack the training and resources to respond efficiently to reports of labour violations. GRETA has urged the authorities to reinforce labour inspections in sectors known to be prone to undeclared work and/or human trafficking, and to ensure that labour inspections are comprehensive and proactive.

In France, the mandate of labour inspectors was extended in 2016 to include the reporting of human trafficking offences.<sup>81</sup> The National Action Plan provides for the designation of a contact person for such offences in each regional branch of the Labour Inspectorate.<sup>82</sup>

In Ireland, the Workplace Relations Commission focuses on sectors where employees are at an increased risk of exploitation (such as catering, construction, hotels, car washes, domestic work and fisheries). Labour inspectors are trained in the identification of indicators of trafficking and a card has been developed with contact numbers in six different languages which inspectors can give discretely to workers during inspections.<sup>83</sup>

In the UK, civil society expressed concerns about the increasing precariousness and potential vulnerability to trafficking of self-employed workers, in particular in

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79. GRETA 2<sup>nd</sup> report on Georgia, paragraphs 61-62.

80. <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/lang--en/index.htm>

81. GRETA 2<sup>nd</sup> report on France, paragraph 25.

82. GRETA 2<sup>nd</sup> report on France, paragraphs 25 and 82.

83. GRETA 2<sup>nd</sup> report on Ireland, paragraph 65.

the construction industry. GRETA noted that since 2010, the resources of different inspectorates had been significantly reduced and, as a result, there had been a reduction in the number of proactive labour inspections.<sup>84</sup>

In some countries, labour inspectors have broad, including investigative, powers. Thus in the Netherlands, the Inspectorate SZW, which was set up in 2012 following a merger of the former Labour Inspectorate, the Work and Income Inspectorate and the Social Security Intelligence and Investigation Department, is competent for supervising respect for labour regulations as well as detecting and investigating labour exploitation and human trafficking cases under the supervision of the Public Prosecution Service.<sup>85</sup>



In the **United Kingdom**, the Gangmasters Licensing Authority (GLA) was set up in 2005 to regulate the supply of workers to the agricultural, forestry, horticultural, shellfish gathering, food processing and packaging industries by setting up and operating a licensing scheme for labour providers across the UK. The GLA carries out compliance inspections and also holds extensive criminal powers to ensure effective investigations. In January 2016 the UK Government decided that the GLA's remit would be broadened to cover additional sectors and the GLA was renamed the Gangmasters Labour Abuse Authority (GLAA).

The mandate of labour inspectors as regards private households varies between countries. In Belgium, labour and social inspectors can carry out visits to all workplaces, including where domestic workers are present.<sup>86</sup> Labour inspectors in Norway can make inspections of any work place, except for private households, unless the employer provides accommodation for his/her workers.<sup>87</sup> In Austria and Cyprus, labour inspectors have the right to inspect private households, but rarely do so in practice.

The carrying out of **joint inspections** by labour inspectors and other agencies, such as the police, migration or border agencies, tax agencies and social inspection, enables a multidisciplinary approach and the pooling of information, which can improve effectiveness. At the same time, it is important to delineate the roles of different agencies, in particular when irregular migrants are involved as they might be reluctant to provide information for fear of expulsion.

In Cyprus, joint inspection units have been established in order to inspect enterprises for employees that are not registered with the Social Insurance Fund, co-ordinated by the Department of Labour Relations.<sup>88</sup> Belgium has a specialised team of inspectors who are trained to detect situations of possible trafficking and labour exploitation, called ECOSOC, with the mandate to investigate human trafficking cases for labour exploitation.

**Co-operation with trade unions and NGOs** is essential in order to tackle cases of trafficking for labour exploitation successfully, and needs to be organised in a structured way. By way of example, in Austria, seasonal workers who were brought

84. GRETA 2<sup>nd</sup> report on the UK, paragraph 96.

85. GRETA 1<sup>st</sup> report on the Netherlands, paragraph 32.

86. GRETA 1<sup>st</sup> report on Belgium, paragraph 32.

87. GRETA 2<sup>nd</sup> report on Norway, paragraph 48.

88. GRETA 2<sup>nd</sup> report on Cyprus, paragraph 46.

from Romania by bus, worked up to 60 hours per week and received only part of their wages, contacted trade union representatives who informed the police and following an inspection, a criminal investigation was launched, human trafficking being one of the charged offences.<sup>89</sup> In Greece, the Athens Labour Centre Trade Union (EKA) carries out on-site visits together with the Labour Inspectorate with a view to detecting cases of forced labour.<sup>90</sup>

Fraudulent practices of (temporary) employment and recruitment agencies, including the payment of recruitment fees which puts the workers in debt, or non-payment of minimum wage and social insurance contributions, are conducive to human trafficking. The **licensing of employment and recruitment agencies** and the monitoring of their activities is another tool for preventing trafficking for the purpose of labour exploitation.

In Georgia, the Law on Labour Migration was adopted in 2015, obliging the registration of legal persons and individual entrepreneurs providing or facilitating employment abroad.<sup>91</sup> In the Republic of Moldova, Law No. 180 of 2008 regulates the activities of private employment agencies that facilitate employment abroad, requiring them to obtain a licence subject to certain criteria.<sup>92</sup> In order to prevent irregular employment of foreign nationals and trafficking for the purpose of labour exploitation, the Labour Law of Latvia was amended in 2014 to oblige employers and temporary employment agencies to specify the registration number of the employers or their name and registration number in job announcements, as well as requiring the provision of information about the work contract to employees in a language they understand.<sup>93</sup>

GRETA has noted the need for strengthening the monitoring of employers registered in EU countries and recruiting “posted workers”<sup>94</sup> to other EU countries with a view to preventing the economic exploitation of these workers. In Belgium, the authorities referred to an on-going case involving a Belgian and a Slovak firm which recruited Romanian citizens who had signed contracts with the Slovak firm and were working in Belgium. The workers’ salaries were apparently so low that the Belgian authorities had reasonable grounds to believe that this was a case of trafficking for the purpose of economic exploitation and a criminal investigation was opened.<sup>95</sup>

GRETA refers to the Council of Europe Commissioner for Human Rights issue paper “Safeguarding human rights in times of economic crisis”, which stresses that as economic conditions deteriorate and the demand for cheap labour increases, strong

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89. GRETA 2<sup>nd</sup> report on Austria, paragraph 98.

90. GRETA 1<sup>st</sup> report on Greece, paragraph 35.

91. GRETA 2<sup>nd</sup> report on Georgia, paragraph 55.

92. GRETA 2<sup>nd</sup> report on the Republic of Moldova, paragraph 57.

93. GRETA 2<sup>nd</sup> report on Latvia, paragraph 61.

94. As envisaged under Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (‘the IMI Regulation’).

95. GRETA 2<sup>nd</sup> report on Belgium, paragraph 62.

support for labour inspectors and child protection agencies is needed to combat increasing labour exploitation and child trafficking.<sup>96</sup>

GRETA has asked the national authorities of States Parties to intensify their efforts to prevent trafficking for the purpose of labour exploitation by expanding the capacity and mandate of labour inspectors so that they can be actively engaged in the prevention of trafficking, including in private households, and by ensuring that training and sufficient resources are made available to labour inspectors to fulfil their mandate. With a view to preventing trafficking, the regulatory systems concerning migrants working as domestic and care workers should be reviewed. Efforts to prevent trafficking for the purpose of labour exploitation should include the licensing and monitoring of job intermediaries and temporary employment agencies.

### **Measures to discourage demand, including through public-private partnerships**

Article 6 of the Convention places a positive obligation on Parties to adopt legislative, administrative, educational, social, cultural or other measures to discourage demand for the services of victims of trafficking. Further, Article 19 of the Convention contains a provision encouraging Parties to make it a criminal offence to knowingly use the services of a victim of trafficking, with a view to suppressing demand that drives trafficking in human beings. This provision targets the client whether of a victim of trafficking for sexual exploitation or of a victim of forced labour or services, slavery or practices similar to slavery, servitude or organ removal.<sup>97</sup>

GRETA's Third General Report (2013) contained a section examining the factors that may drive or facilitate the use of services from trafficked persons and considered policies that may be used to discourage demand, with particular attention to the role and involvement of the private sector.<sup>98</sup>

GRETA's second round evaluation reports show that many national action plans contain measures aimed at reducing the demand that fosters human trafficking and some of the evaluated countries have implemented specific measures to discourage demand for labour trafficking.



**In Portugal**, the Immigration and Border Service (SEF) organised information meetings and conferences targeting businesses operating in sectors with high risk of trafficking in human beings for the purpose of labour exploitation, seeking to discourage the use of intermediaries that are not certified in Portugal. For example, the conference “New Migration Flows and Trafficking in Human Begins”, which was held in Beja, aimed to clarify the legal forms of recruitment of foreign nationals, identify mechanisms to better regulate the phenomenon and warn of the risks of irregular migration and human trafficking.

Some cases of trafficking for labour exploitation concern businesses whose contractors and subcontractors exploit trafficked workers. GRETA's reports provide examples

96. Council of Europe Commissioner for Human Rights, *Safeguarding human rights in times of economic crisis*, p. 44, available at: <http://rm.coe.int/16806daa3f>

97. Explanatory Report on the Convention, paragraph 231.

98. See pp. 45-50. Available at: <http://rm.coe.int/16805aa45d>.

of measures to enhance the **transparency of corporate supply chains** which have been taken in some countries.

In Denmark, the CMM has issued guidelines for companies and employers on managing the risk of hidden forced labour in 2014, which are available as an interactive web-based toolkit, and include checklists for measures which companies can take to reduce the risk of forced labour in their supply chains and which are also used for training purposes.<sup>99</sup> The manual developed by the CMM was translated into Slovenian in 2016.<sup>100</sup>

In the UK, the Gangmasters Licensing Authority (GLA) sought private sector engagement through the 2013 Supplier/Retailer Protocol (known as the Supermarket Protocol) agreed with the major food retailers and suppliers, which aims to ensure that safety and welfare standards for workers are maintained and any exploitation of workers is eliminated.<sup>101</sup> The Good Practice Guide for Labour Users and Suppliers details the legal requirements and explains how suppliers can ensure they are using a licensed labour provider. A multi-stakeholder campaign, “Stronger Together”, was developed and launched in 2014 by the GLA, the Association of Labour Providers and the NGO Migrant Help in order to raise awareness of trafficking for forced labour in supply chains. The campaign has a website where a toolkit, a video in several languages, posters and leaflets can be downloaded, as well as a guidance to deter, detect and deal with hidden labour exploitation in supply chains. Online training courses are available and regular workshops are also organised across the UK on “Tackling Modern Slavery in UK Businesses & Supply Chains”.<sup>102</sup>

In 2016, the Welsh Government adopted a Code of Practice: Ethical Employment in Supply Chains.<sup>103</sup>



In the **United Kingdom**, the transparency in supply chains provisions of the Modern Slavery Act 2015 require business of a certain size to prepare a “slavery and human trafficking statement” for each financial year, indicating the steps taken to ensure that slavery and human trafficking are not present in any of the supply chains and any other part of the business. A failure to produce a slavery and human trafficking report can result in the Secretary of State bringing civil proceedings in the High Court for an injunction against the companies concerned.

In October 2015 the Home Office published guidance for companies entitled “Practical Guide on Transparency of Supply Chains”.

In France, a law on due diligence by parent companies and principal companies operating with subcontractors was adopted on 21 February 2017. It creates an

99. GRETA 2<sup>nd</sup> report on Denmark, paragraph 52.

100. GRETA 2<sup>nd</sup> report on Slovenia, paragraph 51.

101. Available at: [www.gla.gov.uk/Publications/Labour-User-Guidance/](http://www.gla.gov.uk/Publications/Labour-User-Guidance/)

102. GRETA 2<sup>nd</sup> report on the UK, paragraph 90.

103. Available at: <http://gov.wales/docs/dpsp/publications/valuewales/170502-ethical-en.pdf>

obligation for certain companies<sup>104</sup> to introduce a vigilance plan “geared to identifying and obviating risks of violations of human rights and fundamental freedoms, serious physical harm or environmental damage or health risks resulting from its activities and those of companies under its direct or indirect control, as well as the activities of subcontractors or suppliers over which they exert decisive influence”. The company’s civil liability will be incurred in the event of failure to fulfil the newly created obligations.<sup>105</sup>

In Ireland, the 2016 Cross Border Conference focused on engagement with the private sector to raise awareness of the indications of serious labour exploitation in supply chains and advice on prevention to businesses.<sup>106</sup>

Initiatives to prevent trafficking for labour exploitation involving the business community are increasingly reported by State Parties. Such **public-private partnerships** are fully in line with the Convention.



In Slovenia, in 2016 a project entitled “Resnica” (“Truth”) aimed at raising awareness of the services and products that are the results of trafficking for labour exploitation, which was implemented in co-operation with the web portal 24ur.com, involving the publication of 27 articles, streaming of five programmes on the TV channel Kanal A. and the creation of a special website with stories on products that may be the result of labour exploitation and recommendations for consumers on how to contribute to the reduction of the problem. Additionally, messages were sent to the companies that deal with such products to create awareness about the issue of labour exploitation.

In Denmark, the CMM has made efforts to engage with the private and public sectors to combat trafficking and forced labour. Since 2014 the CMM has been part of the Danish Inter-Ministerial Working Group on Corporate Social Responsibility (CSR). The CMM has prepared sector-specific corporate social responsibility guidelines on combatting human trafficking. The guidelines were distributed at a conference focusing on trafficking for the purpose of forced labour held in November 2014. As part of an awareness-raising campaign, a side event on trafficking for the purpose of labour exploitation was held in connection with a larger event on CSR Awards in 2014. The CMM hosted a similar side event on THB at the 2015 CSR Awards event.<sup>107</sup>

In Bulgaria, under the project entitled “NGOs&Co: Co-operation between NGOs and the business in combatting trafficking in human beings”, the Animus Association Foundation organised several business meetings, made direct contacts with some 30 business representatives, including Manpower Bulgaria and JobTiger Bulgaria, and participated in two job fairs.<sup>108</sup>

104. “Any company employing, upon the closure of two consecutive financial years, at least 5 000 employees within the company itself and in direct or indirect subsidiaries whose head office is in France, or at least 10 000 employees within the company itself and in direct or indirect subsidiaries whose head office is in France or abroad.”

105. GRETA 2<sup>nd</sup> report on France, paragraph 112.

106. GRETA 2<sup>nd</sup> report on Ireland, paragraph 97.

107. GRETA 2<sup>nd</sup> report on Denmark, paragraph 53.

108. GRETA 2<sup>nd</sup> report on Bulgaria, paragraph 114.

In Portugal, as a reaction to cases of football players, some of them children, having been identified as victims of trafficking for the purpose of labour exploitation, in 2015 the Immigration and Border Service (SEF) signed a protocol with the Portuguese Football Federation, the Portuguese Professional Football League and the Union of Professional Football Players. The protocol aims to promote collaboration, transparency and information-sharing between the parties with a view to preventing such cases in the future.<sup>109</sup>

In a human rights comment entitled “Improving protection for victims of forced labour and human trafficking”, the Council of Europe Commissioner for Human Rights has emphasised the need to involve all States and non-state actors in the fight against forced labour and human trafficking, including prevention efforts aimed at all stages of the supply chain in high-risk industries, such as the textile, agriculture and tourism sectors.<sup>110</sup>

Building on the 2011 UN Guiding Principles on Business and Human Rights, the Committee of Ministers of the Council of Europe adopted Recommendation CM/Rec/(2016)3 on human rights and business, a text that provides guidance to member States regarding human rights violations by business enterprises, including child and forced labour.<sup>111</sup> A number of States Parties have adopted national action plans for implementing the UN Guiding Principles on Business and Human Rights, including measures to address human trafficking.

GRETA has asked the authorities of States Parties to work closely with trade unions, civil society and the private sector to raise awareness of trafficking for the purpose of labour exploitation, prevent trafficking in supply chains and strengthen corporate social responsibility, drawing on the Guiding Principles on Business and Human Rights<sup>112</sup> and Recommendation CM/Rec(2016)3 on human rights and business.<sup>113</sup>

The majority of the 25 Parties to the Convention so far evaluated under the second evaluation round have adopted provisions **criminalising the use of the services of victims of trafficking, with the knowledge that the person is a victim**. However, there have been very few related convictions. Countries which have reported convictions include Belgium,<sup>114</sup> Bulgaria,<sup>115</sup> Romania<sup>116</sup> and “the former Yugoslav Republic of Macedonia”.<sup>117</sup>

GRETA stresses that the criminalisation of the use of services which are the object of exploitation as defined in Article 4 of the Convention, with the knowledge that

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109. GRETA 2<sup>nd</sup> report on Portugal, paragraph 74.

110. <http://www.coe.int/en/web/commissioner/-/improving-protection-for-victims-of-forced-labour-and-human-trafficking?desktop=false>

111. <http://edoc.coe.int/en/fundamental-freedoms/7302-human-rights-and-business-recommendation-cmrec20163-of-the-committee-of-ministers-to-member-states.html>

112. [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

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

114. GRETA 2<sup>nd</sup> report on Belgium, paragraph 177.

115. GRETA 2<sup>nd</sup> report on Bulgaria, paragraph 185.

116. GRETA 2<sup>nd</sup> report on Romania, paragraph 170.

117. GRETA 2<sup>nd</sup> report on “the former Yugoslav Republic of Macedonia”, paragraph 150.

the person is a victim of trafficking in human beings, can have a normative effect and increase public awareness of human trafficking issues, in addition to having a punitive function.

## Identification of victims of trafficking for the purpose of labour exploitation

Article 10 of the Convention requires Parties to adopt measures to identify victims of trafficking for all forms of exploitation. In order to do so, Parties must provide their competent authorities with persons who are trained to identify and assist victims and develop an identification procedure which is not subject to the criminal investigation.

The identification of victims of trafficking for the purpose of labour exploitation is challenging due to the fact that the persons concerned may not see themselves as victims or mistrust the authorities because they are in an irregular situation. Therefore, relationships of trust need to be established between vulnerable migrant communities and the authorities, such as labour inspectors.

Not surprisingly, the number of identified victims remains low in the majority of Parties to the Convention and there is a knowledge gap when it comes to identifying this form of trafficking amongst the relevant professionals.

With a few exceptions, the countries evaluated by GRETA in the context of the second evaluation round have set up a **National Referral Mechanism (NRM)** for the identification of victims of trafficking and their referral to support and protection. The NRM defines the roles and responsibilities of stakeholders which can perform identification of victims and who usually include, in addition to law enforcement officers, labour inspectors, migration officials, health-care providers, local administration authorities and NGOs. However, the NRMs of many countries do not sufficiently involve agencies specialised in detecting trafficking for labour exploitation.

**Indicators for the identification** of victims of trafficking for the purpose of labour exploitation have been developed and updated in all countries, with the support of international organisations and the involvement of civil society actors. In Austria, the Task Force's working group on human trafficking for the purpose of labour exploitation has elaborated a list of indicators for the identification of victims, with the involvement of relevant practitioners, to help the authorities that establish first contact with possible victims.<sup>118</sup> In Cyprus, the Police Unit for Combating Trafficking in Human Beings uses formalised indicators for reaching a reasonable grounds decision.<sup>119</sup> In Albania, the Labour Inspectorate uses indicators for forced labour drawn up in collaboration with IOM.<sup>120</sup> In several countries which participated in the EuroTrafGuID project (Bulgaria, France, Greece, the Netherlands, Romania and Spain), tools and indicators for the first-level identification of victims of trafficking for the purpose of labour exploitation have been distributed to stakeholders.<sup>121</sup>

118. GRETA 2<sup>nd</sup> report on Austria, paragraph 96.

119. GRETA 2<sup>nd</sup> report on Cyprus, paragraph 64.

120. GRETA 2<sup>nd</sup> report on Albania, paragraph 97.

121. Available at: <http://www.expertisefrance.fr/eng/What-we-do/Stability-Safety-and-Security/Identification-of-Victims-of-Trafficking-in-Human-Beings-EuroTrafGuID-Project>



In **Malta**, the National Referral Mechanism was applied in the so-called “Leisure Clothing factory case”. In this case, one Chinese and nine Vietnamese workers were employed at a leisure clothing factory. They had been promised wages of 600 Euros per month, but were made to sign contracts for a much lower salary while the Maltese Employment and Training Corporation was shown false work contracts. Based on such false premises, the workers were issued visas and work permits and arrived in Malta. The victims were living in very cramped and poor conditions and were locked in at night. Their passports were taken away and they were told they would be sent back to their countries of origin if they complained. The case was detected by an NGO after which the Police Vice Squad provided the persons with interpreters and formally identified them as victims of trafficking. The Police requested assistance from the Agency Appoġġ and the Jesuit Refugee Service. Appoġġ provided them with emergency shelter, clothing and culturally appropriate food, linked up with medical services for the provision of medical assessments and treatment and liaised with the Immigration Police and Visa Department in view of having residence permits issued, as well as with the Employment and Training Corporation regarding the possibility of new employment. The Jesuit Refugee Service provided support and legal advice to the victims during interviews by the Police and the subsequent court hearings.

Further, certain measures have been elaborated to facilitate the self-identification of victims, such as free telephone hotlines, posters at airports and distribution of leaflets.

In Greece, there have been relatively few cases of identified victims of trafficking for the purpose of labour exploitation, although there are reports suggesting that the prevalence of forced labour in the sectors of agriculture, cleaning services, tourism and food/beverages production is particularly high. The agricultural sector in particular reportedly employs irregular migrants of Pakistani and Bangladeshi origin, as well as

Bulgarians, Romanians, Albanians and other workers from Eastern Europe.<sup>122</sup> GRETA also noted that a sector with a particular risk of trafficking is domestic service, but there are difficulties to identify victims as many have an irregular residence status (e.g. from the Philippines and the Dominican Republic) and are working in the grey economy. Such victims are reluctant to complain and prefer to live in an exploitative situation rather than risk losing their wages.<sup>123</sup>

In the UK, according to reports by civil society, victims of human trafficking for the purpose of forced labour, including domestic servitude, are frequently turned away from police stations when they report withheld passports or wages because these are seen as civil claims and there is insufficient awareness about the situation of trafficking for forced labour.<sup>124</sup> In Slovenia, in 2015 the police investigated nearly 5 000 violations of labour rights without establishing that there had been trafficking for labour exploitation, whereas NGOs and trade unions informed GRETA of cases which could amount to human trafficking but were treated as labour rights violations due to the low awareness of the relevant authorities regarding the indicators of human trafficking.<sup>125</sup>

GRETA has urged States Parties to pursue a proactive approach to the identification of victims of trafficking for the purpose of labour exploitation by encouraging regular and co-ordinated multi-agency inspections in the sectors most at risk, and by regulating and monitoring private employment agencies and domestic work. Further, GRETA has stressed the need for a multidisciplinary approach to the identification of victims of trafficking, which gives a formal role in the identification process to frontline actors such as NGOs, labour inspectors, social workers, health-care staff and other bodies which may come into contact with victims of trafficking.

### **Assistance to victims of trafficking for the purpose of labour exploitation**

The Convention requires States Parties to provide assistance to victims and presumed victims of trafficking regardless of nationality, gender or form of exploitation, and to ensure that assistance is not made conditional on the victim's co-operation in the investigation and criminal proceedings. Assistance should be tailored to the person's needs and should encompass access to various support services, as provided in Article 12, paragraphs 1 and 2, of the Convention. The victim-centred approach of the Convention can be met only through multi-agency co-operation, such as in the framework of a National Referral Mechanism, involving a series of public bodies and NGOs working together to ensure that the needs of victims are met.

The provision of assistance to victims of trafficking for the purpose of labour exploitation has specificities linked to the fact that the majority of these victims are men who may fear losing their jobs and any payments due, feel responsible for what happened to them and not see themselves as victims. Providing support to victims of trafficking for labour exploitation therefore requires an approach which

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122. GRETA 1<sup>st</sup> report on Greece, paragraph 140.

123. GRETA 1<sup>st</sup> report on Greece, paragraph 142.

124. GRETA 2<sup>nd</sup> report on the UK, paragraph 158.

125. GRETA 2<sup>nd</sup> report on Slovenia, paragraph 93.

addresses these particular factors. The availability of information on their rights, in languages the victims can understand, as well as qualified interpretation and specialised legal assistance, are crucial for building trust with the victims, helping them understand their situation and increasing the chances of successful investigation and prosecution.

GRETA's reports under the first evaluation round found that only nine countries offered appropriate support, including shelters, to male victims of trafficking.



**In Belgium**, there are three specialised reception centres for adult victims of trafficking, irrespective of gender or type of exploitation, which are run respectively by the NGOs Pag-Asa, Payoke and Sürya. For example, in 2015 the shelter run by Sürya accommodated 27 victims of trafficking for the purpose of economic exploitation, seven victims for the purpose of sexual exploitation and one victim of exploitation for forced begging. In addition to accommodation, the specialised centres provide legal aid and psychosocial support as well as medical assistance. Each centre has a multidisciplinary team including educators, criminologists and social workers. They help the trafficked people to take back control of their lives and build a plan for the future (for example, through enrolment in language classes or vocational training, job hunting). The specialised centres can also request the Foreigners' Office to issue residence permits for victims. Further, the specialised centres provide necessary out-of-shelter assistance to victims not residing at their premises.

At the time of the first visit to the UK, the GRETA delegation visited a safe house for victims of trafficking run by Migrant Help in Paisley, near Glasgow. The majority of the trafficking victims supported by Migrant Help had been victims of labour exploitation, primarily men. The services offered to victims included health care, specialised counselling, toiletries and clothing if needed, training and English lessons, help with documentation and appointments with consulates/embassies, solicitors and officials. Migrant Help operated an interpreter service (Clear Voice) and received victims around the clock. For those with leave to remain in the UK, Migrant Help provided assistance in finding work and accommodation. Assistance in returning to the country of origin or a safe third country was also offered.<sup>126</sup>



In cases of labour exploitation, large groups of victims can be detected at the same time, for example as a result of a raid or an action day. In the **Netherlands**, a strategy for large groups of victims, often of labour exploitation, has been devised by the Ministries of Security and Justice, Health, Welfare and Sports, and Social Affairs and Employment, together with the NGO CoMensha, according to which the latter is to be contacted in advance of any major action where there is an expected need. The Dutch authorities made available funding to the NGO CoMensha to organise temporary shelter for victims of labour exploitation at least for the duration of the investigation period.

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126. GRETA 1<sup>st</sup> report on the UK, paragraph 269.

The second evaluation round has brought to light some improvements in certain countries when it comes to assisting male victims of trafficking. For example, in Austria, a support centre for male victims of human trafficking was set up in early 2014, financially supported by the Federal Ministry of Labour, Social Affairs and Consumer Protection.<sup>127</sup> In Portugal, a shelter for male victims of trafficking was opened after the first evaluation visit. It is run by the NGO Saúde em Português. At the time of GRETA's second visit, six men were hosted; five were presumed victims of forced labour and one had been detected in a slavery-like situation. They had been referred by the Judicial Police, the Immigration and Border Service (SEF) or the multi-disciplinary teams.<sup>128</sup>

However, in several countries, there are still no shelters or crisis centres providing assistance to male victims of trafficking. GRETA is concerned by this continuing lacuna, which is all the more worrying given the increasing number of male victims. GRETA has urged the authorities of the States Parties concerned to provide assistance, including safe accommodation, adapted to the specific needs of male victims of trafficking.

## Compensation and legal redress

Pursuant to Article 15 of the Convention, victims of human trafficking should be able to obtain compensation and legal redress, either from the State or from the perpetrators.

There is in general a scarcity of available information on compensation awarded to victims of trafficking for the purpose of labour exploitation. In many countries, there is no recorded information on any compensation received by victims of trafficking and several countries still lack State compensation schemes accessible to victims of trafficking.

Nevertheless, some countries have provided examples of compensation awarded to victims of trafficking for the purpose of labour exploitation. In the Republic of Moldova, the authorities referred to a sentence by the Buiucani Court (Chisinau municipality) of 17 October 2014, by which 14 Moldovan citizens who were recruited to work in the Russian Federation in 2012 were each awarded compensation from the perpetrators of 32 160 MDL (equivalent to about 1 430 euros).<sup>129</sup> In France, one recent example reported to GRETA by civil society involved a trafficking victim who had received compensation of 13 000 euros from the perpetrator for six years of labour exploitation.<sup>130</sup>



**In Belgium**, there has been an increase in compensation awards to victims of trafficking during criminal proceedings. By way of example, compensation was awarded in cases of labour exploitation in a bakery (March 2013, Brussels Criminal Court), construction (June 2013, Charleroi Criminal Court) and an

127. GRETA 2<sup>nd</sup> report on Austria, paragraph 112.

128. GRETA 2<sup>nd</sup> report on Portugal, paragraph 118.

129. GRETA 2<sup>nd</sup> report on the Republic of Moldova, paragraph 137.

130. GRETA 2<sup>nd</sup> report on France, paragraph 210.

equestrian centre (April 2014, Antwerp Court of Appeal). In a trafficking case tried by the Brussels Criminal Court in 2015, the defendant charged with trafficking for economic exploitation was ordered to pay to the victims compensation of 215 189.99 euros. However, in this case the compensation could not be paid as no assets were seized during the investigation and the defendant had no property which could be confiscated.

GRETA's monitoring under the second evaluation round suggests that in several countries, some progress has been made in the area of compensation to victims of trafficking. Thus in the UK, victims of trafficking for the purpose of domestic servitude and forced labour can bring a case before an employment tribunal, in particular to recover unpaid wages. Irregular migrant workers used to be unable to access compensation for unpaid wages under employment law due to the "doctrine of illegality", because of their immigration status. However, in *Hounga (Appellant) v Allen and another (Respondent)*, the UK Supreme Court, reversing the decision of the Court of Appeal, held that to uphold the defence of illegality in this case ran counter to the greater public policy interest in combating human trafficking and protecting its victims, including against discrimination. The judgment is a significant one in advancing the human rights of trafficked persons.<sup>131</sup>

In Austria, an amendment to the Victims of Crime Act in 2013 introduced the possibility of granting compensation to victims of trafficking whose stay in Austria was irregular at the time of the crime. Further, special departments for proprietary measures were established at the Prosecutor's Offices in Vienna, Graz, Linz and Innsbruck and at the Central Public Prosecutor's Office for Combating Economic Crimes and Corruption; these departments are concerned with proprietary orders to ensure that assets are seized and victims of trafficking are eventually able to obtain compensation from perpetrators. Illegally employed foreigners can sue the business operator having employed them for their outstanding claims and perpetrators can be fined or imprisoned for not paying; in this regard the Chamber of Labour provides legal support together with the LEFÖ-IBF through labour law court proceedings.<sup>132</sup>



In Ireland, persons who have been trafficked for the purpose of labour exploitation can seek legal redress and compensation through a number of State bodies which deal specifically with work-related rights and entitlements. While NGOs such as the Migrant Rights Centre Ireland (MRCI) have supported victims in accessing labour courts for monies owed to them under the employment legislation, this is separate to achieving compensation for the crime of human trafficking. According to information provided by the Irish authorities, in November 2014, three Filipina domestic workers were awarded 80 000 euros each by the Employment Appeals Tribunal on the basis of an unfair dismissal claim they brought against the United Arab Emirates Ambassador to Ireland and his wife.

131. *Hounga (Appellant) v Allen and another (Respondent)* [2014] UKSC 47 as referred to in GRETA 2<sup>nd</sup> report on the UK, paragraph 239.

132. GRETA 2<sup>nd</sup> report on Austria, paragraphs 144-147.

Despite the positive examples, effective access to compensation remains out of reach for most trafficked people. This amounts to a major failing of States Parties in their duty to help trafficked people, and makes their rehabilitation all the more difficult. GRETA has called on the authorities of most States Parties to enable victims of trafficking to exercise their right to compensation by including victim compensation in training programmes for law enforcement officials, prosecutors and judges, building the capacity of legal practitioners to support victims to claim compensation, making the State compensation scheme effectively accessible to victims of trafficking, and making full use of the existing legislation on the freezing and forfeiture of assets to secure compensation to victims of trafficking.

GRETA refers to the 2014 Protocol to the 1930 ILO Forced Labour Convention, which requires Parties to provide protection and access to appropriate and effective remedies to victims, irrespective of their legal status.

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

Most of the States Parties evaluated by GRETA in the course of the second evaluation round have adopted specific legal provisions reflecting Article 26 of the Convention and in many countries guidance has been issued to prosecutors and other relevant professionals on the non-punishment provision.<sup>133</sup>

Several GRETA reports provide examples of the application of the non-punishment provision to victims of human trafficking for the purpose of labour exploitation. Thus in Croatia, GRETA was informed of a case where victims of trafficking for the purpose of labour exploitation involved in illegal slaughtering were not prosecuted for this offence.<sup>134</sup>

However, GRETA reports also provide examples of cases where the non-punishment provision was not applied. For example, in the Slovak Republic, some 200 Ukrainian nationals who worked on construction sites were treated as irregular migrants and deported. A criminal investigation was initiated in 2009 and the specialised criminal court, while establishing that the persons in question were transported to the Slovak Republic illegally, worked for an extremely low pay and had constant supervision of their movement, did not consider that these elements amounted to human trafficking, but delivered a judgment for illegal smuggling of migrants. This judgment was appealed by the prosecution and the case was pending at the Supreme Court.<sup>135</sup>

In the UK, the Immigration Act 2016 creates an offence of illegal working, including a fine or a prison sentence for the irregular migrant. The UK authorities have stated that victims of modern slavery or human trafficking have a strong statutory defence in section 45 of the Modern Slavery Act 2015 and are not the targets of the new criminal offence. However, GRETA asked the UK authorities to closely monitor the implications of the new offence of illegal working for the identification of victims of trafficking, the application of the non-punishment provision and the prosecution of offenders.<sup>136</sup>

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133. See, for example, GRETA 2<sup>nd</sup> report on the UK, paragraph 286; GRETA 2<sup>nd</sup> report on Belgium, paragraph 180; GRETA 2<sup>nd</sup> report on Denmark, paragraph 158.

134. GRETA 2<sup>nd</sup> report on Croatia, paragraph 152.

135. GRETA 2<sup>nd</sup> report on the Slovak Republic, paragraph 160.

136. GRETA 2<sup>nd</sup> report on the UK, paragraph 157.

GRETA has stressed that that the scope of the non-punishment provision should cover all offences which victims of trafficking were compelled to commit, including administrative and immigration-related offences.

## Investigating and prosecuting cases of trafficking for the purpose of labour exploitation

In the majority of countries evaluated under the second evaluation round of the Convention, available statistical information on investigations, prosecutions and convictions in human trafficking cases was not disaggregated by form of exploitation. Nevertheless, it is clear that there have been few successful prosecutions and convictions for trafficking for the purpose of labour exploitation.

Many States Parties have referred to difficulties regarding the prosecution of cases of trafficking for the purpose of labour exploitation. By way of example, the Cypriot authorities noted that the element of coercion in forced labour was often not clear, victims of forced labour rarely complained, and there was sometimes a thin line between trafficking and violations of the labour legislation.<sup>137</sup> In the Republic of Moldova, the authorities stated that in cases of labour exploitation in the construction sector, the victims were exploited by sub-contractors who did not use contracts and made no banking or accounting transactions with the final beneficiaries of the exploited labour.<sup>138</sup> In Armenia, the investigation of cases of trafficking for the purpose of labour exploitation was hampered by the fact that evidence related to the offences was located mainly abroad and international co-operation was inefficient.<sup>139</sup> In the UK, GRETA was informed that knowledge of human trafficking was uneven amongst judges, leading to judgments where the forced labour irregular migrants were subjected to was weighed against their irregular migration status.<sup>140</sup> In the report on France, GRETA noted that the fact that exploiters often accuse victims of committing offences against them can also explain why the offence of trafficking is not prosecuted, since victims are regarded *prima facie* as offenders.<sup>141</sup>

A study on case law relating to trafficking in human beings for labour exploitation published by the European Commission in 2015 found a limited number of prosecuted cases, while in six Member States no case law on labour exploitation was identified.<sup>142</sup> The study identified as one of the key issues the wide-ranging differences in understanding of what constitutes trafficking for forced labour. It noted that the scope of the meaning of forced labour, and in some instances restrictive interpretations by courts, lead to acquittals or cases being prosecuted under alternative offence provisions.

In the Republic of Moldova, a study on “Monitoring trafficking in human beings – analysis of status and dynamics of crimes for 2013” revealed that trafficking for labour

137. GRETA 2<sup>nd</sup> report on Cyprus, paragraph 148.

138. GRETA 2<sup>nd</sup> report on the Republic of Moldova, paragraph 174.

139. GRETA 2<sup>nd</sup> report on Armenia, paragraph 166.

140. GRETA 2<sup>nd</sup> report on the UK, paragraph 310.

141. GRETA 2<sup>nd</sup> report on France, paragraph 266.

142. Available at: [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study\\_on\\_case\\_law\\_on\\_trafficking\\_for\\_the\\_purpose\\_of\\_labour\\_exploitation\\_2.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_case_law_on_trafficking_for_the_purpose_of_labour_exploitation_2.pdf)

exploitation constituted 22% of all criminal cases initiated under Section 165 of the Criminal Code, or 37% of the total number of victims recorded under this section.<sup>143</sup>



Belgium is one of the few countries where there are disaggregated statistics on investigations, prosecutions and convictions, according to which there were 548 investigations of human trafficking for the purpose of economic exploitation in 2012-2015 (i.e. 40% of all investigations initiated into human trafficking offences). The rate of convictions was 30-40% in cases of trafficking for the purpose of economic exploitation (as opposed to 60-70% in cases of trafficking for the purpose of sexual exploitation). There are labour prosecutors specialised in the investigation and prosecution of cases of human trafficking for economic exploitation, which is instrumental for tackling this form of trafficking. By way of example, GRETA's second report refers to a case of exploitation of a Brazilian man in a horse-riding school, in which a Belgian businessman and his wife were convicted of human trafficking. In another case concerning Chinese workers exploited in the construction sector in Charleroi from 2008 to 2010, a Chinese national and his daughter were convicted of trafficking of human beings and smuggling of migrants by Charleroi Criminal Court on 7 June 2013.

In Austria, there was a Supreme Court ruling in a case involving trafficking for labour exploitation of a girl, involving domestic servitude and physical abuse, in the period 1999-2006. The accused were convicted under several provisions of the Criminal Code: tormenting an under-age or defenceless person (Section 92), severe coercion (Sections 105 and 106), trafficking in human beings (Section 104a) and organised serious fraud (Sections 146, 147 and 148). The Supreme Court accepted several of the claims of the accused and referred the case back to the court of first instance. The conviction for human trafficking was not attacked as such, but the application of the aggravating circumstances contained in paragraph 4 of Section 104a ("particularly serious harm") was repealed because the first instance judgment had not contained sufficient factual basis for it.<sup>144</sup>

In Denmark, two cases involving trafficking for the purpose of labour exploitation were prosecuted, but neither of them resulted in convictions. Both cases involved men exploited in the cleaning sector. In the so-called "Garage Case", the district court acquitted the defendants of human trafficking charges, but the prosecution appealed the case to the High Court, which found that the victims were not in a situation where they had no alternative but to do the work as they were free to leave the premises and were therefore not victims of human trafficking for the purpose of forced labour. The court emphasised the fact that the persons in question were in possession of identity papers, money and a certain network of family and friends. On 4 March 2015 the High Court delivered its decision, in which the defendants were acquitted of the trafficking charge, but convicted of usury pursuant to Sections 282 and 279 of the CC. In the second case, known as the "Cellar Case", the charge of human trafficking was rejected by the district court because the description of the criminal act did not fulfil the requirements in the Administration of Justice Act. The

143. GRETA 2<sup>nd</sup> report on the Republic of Moldova, paragraph 172.

144. GRETA 2<sup>nd</sup> report on Austria, paragraph 184.

case was appealed to the High Court by the prosecution, but withdrawn after the High Court decision on the “Garage Case”.<sup>145</sup>

In the United Kingdom, in the linked cases of *Benkharbouche and Janah*, two Moroccan domestic workers previously employed in the Embassies of Sudan and Libya respectively, brought claims for unfair dismissal. The Supreme Court held that sections 4(2)(b) and 16(1)(a) of the State Immunity Act 1978, which confer immunity in English law, are incompatible with Article 6 of the European Convention on Human Rights and Article 47 of the EU Charter. These cases are particularly significant given the vulnerability of domestic workers in diplomatic households to labour exploitation, including trafficking.<sup>146</sup>

GRETA recalls the positive obligation of States to investigate human trafficking, established by the European Court of Human Rights in its judgement in the case of *Rantsev v. Cyprus and Russia* and confirmed in *Chowdury and others v. Greece*. GRETA’s recommendations to States Parties stress the need to strengthen efforts to investigate and prosecute cases of trafficking for the purpose of labour exploitation, including by improving the knowledge of investigators, prosecutors and judges about the seriousness of human trafficking, the severe impact of exploitation on the victims and the need to respect their human rights.

### Corporate liability

“Each Party shall 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 this Convention, committed for its benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- a. a power of representation of the legal person;
- b. an authority to take decisions on behalf of the legal person;
- c. an authority to exercise control within the legal person.”

(Article 22, paragraph 1, of the Convention).

All but one of the State Parties evaluated by GRETA have legislation according to which legal persons can be held liable for human trafficking offences.<sup>147</sup> However, only five of the 25 countries evaluated so far under the second evaluation round have reported cases in which corporate liability was invoked in human trafficking cases (Belgium, Cyprus, Malta, Portugal and the UK).

145. GRETA 2<sup>nd</sup> report on Denmark, paragraphs 174-175.

146. *Benkharbouche and Janah* [2017] UKSC 62, referred to in GRETA 2<sup>nd</sup> report on the United Kingdom, paragraph 102. In another recent case concerning domestic service in a diplomatic household (*Reyes v Al-Malki and another* [2017] UKSC 61), the Supreme Court found that diplomatic immunity did not arise since the diplomatic agent was no longer in post and had left the UK, and the employment and exploitation of Ms Reyes were not acts performed as part of the agent’s diplomatic functions.

147. Armenia still does not provide for the liability of legal persons for their involvement in criminal offences. See GRETA 2<sup>nd</sup> report on Armenia, paragraph 154.

In Belgium, MYRIA's report of 2016 refers to a case involving trafficking for labour exploitation concerning a transport company where legal persons were sanctioned.<sup>148</sup> Another example of a conviction of legal entities for acts of trafficking was the decision of the Ghent regional court of 5 November 2012. In that case, a company (a chain of motorway cafes as the order-giver) used the services of a contractor for the cleaning of its toilets. That contractor used solely foreign employees who worked seven days a week from 7 a.m. to 10 p.m. for 45 euros a day. Both the contractor employing the workers and the order-giver, which was fully aware of their working conditions, were sentenced to pay fines of 528 000 euros and 99 000 euros respectively.<sup>149</sup>

In Cyprus, there were three cases of private companies investigated for labour exploitation from 2011 to 2013, including a number of Indian nationals and one Sri Lankan who were identified as victims of human trafficking by the Police Office for Combatting trafficking in human beings.<sup>150</sup>

In Malta, corporate liability is regulated by Article 121D of the Criminal Code in conjunction with Article 248E(3), which were invoked by the prosecution in the case *Police vs Han Bin* (known as the "Leisure Clothing factory case") which concerned foreign workers employed at a leisure clothing factory, in very poor conditions, whose passports were taken away.<sup>151</sup>

In Portugal, in two cases of trafficking for the purpose of labour exploitation tried by the Country Court of Beja, small businesses were convicted and imposed the sanction of closure.<sup>152</sup>

In the UK, a prosecution in February 2016 saw the first conviction of a company director under the Modern Slavery Act 2015, involving a conspiracy to traffic for forced labour in which the company director of two bed-making factories knew or ought to have known that the workers he employed were victims of human trafficking.<sup>153</sup>

GRETA has urged the national authorities of most States Parties to carry out a review on the application of the corporate liability provision to examine why no legal entities have been punished for trafficking-related acts and to take necessary measures to ensure that criminal liability is effectively applied.

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148. GRETA 2nd report on Belgium, paragraph 178. More information available at: <http://www.myria.be/files/EN-RATEH-2016-DEF.pdf>

149. GRETA 1st report on Belgium, paragraph 208.

150. GRETA 2nd report on Cyprus, paragraph 136.

151. GRETA 2nd report on Malta, paragraphs 78 and 141-142.

152. GRETA 2nd report on Portugal, paragraph 169.

153. GRETA 2nd report on the UK, paragraph 283. *R v "R", "P" & "D"* [2015] EWCA Crim 2079.







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