



# EVALUATION REPORT

## SWITZERLAND

### Third evaluation round

#### **GRETA**

Group of Experts  
on Action against  
Trafficking  
in Human Beings

Access to justice  
and effective remedies  
for victims of trafficking  
in human beings

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## Preamble

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

In accordance with Article 38, paragraph 1, of the Convention, GRETA evaluates the implementation of the Convention following a procedure divided into rounds. At the beginning of each round, GRETA selects the specific provisions of the Convention on which the evaluation procedure is based.

The first round of monitoring of the Convention provided an overview of its implementation by State Parties. The second evaluation round of the Convention examined the impact of legislative, policy and practical measures on the prevention of trafficking in human beings, the protection of the rights of victims of trafficking, and the prosecution of traffickers, paying particular attention to measures taken to address new trends in human trafficking and the vulnerability of children to trafficking.

GRETA has decided that the third evaluation round of the Convention will focus on trafficking victims’ access to justice and effective remedies, which is essential for victims’ rehabilitation and reinstatement of rights, and reflects a victim-centred and human-rights based approach to the fight against human trafficking. A number of provisions of the Convention establishing substantive and procedural obligations are relevant to this topic, in particular articles 12, 15, 23, 26, 27, 28, 29, 30 and 32.

Access to justice and effective remedies is contingent on the fulfilment of a number of preconditions, including prompt and accurate identification of victims of trafficking, the provision of a recovery and reflection period, the availability of material, psychological, medical and legal assistance, access to translation and interpretation, when appropriate, regularisation of the victim’s stay, the right to seek and enjoy asylum, and full respect for the principle of *non-refoulement*. These preconditions, corresponding to various provisions of the Convention, have been examined at length during the first and second evaluation rounds of monitoring of the Convention. Consequently, GRETA has decided to ask each State Party for an update on the implementation of GRETA’s previous recommendations on selected topics through a separate country-specific part of the questionnaire. GRETA’s findings and analysis of these topics are presented in a separate chapter.

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## Executive summary

Since the second round of evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, Switzerland has taken steps to further develop the relevant institutional and policy framework. The authorities adopted the third National Action Plan against Trafficking in Human Beings, which will be subject to regular monitoring and an independent evaluation. The National Expert Group against Human Trafficking and Smuggling of Migrants, led by the Federal Office of Police (fedpol) which took over the co-ordination of action against trafficking in human beings, began its work in July 2022. Further, roundtables responsible for the co-ordination of anti-trafficking action were established in three additional cantons.

Switzerland remains predominantly a country of destination for victims of trafficking in human beings. In the period 2019-2023, the police identified 295 victims, most of whom were women, and around 8% were children. There has been a significant increase in the number of victims identified in the asylum procedure. Sexual exploitation remains the predominant form of exploitation, affecting mainly women and girls, although trafficking for the purpose of forced criminality (including forced begging) and labour exploitation are also on the rise.

The focus of the third evaluation round of the Convention being on trafficking victims' access to justice and effective remedies, the report analyses in detail the implementation of provisions of the Convention establishing substantive and procedural obligations relevant to this topic.

GRETA welcomes the existence of various information materials for victims of trafficking, in different languages, and invites the Swiss authorities to ensure that victims are provided with information concerning their rights and the services available to them from their first contact with the competent authorities.

While welcoming the availability of specialised lawyers assisting victims of trafficking, GRETA notes with concern that requests for free legal aid are approved at a later stage of the proceedings. GRETA considers that the Swiss authorities should take further steps to ensure that legal assistance is provided as soon as there are reasonable grounds for believing that a person is a victim of human trafficking, and that victims have access to free legal aid from a specialised lawyer in all relevant legal proceedings, including civil proceedings.

GRETA notes with concern that, although the relevant legal framework is in place, few victims of trafficking have been awarded compensation during the reporting period. It considers that the Swiss authorities should facilitate and guarantee effective access to compensation for victims of trafficking, including by ensuring that evidence of the harm suffered by the victim is collected as part of the criminal investigation with a view to supporting compensation claims in court, and enabling victims to effectively exercise their right to obtain state compensation within a reasonable time. Further, GRETA urges the Swiss authorities to ensure that victims obtain a decision on compensation from the offenders for unpaid wages as part of the criminal trial.

The report notes that Article 182 of the Swiss Criminal Code does not fully correspond to the international definition of trafficking in human beings and urges the Swiss authorities to bring the national definition of human trafficking fully in line with Article 4 of the Convention, including by ensuring that all forms of exploitation are adequately covered, and adding the element of "means" for adult victims.

GRETA welcomes the existence of specialised police units and prosecutors in some cantons, and the establishment of the exchange platform on human trafficking for prosecutors. However, it notes with concern the low number of prosecutions and convictions in human trafficking cases, as well as the excessive length of criminal proceedings in some trafficking cases. GRETA calls on the Swiss authorities to take measures to improve the criminal justice response to trafficking, including by ensuring that trafficking offences are proactively and promptly investigated, and that they are not qualified as other offences.

While welcoming the adoption of guidelines on the application of the non-punishment principle by the Swiss Conference of Public Prosecutors, GRETA considers that the Swiss authorities should ensure that the guidelines are transposed into cantonal directives in a manner that ensures their consistent application throughout the country. Further, public prosecutors and the police should be trained on the application of the non-punishment principle.

The report also examines progress made on the implementation of previous GRETA recommendations on selected topics. It welcomes steps taken to combat human trafficking for the purpose of labour exploitation, including the organisation of training for labour inspectors and the inclusion of labour inspectors in the cantonal roundtables for anti-trafficking co-operation. Nonetheless, GRETA urges the Swiss authorities to increase the capacity of labour inspectors to proactively detect victims of trafficking. Moreover, GRETA considers that further steps should be taken to combat trafficking for the purpose of labour exploitation, including by developing specific guidelines on the investigation of trafficking for the purpose of labour exploitation, strengthening the monitoring of domestic work and agriculture, and developing co-operation with specialised NGOs and trade unions.

While welcoming the adoption of updated indicators and the increase in the detection of victims of trafficking among asylum seekers, GRETA considers that the Swiss authorities should take further measures to improve the identification of victims, including by ensuring that a harmonised victim identification procedure is put in place in all cantons and involving specialised organisations in the procedure for the identification of victims of trafficking in the asylum process.

GRETA urges the Swiss authorities to ensure that all victims under Swiss jurisdiction, including asylum seekers and persons exploited abroad but identified in Switzerland, benefit from the assistance measures provided for under the Convention. It also considers that the authorities should ensure the availability of specialised assistance to all victims, including men, and provide adequate funding to NGOs providing assistance to victims of trafficking.

The report also urges the Swiss authorities to put in place a formalised procedure for the identification of child victims of trafficking in all cantons, and to ensure that child victims throughout the country benefit from assistance measures provided for under the Convention.

Further, GRETA asks the Swiss authorities to strengthen their efforts to ensure that all possible foreign victims of trafficking are offered a recovery and reflection period. Victims of trafficking should also benefit in practice from the right to obtain a renewable residence permit for the purpose of co-operating with the authorities or on humanitarian grounds.

Finally, GRETA urges the authorities to review the application of the Dublin Procedure to presumed victims of trafficking, and to conduct risk assessments in order to prevent victims being returned to the country where they first applied for asylum, but where they face the risk of being re-trafficked.

## I. Introduction

1. The Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) entered into force for Switzerland on 1 April 2013. GRETA’s first evaluation report<sup>1</sup> on Switzerland was published on 14 October 2015, and the second evaluation report<sup>2</sup> on 9 October 2019.
2. On the basis of GRETA’s second report, on 18 October 2019 the Committee of the Parties to the Convention adopted a recommendation to the Swiss authorities, requesting them to inform the Committee within a one-year period of measures taken to comply with the recommendation. The report submitted by the authorities was considered at the 27th meeting of the Committee of the Parties (4 December 2020) and was made public.<sup>3</sup>
3. On 30 November 2022, GRETA launched the third round of evaluation of the Convention in respect of Switzerland by sending the questionnaire for this round to the Swiss authorities. The deadline for submitting the reply to the questionnaire was 30 March 2023. The Swiss authorities’ reply was received on 29 March 2023.
4. In preparation of the present report, GRETA used the reply to the third-round questionnaire by the Swiss authorities,<sup>4</sup> the above-mentioned report to the Committee of the Parties as well as information received from civil society. Further, an evaluation visit to Switzerland took place from 28 August to 1 September 2023 in order to hold meetings with relevant governmental and non-governmental actors, collect additional information and examine the practical implementation of adopted measures. The visit was carried out by a delegation composed of:
  - Mr Sergey Ghazinyan, Second Vice-President of GRETA;
  - Ms Rita Penedo, member of GRETA;
  - Ms Petya Nestorova, Executive Secretary of the Convention;
  - Ms Asja Zujo, Administrator in the Secretariat of the Convention.
5. During the visit, the GRETA delegation met Ms Nicoletta della Valle, Director of the Federal Office of Police (fedpol), as well as officials from fedpol dealing with combating trafficking in human beings. Consultations were also held with representatives of the Federal Department of Foreign Affairs, the Federal Office of Justice, the Federal Office for Customs and Border Security, the State Secretariat for Migration (SEM), the State Secretariat for Economic Affairs (SECO), the Cantonal Conference of Social Affairs, the Cantonal Conference for the Protection of Children and Adults, the Unification of the Cantonal Migration Offices, the Swiss Unification of Judges, and the Swiss Conference of Public Prosecutors. Furthermore, the delegation met with representatives of the Parliamentary Group on Human Trafficking of the Swiss Parliament (Federal Assembly).
6. In addition to holding meetings with the federal authorities in Bern, GRETA’s delegation met members of the cantonal round-tables against trafficking in human beings in the cantons of Aargau, Geneva, Graubünden, Neuchâtel, Valais and Zurich. In Neuchâtel, GRETA also met the Co-ordination against Trafficking in Human Beings for Latin Switzerland.
7. The GRETA delegation held separate meetings with non-governmental organisations (NGOs), trade unions and lawyers representing victims of human trafficking.
8. Meetings were also held with representatives of the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR).

<sup>1</sup> <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168063cab6>

<sup>2</sup> <https://rm.coe.int/report-on-the-implementation-of-the-council-of-europe-convention-on-ac/1680981889>

<sup>3</sup> <https://rm.coe.int/cp-2020-13-switzerland/1680a09adf>

<sup>4</sup> <https://rm.coe.int/suisse-reponse-au-3e-questionnaire-du-greta/1680ab0ab7>

9. In the course of the visit, the GRETA delegation visited three shelters accommodating victims of trafficking, in Bern, Geneva and Zurich, and had the opportunity to speak to victims of human trafficking. The delegation also visited the federal centre for asylum seekers in Altstätten (canton of St. Gallen) and an accommodation centre for unaccompanied children and asylum seekers in Trimmis (canton of Graubünden).

10. The list of the national authorities, NGOs and other organisations with which the delegation held consultations is set out in Appendix 2 to this report. GRETA is grateful for the information provided by them.

11. GRETA wishes to place on record the co-operation provided by the Swiss authorities in the preparation and conduct of the visit, and in particular by the contact person appointed to liaise with GRETA, Mr Boris Mesaric from the Unit against Trafficking in Persons and Smuggling of Migrants of fedpol's Crime Prevention Division, as well as by Mr Laurent Knubel and Ms Dora Naegeli of the same Division.

12. The draft version of the present report was approved by GRETA at its 49th meeting (13-17 November 2023) and was submitted to the Swiss authorities for comments. The authorities' comments were received on 14 February 2024 and were taken into account by GRETA when adopting the final report at its 50th meeting (18-22 March 2024). The report covers the situation up to 22 March 2024; developments since that date are not taken into account in the following analysis and conclusions. GRETA's conclusions and proposals for action are summarised in Appendix 1.



## II. Overview of the current situation and trends in the area of trafficking in human beings in Switzerland

13. Switzerland remains predominantly a country of destination for victims of trafficking in human beings (THB). According to information provided by the Swiss authorities, based on the Police Crime Statistics compiled by the Federal Office of Statistics, the number of victims of THB identified by the police was 83 in 2019 (48 female and 35 male; five of the victims were children), 53 in 2020 (44 female and nine male; two of the victims were children), 62 in 2021 (33 female and 29 male; eight of the victims were children), 37 in 2022 (31 female and six male; one of the victims was a child), and 60 in 2023 (40 female and 20 male; eight of the victims were children).<sup>5</sup> In March 2021, the Police Crime Statistics published for the first time figures on THB disaggregated by type of exploitation,<sup>6</sup> according to which in 2020 there were 43 victims of sexual exploitation (38 female and 5 male; two of the victims were children) and 12 victims of labour exploitation (8 female and 4 male), in 2021 there were 29 victims of sexual exploitation (25 female and 4 male; eight of the victims were children) and 33 of labour exploitation (8 female and 25 male), in 2022 there were 27 victims of sexual exploitation (25 female and 2 male) and 10 victims of labour exploitation (six female and four male; one of the victims was a child), and in 2023 there were 41 victims of sexual exploitation (28 female and 13 male; seven of the victims were children) and 19 victims of labour exploitation (12 female and seven male; one of the victims was a child).<sup>7</sup> The police statistics are still not disaggregated by country of origin of the victims.

14. GRETA was also provided with the number of victims of THB identified by the State Secretariat for Migration (SEM) in the asylum procedure: 80 victims in 2019 (61 female and 19 male, including five boys), 90 in 2020 (60 female and 30 male, including five girls and three boys), 79 in 2021 (53 female and 26 male, including three girls and four boys), 115 in 2022 (74 female and 41 male, including five girls and six boys), and 181 in 2023 (98 female and 83 male, including four girls and 16 boys).<sup>8</sup> While most of the identified victims were women, there has been an increase in the number of male victims. African countries, and Nigeria in particular, account for a significant number of the victims, but there has been an increase in the number of victims coming from Asia and Latin America. GRETA was informed that it is not possible to determine how many, if any, victims are counted in both the SEM and the police statistics.

15. Sexual exploitation remains the predominant form of exploitation of identified victims of THB in Switzerland, affecting mainly women and girls. In addition to the exploitation of victims in street prostitution, the authorities have noted an increase in the use of escort services since the COVID-19 pandemic. Young women are particularly vulnerable to recruitment through the use of the "loverboy" method. The increased use of the internet for the recruitment and offering of services of victims of trafficking represents another worrying trend. Trafficking for the purpose of forced criminality (including forced begging) and labour exploitation are also on the rise. While women are typically exploited in domestic work, care giving, and nail salons, men are often exploited in the construction, transport and restaurant industries. The risk of THB for the purpose of labour exploitation is particularly elevated in construction, agriculture, hospitality (restaurants and hotels) and among domestic workers.<sup>9</sup>

16. It is estimated that the number of victims of THB captured in the Police Crime Statistics (PCS) represents only the tip of the iceberg. This is due to difficulties in the identification of victims, in particular for the purpose of labour exploitation, a low self-reporting rate by victims who fear being punished or deported, and the continuing absence of a centralised process for the formalised identification of victims

<sup>5</sup> By way of comparison, the number of victims identified by the police during the previous reporting period was: 35 in 2014, 47 in 2015, 90 in 2016, 108 in 2017, and 64 in 2018.

<sup>6</sup> The disaggregation categories are sexual exploitation, labour exploitation and organ removal.

<sup>7</sup> According to the Swiss authorities, the total number of victims may be less than the sum of the individual categories when the same victim is registered for different forms of trafficking. The same victim is therefore only counted once in the total.

<sup>8</sup> By way of comparison, the number of victims identified by SEM during the previous reporting period was: 84 in 2014, 32 in 2015, 73 in 2016, and 100 in 2017.

<sup>9</sup> Study "Combating trafficking in human beings in the cantonal context." See <https://www.admin.ch/gov/fr/accueil/documentation/communiqués.msg-id-90365.html>.

of THB. By way of example, the four specialised NGOs members of the Swiss Platform against Human Trafficking identified 142 victims in 2019, 174 in 2020, 207 in 2021, and 177 victims of THB from 60 different countries (mostly Hungary, Brazil, Columbia and Romania) in 2022.<sup>10</sup>

17. The Swiss authorities stated that thanks to the quick reaction to the massive arrival of Ukrainian refugees,<sup>11</sup> including awareness raising and social media campaigns (see paragraphs 147 and 178) and the national coordination to support them, no cases of trafficking of Ukrainian refugees have been identified so far among them. According to the SEM, there have been rare cases where staff working in federal asylum centres had suspicions and referred the information to the federal police. According to the 2022 report on the national hotline run by ACT212 (see paragraph 187), out of a total of 118 declarations concerning 139 persons received in 2022, 21 were related to the war in Ukraine. During the visit, NGOs and international organisations raised concerns about the vulnerability of Ukrainian refugees to THB. The authorities have informed GRETA of one ongoing investigation in the canton of Vaud concerning the alleged exploitation of Ukrainian refugees in domestic work without remuneration.<sup>12</sup>

### **III. Developments in the legal, institutional and policy framework for action against human trafficking**

18. There have been no legislative changes since GRETA's second evaluation report directly related to action against THB. It should be recalled that Switzerland is a federal state composed of 26 cantons which retain all powers and competencies not delegated to the Confederation by the Swiss Constitution. Each canton has its own legislative and executive bodies as well as court system, and is responsible for matters ranging from police and prosecution to welfare, health-care and social policies. Nevertheless, the Swiss Criminal Code (CC), which criminalises trafficking in human beings in Article 182, applies throughout the country, as does the Swiss Code of Criminal Procedure (CCP) and federal laws related to the assistance to victims of crimes, on foreigners and integration, on the extra-procedural protection of witnesses, and on asylum.

19. There have been some changes to the co-ordination of anti-trafficking action at the level of the Confederation. In September 2020, the Federal Office of Police (fedpol) took over the role of National Coordination Office against Trafficking in Human Beings from the Swiss Co-ordination Unit against Trafficking in Persons and Smuggling of Migrants (KSMM), after the KSMM Steering Committee decided to dissolve this co-ordination unit. This change ensures that the Federal Department of Justice and Police assumes political responsibility for combating human trafficking. Following a restructuring, since 2022, the Unit against Trafficking in Persons and Smuggling of Migrants (FSMM) has been placed within fedpol's Crime Prevention Division. It comprises four staff members who work on THB co-ordination at the level of the Confederation.

20. The National Expert Group against Human Trafficking and Smuggling of Migrants (NEGEM/GNETT), which is headed by fedpol, began its work in July 2022 when the first meeting took place. Another meeting, which focused on the adoption of the third National Action Plan (see paragraph 26), took place in May 2023. The group is expected to continue meeting once or twice a year. It is composed of 25 to 30 experts, including from federal agencies (fedpol, SEM, SECO, Federal Office for Customs and Border Security), cantonal agencies, specialised NGOs, trade unions, the Swiss Employers' Association, academia and IOM Bern. The main objectives of NEGEM include the co-ordination of projects and activities in the area of THB, exchange of information and expertise, and issuance of recommendations. According to civil society organisations, there have been improvements in the co-ordination of anti-trafficking action since 2022,

<sup>10</sup> [Statistiques sur les victimes de la traite 2022 - Plateforme Traite \(plateforme-traite.ch\)](https://plateforme-traite.ch/fr/statistiques-sur-les-victimes-de-la-traite-2022)

<sup>11</sup> The number of Ukrainians who submitted a request for temporary protection in Switzerland between 12 March 2022 and 15 August 2023<sup>14</sup> was 88,354.

<sup>12</sup> Another case from the canton of Bern, which is currently under police investigation, concerns a Ukrainian woman who arrived in Switzerland before the war and worked for several months as a nanny without being paid.

and some of the previously existing working groups<sup>13</sup> have been reactivated. The working group on training tasked with the preparation of a national concept on training which is expected to be ready by 2025, held five meetings in 2023 and is expected to continue meeting regularly in 2024. A working group on victim assistance will also be set up, as envisaged by the new National Action Plan.

21. The first meeting of the public prosecutors' exchange platform on human trafficking took place in September 2021. The aim of this platform, which brings together 20 to 25 prosecutors, is to exchange practical knowledge about specific human trafficking phenomena in the cantons as well as to network. The meetings take place once a year in person. This ensures that an institutionalised exchange on combating human trafficking takes place also between public prosecution services.

22. At cantonal level, the co-ordination of anti-trafficking action continues to be organised in the form of roundtables, which bring together different stakeholders. Since the second evaluation by GRETA, three more cantons have set up such roundtables (Graubünden, Glarus and Schaffhausen). Therefore currently six of the 26 cantons (some of which are rather small in terms of size and population) do not have roundtables.<sup>14</sup> The composition of the roundtables varies between cantons, as does the frequency of their meetings and working methods, as highlighted by the independent academic study of the differences in the cantonal contexts published in 2022.<sup>15</sup> It assessed whether the policies and mechanisms adopted in the cantons are adequate to address the local risk factors of THB. According to this study, which reflects the situation as of the end of 2020, most roundtables (12) meet once a year, while six meet twice or three times a year. There are differences in the composition of the cantonal roundtables. The police, prosecution and migration authorities participated in all roundtables, victim support organisations participated in the majority of cantons, and labour inspection participated in 18 cantons. Except for Geneva, none of the roundtables included trade union representatives. Thirteen roundtables included social services, 11 included child protection services, and six included medical services and gender equality offices. In nine cantons, the roundtables had adopted an anti-THB strategy. In seven cantons, the roundtables had set up thematic working groups which examine in more detail certain forms of exploitation and sometimes individual cases. The canton of Zurich also had a second, "operational", roundtable as well as sub-groups based on need. The canton of Geneva has a steering committee and two working groups dealing, respectively, with awareness-raising, information and training, and labour exploitation.

23. Fedpol organises annual meetings of the chairs of the cantonal round-tables and provides them with guidance (directions). The last meeting was held in February 2023 and even the cantons without roundtables were invited to send representatives. The aim of the meetings is to provide information on new developments at national level, and exchange information between cantons and the network. Fedpol is aiming to harmonise the work of the roundtables. In addition, there is a co-ordination mechanism for the cantons of Latin Switzerland, which includes seven French and Italian-speaking cantons. It is supported by a project manager (*chargée de mission*) reporting to the *Groupement des services de l'action sociale des cantons romands, de Berne et du Tessin (GRAS)* which is responsible for the exchange of information, collection of data, co-ordination of victim detection and support, organisation of multi-disciplinary training and awareness raising.

**24. GRETA welcomes the setting up of three more cantonal roundtables on THB, as well as the annual meetings of the chairs of the cantonal roundtables. GRETA considers that the Swiss authorities should continue their efforts to harmonise the co-ordination structures for the fight against trafficking, as envisaged by the third National Action Plan, including by ensuring that all cantons have co-operation agreements on combating THB which involve all relevant stakeholders, address all forms of THB, and identify and assist victims of trafficking without discrimination, regardless of their place of residence in Switzerland.**

<sup>13</sup> See GRETA's second evaluation report, paragraphs 17 and 20.

<sup>14</sup> The cantons without roundtables on THB are Appenzell Ausserrhoden, Appenzell Innerrhoden (with some 16,100 inhabitants), Jura, Nidwalden, Obwalden (a rural canton with around 38,000 inhabitants) and Uri (with some 36,300 inhabitants).

<sup>15</sup> [Combating trafficking in human beings in the cantonal context 2022-bericht-skmr \(7\).pdf](#)

25. An evaluation of the implementation of second National Action Plan (NAP) against THB, for the period 2017-2020, took place in 2021.<sup>16</sup> The evaluation showed that there was a need for a third NAP and its preparation started in 2022. It was led by fedpol and involved three working group meetings bringing together a range of experts from the Confederation, cantons and cities, civil society and the social partners. The new NAP was informed by research, such as the report "Combating Human Trafficking in a Cantonal Context," prepared by the University of Neuchâtel on behalf of fedpol,<sup>17</sup> and the report "Exploitation of Minors in Switzerland in the Context of Human Trafficking".<sup>18</sup> The goals and actions of the new NAP were defined by NEGEM. In order to ensure strategic and political support of the NAP, it was first adopted by the Swiss Security Network (SSN) and its committees. Further, in order to make the third NAP more binding on the federal agencies involved, the plan was submitted to the Federal Council, which approved it on 16 December 2022 as regards the content relevant to the Confederation, whereas the Conference of Cantonal Justice and Police Directors (CCJPD) and the Conference of Cantonal Directors of Social Services (CDSS) adopted the NAP content pertaining to the cantons.

26. In the introductory part to the third NAP,<sup>19</sup> it is stated that it is based, *inter alia*, on the provisions of the Council of Europe Anti-Trafficking Convention and the recommendations from GRETA's second report. The evaluation of the second NAP and the findings outlined in fedpol's Management Response<sup>20</sup> to the evaluation have been translated into four new fields of action: prioritisation of combating labour exploitation; strengthening law enforcement; improving victims' support and rights; and training further stakeholders. In terms of content, the third NAP contains seven strategic goals: 1. The cantons create the conditions necessary for combating human trafficking effectively and take appropriate measures in emergency situations; 2. Those involved in combating human trafficking in Switzerland are trained and able to detect human trafficking and take appropriate measures. The general public and companies are made aware of human trafficking; 3. Switzerland's anti-human trafficking response is grounded on situation reports and knowledge-based findings; 4. Switzerland takes effective action against human trafficking for the purpose of labour exploitation; 5. All human trafficking victims in Switzerland receive the protection and support they are entitled to; 6. Child victims of human trafficking are identified and provided with protection and assistance in accordance with the best interests of the child; 7. Switzerland contributes to reducing the causes of human trafficking and to effective, result-oriented international co-operation. For each of these strategic goals, a series of specific objectives involving concrete actions, indicators, responsible actors and target dates have been developed. Some actions are the responsibility of federal agencies (in particular fedpol, which is responsible for 14 actions, as well as SECO and SEM), and others of the cantonal round-tables and the conferences of cantonal directors, police commanders or prosecutors.

27. As the responsibility for combating human trafficking in Switzerland does not lie with a single agency, a global budget was not allocated for the third NAP, even though this was one of the recommendations made in the evaluation of the second NAP. The implementation of the actions of the third NAP will be subject to regular monitoring. The agencies responsible must submit regular reports on the current status of implementation, structured according to a pre-defined template. Fedpol will monitor and present the progress results, with the support of the SSN. GRETA was informed that civil society organisations will be involved in the monitoring of the implementation of the third NAP through their participation in NEGEM and the strategic advisory group of the SSN. An independent evaluation outsourced to an external service provider is envisaged to take place at the end of the plan.

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<sup>16</sup> <https://www.fedpol.admin.ch/dam/fedpol/de/data/kriminalitaet/menschenhandel/nap-evaluation/ber-napevaluation-2017-2020-d.pdf>

<sup>17</sup> [Combating trafficking in human beings in the cantonal context](https://www.fedpol.admin.ch/fedpol/de/home/publiservice/publikationen/berichte/weitere_berichte.html)

<sup>18</sup> [https://www.fedpol.admin.ch/fedpol/de/home/publiservice/publikationen/berichte/weitere\\_berichte.html](https://www.fedpol.admin.ch/fedpol/de/home/publiservice/publikationen/berichte/weitere_berichte.html)

<sup>19</sup> [National Action Plan against Trafficking in Human Beings 2023-2027 \(admin.ch\)](https://www.fedpol.admin.ch/fedpol/de/home/publiservice/publikationen/berichte/weitere_berichte.html)

<sup>20</sup> <https://www.fedpol.admin.ch/dam/fedpol/de/data/kriminalitaet/menschenhandel/nap-evaluation/management-response-nap-evaluation-2017-2020.pdf>

28. **GRETA welcomes the commitment of the Swiss authorities to further strengthening the fight against THB in Switzerland through the adoption of the third NAP and the fact that it reflects many of GRETA's previous recommendations, was endorsed at the political level and will be subject to regular monitoring and an independent evaluation. However, noting the gap of several years between the second and the third NAPs, GRETA considers that the Swiss authorities should ensure that national action plans against trafficking in human beings are adopted in a timely manner.**

29. In 2021, an evaluation of financial assistance based on the Ordinance against Trafficking in Human Beings took place. Based on this ordinance, financial support is granted to organisations and projects that work to prevent human trafficking in all parts of Switzerland. The evaluation showed that fedpol's financial assistance has had a proven effect, but that it was not sufficient. As a result, the annual amount was increased from CHF 400,000 (approximately 414,000 euros), to CHF 600,000 (approximately 622,00 euros), beginning in 2023. Despite this increase, according to many of GRETA's interlocutors, the funding provided to action against THB remains insufficient (see paragraph 198). **GRETA considers that the Swiss authorities should ensure that adequate funding is provided by the Confederation to action against THB to enable a harmonised approach to combating THB across Switzerland.**

30. According to the Swiss authorities, there are no plans to designate an independent National Rapporteur. Nevertheless, GRETA wishes to reiterate its views that the human rights-based approach to anti-trafficking policies advocated by the Convention requires adequate monitoring and evaluation. The key features of National Rapporteurs' mechanisms, in the sense of Article 29, paragraph 4, of the Convention,<sup>21</sup> should be the ability to critically monitor the efforts and effectiveness of all state institutions, including national co-ordinators, and to that end maintain a constant exchange with civil society, the research community and other relevant stakeholders.<sup>22</sup> **GRETA once again considers that the Swiss authorities should examine the possibility of establishing an independent National Rapporteur or designating another existing mechanism for monitoring the anti-trafficking activities of state institutions, as provided for in Article 29, paragraph 4, of the Convention.**

## **IV. Access to justice and effective remedies for victims of human trafficking**

### **1. Introduction**

31. Victims of human trafficking, by virtue of their status as victims of crime and victims of human rights violations, have the right to access to justice and effective remedies for any harm committed against them. These rights must be guaranteed, in a gender- and age-sensitive manner, to all victims of trafficking subject to the jurisdiction of parties to the Convention, irrespective of their immigration status or presence on the national territory, and notwithstanding their capacity or willingness to co-operate in any criminal investigation.

32. The right to effective remedies is a reflection of the human rights-based approach underpinning the Convention. Regardless of whether a State is implicated in the trafficking or directly responsible for the harm, the positive obligations arising from international human rights law require States to facilitate

<sup>21</sup> "Each Party shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements."

<sup>22</sup> In this context, see also the Summary report on the Consultative Meeting on Strengthening Partnerships with National Rapporteurs on Trafficking in Persons and Equivalent Mechanisms organised by the UN Special Rapporteur on trafficking in persons, especially in women and children, in Berlin, 23-24 May 2013.

and guarantee effective access to remedies if they have failed to take reasonable steps to prevent human trafficking, protect potential or actual victims of THB, and effectively investigate trafficking offences.<sup>23</sup>

33. According to the Basic Principles on the Right to an Effective Remedy for Victims of Trafficking in Persons,<sup>24</sup> the right to an effective remedy is considered to include restitution,<sup>25</sup> compensation,<sup>26</sup> rehabilitation,<sup>27</sup> satisfaction<sup>28</sup> and guarantees of non-repetition.<sup>29</sup> All victims of trafficking require access to appropriate and effective remedies, starting with access to justice. The provision of effective remedies serves multiple purposes. The remedy of compensation, for instance, for any injury, loss or harm sustained, can provide critical support in victims' recovery and empowerment, help their social inclusion and prevent re-victimisation. The remedy of rehabilitation can similarly help in the victims' recovery, as well as social inclusion. Of relevance in this respect is also the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Council of Europe Committee of Ministers Recommendation CM/Rec(2023)2 on rights, services and support for victims of crime,<sup>30</sup> which outline the main steps to be taken to improve access to justice, and fair treatment, restitution, compensation and social assistance for victims of crime.<sup>31</sup>

34. The Convention provides specifically for the substantive right of victims of trafficking to compensation and legal redress, as well as for a number of procedural rights necessary to ensure access to these entitlements. These include the rights to be identified as a victim of trafficking, to be granted a recovery and reflection period, as well as a residence permit (to enable a victim to remain in the country and seek access to remedies), and to receive counselling, information, legal assistance and free legal aid. Another important procedural right is provided by the non-punishment provision of the Convention (Article 26), according to which victims of human trafficking must not be subjected to penalties for their involvement in unlawful activities that they have been compelled to commit. Further, the Convention requires State Parties to enable the seizure and confiscation of the assets of traffickers, which could be used to fund State compensation schemes for victims.

35. Children need special support to access remedies, the best interests of the child being the primary consideration in all actions concerning trafficked children. The appointment of legal guardians to represent

<sup>23</sup> *Rantsev v. Cyprus and Russia*, application no. 25965/04, judgment of 7 January 2010; *L.E. v. Greece*, application No. 71545/12, judgment of 21 January 2016; *Chowdury and Others v. Greece*, application No. 21884/15, judgment 30 March 2017.

<sup>24</sup> UN General Assembly, Basic principles on the right to an effective remedy for victims of trafficking in persons, Annex to the Report by the Special Rapporteur on trafficking in persons, especially women and children, 28 July 2014, A/69/33797.

<sup>25</sup> Restitution includes restoration of liberty, including release of the victim from detention; enjoyment of human rights and family life, including reunification and contact with family members; safe and voluntary repatriation; temporary or permanent residence status, refugee status, complementary/subsidiary protection or third-country resettlement; recognition of the victim's legal identity and citizenship; restoration of the victim's employment; assistance and support to facilitate social integration or reintegration; return of property, such as identity and travel documents and other personal belongings.

<sup>26</sup> Compensation may cover damages for physical or mental harm; damages for lost opportunities, including employment, education and social benefits; reimbursement of costs of necessary transportation, child care or temporary housing; material damages and loss of earnings; moral or non-material damages; reimbursement of legal fees and other costs relating to the participation of the victim in the criminal justice process; reimbursement of costs incurred for legal, medical or other assistance.

<sup>27</sup> Rehabilitation includes medical and psychological care, legal and social services, shelter, counselling and linguistic support, independently of the capacity or willingness of the victims to co-operate in legal proceedings.

<sup>28</sup> Satisfaction includes effective measures aimed at the cessation of continuing violations; verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety, privacy and other interests of the victims of their families; an official declaration or a judicial decision restoring the dignity, reputation and rights of the victim; public apologies; judicial and administrative sanction against the perpetrators.

<sup>29</sup> Guarantees of non-repetition include ensuring the effective investigation, prosecution and sanctioning of traffickers; all measures necessary to protect victims from re-trafficking; providing or strengthening training of relevant officials; strengthening the independence of the judiciary; modifying practices that cause, sustain or promote tolerance to trafficking, including gender-based discrimination and situations of conflict and post-conflict; effectively addressing the root causes of trafficking; promoting codes of conduct and ethical norms for public and private actors; protecting legal, medical and other professionals and human rights defenders who assist victims.

<sup>30</sup> Recommendation CM/Rec(2023)2 of the, Committee of Ministers to member States on rights, services and support for victims of crime, and its Explanatory report: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680aa8263](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680aa8263)

<sup>31</sup> United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by General Assembly resolution 40/34 of 29 November 1985, available at: [https://www.unicef-irc.org/portfolios/documents/472\\_un-declaration-crime.htm](https://www.unicef-irc.org/portfolios/documents/472_un-declaration-crime.htm)

unaccompanied or separated children plays a vital role in enabling child victims of trafficking to access justice and remedies. Further, facilitating family reunification can be an important element of restitution.<sup>32</sup>

36. Civil society, including NGOs, trade unions, diaspora organisations and employer organisations, plays a vital role in enabling victims of THB to claim compensation and other remedies.<sup>33</sup> In this context, reference should be made to the international projects COMP.ACT - European Action on Compensation for Trafficked Persons<sup>34</sup> and Justice at Last - European Action for Compensation of Victims of Crime,<sup>35</sup> which aim to enhance access to compensation for trafficked persons.

37. The private sector should also play a role in enabling access to, as well as providing, remedies to trafficked persons, in accordance with the UN 'Protect, Respect and Remedy' Framework and the United Nations Guiding Principles on Business and Human Rights.<sup>36</sup> The role of businesses includes steps to ensure that their supply chains are free of trafficked labour, as well as the adoption and implementation of measures to facilitate victims' access to remedies for any harm that occurs. Further, businesses have the potential to help trafficked persons regain economic autonomy.<sup>37</sup> States should therefore ensure that business enterprises implicated in human trafficking are held responsible and take steps to reduce barriers that could lead to a denial of access to remedies.

38. Because human trafficking is often a transnational crime, effective international co-operation is essential for fulfilling the obligations with regard to the right to justice and effective remedies. This includes co-operation in tracing and seizing criminal assets, and in returning confiscated proceeds for the purpose of compensation.

## **2. Right to information (Articles 12 and 15)**

39. Victims who are no longer under their traffickers' control generally find themselves in a position of great insecurity and vulnerability. Two common features of victims' situation are helplessness and submissiveness to the traffickers, due to fear and lack of information about how to address their situation. Article 12, paragraph 1, sub-paragraph d, of the Convention provides that victims are to be given counselling and information, in particular as regards their legal rights and the services available to them, in a language that they understand. Further, pursuant to Article 15, paragraph 1, of the Convention, Parties must ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings, in a language they can understand.

40. The information that victims of trafficking must be provided with deals with essential matters, including availability of protection and assistance arrangements, the various options open to the victim, the risks they run, the requirements for legalising their presence in the Party's territory, the various possible forms of legal redress, how the criminal-law system operates (including the consequences of an investigation or trial, the length of a trial, witnesses' duties, the possibilities of obtaining compensation from persons found guilty of offences or from other persons or entities, and the chances of a judgment being fully and effectively enforced). The information and counselling should enable victims to evaluate their situation and make an informed choice from the various possibilities open to them.<sup>38</sup>

41. Many victims do not speak, or barely speak, the language of the country they have been brought to for exploitation. Ignorance of the language adds to their isolation and is one of the factors preventing them from claiming their rights. The provision of translation and interpretation, where needed, is an

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<sup>32</sup> UNODC, ICAT Issue Paper, Providing Effective Remedies for Victims of Trafficking in Persons, 2016, pp. 7-8. Available at: [http://icat.network/sites/default/files/publications/documents/Ebook%20ENG\\_0.pdf](http://icat.network/sites/default/files/publications/documents/Ebook%20ENG_0.pdf)

<sup>33</sup> OSCE Compensation for Trafficked and Exploited Persons in the OSCE Region, 2008, pp. 48-53.

<sup>34</sup> <http://www.compactproject.org/>

<sup>35</sup> <http://lastradainternational.org/about-lsi/projects/justice-at-last>

<sup>36</sup> United Nations Guiding Principles on Business and Human Rights, implementing the UN 'Protect, Respect and Remedy' Framework, Doc. A/HRC/17/31 (2011).

<sup>37</sup> UNODC, ICAT Issue Paper, Providing Effective Remedies for Victims of Trafficking in Persons, 2016, pp. 8-9.

<sup>38</sup> See Explanatory Report on the Convention, paragraphs 160-162.

essential measure for guaranteeing access to rights, which is a prerequisite for access to justice. GRETA has stressed the need for ensuring the availability, quality and independence of interpreters.<sup>39</sup>

42. Article 305 of the Swiss Code of Criminal Procedure (CCP) obliges the police and the prosecution to inform victims of their rights in criminal proceedings, at the time of the first interview, as well as to provide them with the contact of the cantonal victim support centres and information on the support provided by them, and the deadline for the submission of applications for state compensation. The information must be given at the first interview of the victim, in a language he/she understands. Further, pursuant to Article 8 of the Federal Law on Assistance to Victims of Crimes (LAVI), law enforcement authorities shall inform victims of crime of the available assistance and, under certain conditions, transmit their name and address to a victim support centre (LAVI office), subject to the victim's consent. Article 330, paragraph 3, of the CCP provides that the court shall inform the victim of his/her rights if the police or prosecution have not already done so. If the person does not understand the language of the proceedings, interpretation shall be provided (Article 68 of the CCP). The provision of translation or interpretation services is the responsibility of the judicial or administrative authority of the canton in which the proceedings are taking place.

43. There are a number of brochures with information on the rights of victims of THB, issued at cantonal level and by NGOs. By way of example, in the canton of Geneva, a leaflet combining 10 languages (Albanian, Arabic, English, French, Hungarian, Portuguese, Romanian, Russian, Spanish, and Ukrainian)<sup>40</sup> explains what THB is, how to recognise situations of THB, the assistance available (temporary accommodation, psycho-social support, legal aid, medical care, repatriation assistance, integration support) and contact details of relevant organisations. In the canton of Vaud, information for victims of THB is available on the website of the canton.<sup>41</sup> In addition to explaining what THB is, it provides information on the services available and contacts of relevant organisations. The Conference of cantonal directors of social affairs (CDAS) maintains a website<sup>42</sup> containing information for victims of crime, including available support in different cantons, in 12 languages<sup>43</sup> (the link to the website is also available on a small card which can be handed out to victims).

44. The Swiss Platform against Trafficking in Persons, consisting of four specialised NGOs - Antenna MayDay Ticino, Astrée, Centre social protestant (CSP), and FIZ - has developed a flyer for victims of trafficking, with contact information of NGOs where potential victims of THB can receive information and assistance, which is available in 19 languages.<sup>44</sup> Further, CSP has issued a leaflet explaining what THB is, and how CSP can assist victims through counselling, legal representation, referral to safe accommodation, access to social assistance and financial aid (compensation), support in social and professional integration. The online manual on trafficking of children developed by the NGO Kinderschutz Schweiz (Protection de l'enfance Suisse)<sup>45</sup> also contains contact information of relevant cantonal authorities and NGOs.

<sup>39</sup> See 8th General Report on GRETA's activities, paragraphs 168-169.

<sup>40</sup> [Traite d'êtres humains | ge.ch](https://www.geneve.ch/fr/traite-d-etres-humains)

<sup>41</sup> [Traite des êtres humains: de quoi s'agit-il et qui peut vous venir en aide | État de Vaud \(vd.ch\)](https://www.aide-aux-victimes.ch/en/)

<sup>42</sup> <https://www.aide-aux-victimes.ch/en/>.

<sup>43</sup> Albanian, Arabic, Croatian, Rhaeto-Romanic, Russian, Serbian, Spanish, Ukrainian, Tamil, Turkish, Tigrinya, and the Sign language.

<sup>44</sup> Albanian, Arabic, Bulgarian, English, Farsi, French, German, Hungarian, Italian, Mongolian, Portuguese, Romanian, Russian, Serbian, Spanish, Tamil, Thai, Tigrinya, and Ukrainian.

<sup>45</sup> <https://www.kinderschutz.ch/fr/traite-denfants/manuel-en-line-sur-la-traite-d-enfants>.



45. The State Secretariat for Migration (SEM) has issued information leaflets and posters<sup>46</sup> in a range of languages (including Ukrainian), available online, through an application and in centres for asylum seekers, which inform potential victims of THB how to protect themselves from risks and where to seek assistance. When a presumed victim of THB is identified in the asylum procedure, a representative of SEM holds a separate hearing with the person, with the assistance of an interpreter, in order to verify the initial suspicion of THB, inform the victim of his/her rights and identify any special needs. During the hearing, presumed victims are informed of the independence of the asylum procedure from the criminal procedure, and of their rights as victims of THB, including the granting of a recovery and reflection period and how to file a criminal report. In addition, the SEM provides presumed victims with a flyer containing, among other things, the number of the competent cantonal victim support centre (if the exploitation took place in Switzerland) and a link to the above-mentioned CDAS website (see also paragraph 188).

46. However, in practice, only those victims who were trafficked in Switzerland are informed about available assistance measures by SEM officials and provided with the contact of the competent LAVI office and specialised NGOs, since victims who were trafficked abroad are not eligible for state assistance under the current law (see paragraph 192). In their comments on the draft GRETA report, the authorities indicated that in September 2023, SEM concluded an agreement with the NGO Platform against Trafficking in Persons and the specialised anti-trafficking organisation FAS in Neuchâtel, which came into force on 1 January 2024. According to it, a flyer designed by specialised organisations is distributed to all victims of trafficking who are detected by SEM, regardless of whether they were trafficked in Switzerland or abroad. Moreover, an NGO website link has been added to the SEM website related to the prevention campaign "Protect Yourself" ("Protégez-vous").<sup>47</sup> GRETA was also informed that the basic and advanced training provided to SEM staff who process asylum claims cover the provision of information to victims of trafficking detected in the asylum procedure.

47. **GRETA welcomes the existence of various information materials for victims of trafficking, in different languages, and invites the Swiss authorities to ensure that:**

- **information concerning victims' rights and the services available to them is provided from the victims' first contact with the competent authorities;**
- **law enforcement officers and other authorities in contact with victims of trafficking are systematically trained and instructed on how to properly explain to victims of THB their rights, taking into account the victims' age, maturity, intellectual and emotional capacity, literacy and any mental, physical, or other disabilities which may affect their ability to understand the information provided;**
- **staff working at asylum reception centres and detention centres are trained and instructed on how to provide information, in a proactive manner, to presumed victims of trafficking, including those who have been trafficked abroad.**

### **3. Legal assistance and free legal aid (Article 15)**

48. Article 15(2) of the Convention obliges Parties to provide in their internal law for the right of victims of trafficking to legal assistance and free legal aid. As court and administrative procedure is often very complex, legal assistance is necessary for victims to be able to claim their rights. It is for each Party to decide the requirements for obtaining such free legal aid. Parties must have regard not only to Article 15(2) of the Convention, but also to Article 6 of the ECHR. Even though Article 6, paragraph 3.c of the ECHR provides for free assistance from an officially appointed lawyer only in criminal proceedings, European Court of Human Rights case-law<sup>48</sup> also recognises, in certain circumstances, the right to free legal assistance in a civil matter on the basis of Article 6(1) of the ECHR. Thus, even in the absence of legislation granting free legal assistance in a civil matter, it is for the courts to assess whether, in the

<sup>46</sup> [Protégez-vous ! \(admin.ch\)](#)

<sup>47</sup> <https://www.sem.admin.ch/sem/fr/home/asyl/menschenhandel/kampagne.html>.

<sup>48</sup> *Airey v. Ireland*, no. 6289/73, 9 October 1979.

interest of justice, an applicant who is without financial means should be granted legal assistance if unable to afford a lawyer.

49. GRETA's reports highlight the value of a lawyer being appointed as soon as there are reasonable grounds for believing that a person is a victim of trafficking, before the person makes an official statement and/or decides whether to co-operate with the authorities. Early access to legal assistance is also important to enable victims to take civil actions for compensation and redress.<sup>49</sup>

50. In Switzerland, the right of victims of trafficking, as victims of crime, to receive legal assistance and free legal aid is governed by the CCP and the Federal Law on Assistance to Victims of Crimes (LAVI).

51. Victims of THB who participate in criminal proceedings may be assisted by a legal counsel to defend their interests (Article 127 of the CCP). After the expiry of the recovery and reflection period and insofar as the victim declares his/her willingness to participate in the criminal proceedings, he/she is assisted by a lawyer. Insofar as a victim makes civil claims in the criminal proceedings, he/she may be granted free legal aid if he/she does not have the necessary means and if the civil claim is not 'without any prospect of success' (Article 136 of the CCP). The decision to approve a request for free legal aid is made by the prosecutor. GRETA was informed that it might take months for prosecutors to approve a request for free legal aid by a victim of THB. Pursuant to Article 135 of the CCP, lawyers providing free legal aid have to wait until the end of the proceedings before being paid (although part of the payment may be requested in advance), which might take years (see paragraph 109) and the amount of the remuneration may be reduced by the court. Pursuant to amendments to Article 136 of the CCP which will enter into force on 1 January 2024, victims of THB will be able to benefit from free legal aid earlier in the proceedings, when filing a criminal complaint. Another change introduced by the amendments to the CCP is that the victim will have to re-apply for free legal aid during the second instance (appellate) proceedings. This raises concerns that the court may require a victim to reimburse the costs of appellate proceedings, including lawyer's fees, in cases where the prosecution does not file an appeal against the judgment or the defendant is acquitted.

52. If the costs of the legal counsel are not covered under the above-mentioned provisions of the CCP, the victim may apply for the costs to be covered by the financial assistance provided for under the LAVI (Articles 13(2), 14(1) and 16 LAVI and Article 5 of the Ordinance of 27 February 2008 on assistance to victims, OAVI).<sup>50</sup> Legal assistance granted by the cantonal victim support offices under LAVI is subsidiary to that provided in criminal proceedings (Article 4 of LAVI). However, according to a recent decision of the Federal Tribunal from June 2023,<sup>51</sup> lawyer's fees can be covered under LAVI even if the victim did not assert a right to free legal aid in the criminal proceedings. In practice, the costs of legal representation are usually covered by the right to free legal aid in criminal proceedings. Legal assistance under the LAVI can be granted either as a form of "immediate assistance" or "longer-term assistance." During the reflection period, the victim is entitled to a preliminary legal interview, usually lasting four hours, as part of the "immediate assistance" (Article 13(1) of LAVI). This time is sufficient to advise victims on their rights, file a request for free legal aid on their behalf and sometimes also to draft a criminal complaint to the police on behalf of the victim. The victim is not required to pay a fee for the assistance of a legal adviser or for the initiation of proceedings. Only if the victim's financial situation is very good can contributions to the costs of "longer-term assistance" provided by third parties be reduced in accordance with Article 16 of the LAVI. In practice, this type of reduction is not applied, as victims of human trafficking generally have neither a fixed income nor personal assets. The LAVI offices also arrange for legal assistance to victims who wish to file a claim for state compensation (see paragraph 81). However, GRETA was informed of instances in which cantonal victim support offices rejected the request to cover lawyers' fees, meaning that the lawyers provided their services *pro bono*. The LAVI does not cover legal assistance

<sup>49</sup> See 8th General report on GRETA's activities, paragraph 167.

<sup>50</sup> [RS 312.51 - Ordinance of 27 February 2008 on assistance to victims of crime \(Ordinance on assistance to victims, OAVI\) \(admin.ch\)](#)

<sup>51</sup> Decision of the Federal Tribunal 1C\_344/2022 from 2.6.2023 (not yet published).

for criminal offences which happened abroad, unless the victim was domiciled in Switzerland at the time of the offence and when filing the request for assistance (Article 17 of LAVI).

53. Victims of trafficking are also entitled to free legal aid when filing a compensation claim in civil proceedings, under the same conditions that apply to criminal proceedings, i.e. if they are indigent and if their civil claim is not 'without any prospect of success'. However, GRETA was informed that free legal aid is more difficult to obtain in civil proceedings, especially for victims who have been exploited in diplomatic households. In two recent cases from Geneva, the Federal Tribunal<sup>52</sup> confirmed the decisions of the lower courts to deny presumed victims of trafficking access to free legal aid on the basis of the finding that their civil claims were 'without any prospect of success' since the employers enjoyed diplomatic immunity. As a result, the victims were obliged to pay CHF 2,000 (approximately 2,070 euros) each in court fees incurred during the appeal proceedings.

54. Free legal aid does not cover administrative proceedings such as those concerning residence permits. In such cases, victims are assisted by organisations specialised in providing assistance to victims of trafficking.

55. According to the information provided by the Swiss authorities, 100 victims of trafficking received free legal aid in 2019, 110 in 2020, 135 in 2021, and 121 in 2022.

56. NGOs and lawyers met by GRETA confirmed that in most cases victims of trafficking are provided with free legal aid in the context of criminal proceedings. NGOs assisting victims of trafficking have a well-established relationship with specialised lawyers and refer victims to them regularly. GRETA was also informed that cantonal victim support offices have lists of lawyers with experience in THB that they refer victims to. The GRETA delegation met with a number of specialised lawyers from the cantons of Bern, Geneva, Vaud and Zurich, and was impressed with their knowledge and dedication to victims of THB. Further, the NGO CSP in Geneva has run since 2014 a legal advice service, which is the only specialised legal service for victims of THB in Switzerland. It employs two lawyers who provide legal advice and representation in legal proceedings. However, difficulties may arise in cantons in which specialised NGOs are not involved in providing assistance to victims and/or where there are no lawyers specialised in THB.

57. The National Action Plan envisages a one-day training for relevant professionals, including lawyers, to be organised in 2024, which will focus on various aspects of assistance to victims of trafficking, including compensation. GRETA notes the importance of ensuring that lawyers from cantons in which there are no specialised NGOs and lawyers assisting victims of trafficking are included in such training.

58. While welcoming the availability of specialised lawyers assisting victims of trafficking, GRETA notes with concern the fact that requests for free legal aid are confirmed by the prosecutor's office at a later stage of the proceedings and that the procedure for the remuneration of lawyers at the end of the proceedings may hinder their ability to provide effective assistance to victims of trafficking. **GRETA considers that the Swiss authorities should take further steps to guarantee trafficking victims' access to legal assistance and free legal aid, in particular by ensuring that:**

- **legal assistance is provided as soon as there are reasonable grounds for believing that a person is a victim of human trafficking, before the person concerned has to decide whether or not to co-operate with the authorities and/or make a criminal complaint;**

<sup>52</sup> Decisions of the Federal Tribunal in cases 4A 161/2023 and 4A 165/2023 of 7 July 2023.

- **victims of THB have access to free legal aid from a lawyer with specialised knowledge on THB cases in all relevant legal proceedings, including civil proceedings (e.g. those brought by victims who have been exploited in diplomatic households) and administrative proceedings;**
- **the authorities and the Bar Associations encourage training and specialisation of lawyers in all cantons to provide legal aid to victims of trafficking;**
- **lawyers providing free legal aid to victims of trafficking are remunerated for their services in a timely and adequate manner so as to allow them to provide effective assistance to victims.**

#### **4. Psychological assistance (Article 12)**

59. Human trafficking and exploitation may have serious psychological and physical consequences for the victims, including mental health problems and loss of self-esteem. Psychological assistance is needed to help victims of trafficking deal with the trauma they have been through, and to achieve a sustained recovery and social inclusion. Some victims require long-term therapeutic intervention due to the violence they have suffered. Every victim of trafficking should have a clinical assessment tailored to include an evaluation of their particular readiness for therapy, conducted by an experienced clinician.<sup>53</sup> In the case of trafficked children, specialist child psychologists should be employed.

60. In Switzerland, victims of trafficking are entitled to receive psychological support under Article 14 of the LAVI. The authorities have noted that this support is, however, subsidiary to the one provided by the person's social and medical insurance (if they exist). The provision of psychological support falls within the competence of cantons and can be arranged either through the cantonal crime victim centre or specialised NGOs with whom the cantonal authorities have concluded agreements. As is the case with other types of assistance provided under the LAVI, access to psychological support is limited to those victims who were trafficked within Switzerland or who had residence in Switzerland when they were trafficked abroad. The support consists of 10 sessions of counselling within the framework of immediate assistance, with the possibility of receiving additional counselling as part of long-term assistance.

61. Psychological support for victims who were trafficked abroad, many of whom are in the asylum procedure, is mostly provided by specialised NGOs, with the costs covered by the sickness insurance fund and private funding. In their comments on the draft report, the authorities stated that the shortage of specialists across Switzerland and the short stay of asylum seekers in federal asylum centres makes it difficult to put in place psychological support, but the situation improves once the asylum seekers have been assigned to different cantons. The NGO FIZ has set up weekly low-threshold psychiatric consultations in collaboration with the Zurich Psychiatric University Hospital, which is financed by private donations. These consultations are provided by a psychiatrist from the hospital in FIZ's office once a week to victims of trafficking who are in the asylum procedure or who do not have health insurance and/or residence permits. Reportedly, there is a high demand for these services. In Geneva, the NGO Au Coeur de Grottes, which runs a shelter for victims of violence, including trafficking, employs three psychologists who provide counselling, and victims can also be referred to the unit for prevention of violence of the Geneva University Hospital for therapy, the costs of which are partially covered by the cantonal authorities.

62. NGOs have pointed out that traditional forms of psychotherapy, which are provided under LAVI, may not be appropriate for all victims of trafficking, in particular those who come from West African countries where witchcraft may be used as a form of coercion and intimidation against the victims. Therefore, the NGO Astrée collaborates with 'ethno-psychiatrists' who have an understanding of witchcraft and are able to better assist the victims and help them overcome the trauma they have suffered.

<sup>53</sup> See OSCE, *Trafficking in Human Beings Amounting to Torture and Other Forms of Ill-Treatment* (2013), Vienna, p.115.

63. GRETA was also informed that since 2022 the NGO Antenna MayDay in Ticino has collaborated with a private psychiatric practice which provides urgent support to victims who are assisted by the NGO, including asylum seekers. The costs of the support provided are entirely borne by the NGO.

**64. GRETA considers that the Swiss authorities should take further steps to guarantee access of victims of trafficking to psychological assistance, regardless of whether they were trafficked in Switzerland or abroad, and ensure that it is provided for as long as their individual situation requires, in order to help them overcome their trauma and achieve a sustained recovery and social inclusion.**

## **5. Access to work, vocational training and education (Article 12)**

65. In Switzerland, while victims of THB do not have the right to work during the recovery and reflection period, a residence permit based on the victim's co-operation with the criminal justice authorities generally entitles them to work. However, the situation varies between cantons. GRETA was informed that most cantons issue short-term residence permits (L permit), renewable every six months, which makes it difficult for victims to find employment due to the short duration of the permit and the fact that some immigration authorities are not aware that the L permit entitles the holder to work. Moreover, the renewal of the permits sometimes takes a long time (e.g. four months in Geneva), creating problems to keep the job. The issuance of the permit, which has to be confirmed by SEM, is usually conditioned on the confirmation of the criminal authorities that the person's presence is required in Switzerland, and in some cantons the possibility to work exists only if the case is qualified as THB. By way of example, GRETA was informed that in the canton of Geneva victims of trafficking who are issued a residence permit as victims of profiteering (because the case is qualified under this provision of the CC) do not have access to employment. On the other hand, in the canton of Vaud the residence permit is usually granted once the criminal complaint is filed and the immigration authorities do not seek the opinion of the criminal authorities when issuing the permit. Moreover, the type of permit granted (B permit) allows victims to find employment more easily.

66. Victims of THB may be issued another type of residence permit, on the basis of "extremely serious situations of hardship" (see paragraph 232), which also entitles them to work. However, such permits are rarely issued and in order to grant the permit the authorities may require proof of the victim's integration in Swiss society, including having gainful employment (see paragraph 234).

67. Civil society organisations met by GRETA have noted that the difficulties in obtaining access to work can have a detrimental effect on the process of the victims' recovery and integration, increasing the risk of re-victimisation, particularly if the victim is present in Switzerland for several years while the criminal proceedings are ongoing. The fact that most victims are issued short-term, albeit renewable, residence permits may represent an obstacle to their obtaining access to longer vocational training programmes, thus limiting their options in finding employment to a narrow range of sectors.

68. GRETA notes as a positive example a pilot project approved by the canton of Vaud in 2022 which aimed to increase the support for victims of trafficking in the process of their professional integration and search for housing. The support is provided in collaboration with the Social Centre for the Integration of Refugees (CSIR). Victims can be referred to CSIR by NGOs such as Astrée once they have obtained a residence permit and after a follow-up assessment. CSIR continues to support victims after they find independent housing and grants them financial assistance with a view to advancing their professional integration. Further, the NGO Au Coeur des Grottes in Geneva organises access to French courses and vocational training with a view to reintegrating victims into working life.

69. **GRETA considers that the Swiss authorities should strengthen effective access to, and/or reintegration of, the labour market for victims of THB and their economic and social inclusion through the provision of vocational training and job placement, raising awareness amongst employers, and the promotion of micro-businesses, social enterprises and public-private partnerships, including through state supported employment. Further, the authorities should ensure that residence permits are granted and renewed within a reasonable time, in all cantons, so as to facilitate victim's access to the labour market, and the immigration authorities should be made aware of the fact that a short-term (L) permit entitles a person to work in Switzerland.**

## 6. Compensation (Article 15)

70. Article 15(3) of the Convention establishes a right of victims to compensation. The compensation is pecuniary and covers both material injury (such as the cost of medical treatment) and non-material damage (the suffering experienced). However, even though it is the trafficker who is liable to compensate the victim, in practice there is rarely full compensation whether because the trafficker has not been found, has disappeared or has declared him/herself bankrupt. Article 15(4) therefore requires that Parties take steps to guarantee compensation of victims. The means of guaranteeing compensation are left to the Parties, which are responsible for establishing the legal basis of compensation, the administrative framework and the operational arrangements for compensation schemes. In this connection, Article 15(4) suggests setting up a compensation fund or introducing measures or programmes for social assistance to, and social integration of, victims that could be funded by assets of criminal origin. Of relevance in this respect is the European Convention on the Compensation of Victims of Violent Crimes, pursuant to which, when compensation is not fully available from other sources, the State shall contribute to compensate those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence, as well as the dependents of persons who have died as a result of such crime, even if the offender cannot be prosecuted or punished.

71. Compensation fulfils multiple purposes: payment of reparation for injury, loss or harm caused by the offender, access to justice, empowerment of victims, as well as being seen as a form of punishment and deterrence of traffickers. As such, compensation plays a crucial role in the fight against human trafficking, not only as an instrument of restorative justice, but also by way of prevention and recognition by States of their failure to meet their human rights obligations.

72. Victims often leave the country where they were exploited at the end of the criminal proceedings. This creates obstacles to making civil claims for compensation, which in addition are associated with a number of other barriers, such as high costs, unavailability of free legal aid and victim-support services, as well as the claimant bearing the burden of proof of the amount of the damage. State parties should therefore consider adopting a procedure through which victims are entitled to obtain a decision on compensation by the offender as part of the criminal trial, within a reasonable time.

73. As outlined in GRETA's second report on Switzerland,<sup>54</sup> victims of trafficking who have suffered a direct violation of their physical, sexual or mental integrity as a result of the offence can claim compensation from perpetrators in criminal proceedings, in their capacity as private claimants (Articles 116, 118, 122 and following of the CCP). Victims have the right to be assisted by a free legal aid lawyer when filing such a claim (see paragraph 51). Compensation can include both material and non-material damages and GRETA was informed that there are guidelines to assist the court in the calculation of non-material damages. If the court finds that the determination of the damages would require a disproportionate amount of work (unreasonable expenses and inconvenience), it may make a decision on principle only and refer the victim to pursue the rest of the claim in civil proceedings, pursuant to Article 126, paragraph 3, of the CCP. To the extent possible, the court shall rule on minor claims itself.

<sup>54</sup> GRETA's second report on Switzerland, paragraphs 197-206.

74. Victims of trafficking also have the possibility to seek compensation from perpetrators in civil proceedings. However, civil proceedings are lengthy (two years on average) and are not designed for victims of THB as they bear the burden of proof, there is risk of collusion as the names of witnesses have to be shared at an early stage, the victims must cover the costs of the proceedings and may not have access to free legal aid (see paragraph 53). Lawyers often file civil claims for compensation in parallel to the criminal complaint in order not to miss the statute of limitations, but judges may decide to suspend the proceedings if the criminal investigation is ongoing.

75. There are no statistics available with regard to the number of victims of trafficking who have been awarded compensation in criminal or civil proceedings, but on the basis of discussions with lawyers and specialised NGOs, GRETA concludes that the number of such cases is low.<sup>55</sup> Only a few examples of compensation ordered by courts were provided to GRETA (see paragraph 108). GRETA notes the particularly high amounts awarded in a case adjudicated in December 2022 by the Bucheggberg-Wasseramt District Court in the canton of Solothurn (approximately CHF 1.2 million – approximately 1 246 155,90 euros - plus interest), which concerned an underage victim of THB for sexual exploitation who had been recruited using the “loverboy” method and in which the defendant was sentenced to 10 years and six months of imprisonment and expelled from Switzerland.

76. GRETA was informed that victims are rarely able to enforce compensation awards against the perpetrators who usually have no executable assets. Articles 70 to 73 of the CC provide a legal basis for the confiscation of assets of perpetrators in order to compensate victims of crime. In addition, it is possible to confiscate assets which are not derived from a criminal activity for procedural costs, penalties, fines and compensation (Article 263, paragraph 1, sub-paragraph b, and Article 268, paragraph 1, sub-paragraphs a and b, of the CCP). However, the authorities noted that most traffickers either spend the proceeds of crime or transfer them abroad thus making confiscation difficult.

77. The Federal Act of 17 June 2005 on undeclared work (LTN; RS 822.41) provides that, during the removal or expulsion procedure, the authorities must inform the person concerned that he or she can assert his or her rights against the employer for the unauthorised gainful activity carried out and that he or she can appoint a representative for this purpose (Art. 14 LTN). In cases of violation of reporting or authorisation obligations in terms of foreigners' law, when the foreigner has left Swiss territory, trade union organisations are recognised as having the right to assert the worker's rights against the employer (Art. 15 LTN). However, GRETA was informed that it is particularly difficult for victims of trafficking to obtain compensation for unpaid wages, as they may not be able to prove that they performed the work in question or the amount of wages that are owed to them. Reportedly, in some cases courts have even found that victims were not entitled to compensation for unpaid wages because they did not have a work permit and were working and staying in Switzerland illegally. Such reasoning is particularly concerning having in mind that victims of THB for the purpose of labour exploitation are often forced to work without proper contracts and work/residence permits. GRETA was also informed that some judges adhere to the interpretation, based on the commentary to the CCP, that claims related to contractual obligations or unjust enrichment, which include unpaid wages, are not covered by the provisions of the CCP concerning compensation claims in criminal proceedings. In this context, GRETA refers to the recent judgment of the European Court of Human Rights in the case *Krachunova v. Bulgaria*, in which the Court found that States have a positive obligation under Article 4 of the European Convention on Human Rights to enable victims of trafficking to claim compensation from their traffickers in respect of lost earnings.<sup>56</sup>

78. GRETA was informed that persons who have been exploited in diplomatic households must go through a mediation procedure with their employer at the “Bureau de l'Amiable Compositeur” (BAC) in

<sup>55</sup> In their comments to the draft report, the Swiss authorities referred to an analysis carried out in 2019 of 107 judgments in THB cases issued in preceding years (concerning 119 defendants), according to which Swiss courts confiscated 192,309 CHF from perpetrators and awarded to victims compensation amounting to 413,800 CHF in material damages and interests and 364,405 CHF in civil damages and interests, as well as 1,545,110 CHF in moral compensation. The information does not specify which period prior to 2019 is covered by the analysis nor whether any of the victims actually received compensation from the perpetrators and/or the confiscated funds.

<sup>56</sup> [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-229129%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-229129%22]}).

Geneva before they can file a claim for compensation of unpaid wages in civil court. However, such a civil claim for compensation is unlikely to succeed since the employers enjoy diplomatic immunity.

79. The ability of victims of THB for the purpose of labour exploitation to obtain compensation is further limited by the fact that the state compensation scheme, described below, does not include compensation for unpaid wages. By way of example, GRETA was informed of a court decision from the Canton of Geneva in which a Ukrainian victim of THB for the purpose of labour exploitation was awarded CHF 12,534 (approximately 13,220 euros) in unpaid wages. Not being able to obtain compensation from the perpetrator, he filed a request for state compensation which was denied by the LAVI office and later by the competent cantonal court. In a judgment dated 11 October 2023, the Federal Tribunal confirmed the decision of the lower court, finding that, based on the text of the law and relevant explanatory documents, Article 19 LAVI only covers material damages related to physical, psychological and sexual harm suffered by victims of criminal offences, thus excluding economic damages such as unpaid wages. The court further noted that there is no obligation under international law, namely ECtHR jurisprudence under Article 4 ECHR (*Chowdury and others v. Greece*) and Article 15 of the Convention and its Explanatory Report, to provide state compensation for unpaid wages. The court observed that this issue was not raised in GRETA's second report on Switzerland, but that the question of compensation for unpaid wages is raised in the 3rd questionnaire sent to the Swiss authorities. The court concludes that, "if GRETA seems to want to examine the question of compensation for wages not received by victims of trafficking (see consideration 4.1 above), the third evaluation report could provide certain clarifications with regard to the concept of material damages covered by Article 15 para. 4 of the [Council of Europe Convention on Action Against Trafficking in Human Beings], which could lead, if necessary, the Swiss legislator to look into this question."

80. GRETA notes that the human rights-based approach to combating human trafficking implies fair and appropriate compensation for the material and non-material harm suffered. The withholding of wages from victims is a common feature of trafficking for the purpose of labour exploitation which, together with other factors, renders victims completely dependent on their traffickers and leaves them without any real alternatives to their exploitation. As such, unpaid wages constitute a harm suffered by victims as a direct result of being trafficked, for which they should be able to obtain compensation. While compensation for unpaid wages should normally be paid by the traffickers, GRETA notes that in Switzerland this option may not be available in practice to victims of trafficking for the purpose of labour exploitation, due to the restrictive interpretation of the courts (mentioned in paragraph 77), the diplomatic immunity of the alleged perpetrators, or because traffickers often do not have assets which can be confiscated. In this context, Article 15, paragraph 4, of the Convention requires States Parties to take steps to guarantee access to state compensation for victims who are unable to claim compensation from the perpetrators. While the Convention leaves up to the States Parties to determine the conditions for compensation provided by the State, GRETA is of the view that such compensation should include both material damages, such as unpaid wages, and non-material damages. **Therefore, GRETA invites the Swiss authorities to amend the relevant provisions of LAVI to ensure that it is capable of also covering compensation for unpaid wages.**

81. Victims of trafficking can apply for state compensation for material and non-material (moral) damages pursuant to Articles 2, 19, 20 and 22 of the LAVI. In order for state compensation to be awarded, the crime must have been committed in Switzerland and it must be proven by a 'preponderance of the evidence' (*vraisemblance prépondérante*) that the person seeking compensation was a victim of crime. While the initiation of criminal proceedings against the perpetrator is not a requirement, when such proceedings are initiated a decision on the award of state compensation will only be issued after the conclusion of the criminal trial. The payment of state compensation is subsidiary to any compensation awarded in criminal or civil proceedings and is granted only if the perpetrator fails to pay or pays only part of the sum (Article 4 of LAVI). The application for state compensation must be submitted to the competent cantonal LAVI office within five years from the commission of the offence or the time the victim became aware of the offence, or one year after the court judgment becomes final (Article 25 of LAVI). Victims are entitled to be assisted by a lawyer when filing a claim for state compensation. GRETA was informed that the procedure for the granting of state compensation is often lengthy.



82. The conditions for the award of material damages as part of state compensation (Articles 19 and 20 of LAVI) are rather restrictive, as such compensation does not include damage to assets (including unpaid wages) and the victim will only receive the full amount of damages if his/her income does not exceed the minimum necessary to cover the essential needs.<sup>57</sup> GRETA was informed that state compensation for pecuniary damages is almost never granted to victims of trafficking.

83. In practice, victims of trafficking in Switzerland are mostly granted state compensation in the form of moral damages, in cases in which the gravity of the offence justifies it (Article 22 of LAVI). Although the maximum amount of compensation for moral damages is set at CHF 70,000 (approximately 72,300 euros) under Article 23 of the LAVI, GRETA was informed that the amounts awarded to victims of THB in practice are much lower. The Federal Office of Justice has issued guidelines for the calculation of the amount of moral damages which provide that THB, particularly for the purpose of labour exploitation, may give rise to a claim for damages resulting from the psychological harm suffered by the victim. Such harm is considered to be grave when the threat, coercion or mental anguish suffered become a serious burden to the victim, even in the absence of other consequences. GRETA was informed that a one-day training for judges, lawyers and police officers which will be organised in September 2024 in co-operation with the University of Bern will cover victims' right to compensation.

84. Pursuant to Article 24 of the LAVI, victims can be granted compensation after their return to the country of origin. However, it might be difficult to locate the victim and organise the transfer of money once they have left Switzerland. According to Article 27, paragraph 3, of the LAVI, the amount of moral damages awarded may be reduced "if the person has his/her residence abroad and, given the cost of living in the place of residence, the moral compensation would be disproportionate." According to NGOs representing victims of trafficking this often results in up to a 50% reduction in the damages paid.

85. According to the information provided by the authorities, state compensation was awarded to less than half of the victims who filed requests for such compensation.<sup>58</sup> Namely, eight victims of trafficking received state compensation in 2019 in the total amount of CHF 35,500 (approximately 36,600 euro), nine victims in 2020 in the total amount of CHF 61,000 (approximately 62,900 euro), and nine victims in 2021 in the total amount of CHF 48,000 (approximately 49,500 euro). Most of the victims were women and all were foreign. Twenty-three victims filed a request for compensation in 2022, but no information is available with regard to how many of these requests were granted.

86. GRETA notes with concern that, although the relevant legal framework is in place, few victims of trafficking have been awarded compensation during the reporting period. **GRETA considers that the Swiss authorities should take steps to facilitate and guarantee effective access to compensation for victims of trafficking, including by:**

- **systematically informing victims of trafficking of their right to seek compensation in criminal and civil proceedings and the procedure to be followed, and ensuring that they are provided with effective legal assistance from their first contact with the competent authorities in order to exercise this right;**
- **ensuring that the collection of evidence about the harm the victim has suffered, including the financial gain from the exploitation of the victim, is part of the criminal investigations with a view to supporting compensation claims in court;**

<sup>57</sup> The maximum amount of compensation for pecuniary damages provided for in the LAVI (Article 20) is CHF 120,000 (approximately 124,000 euros).

<sup>58</sup> Between 2019-2021 a total of 53 claims for compensation and moral redress were filed (19 in 2019, 17 in 2020 and 17 in 2021).

- **enabling victims of THB to effectively exercise their right to compensation, by building the capacity of legal practitioners to support victims to claim compensation and including compensation in the training of law enforcement officials and the judiciary;**
- **making full use of the legislation on the seizure and confiscation of criminal assets to secure compensation to victims of THB;**
- **enabling victims of trafficking to effectively exercise their right to obtain state compensation within a reasonable time.**

87. **Further, GRETA urges the Swiss authorities to ensure that victims obtain a decision on compensation from the offender for unpaid wages, as part of the criminal trial, regardless of whether they held appropriate work and/or residence permits or not, and facilitate victims' access to compensation in civil proceedings.**

## **7. Investigations, prosecutions, sanctions and measures (Articles 22, 23 and 27)**

88. One of the purposes of the Convention is to ensure the effective investigation and prosecution of THB. Article 27(1) of the Convention establishes that the investigation or prosecution of THB offences must not depend on victims' reports. The aim is to avoid traffickers' subjecting victims to pressure and threats in attempts to deter them from complaining to the authorities. Pursuant to Article 27(2), if the competent authority with which the complaint has been lodged decides that it does not itself have jurisdiction in the matter, then it must forward the complaint without delay to the competent authority of the Party in whose territory the offence was committed. Further, under Article 27(3), each Party shall ensure to non-governmental organisations and other associations which aim at fighting trafficking in human beings or protection of human rights, the possibility to assist and/or support the victim with his or her consent during criminal proceedings concerning the offence of trafficking in human beings.

89. Article 23 requires Parties to match their action to the seriousness of the offences and lay down criminal penalties which are "effective, proportionate and dissuasive". Further, paragraph 3 of Article 23 places a general obligation on Parties to adopt appropriate legal instruments enabling them to confiscate or otherwise deprive offenders (e.g., by so-called "civil" confiscation) of the instrumentalities and proceeds of human trafficking criminal offences. As trafficking in human beings is nearly always engaged in for financial profit, measures depriving offenders of assets linked to or resulting from the offence are an effective anti-crime weapon. The confiscation of criminal assets is crucial for reinforcing the effect of the penalty, as well as ensuring the payment of compensation to the victim. It requires as a prerequisite to detect, identify and seize the illegal assets at the time of the criminal investigations and to have adequate procedures to do so. The identified, seized and confiscated illegal profits of trafficking should be used to compensate victims of trafficking, directly or through a victim compensation fund.

90. Further, Article 22 of the Convention requires Parties to ensure that legal persons can be held liable for human trafficking offences committed for their 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. Liability under this article may be criminal, civil or administrative.

91. There have been no major changes as regards the criminalisation of THB in Switzerland since GRETA's first evaluation report. Article 182, paragraph 1, of the Criminal Code (CC) provides that any person who, as a supplier, intermediary or customer engages in trafficking of human beings for the purposes of sexual exploitation, labour exploitation or organ removal shall be punished with imprisonment. As of 1 July 2023, the Article 182 of the CC no longer envisages an obligatory monetary penalty. While Article 182 does not prescribe a minimum punishment for the basic form of the offence, paragraph 2 of that article provides for a minimum sentence of one year of imprisonment for the aggravated form of the offence, namely in case the offence is committed against a child or for commercial gain. No other aggravating circumstances provided for in Article 4 of the Convention are included in

Article 182 but are rather covered by separate articles of the CC.<sup>59</sup> Pursuant to Article 40 of the CC, the maximum penalty that may be imposed in any case is 20 years of imprisonment.

92. As previously noted by GRETA,<sup>60</sup> the definition of THB in Article 182 does not require the use of means for the offence of human trafficking to be established. Moreover, it does not expressly mention forced labour or services, slavery, practices similar to slavery and servitude as forms of exploitation, nor does it state the irrelevance of the victim's consent to the exploitation.<sup>61</sup> The Swiss authorities have reiterated that the legislative practice in Switzerland favours shorter definitions of offences and that the definition in Article 182 is to be read in conjunction with the *travaux préparatoires* published in the Federal Gazette No. 17 of 3 May 2005 (FF 2005 2639, pp. 2665-2667), which refers to the definition contained in Article 4 of the Council of Europe Anti-Trafficking Convention and clarifies that "labour exploitation" covers the notions of forced labour or services, slavery, practices similar to slavery, and servitude.<sup>62</sup> However, GRETA notes that the commentary to the CC, upon which courts rely in their interpretation of Article 182, is based on outdated jurisprudence and contains an overly narrow interpretation of THB for the purpose of labour exploitation. Further, in their comments to the draft report, the prosecution authorities (CMP) agreed that Article 182 is formulated in an unusually open manner, which results in difficulties of interpretation already at the stage of the criminal investigation, in particular in the absence of aggravating circumstances. The CMP have also stressed the need to provide for a definition of the concept of labour exploitation, and to include the element of means and servitude and forced labour and services among the forms of exploitation in Article 182.

93. The overly vague definition of THB in Article 182 of the CC has led to difficulties in interpretation and inconsistencies in case-law, particularly with regard to trafficking for the purpose of labour exploitation, resulting in exceedingly mild punishment of perpetrators.<sup>63</sup> The absence of the 'means' element in Article 182 of the CC has led to erroneous interpretation of labour exploitation, without taking into account the abuse of a vulnerability. This problem has been acknowledged by the Swiss authorities and the third NAP envisages a possible amendment to Article 182 to include the abovementioned forms of exploitation and the relevant means (Action 4.1.1). The NAP further envisaged an examination of whether labour exploitation should be made a separate criminal offence (Action 4.1.2). According to the information provided by the authorities, the Federal Office of Justice is expected to prepare reports on these issues in 2025.

94. While trafficking for the purpose of exploiting criminal activities is not expressly mentioned in Article 182 of the CC, the Swiss authorities have indicated that it can be assimilated to labour exploitation under the current definition. Forced marriage is criminalised separately in the Criminal Code (Article 181a); however, Article 182 of the CC could be applicable to cases of arranged or sham marriages which lead to the person's exploitation for sexual or other purposes.<sup>64</sup>

**95. GRETA urges the Swiss authorities to bring the definition of THB in the Criminal Code fully in line with Article 4 of the Convention, including by ensuring that all forms of exploitation are adequately covered, and adding the element of 'means' for adult victims.**

**96. Further, when examining amendments to Article 182 of the CC, GRETA invites the Swiss authorities to take into account forms of exploitation which are not specifically**

<sup>59</sup> Article 122 CC (Serious Assault), Article 125 (Assault Through Negligence), Article 129 CC (Endangering a Life), and Article 260ter (Criminal or Terrorist Organisation).

<sup>60</sup> GRETA's second evaluation report on Switzerland, paragraph 215.

<sup>61</sup> Nevertheless, the *travaux préparatoires*, published in the Federal Gazette, state that consent does not automatically preclude Article 182 from applying. The irrelevance of the victim's consent has been confirmed by Federal Supreme Court's case-law.

<sup>62</sup> See GRETA's first evaluation report on Switzerland, paragraph 35 and GRETA's second evaluation report on Switzerland, paragraph 217.

<sup>63</sup> Annatina Schultz, Trafficking in Human Beings for the purpose of labour exploitation: An overview of cantonal jurisprudence. See also the study "Combating trafficking in human beings in the cantonal context," p. 43.

<sup>64</sup> See GRETA's second evaluation report on Switzerland, paragraphs 220 and 222.

**mentioned in the international definition of THB, such as forced marriage, forced criminality and forced begging.**

97. There is still no provision in Swiss law criminalising the use of services of victims of THB, with the knowledge that the person is a victim of THB. As noted in GRETA's second report,<sup>65</sup> the Swiss authorities consider that Article 193 of the CC on the exploitation of a person in a position of need or dependency could be applied in such cases. Further, employers who knowingly illegally employ or exploit foreign workers are punishable under the Aliens Act and, depending on the circumstances, under the CC (e.g. coercion, abuse of distress, encouragement of prostitution). **GRETA once again considers that the Swiss authorities should adopt legislative measures to criminalise the use of services with the knowledge that the person is a victim of THB, as stipulated by Article 19 of the Convention.**

98. Article 102 of the CC provides for primary liability of legal entities for a limited range of offences if the company has failed to take all reasonable and necessary organisational steps to prevent the offence. In addition, subsidiary criminal liability is provided for in cases where an offence is committed within a company during the exercise of business activities in line with its aims and the offence cannot be attributed to any physical person owing to a lack of organisation on the part of the company. The penalty is a maximum fine of CHF 5 million (5.2 million euros). GRETA was not informed of any cases involving the prosecution of legal persons for THB during the reporting period. GRETA's interlocutors have raised in particular the issue of impunity of administrative employees of companies who facilitate the exploitation of workers by drawing up employment contracts on behalf of traffickers. To GRETA's knowledge, there has only been one case, adjudicated in 2023, in which several employees of a company were convicted of profiteering in connection with the exploitation of workers in the construction industry. Lawyers met by GRETA pointed out the apparent unwillingness to detect and investigate third parties which act as perpetrators and accomplices in THB cases, such as fiduciaries, accountants or de facto administrators of companies employing victims of THB, to investigate money laundering and to confiscate assets. Reference was made to a case which started in June 2021 in Geneva, involving Chinese workers who were employed in a restaurant without contracts and were not paid for several months. The restaurant went into bankruptcy and the available assets were used to cover the financial claims of other creditors. **GRETA considers that the Swiss authorities should keep under review the application of the legal provisions concerning corporate liability for THB with a view to ensuring that they are effectively applied in practice.**

99. Trafficking in human beings is among the offences for which covert surveillance may be used pursuant to the CCP, the Federal Law on the Surveillance of Postal Correspondence and Telecommunications (LSCPT; RS 780.1), the Order on Covert Investigations (OISec; RS 312.81), as well as cantonal laws governing the police. Such measures include monitoring correspondence and telephone communications, observing or recording events in private or inaccessible places, and establishing the whereabouts of a person (Articles 269-279 CCP). The prosecutor may request the competent court to approve such measures once the criminal proceedings have been opened. GRETA was informed that special investigative measures have been used in THB cases.

<sup>65</sup> GRETA's second evaluation report on Switzerland, paragraph 227.

100. The authorities have also increasingly used the monitoring of online activities, particularly in relation to THB for the purpose of sexual exploitation. GRETA was informed that fedpol is testing web crawler software developed in Germany and plans to introduce it in the cantonal police forces gradually. Although the need to tackle the use of cyberspace for the recruitment and exploitation of victims of trafficking is recognised in the introduction to the third NAP, it is of note that there are no concrete actions related to this phenomenon included in the NAP.

101. According to the authorities, financial investigations are routinely conducted in THB cases. No statistics are available as to the number of cases in which assets were confiscated from perpetrators of THB and prosecutors referred to difficulties in tracing financial flows across borders. GRETA was informed of a recent case from Geneva concerning THB for labour exploitation in which the authorities seized CHF 10 million (10.4 million euros).

102. The Swiss Financial Intelligence Unit (*cellule de renseignements financiers suisse* – MROS) analyses and investigates suspicious activity reports (SARs) received from Swiss financial institutions when there is a suspicion of human trafficking, encouraging prostitution or a similar offence, and forwards them to the prosecution authorities where appropriate. MROS also deals with requests from national and foreign authorities concerning financial transactions related to THB, and it closely collaborates with fedpol, cantonal and municipal police, prosecution offices, and tax authorities. In their comments to the draft report, the authorities referred to a joint project with OSCE aimed at developing co-operation between the law enforcement authorities, financial intermediaries and MROS as part of combating THB.

103. According to data provided by the Swiss authorities, the number of THB cases registered by the police was 99 in 2019, 67 in 2020 (of which 51 concerned THB for sexual exploitation, 15 for labour exploitation, and in one case the type of exploitation was unknown), 71 cases in 2021 (of which 31 for sexual exploitation and 40 for labour exploitation), 63 cases in 2022 (of which 45 for sexual exploitation and 18 for labour exploitation), and 74 cases in 2023 (of which 51 for sexual exploitation and 23 for labour exploitation). There is no information available with regard to the number of prosecutions for THB during the reporting period. The number of persons convicted under Article 182 of the CC was 10 in 2019 (seven men and three women), eight in 2020 (four men and four women), and 13 in 2021 (eight men and five women). Most of the perpetrators were foreigners. There is no information with regard to the type of exploitation or the sentences imposed in these cases.

104. GRETA's interlocutors have attributed the low number of convictions in THB cases to several factors, including the broad wording of the definition of THB in Article 182 of the CC (see paragraph 93) and the courts' restrictive and even erroneous interpretation of its requirements, particularly in relation to THB for labour exploitation, as well as the fact that THB cases are often handled by non-specialised prosecutors. Most prosecutions are concentrated in several cantons (e.g. Bern, Geneva and Zurich), while other cantons, such as Graubünden or Neuchâtel, have not had any cases of THB during the reporting period.

105. While cases involving an element of organised crime (within the meaning of Article 260ter of the CC) should as a rule be prosecuted on the federal level, GRETA was informed that they are sometimes handled by cantonal criminal justice authorities specialised in THB. On the other hand, cases without the organised crime element, which represent the majority of THB cases in Switzerland, are reportedly often investigated and prosecuted by police officers and prosecutors who are not specialised in THB, depending on the canton. This may lead to cases being qualified as other offences, such as profiteering (Article 157 of the CC) and encouraging prostitution (Article 195 of the CC).

106. The prosecution of cases involving THB for labour exploitation represents a particular challenge. GRETA was informed that, based on a 2018 judgment of the Federal Tribunal, certain judges and prosecutors consider that in order to prove the existence of THB for the purpose of labour exploitation, the victim must have been subjected to threats, use of force and/or restriction of movement. Reportedly, there have only been a few cases in which the abuse of a position of vulnerability has been recognised

as a means in cases of THB for labour exploitation (see the case described in paragraph 108). In addition, the fact that the abuse of a position of vulnerability is also a constituent element of the offence of profiteering under Article 157 of the CC<sup>66</sup> may lead to the qualification of THB cases under that provision<sup>67</sup> or as extortion under Article 156 of the CC.<sup>68</sup>

107. Further, cases concerning the exploitation of domestic workers have been difficult to prosecute, either due to the diplomatic immunity<sup>69</sup> of the alleged traffickers or the courts' restrictive interpretation of THB for labour exploitation. By way of example, in a case from February 2020, a Senegalese national was acquitted of THB by the Geneva Court of Appeals which found that although the victim (the defendant's cousin) had been forced to work long hours, was exposed to violence and her passport had been withheld, her treatment did not amount to forced labour and her movement had not been restricted. The defendant was convicted of profiteering. GRETA was informed of another case in which a Public Prosecutor in Geneva decided to drop the charges for THB against a member of a wealthy family of antique art dealers who had allegedly exploited two young women from Nicaragua by forcing them to work up to 15 hours a day, including night shifts, for an hourly wage of CHF 6, and sexually abused them. The prosecutor reasoned that the victims had negotiated their contracts, had not had their passports confiscated and were able to communicate with their family. GRETA was also informed that four members of a wealthy Indian family accused of exploiting domestic workers from India, mentioned in paragraph 245 of GRETA's second report, were indicted of THB and other offences in August 2023. The trial was supposed to begin on 15 January 2024, but the defendants' lawyers did not appear in court and the session was postponed until March when the first hearing was held.<sup>70</sup>

108. GRETA was provided with judgments in several THB cases adjudicated in the period 2019-2023, summarised below:

- In a first judgment concerning THB for labour exploitation in the construction industry, issued on 9 April 2020, the *Tribunal correctionnel de Genève* convicted an entrepreneur of eight counts of aggravated trafficking in human beings (Article 182, paragraph 2, acting for commercial gain), five counts of profiteering (Article 157 CC), as well as several other offences, and sentenced him to six years of imprisonment. The court found that the defendant, a Lithuanian national and building contractor, recruited foreign workers mainly from Eastern Europe to work for construction companies based in Switzerland. Some of the workers received small advances of the wages they had been promised (EUR 8 per hour), while most of the wages were never paid to the workers. The workers were housed in poor conditions and were not given sufficient food. The court concluded that the defendant recruited the workers taking advantage of their precarious financial situation with the intent to profit from their work without paying them. Although the workers were free to leave and were able to keep their identity documents, the court found that because of their vulnerable situation they had

<sup>66</sup> In Article 157 of the CC, profiteering is defined as the "exploitation of a vulnerable position, dependency, inexperience or weakness of judgment of a person with the intention of financial gain in return for a service that is economically disproportionate to the service provided".

<sup>67</sup> GRETA was given the example of a judgment of the District Court of St. Gallen, dated 13 May 2022, by which an owner of several nail studios in Switzerland which employed Vietnamese nationals was found guilty of profiteering and sentenced to a suspended sentence of 15 months' imprisonment. The case concerned a Vietnamese national who was working at one of the nail salons as a nail designer without a work permit. She had been recruited by the defendant while she was in the Czech Republic (she was married to a Czech national of Vietnamese origin) and was working in the nail salon six days a week for CHF 500 a month. She had no holidays and never received the full salary that had been promised to her (approximately CHF 3,350).

<sup>68</sup> Article 156 of the CC: "Whoever, with the intention of procuring unlawful enrichment for himself or a third party, induces a person to act prejudicial to his/her pecuniary interests or those of a third party, by using violence or threatening him/her with serious harm, shall be punished by deprivation of liberty for a term not exceeding five years or by a financial penalty."

<sup>69</sup> GRETA was informed of a 2015 decision of the Geneva Court of Appeals in which the court rejected the diplomatic immunity invoked by an employer in civil proceedings brought by a domestic worker. In another more recent case from Geneva, diplomatic immunity was rejected by a first instance court and the decision was confirmed by the Geneva Court of Appeals in a decision issued in February 2024.

<sup>70</sup> [A Genève, le procès d'une famille de milliardaires tourne à la partie de cache-cache judiciaire - Le Temps](https://www.tagesanzeiger.ch/milliardaere-vor-gericht-genfer-hinduja-clan-will-richter-absetzen-894949682057) [Le procès d'une famille de milliardaires accusée d'esclavage reprend | blue News \(bluewin.ch\)](https://www.letemps.ch/suisse/geneve/a-geneve-la-richissime-famille-hinduja-fait-le-proces-du-ministere-public). See also <https://www.tagesanzeiger.ch/milliardaere-vor-gericht-genfer-hinduja-clan-will-richter-absetzen-894949682057> and <https://www.letemps.ch/suisse/geneve/a-geneve-la-richissime-famille-hinduja-fait-le-proces-du-ministere-public>.

no alternative but to consent to the exploitation by the defendant. Notably, the court relied in its reasoning on the decision of the European Court of Human Rights (ECtHR) in the *Chowdury and others v. Greece*. The court ordered the defendant to compensate the victims in the amounts ranging from CHF 5278 (5,576 euros) to CHF 52,000 (54,940 euros).

- In a judgment of 11 June 2021, the District Court of Winterthur convicted a husband and a wife of THB (Art 182 CC) and profiteering (Art 157 CC), as well as a number of other offences, in relation to the exploitation and abuse of a woman from South-Eastern Europe whom they had employed as a nanny in their house on two occasions. The victim, who was recruited by the defendants after she placed an ad online, was forced to work long hours looking after the couple's children and performing housework. She did not have a work permit and was only paid a small amount of the salary that had been promised to her. Her passport was withheld by the defendants and she was exposed to physical and sexual abuse. The court provided a thorough examination of the elements of THB, including the abuse of vulnerability of the victim, and referred to the abovementioned judgment of the *Tribunal correctionnel de Genève*. The court sentenced the husband to 36 months' imprisonment and a monetary penalty (180 daily rates of CHF 30), while the wife was sentenced to 22 months' imprisonment and the same monetary penalty. They were ordered to pay compensation for moral damages to the victim, jointly, in the amount of CHF 12,000 (12,600 euros) and CHF 19,000 (19,700 euros) in unpaid wages based on the defendants' recognition of the fact that the wages had not been paid. Otherwise, the court opined that the claim for unpaid wages concerned a contractual obligation which was not covered by Article 122 of the CCP. The conviction for THB was overturned by the High Court of Zurich in July 2023, which found the defendants guilty only of profiteering and sentenced them to, respectively, 27 and 10 months' imprisonment. The High Court reasoned that the victim's position of vulnerability had not been proven as well as the allegation that she had no acceptable alternative but to take up the employment offer, given the fact that she had travelled back to her home country and returned to Switzerland after a break in her employment.<sup>71</sup>
- In a 6 March 2020 judgment, the High Court of Bern confirmed the conviction (issued by the Bernese Jura-seeland Regional Court on 11 July 2018) for multiple counts of aggravated THB (Article 182(2) CC, acting for commercial gain), encouraging prostitution (Article 195(c) CC), as well as money laundering (Article 305 CC) and encouragement of unlawful entry and stay (Article 116(3)(a) of the Federal Act on Foreign Nationals and Integration) against a Thai national and sentenced her to 10.5 years' imprisonment and a suspended monetary penalty of 180 daily rates of CHF 30 (31 euros). The court found that the defendant had lured 75 Thai women and transgender persons to Switzerland and Denmark between 2009 and 2014, where they were forced to engage in prostitution. She charged 58 of the victims between CHF 25,000 and 30,000 (between 26,300 and 31,570 euros) for their travel expenses, tourist visas and the arrangement of employment in Switzerland, which they had to pay off by engaging in prostitution. Two of the operators of brothels where victims worked had to pay placement fees for each victim (up to CHF 12,000), which the victims had to pay off as well. The court found that the fact the victims were indebted, were working illegally, as well as that they did not speak the language and were afraid of the police made them particularly vulnerable and dependent on the defendant. The court confiscated around CHF 15,000 (approximately 15,570 euros) of the defendant's assets and ordered her to pay between CHF 16,000 (16,606 euros) and CHF 25,000 (25,948 euros) of compensation to them, as well as punitive damages ranging between CHF 10,000 (10,376 euros) and CHF 35,000 (36,329 euros).

<sup>71</sup> See <https://www.tagesanzeiger.ch/zuercher-obergericht-spricht-ehespaar-weitgehend-frei-437554966433>.

109. According to the Swiss authorities, it usually takes between nine months and a year and a half from the filing of the indictment to the conclusion of the first instance proceedings in THB cases, while the second instance proceedings can last up to two years. However, GRETA was informed that the criminal proceedings in THB cases can last for years, which puts an additional strain on the victims. By way of example, in one case from Geneva, the criminal complaint was submitted in 2015 and it took until April 2023 for the prosecutor to close the case. In Geneva, the frequent turnover of prosecutors further contributes to the excessive length of the proceedings.

110. GRETA is concerned by the low number of prosecutions and convictions in THB cases in Switzerland, the absence of convictions of legal entities, and the excessive length of criminal proceedings in some THB cases. GRETA stresses that failure to convict traffickers and the absence of effective, proportionate and dissuasive sanctions undermines efforts to support and empower victims to testify and to combat THB.

111. Consequently, **GRETA urges the Swiss authorities to take measures to ensure that THB offences are investigated and prosecuted effectively, leading to proportionate and dissuasive sanctions, in particular by:**

- **ensuring that human trafficking offences for different forms of exploitation, including labour exploitation, are proactively and promptly investigated, by allocating sufficient resources to the police and prosecution services.**
- **ensuring that human trafficking offences are classified as such every time the circumstances of a case allow it, and are not qualified as other offences, by taking into account all of the different means applicable, which are part of the international definition of human trafficking.**

112. **Further, GRETA considers that the Swiss authorities should take steps to:**

- **ensure that the length of court proceedings in cases of trafficking of human beings is reasonable, in line with the case-law of the European Court of Human Rights (Article 6, paragraph 1 of the ECHR) and the standards set by the European Commission for the Efficiency of Justice (CEPEJ);<sup>72</sup>**
- **ensure that THB cases are handled by specialised police officers and prosecutors and continue to improve the knowledge of investigators, prosecutors and judges about the seriousness of THB, the severe impact of exploitation on the victims and the need to respect their human rights.**

## **8. Non-punishment provision (Article 26)**

113. Pursuant to Article 26 of the Convention, Parties must provide for the possibility of not imposing penalties upon victims of THB for their involvement in unlawful activities, to the extent that they have been compelled to do so. As previously stressed by GRETA, the criminalisation of victims of THB not only contravenes the state's obligation to provide services and assistance to victims, but also discourages victims from coming forward and co-operating with law enforcement agencies, thereby also interfering with the state's obligation to investigate and prosecute those responsible for THB.<sup>73</sup> Furthermore, GRETA has noted that the absence of a specific provision on the non-punishment of victims of trafficking entails a risk of differential treatment, depending on the prosecutor in charge of the case.

<sup>72</sup> <https://rm.coe.int/cepej-2018-26-en-rapport-calvez-regis-en-length-of-court-proceedings-e/16808ffc7b>

<sup>73</sup> See 2nd General Report on GRETA's activities, paragraph 58.



114. There is still no specific provision in Swiss law on the non-punishment of victims of THB for unlawful activities they were compelled to commit. As explained in GRETA's second report,<sup>74</sup> the Swiss authorities rely on the principle that the perpetrator of a criminal offence can only be convicted if he/she acted with the ability to determine or assess the unlawfulness of the act committed (Article 19 of the CC). Pursuant to Articles 15 to 19 of the CC, victims of THB may be exempt from liability if the prosecutor determines that they acted out of legitimate defence or necessity. The conditions under which persons may be exempted from punishment or have criminal proceedings against them suspended are set out in Articles 52 to 54 of the CC. GRETA notes that these provisions are more limited in scope than the non-punishment principle enshrined in Article 26 of the Convention. The determination on whether or not these provisions apply in a specific case is made by the competent prosecutor.

115. The Swiss authorities have once again affirmed that the existing legal framework is sufficient to ensure the non-punishment of victims of THB. According to the authorities, cases in which sanctions are imposed on victims are the result of failure to identify the person as a victim of THB.

116. However, lawyers representing victims of THB met by GRETA referred to cases in which victims were imprisoned or imposed fines for illegal stay, pursuant to the Foreign Nationals and Integration Act, or for engagement in prostitution without declaring the activity, as a result of the fact that the case was handled by non-specialised police officers and prosecutors or that the victim was assigned an *ex officio* lawyer unfamiliar with THB. GRETA is concerned by reports regarding victims of THB who were prosecuted for unlawful activities despite the fact that their status as victims of THB had been clearly revealed through prolonged covert surveillance of traffickers or through their testimony in the criminal case against the traffickers. Even in cases in which the victim's lawyer succeeds in showing that the person is a victim of THB and should not be prosecuted for the offence committed, the decision not to impose the sanction is only made at the end of often lengthy proceedings.

117. Once victims of THB have been punished for unlawful activities they were forced to commit it is very difficult to have the judgment revised and many victims do not have access to specialised lawyers who can assist them in challenging their conviction. There have reportedly been cases in which victims were identified by medical personnel or social workers in prison while they were serving their sentence. GRETA was also informed of cases in which victims returning to Switzerland to testify against their traffickers were obliged to pay outstanding fines which had been imposed for illegal work in prostitution they were forced to commit by their traffickers. Some prosecutors claim that they have to issue fines to prostitutes even if they know they were exploited because otherwise 'it would look suspicious'.

118. Reference can be made to a recent study conducted by the NGO Astrée in the canton of Vaud which analysed THB cases in the period 1 January 2018 – 24 April 2023. Astrée identified 133 victims during this period. Of these victims, 13 persons had proceedings initiated against them for at least one unlawful act committed in Switzerland (12 concerned violations of the Federal Law on Foreigners and Integration, 4 - the illicit exercise of prostitution, 2 – violations of the Narcotics Act, and 2 – stealing).<sup>75</sup>

119. GRETA notes positively the procedure applied by the city and cantonal police of Zurich, described in a flowchart outlining the steps to be taken in case of suspicion that a perpetrator of an offence (especially a violation of the immigration law) may be a victim of trafficking.

120. GRETA is concerned that the continuing lack of a specific provision for the non-punishment of victims of trafficking in the Swiss legal framework exposes many victims of trafficking to prosecution, conviction and detention for unlawful activities they were forced to commit by their traffickers. In GRETA's view, the possibility to apply the general criminal law provision on "legitimate defence or necessity" cannot be considered as an appropriate response because it is narrower in scope than the non-punishment principle enshrined in the Convention and applies after the victim has been prosecuted and punished. GRETA considers that the absence of a specific provision on the non-punishment of victims of trafficking

<sup>74</sup> GRETA's second report on Switzerland, paragraphs 233 and 234.

<sup>75</sup> Aurora Gallino, La non-sanction des victimes de traite des êtres humains : pratique suisse (September 2023).

entails a risk of differential treatment, depending on the prosecutor in charge of the case. The likelihood that victims will be punished for offences they committed even when it is clear that they were victims of trafficking reduces their trust in the criminal justice system and deters them from contacting the authorities and/or specialised organisations, as well as co-operating with the investigations.

121. The National Action Plan on Combating Human Trafficking (2023-2027) envisages training for police and prosecutors on the non-punishment principle (Action 2.2.1) and the development of cantonal directives for the public prosecution services on the application of the non-punishment of victims of trafficking (Action 5.1.1). In their comments on the draft report, the authorities indicated that guidelines for prosecutors on the application of the non-punishment principle were adopted by the Swiss Conference of Public Prosecutors in November 2023. The guidelines elaborate on the legal basis for the application of the principle of non-punishment to victims of trafficking and provide examples of cases in which the principle should be applied (e.g. cases in which the victim enters the country illegally, or is forced to engage in begging and theft). Further, they contain recommendations for the adoption of relevant cantonal directives for the public prosecution services. GRETA welcomes the adoption of these guidelines and notes the importance of ensuring that they are applied consistently throughout the country.

**122. GRETA considers that the Swiss authorities should take further steps to ensure full compliance with Article 26 of the Convention, including by:**

- **ensuring that the guidelines adopted by the Swiss Conference of Public Prosecutors are transposed into cantonal directives in a manner that ensures their consistent application throughout the country;**
- **providing training to public prosecutors and the police on the application of the principle of non-punishment to victims of trafficking;**
- **ensuring that victims of THB are promptly identified as such, in any event before being convicted of offences they were compelled to commit;**
- **encouraging prosecutors to be proactive in establishing whether an accused person is a potential victim of trafficking, and to consider that, having been trafficked, the culpability of the victim may be diminished, or even removed entirely;**

**123. GRETA further considers that the Swiss authorities should keep the implementation of the non-punishment principle under review so as to determine whether legislative amendments are necessary to achieve its objectives, as set out by Article 26 of the Convention, and to guarantee consistency of practice in its implementation.**

## **9. Protection of victims and witnesses (Articles 28 and 30)**

124. Under Article 28 of the Convention, Parties must take the necessary measures to provide effective and appropriate protection from potential retaliation or intimidation to victims and witnesses of human trafficking, as well as to members of civil society organisations supporting victims during criminal proceedings and, where appropriate, to victims' family members. Intimidation of victims and witnesses is nearly always aimed at suppressing evidence against defendants. Effective protection can be of various types (physical protection, relocation, identity change...) and depends on the assessment of the risks that victims and witnesses run. In addition, Article 28(3) provides that a child victim shall be afforded special protection measures, taking into account the best interests of the child. Regarding the period during which the protection measures are to be provided, the Convention aims in a non-exhaustive manner at the period of investigation and of the proceedings or the period following them. The period in which protection measures have to be provided depends on the threats to the persons concerned. Moreover, because trafficking in human beings is often international and some countries are small, Article 28(5) encourages Parties to enter into agreements or arrangements with other countries so as to implement Article 28.

125. Further, Article 30 of the Convention requires Parties to adapt their judicial procedure so as to protect victims' privacy and ensure their safety, including special protection measures for child victims. While the measures provided for in Article 28 address extra-judicial protection, the measures referred to in Article 30 are concerned with the procedural measures to be introduced. The following means can be used, in accordance with the European Convention on Human Rights and the case-law of the European Court of Human Rights, to achieve the objectives of Article 30: non-public hearings, audio-visual technology, recordings of testimony, and anonymous testimony.

126. Measures for the protection of witnesses in criminal proceedings are outlined in Articles 149-151 of the Swiss CCP. They include anonymity, establishing personal details while excluding the parties or the public, closing the hearing to the public, voice and image distortion, the use of protective screens and restricting the parties' right to inspect the files. Article 152 of the CCP provides for protection measures for victims of crime, namely safeguarding the personal privacy of the victim and avoiding, insofar as possible, a confrontation with the accused. Victims of sexual offences have the right to be questioned by a person of the same sex (Article 153 of the CCP). Further, the victim may be accompanied by a person of trust at all hearings, in addition to his/her legal counsel (Article 152 of the CCP). This role can be fulfilled by a psychologist, a social worker or an NGO representative. Specialised NGOs met by GRETA have counsellors who provide support to victims including by accompanying them during court hearings.

127. Extra-procedural protection for victims of crime is primarily provided by cantonal police which has an obligation under the relevant cantonal legislation on policing to prevent direct risks to citizens' lives and physical integrity. If the services providing assistance to victims of trafficking identify any risks to the victim, they shall inform the police and together with them determine the appropriate protection measures.<sup>76</sup>

128. If such measures are insufficient, victims of trafficking can be admitted into a witness protection programme, pursuant to the Federal Law on Extra-Procedural Protection (Ltém), which entered into force on 1 January 2013, and the Ordinance on the Extra-Procedural Protection of Witnesses (Otém) of 7 November 2012. Victims of trafficking who are exposed or may be exposed to serious threat to life or physical integrity or some other serious disadvantage as a result of their collaboration or willingness to collaborate in a criminal law procedure, will be considered as a witness within the meaning of this law. The witness protection programme is implemented by the Witness Protection Service of fedpol.

129. As regards the protection of children in criminal proceedings, see paragraphs 153 and 154.

130. There is no information regarding the number of victims of trafficking who have benefited from protection measures within or outside of criminal proceedings during the reporting period. It appears that no victims of trafficking have been admitted into a witness protection programme. Prosecutors and judges met by GRETA have mentioned cases in which victims of THB testified from behind screens or from another room in order to prevent their re-victimisation. However, it was pointed out that multiple hearings cannot always be avoided during different stages of the proceedings due to the fact that victims often do not provide all of the relevant information at the beginning and additional questioning may be required. Moreover, NGOs have noted that victims may come face to face with the perpetrator when entering or exiting the courtroom or during breaks in hearings, which has a distressing effect on them. NGOs also referred to cases of victims who were exposed to serious threats and violence as a result of their co-operation with the law enforcement, often after they returned to their home country. By way of example, a victim from Hungary who was preparing to come back to Switzerland to testify in court and her family were violently attacked in their home.

<sup>76</sup> See GRETA's first report on Switzerland, paragraph 204.

131. **GRETA considers that the Swiss authorities should make full use of the measures available in law to protect victims and witnesses of THB and to prevent intimidation and secondary victimisation during the investigation, as well as during and after court proceedings. Situations in which victims come face to face with their traffickers in courtrooms should be avoided.**

## 10. Specialised authorities and co-ordinating bodies (Article 29)

132. Under Article 29(1) of the Convention, Parties have to adopt the necessary measures to promote specialisation of persons or entities in anti-human-trafficking action and victim protection. Each country must have anti-trafficking specialists in sufficient numbers and endowed with appropriate resources. The staff of specialised authorities and coordinating bodies should, as far as possible, be composed of both women and men. To combat trafficking effectively and protect its victims, it is essential that proper training is provided to relevant officials.

133. The presence of police and prosecution authorities specialised in THB varies from one canton to another, depending on the size of the canton, its population and available resources. According to the study "Combating Trafficking in Human Beings in the Cantonal Context",<sup>77</sup> which was published in July 2022, around two-thirds of the cantons surveyed<sup>78</sup> have police and prosecution authorities who are specialised in THB. Police officers and prosecutors, designated by their cantons, are considered specialised once they have undergone a week-long course on THB organised annually by fedpol. However, this does not mean that they will work on THB cases exclusively. The National Action Plan to Combat Human Trafficking (2023-2027) envisages that, starting in 2023, the Federal Office for Customs and Border Security and all cantonal law enforcement services should appoint human trafficking specialists (Specific target 2.2) and that training courses should be organised for the police and prosecution staff in the cantons as well.

134. While certain cantons have police teams which investigate THB offences, among others, such as the counter human trafficking and illicit prostitution team in Geneva (around 17 police officers), the specialised team of the judicial police in Bern, and the specialised teams in the cantonal and city police forces in Zurich (20 specialised police officers), other cantons have one or more specialised police officers. By way of example, in the canton of Graubünden, there are two police officers who are specialised in THB, and all police staff is expected to undergo training on THB by 2025. In the canton of Aargau, there are seven police officers who are specialised in THB (as compared to none in 2018), and this number is expected to increase to 10 in 2024.

135. GRETA was informed that a one-day course on the topics of THB and child trafficking, with a focus on the identification of victims, is included in the induction training for border guards from the Federal Office for Customs and Border Security. In addition, refresher courses are provided every two years and border guards also participate in trainings organised by fedpol.

136. Most of the cantons visited by GRETA (see paragraph 6) have specialised prosecutors. There is one specialised prosecutor in the canton of Graubünden, two in Aargau and Zurich, and five in Geneva. There are no specialised prosecutors in Neuchâtel and Valais. GRETA was informed that, in addition to the week-long training organised by fedpol (through the *Institut suisse de police*) and internally, specialised prosecutors can attend training offered by universities and NGOs. One-day training on THB is offered by the Académie des procureurs de Lucerne to all prosecutors.

<sup>77</sup> <https://www.admin.ch/gov/fr/accueil/documentation/communiques.msg-id-90365.html>

<sup>78</sup> Police representatives from 23 and prosecutors from 21 out of the 26 cantons participated in the study.

137. An exchange platform on human trafficking, organised by the Swiss Conference of Public Prosecutors, held its first annual meeting in September 2021. The platform, which aims to facilitate the exchange of practical knowledge on the prosecution of THB cases and to create an informal network of prosecutors working on THB, brings together between 20 and 25 prosecutors. The prosecutors met by GRETA found the platform as well as individual exchanges with colleagues from other cantons to be very helpful in their work. It has also been suggested that the establishment of a database of knowledge on THB would further aid prosecutors in their work, in particular those who are not specialised in THB and who might be assigned to work on THB cases (see paragraph 105).

138. No training on THB is provided to judges in Switzerland and judges do not specialise in any one area of law. Judges met by GRETA have noted that they have access to other training which is of relevance for their work on THB cases, such as courses on the protection of victims and witnesses in criminal proceedings. GRETA was informed that fedpol is conducting a systematic analysis of judgments in THB cases from different cantons, which may be used in future training provided to prosecutors and judges.

**139. GRETA welcomes the existence of specialised police units and prosecutors in some cantons, and the establishment of the exchange platform on human trafficking for prosecutors. Nevertheless, GRETA considers that the Swiss authorities should continue to develop the knowledge and specialisation of police officers and prosecutors. In this respect, the expected national concept on training which is being prepared as part of the third National Action Plan (see paragraph 26) should play an important role in ensuring that there is a systematic and coherent approach to training of relevant professionals, including border and customs officials, labour inspectors, social workers and health-care staff.**

## **11. International co-operation (Article 32)**

140. Article 32 of the Convention requires parties to co-operate to the widest extent possible to prevent and combat THB, to protect and to provide assistance to victims, and to investigate and prosecute cases of THB. International co-operation between State Parties to the Convention is also essential for enabling access to effective remedies for victims of trafficking. Parties must co-operate with one another "to the widest extent possible". This principle requires them to provide extensive co-operation to one another and to minimise impediments to the smooth and rapid flow of information and evidence internationally. As regards international co-operation in criminal matters for the purposes of investigations or proceedings, the provisions of the Convention neither cancel nor replace the provisions of relevant international or regional instruments<sup>79</sup> on mutual legal assistance and extradition, reciprocal arrangements between Parties to such instruments and relevant provisions of domestic law concerning international co-operation.

141. International co-operation in trafficking cases is based on the Federal Law on International Co-operation in Criminal Matters (EIMP; RS 351.1) and the Federal Order on International Co-operation in Criminal Matters of 24 February 1982 (OEIMP, RS 351.11). The Federal Office of Justice is the main government body responsible for the processing of requests for mutual legal assistance in criminal matters. Nonetheless, GRETA was informed that, as a result of Switzerland's federal structure and the ratification by Switzerland of the Optional Protocol to the Convention on Mutual Assistance in Criminal Matters, cantonal authorities can also establish co-operation with their counterparts in other countries which have ratified this protocol either directly or through fedpol.

142. According to the information provided by the authorities, the number of requests for mutual legal assistance in THB cases received by the Swiss authorities was 14 in 2018, five in 2019, 17 in 2020, 17 in 2021, and 12 in 2022. During the same period, the Swiss authorities sent a total of 19 requests to other countries (five in 2018, three in 2019, 2020 and 2021 respectively, and five in 2022). These statistics do not include cases in which co-operation was established directly between cantonal authorities and the

<sup>79</sup> For example, the European Convention on Extradition, the European Convention on Mutual Assistance in Criminal Matters and its protocols, Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member states, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

authorities of other states. During the period 2018-2023, the Swiss authorities received 13 requests for extradition and sent five such requests to other countries.<sup>80</sup> GRETA was also informed that the number of requests from other countries (e.g. Romania) concerning suspicious financial activity reports increased significantly in 2022.

143. GRETA was informed that fedpol co-operates closely with Interpol, Europol and Eurojust. This co-operation may lead to the establishment of joint investigation teams (JITs) with other countries, either through Eurojust or bilaterally. According to information provided by the Swiss authorities, in the period 2019-2023, Switzerland was involved in 36 THB investigations facilitated through Eurojust (19 concerned cases initiated by Switzerland and 17 by other countries). By way of example, a JIT established between Switzerland and Hungary with the support of Eurojust and Europol, concerning THB for sexual exploitation of Hungarian women in Switzerland, resulted in the arrest of four suspects in the two countries in November 2022, as well as the confiscation of perpetrators' assets in Hungary.<sup>81</sup> In 2022 and 2023, fedpol co-ordinated the co-operation between cantons and the authorities of other countries in 17 and 16 investigations respectively.

144. The Swiss authorities also participated in Operation Lotus, initiated in 2020 by Belgium and co-ordinated through Europol, which included the authorities of Denmark, Germany, the Netherlands, Norway, Poland, and Spain. The investigation concerned alleged trafficking of victims from China for the purpose of sexual and labour exploitation by an organised network and involved investigations and arrests in several cantons.<sup>82</sup> The investigation by the Swiss authorities resulted in the arrest of five persons in May 2022 in the canton of Bern, two persons in September 2022 in the canton of Solothurn, three persons in June 2023 in the canton of St. Gallen, and around 12 persons in the canton of Geneva in June 2023. In addition, two persons wanted by the Belgian authorities were arrested in February 2023. The criminal proceedings in the cases, which concerned around 200 alleged victims, are ongoing.

145. Further, the Swiss authorities (fedpol coordination with cantonal police authorities, the SEM and the FOCA) participate in Joint Action Days (JAD) co-ordinated by Europol within the framework of EMPACT (European Multidisciplinary Platform Against Criminal Threats). In 2022, Switzerland took part in JADs against THB for the purpose of labour exploitation (15-21 June 2022) and JADs against THB for the purpose of sexual exploitation, forced begging and forced criminality (24-30 October 2022). Moreover, Switzerland participated in Action OA 4.1. of the EMPACT OAP (operational action plan) in 2022 concerning financial investigations and asset recovery related to THB. The participation of the Swiss authorities was extended to cover 2023. Further, in May 2023, Switzerland became a partner in the EU-funded project THB Liberi, led by the German Federal Police Office (BKA), which concerns children and young adults.

146. The Swiss authorities also rely on the assistance of police liaison officers (attachés de police) stationed in other countries, such as Thailand, who facilitate co-operation in particularly urgent or sensitive matters, in cases where the exchange of information through other channels is not possible. For example, they may participate in investigations related to cases of online sexual abuse of children.

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<sup>80</sup> In 2023, the authorities also sent inquiries to Austria, Greece and Bulgaria with regard to whether those countries wished to have three alleged perpetrators who were under investigation in Switzerland for forcing one person to beg extradited to be prosecuted for acts previously committed in those countries.

<sup>81</sup> <https://www.eurojust.europa.eu/news/eurojust-assists-hungary-and-switzerland-dismantling-human-trafficking-network>.

<sup>82</sup> <https://www.europol.europa.eu/media-press/newsroom/news/first-forensic-sprint-europol-to-speed-human-trafficking-investigations>.

147. The Swiss Agency for Development and Co-operation (SDC) and the Peace and Human Rights Division, within the Federal Department of Foreign Affairs (FDFA), implement programmes in countries of origin of victims of trafficking aimed at combating THB. For example, the FDFA has funded programmes in selected EU states from which victims of trafficking in Switzerland often originate. The second phase of co-operation programmes with Hungary, Bulgaria and Romania will focus, *inter alia*, on prevention, victim support, and return and reintegration of victims of trafficking, in partnership with IOM and local NGOs. The programmes will entail significant financial support from the Swiss authorities, namely, CHF 2 million (EUR 2.1 million) for Hungary, CHF 1.7 million (EUR 1.8 million) for Bulgaria, and CHF 3 million (EUR 3.15 million) for Romania. The FDFA also provides support to NGOs and international organisations working on prevention of THB and providing assistance to victims of trafficking. By way of example, the Peace and Human Rights Division has supported the work of the Mixed Migration Centre and the UNODC, in particular with regard to the identification and prevention of risks faced by persons fleeing the war in Ukraine, together with SEM, the Nigerian NGO Women Aid Collective (WACOL) which seeks to empower survivors of trafficking, the Nigerian National Agency for the Prohibition of Trafficking in Persons (NAPTIP), as well as the Global Alliance Against Trafficking in Women (GAATW) through a project supporting women migrant workers in South Asia.

**148. GRETA welcomes the Swiss authorities' active participation in international co-operation related to combating THB, including the setting up of JITs in THB cases and co-operation in financial investigations, as well as the programmes implemented in countries of origin of victims of trafficking by the Federal Department of Foreign Affairs, and invites them to continue their efforts in this respect.**

## 12. Cross-cutting issues

### a. gender-sensitive criminal, civil, labour and administrative proceedings

149. As noted in CEDAW General recommendation No. 33 on women's access to justice, discrimination against women, based on gender stereotypes, stigma, harmful and patriarchal cultural norms and gender-based violence, which affects women in particular, has an adverse impact on the ability of women to gain access to justice on an equal basis with men.<sup>83</sup> The Council of Europe Gender Equality Strategy 2018-2023 notes that while accessing justice might be difficult for everyone, it is even more so for women, due to gender inequality in society and in the justice system, and therefore one of the objectives of the Strategy is to ensure the equal access of women to justice.<sup>84</sup> GRETA notes that in the case of trafficking in human beings, gender stereotypes, prejudices, cultural barriers, fear and shame impact women's access to justice, and these barriers may persist during investigations and trials. This is particularly true for some groups of women, such as victims of gender-based violence, migrant, refugee and asylum-seeking women, ethnic minority women and women with disabilities. On the socio-economic level the obstacles include lack of awareness of one's legal rights and legal procedures or of how to access legal aid, which can stem from gender differences in educational levels, and access to information. A further obstacle may be the lack of financial resources, including the means to pay for legal representation, legal fees, judicial taxes, transportation to courts or child care.<sup>85</sup> Such obstacles, and remedies to them, are listed in a Council of Europe training manual for judges and prosecutors on ensuring women's access to justice, as well as in the publication "Women's Access to Justice: Guide for Legal Professionals".<sup>86</sup>

<sup>83</sup> CEDAW General recommendation No. 33 on women's access to justice, paragraph 8, CEDAW/C/GC/33 of 3 August 2015: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/33&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/33&Lang=en)

<sup>84</sup> Council of Europe Gender Equality Strategy 2018-2023, pp.24-26, <https://rm.coe.int/prems-093618-gbr-gender-equality-strategy-2023-web-a5/16808b47e1>

<sup>85</sup> Council of Europe training manual for judges and prosecutors on ensuring women's access to justice, page 13 available at <https://rm.coe.int/training-manual-women-access-to-justice/16808d78c5>

<sup>86</sup> Available at: <https://rm.coe.int/factsheet-womens-access-to-justice/16808ff44e>

150. According to the CCP, victims of sexual offences may ask to be questioned by a person of the same sex (Article 153), and in case they require interpretation they will be appointed a person of the same sex to serve as an interpreter (Article 68). There is no information available with regard to the application of these rules to victims of trafficking in practice. The Swiss authorities indicated that training has been provided to prosecutors and police officers on interviewing female victims in a manner that avoids their re-traumatisation.

151. GRETA notes the concern expressed in CEDAW's Concluding observations on the sixth periodic report of Switzerland<sup>87</sup> that women victims of gender-based violence are deterred from filing cases due to gender stereotypes within the judiciary, as well as a study indicating that women are significantly less likely than men to be parties to proceedings before the federal court.

152. The Swiss authorities have referred to Article 8(3) of the Constitution as well as in the Federal Act on Gender Equality of 24 March 1995 (LEg, RS 151.1) which provide for equality between women and men. They further note that the Federal Office for Gender Equality (Bureau federal de l'égalité entre femmes et hommes) is committed to the elimination of all forms of direct and indirect discrimination based on gender.

b. child-sensitive procedures for obtaining access to justice and remedies

153. In addition to measures outlined in paragraphs 126-128, Article 154 of the CCP lays down special measures for the protection of child victims<sup>88</sup> in criminal proceedings. Specifically, the first examination of the child must take place as soon as possible and the person of trust accompanying the child may be excluded from the hearing if that person could exert a decisive influence over the child. If the examination hearing or the confrontation hearing could represent a serious psychological burden for the child, the following rules shall be applied: a cross-examination with the accused can be ordered only if the child expressly requests it or the accused's right to be heard cannot be guaranteed in any other way; the child cannot normally be interviewed more than twice during the entire proceedings; a second interview can take place only if the parties were unable to exercise their rights at the first interview or the examination hearing is essential for the interests of the enquiries or of the child; if possible, the child shall be interviewed by the same person who conducted the first interview; hearings must be conducted in the presence of a child specialist by an investigating officer specially trained for this purpose; and unless a confrontation hearing is held, audio and video recordings shall be made of the examination hearing.

154. According to GRETA's interlocutors, these measures are applied in cases involving child victims of trafficking. Reference was made to the use of dedicated rooms for the interviews of victims of trafficking, including children, by the police and prosecutors, as well as the fact that interviews with child victims are as a rule conducted by specially trained police officers. Moreover, GRETA was informed that training is provided to prosecutors with regard to the conduct of hearings involving child victims.

**155. GRETA invites the Swiss authorities to continue to ensure that child-sensitive procedures are consistently used when investigating, prosecuting and adjudicating cases of THB, in line with the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice,<sup>89</sup> including measures to ensure that there is a sufficient number of child-friendly interview rooms across the country.**

<sup>87</sup> CEDAW, Concluding observations on the sixth periodic report of Switzerland, adopted in October 2022, paragraphs 23-26.

<sup>88</sup> Pursuant to Article 154(1), a child is considered to be any person who is under the age of 18 at the time of their examination.

<sup>89</sup> Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies).



### c. role of businesses

156. The National Action Plan for the Implementation of the UN Guiding Principles on Business and Human Rights, initially adopted by the Federal Council in 2016, was revised in 2020 and the Swiss Business and Human Rights Forum was launched in 2021. In addition, the action plan concerning corporate social responsibility which had been adopted in 2015 was revised in January 2020 with a focus on further implementation of the OECD "Due Diligence Guidance for Responsible Business Conduct" in various sectors including agriculture, the textile industry, and the financial sector. In order to support Swiss companies in implementing due diligence in their supply chains, the federal authorities organise meetings of the abovementioned Business and Human Rights Forum as well as workshops which provide training to the relevant actors.

157. GRETA was informed that the popular initiative for responsible companies which had been launched in 2016 and which called for companies to be obliged to protect human rights and the environment in all of their business dealings, including abroad throughout their supply chains<sup>90</sup> was approved in a popular vote but rejected by the cantons in 2020. On 1 January 2022 an indirect counter-proposal of the Swiss Parliament came into force, pursuant to which large companies and financial institutions are required to publish non-financial information in their reports (as foreseen in Directive 2014/95/EU), including information on working conditions and respect for human rights, as well as to exercise due diligence and report child labour. Companies are required to submit their first reports in 2024 for the financial year 2023.

158. In January 2021, a revised Federal Law on Public Procurement (LMP; SR 172.056.1)<sup>91</sup> and the Ordinance on Public Procurement (OMP; SR 172.056.11)<sup>92</sup> came into force. The new law incorporates provisions on the protection of workers and working conditions which had previously been outlined in the ordinance. In relation to goods, construction work and services to be provided in Switzerland, contracting authorities may exclude or sanction suppliers who do not comply with the standards on protection of workers, working conditions, equal pay and environmental regulations.<sup>93</sup> Under Art. 12(1) of the LMP, public contracts may only be awarded to bidders who comply with the registration and authorisation requirements of the Federal Act on Undeclared Work (LTN; SR 822.41). An employer who has been convicted of a significant or repeated failure to comply with these requirements shall be excluded from future public contracts by the competent cantonal authority for a maximum of five years and may have the financial support granted to it reduced during the same period (Article 13 LTN). SECO maintains a list of employers who have been excluded from public contracts or whose financial support has been reduced, which is publicly available.

159. Further, the Swiss government has published recommendations promoting sustainable procurement and organised a conference on the subject in 2021. The online knowledge platform on sustainable public procurement (PAP) compiles information and instruments for sustainable procurement and makes them available to procurement offices.

160. The third NAP against Trafficking in Human Beings<sup>94</sup> envisages the strengthening of synergies between the NAP and future projects on human rights and the economy as part of combating THB for the purpose of labour exploitation. Further, it foresees activities aimed at raising awareness of trafficking in human beings within the private sector as part of such projects (Specific Target 4.2).

**161. GRETA welcomes the abovementioned legislative and policy measures and considers that the Swiss authorities should strengthen engagement with the private sector, in line with**

<sup>90</sup> See GRETA's second evaluation report on Switzerland, paragraph 230.

<sup>91</sup> [172.056.1 \(admin.ch\)](#)

<sup>92</sup> [RS 172.056.11 - Ordinance of 12 February 2020 on Public Procurement \(OMP\) \(admin.ch\)](#)

<sup>93</sup> With regard to goods, construction work and services to be performed abroad, bidders must at a minimum comply with international environmental conventions and the 10 core ILO conventions, including those on forced labour and child labour.

<sup>94</sup> [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewjKhqmu5ZaFAXUfhPOHHclrCYYQFnoECBUQAQ&url=https%3A%2F%2Fwww.news.admin.ch%2Fnewsd%2Fmessage%2F74538.pdf&usq=AOvVaw2V0q7q5b\\_Gx4st\\_IY-V\\_19&opi=89978449](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewjKhqmu5ZaFAXUfhPOHHclrCYYQFnoECBUQAQ&url=https%3A%2F%2Fwww.news.admin.ch%2Fnewsd%2Fmessage%2F74538.pdf&usq=AOvVaw2V0q7q5b_Gx4st_IY-V_19&opi=89978449)

**the UN Guiding Principles on Business and Human Rights<sup>95</sup> and Council of Europe Committee of Ministers Recommendation CM/Rec(2016)3 on human rights and business,<sup>96</sup> with a view to raising awareness of the important role and responsibility of businesses in supporting the rehabilitation and recovery of victims, and to provide access to effective remedies.**

d. measures to prevent and detect corruption

162. Trafficking in human beings may be engaged in by organised criminal groups, which frequently use corruption to circumvent the law and money laundering to conceal their profits, but it can occur in other contexts. Consequently, other Council of Europe legal instruments are also relevant to combating human trafficking, in particular those designed to combat corruption, money laundering and cybercrime. The Council of Europe body with the main role to play in the fight against corruption is the Group of States against Corruption (GRECO). Its country reports are relevant in addressing structural shortcomings in preventing corruption, including potentially in a THB context.

163. In its Second Compliance Report concerning the Fourth Round of Evaluation, published on 10 June 2021,<sup>97</sup> GRECO noted that while all recommendations in respect of prosecutors had been implemented, a number of recommendations which pertain to the prevention of corruption in respect of judges had not been fully implemented. GRECO noted positively progress made with regard to the adoption of the Justice Initiative, aimed at ensuring that judges at the Federal Supreme Court have increased independence from political parties, in particular during the appointment, election and re-election process and called for it to be continued with a view, *inter alia*, to achieving greater objectivity in the recruitment of federal court judges and introducing a system of disciplinary measures.

164. GRETA was informed that no cases with a link between trafficking in human beings and corruption were identified during the reporting period. The Swiss authorities have noted that state officials who are involved in human trafficking may be held liable pursuant to Article 25 of the CC (complicity) in conjunction with Article 182 of the CC (THB), as well as under Article 312 of the CC which concerns abuse of public office. The Federal Act of 15 March 1958 on the Liability of the Confederation, its Authorities and Civil Servants (LCRF; SR 170.32), provides in Article 15 that authorisation from the Federal Department of Justice and Police is required to initiate criminal proceedings against civil servants for offences related to their official activity or position. Under Article 7(2) of the CCP, cantonal authorities may make the initiation of criminal proceedings against members of the executive or the judiciary for crimes or offences which were committed in the exercise of their official functions subject to authorisation by a non-judicial authority. With regard to the prevention of bribery of public officials, the authorities have referred to the provisions in Articles 322<sup>ter</sup>-322<sup>septies</sup> of the CC. Also relevant in this context are the Federal Act of 17 December 2004 on the principle of transparency in the administration (LTrans), the Federal Personnel Act of 24 March 2000 (LPers), as well as cantonal laws on personnel.

<sup>95</sup> [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

<sup>96</sup> [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 1249th meeting of the Ministers' Deputies.

<sup>97</sup> GRECO, Fourth evaluation round, Second compliance report on Switzerland, paragraph 74. Available at : <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a2c9d1>.

## V. Follow-up topics specific to Switzerland

### 1. Measures to prevent and combat trafficking for the purpose of labour exploitation

165. In its second report, GRETA urged the Swiss authorities to increase their efforts to proactively identify victims of trafficking for the purpose of labour exploitation, by broadening the mandate of labour inspectors to cover the detection of cases of THB and reinforcing their capacity and training. GRETA also considered that the authorities should establish effective mechanisms to allow irregularly present migrant workers to lodge complaints in respect of labour standards against employers and obtain effective 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.

166. THB for the purpose of labour exploitation has received increased attention in Switzerland since GRETA's second report. Following up on the results of the 2016 study "Labour exploitation in the context of human trafficking - An assessment of the situation in Switzerland",<sup>98</sup> the Labour Directorate of the State Secretariat for Economic Affairs (SECO) launched an awareness-raising campaign in 2020 for labour inspectors and labour market inspectors on the subject of trafficking in human beings for labour exploitation.<sup>99</sup> The aim was to raise awareness of the issue and give them practical tools to identify potential victims. The campaign included the publication and distribution of a brochure<sup>100</sup> on labour exploitation for cantonal labour and labour market inspectors, which provides a definition of labour THB, indicators, examples of situations, and addresses of NGOs supporting victims. The brochure informs labour inspectors that they can analyse the situation with the help of the indicators, inform the persons concerned of their rights to assistance regardless of their immigration status, and provide them with contact details of specialised NGOs. Further, the brochure clarifies that in case of detecting indicators of THB during an inspection, labour inspectors should transmit the information to the criminal justice authorities, without violating in doing so the obligation to protect professional secrets. The brochure has been promoted among labour inspectors as well as heads of cantonal employment and migration offices, social partners and NGOs. The campaign continues under the third NAP (2023-2027).

167. In 2021 and 2022, two one-day regional workshops and one cantonal workshop on THB for labour exploitation, financed by SECO and co-ordinated by the NGO ACT212, were organised. These workshops raised awareness among 80 labour inspectors from 18 cantons, as well as representatives from the police, public prosecutors, migration offices, social partners and NGOs. The workshops covered different aspects of the problem, including legislation and the protection of victims, and provided an opportunity for participants to share practical experiences. The training continued to be rolled out in 2023. Further, in October 2021, a workshop on the role of trade unions in combating THB was organised by IOM, with the participation of SECO. In November 2019, the *Centre Suisse de compétence pour les droits humains* (CSDH) organised a seminar on THB for labour exploitation, which was attended by labour inspectors and police officers from different cantons. While these training initiatives are welcome, GRETA notes the benefits of integrating the issue of THB into the regular (initial and ongoing) training of labour inspectors and labour market inspectors.

168. In 2021, the fifth edition of the counter-trafficking action weeks organised by IOM Bern on the occasion of the European Day against Human Trafficking (18 October) focused on THB for labour exploitation. Throughout the month of October, 24 events were organised in eight cantons and online by public services and partner organisations, including lectures, presentations, film screenings, expert roundtables, webinars, podcasts and street actions. In total, some 1,077 people participated online or

<sup>98</sup> <https://www.fedpol.admin.ch/dam/fedpol/de/data/aktuell/news/2016/2016-04-06/ber-sfm-menschenhandel-d.pdf.download.pdf/ber-sfm-menschenhandel-d.pdf>

<sup>99</sup> [Awareness raising on trafficking in human beings for labour exploitation \(admin.ch\)](https://www.fedpol.admin.ch/dam/fedpol/de/data/aktuell/news/2020/2020-04-06/ber-sfm-menschenhandel-d.pdf.download.pdf/ber-sfm-menschenhandel-d.pdf)

<sup>100</sup> [www.seco.admin.ch/menschenhandel](https://www.seco.admin.ch/menschenhandel)

directly on site in these actions. In addition, an even larger number (estimated at around 450,000 people) were sensitised through various online, radio and podcast campaigns.<sup>101</sup>

169. According to the authorities, the awareness raising and training efforts have led to increased operational implementation efforts in the cantons. There are reports of more checks and investigations in the construction industry, domestic work, nail shops and other sectors of the economy, even if these cases are not yet reflected in the statistics. As mentioned in paragraph 26, the NAP for 2023-2027 includes as a strategic goal the effective combating of trafficking in human beings for the purpose of labour exploitation and includes a series of relevant measures, including the possibility of creating a separate offence of THB for the purpose of labour exploitation (see paragraph 93). Another objective is to raise the awareness of labour and labour market inspectors of the signs of human trafficking to enable them to identify it and respond appropriately. Their role and tasks as well as co-operation with other actors should be clarified. Further, it is planned to raise awareness in the private sector (see paragraph 160).

170. The cantonal authorities responsible for supervising the labour market have been integrated in the cantonal roundtables for anti-trafficking co-operation in 18 cantons (see paragraph 22). However, except for Geneva, where there is a working group of the cantonal round-table devoted to labour exploitation and involving the trade union SIT (*Syndicat interprofessionnel des travailleuses et travailleurs*), none of the round-tables include trade union representatives. SIT has recently warned about an increasing number of THB cases, especially in the construction industry, and has asked for greater protection of victims of trafficking and the application of the principle of non-punishment to them.<sup>102</sup>

171. There have been no changes to the mandate of labour inspectors to cover the detection of cases of THB, as recommended by GRETA in its second report, and the Swiss authorities have indicated that there are no plans to include detection of THB in the mandate of labour inspectors. As explained in the second report,<sup>103</sup> there are three different groups of labour inspection bodies in Switzerland. First, there are the cantonal labour inspectorates, whose mandate is to check the application of the Labour Law (LTr; RS 822.11) and the regulations on the protection of health and safety at work. Second, there are cantonal agencies responsible for monitoring illegal work pursuant to the Law on Measures to Combat Illegal Labour (LTN; RS 822.41), referred to as 'labour market inspectors'. They receive reports and check whether employers and employees comply with their obligations of declaration and authorisation arising under social insurance law, legislation on foreigners and law governing taxation at source. Third, there are inspection bodies under the Federal Law on Workers Posted from Foreign Countries (RS. 823.20). This law obliges foreign employers who post their workers to Switzerland to respect the wage payment and working conditions defined by the Swiss federal legislation, decrees of the Federal Council, collective agreements and standard work contracts. The situation is monitored by the federal and cantonal tripartite commissions, which have received information and training of THB by SECO. The Swiss authorities have stressed once again that cantonal labour inspectors are obliged to follow the application of labour legislation and health and safety regulations, and therefore THB does not form part of their mandate. The updated list of indicators of THB developed by fedpol has been distributed to labour inspectors and labour market inspectors who, when they suspect a case of THB during an inspection, should report this to their hierarchy or an independent internal body, so that the information can be forwarded to the police. Combined labour controls are frequently carried out together with cantonal migration authorities, health control authorities and/or the cantonal police. However, there are no statistics on the number of presumed victims of THB detected during labour inspections.

<sup>101</sup> [Prévention et coopération | IOM Switzerland](#)

<sup>102</sup> <https://www.tdg.ch/esclavage-moderne-a-geneve-un-syndicat-reclame-une-task-force-contre-la-traite-des-humains-739588201459>.

<sup>103</sup> See paragraph 74 of GRETA's second report.

172. Labour market inspectors are, *inter alia*, responsible for domestic work inspections and can enter private households if they receive a notification. Switzerland has ratified the ILO Convention 189 on Domestic Work. In the area of domestic work, there is a national minimum wage, unlike other sectors of work where this is not the case.<sup>104</sup> In the canton of Geneva, in the context of the operation "Papyrus" (targeting the regularisation of undocumented foreign workers), the cantonal office of inspection of work relations (OCIRT) has reportedly carried out thousands of checks in the domestic work sector in order to ensure respect of the minimum wage. Most of the employers complied with the measures imposed by OCIRT and only a few were reported to the prosecutor's office. Also in Geneva, the trade union SIT covers the domestic work sector. SECO publishes annual statistics concerning inspections carried out by cantonal authorities as part of measures to combat illegal work. In 2022, the cantonal authorities inspected 408 private households and 558 persons.<sup>105</sup> As regards detected cases on THB for the purpose of domestic work, including in diplomatic households, see paragraph 107.

173. GRETA was informed that the agricultural sector is excluded from the Labour Law and the mandate of labour inspectors. The Foundation Agriss,<sup>106</sup> which is self-regulated and carries out surveillance on compliance with safety requirements for agricultural and horticultural machinery, protection of the health of workers, and prevention of abusive child labour, has a mandate to perform controls specifically about the salary paid out to workers. It covers the whole territory of Switzerland. GRETA was informed that Agriss' mandate does not include detection of THB in the agricultural sector, nor is Agriss included in the sensibilization campaign implemented by SECO. The agricultural sector is also subject to inspections under the Federal Law on Workers Posted from Foreign Countries, in relation to the minimum wage requirements, as well as to inspections under the Law on Measures to Combat Illegal Labour, which are conducted by the cantonal authorities and concern compliance with the reporting and authorization obligations under social insurance, foreigners and tax legislation.

174. As noted in the chapter on investigations/prosecutions/convictions, the way in which THB is criminalised in Swiss law, namely the absence of the "means" element and the lack of a definition of the concept of "labour exploitation", creates problems for the prosecution of cases of THB for the purpose of labour exploitation.<sup>107</sup> The identification of victims of THB for the purpose of labour exploitation by specialised NGOs is often questioned by the criminal justice authorities, the migration authorities and LAVI centres. It is still rare for cases of labour exploitation to be identified as cases of THB and for the victims to be put in contact with specialised organisations by labour inspectors or law enforcement authorities. The frequent qualification of cases of THB as profiteering (Article 157 of the CC) deprives victims of access to rights and protection, including to residence permits and assistance under the LAVI. According to specialised NGOs, there is a lack of agreements or mechanisms for collaboration between labour inspectors, trade unions and organisations specialising in the protection of victims in many of the cantons.

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<sup>104</sup> [Salaire minimum pour les travailleurs domestiques \(admin.ch\)](#)

<sup>105</sup> [Rapport LTN 2022 - Exécution de la loi fédérale concernant des mesures en matière de lutte contre le travail au noir,](#)

p. 21.

<sup>106</sup> [Home \(agriss.ch\)](#)

<sup>107</sup> Annatina Schultz, "Extortion and usury as provisions to address labour exploitation? On the necessity of a separate law or provision criminalising labour exploitation."

175. **GRETA welcomes the increased attention to combating THB for the purpose of labour exploitation, including the development of awareness-raising and training on THB, as well as the including of labour inspectors in the cantonal round-tables. Nevertheless, the Swiss authorities should take further measures to combat THB for the purpose of labour exploitation, taking into account Recommendation CM/Rec(2022)21 of the Committee of Ministers<sup>108</sup> and GRETA's Guidance Note on combating trafficking for labour exploitation.<sup>109</sup> In this regard, GRETA urges the Swiss authorities to:**

- **ensure that labour inspectors can effectively detect and follow up on cases of THB, including in the agricultural sector;**
- **ensure that cantonal labour inspectors, labour market inspectors, inspectors of posted workers, law enforcement officers and other relevant actors increase their capacity to proactively detect victims of THB for the purpose of labour exploitation, paying particular attention to at-risk sectors, and to collect evidence enabling the prosecution of cases of THB.**

176. **Further, GRETA considers that the Swiss authorities should take steps to:**

- **develop co-operation with specialised NGOs and trade unions in identifying victims of THB, including during labour inspections, and referring them to assistance;**
- **develop specific guidelines<sup>110</sup> on the investigation of THB for the purpose of labour exploitation in order to gather all necessary evidence, using special investigative techniques and carrying out financial investigations, in order to decrease reliance on trafficked persons' evidence and ensure that cases of THB for labour exploitation are not requalified as profiteering or other offences which deprive victims of access to rights and protection;**
- **encourage trafficked persons to self-identify as victims of trafficking, including through establishing safe reporting and effective complaint mechanisms for foreign workers, concrete possibilities of regularisation of the trafficked person's residence status and access to the labour market, the provision of targeted and tailored support services;**
- **put in place practical co-operation and data sharing agreements between labour inspectors and law enforcement in order to ensure that personal information of workers, whether collected in the course of labour inspections, joint inspections, reporting or complaints mechanisms, is not used for immigration enforcement purposes, but to tackle the perpetrators of trafficking offences;**
- **further train labour inspectors, as well as law enforcement officers, prosecutors and judges, on THB for the purpose of labour exploitation and the rights of victims;**
- **ensure that sufficient resources are made available to labour inspectors to carry out proactive and unannounced inspections;**
- **strengthen the monitoring of domestic work and agriculture;**
- **raise awareness among the general public as well as, in a targeted manner, among migrant workers, about the risks of trafficking for the purpose of labour exploitation;**
- **develop data collection on the number of presumed victims of trafficking detected during labour inspections and referred to the police.**

<sup>108</sup> [https://search.coe.int/cm/pages/result\\_details.aspx?objectid=0900001680a83df4](https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a83df4).

<sup>109</sup> <https://rm.coe.int/guidance-note-on-preventing-and-combating-trafficking-in-human-beings-/1680a1060c>.

<sup>110</sup> See GRETA's Guidance Note on combating trafficking for labour exploitation, paragraph 90.

## 2. Measures to raise awareness and discourage demand

177. The second NAP provided for various awareness-raising initiatives which were largely implemented. IOM Bern, in collaboration with other stakeholders, has continued to organise awareness-raising events on the occasion of the European Day against Human Trafficking (18 October).<sup>111</sup> The fifth edition of the counter-trafficking action weeks, in 2021, focused on THB for labour exploitation (see paragraph 145). The sixth edition, in October-November 2023, focused on the causes of THB, with some 28 events (including lectures, round-tables, webinars, exhibitions and a flashmob) organised in 11 cantons. The action weeks are partially funded by fedpol (82,000 CHF in 2023 – 85,115.26 euros).

178. Awareness raising has also continued through the work of civil society organisations, such as the Swiss Platform against Human Trafficking, which provides information to potential victims of THB on the websites of its member organisations and through printed materials. The CSP, which is based in Geneva, has renewed its public awareness campaign with Ukrainian-language materials in 2022 (in addition to those already available in French, English, Spanish, Romanian and Russian), publicising the helpline for victims of human trafficking (0800 20 80 20) on public transport, train stations, Facebook and flyers. Further, the NGO ACT212 has focused in recent years on raising awareness of the “loverboy” method. Moreover, the media plays an active role in raising awareness of the public through regular reporting on THB cases.<sup>112</sup>

179. The NGO Perla, set up in 2017, which is active in French-speaking cantons, raises awareness amongst people engaged in prostitution and is lobbying at cantonal and national level for legislation which would strengthen the control over the exercise of prostitution and the punishment of pimps.

180. GRETA notes that the third NAP does not include actions related to discouraging demand for services of victims of THB. As noted in paragraph 97, there is no provision in Swiss law criminalising the use of services of victims of THB, with the knowledge that the person is a victim of THB.

181. **GRETA considers that the Swiss authorities should adopt and strengthen legislative, administrative, educational, social, cultural or other measures to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with civil society, trade unions and the media, including by:**

- **implementing educational programmes at schools, stressing the importance of gender equality and respect for the dignity and integrity of every human being and the consequences of gender-based discrimination;**
- **highlighting the risks of trafficking and other forms of sexual and gender-based violence linked to prostitution, and strengthening awareness-raising campaigns of such risks, targeted at men and boys in particular.**

## 3. Identification of victims of trafficking

182. In its second report, GRETA urged the Swiss authorities to take steps to ensure that all victims of trafficking are properly identified and can benefit from the assistance and protection measures contained in the Convention, in particular by ensuring that a formalised victim identification procedure is put into place in all cantons without delay, defining the roles and responsibilities of all stakeholders and including indicators for identifying victims of different forms of exploitation. GRETA also considered that the Swiss authorities should ensure that increased attention is paid to the proactive detection of victims of trafficking among asylum seekers and persons placed in immigration detention, allowing sufficient time to gather necessary information and taking into account their traumatic experience, and that the application of the Dublin Procedure to presumed victims of THB is reviewed.

<sup>111</sup> [www.18oktober.ch/en](http://www.18oktober.ch/en)

<sup>112</sup> Between January 2021 and December 2023, 881 media articles on the subject of THB were published in Switzerland.

183. As explained in the previous GRETA reports, there is no centralised process for the formalised identification of victims of THB in Switzerland. Anti-trafficking action, including the identification of victims, is organised at the cantonal level. The co-operation agreements against human trafficking negotiated at the cantonal roundtables (currently existing in 20 out of 26 cantons) define the roles, tasks and competencies of the various cantonal agencies and organisations in cases of human trafficking. These agreements, which differ in form from canton to canton, thus serve as a referral mechanism or an identification procedure. There is no competent federal or cantonal authority in Switzerland that can authoritatively determine which victims are recognised as victims of human trafficking, with all the legal consequences that this entails. Instead, identification is carried out through the application of the law of the relevant authority in its area of competence (residence, victim support, return assistance...). As a result, the approach to victim identification remains fragmented.

184. The Swiss authorities have pointed out that for reasons of federalism and legislation, it is not possible to force the cantons to set up round-tables and cooperation mechanisms. In order to achieve the goal, however, innovative approaches have been adopted in the third NAP, according to which all cantons are required to agree on and adopt a cooperation mechanism (Action 1.1.1). The NAP was adopted by the Conference of Directors of Cantonal Justice and Police Departments (CCJPD), which has increased the political pressure on all cantons to set up cooperation agreements.

185. In November 2019, fedpol published an updated list of indicators for identifying potential victims of THB,<sup>113</sup> replacing the old checklist from 2005. The indicators vary according to the purposes of exploitation (sexual exploitation, labour exploitation, forced begging, forced criminal acts, removal of organs, trafficking in children, the "loverboy" method). The list takes into account current developments and contains recommendations on how to use the indicators for identifying victims.

186. According to specialised NGOs, more victims of THB are identified and referred to assistance in cantons where there are organisations specialising in the protection of victims which carry out proactive awareness-raising activities and outreach. However, financial support from the cantons and the Confederation is lacking, limiting the possibilities for proactive identification of victims (see also paragraph 209).

187. The Bern-based NGO ACT212 runs a nationwide hotline (0840 212 212) set up in October 2015 and funded by the federal authorities. According to the 2022 report on the national hotline, a total of 118 declarations concerning 139 persons (84 female, 12 male, 1 transgender, 42 unknown) were received in 2022 (of which 41 concerned sexual exploitation, 12 labour exploitation, 9 the use of the "loverboy" method, 4 forced begging, while it was unclear whether the remainder involved THB or other forms of abuse). The majority of the declarations (30) came directly from the persons concerned, 26 were made by neighbours and other private persons, 19 by clients of sexual services, 17 by friends or family members, 14 by social workers, three by health care staff. Since 2023, the hotline employs a Ukrainian-speaking staff member. The members of the Swiss Platform against Human Trafficking also run hotlines in the cantons where they are active. In 2022, they received 324 referrals of possible victims, of whom 177 were identified as victims of trafficking. In 2021, there were 284 referrals, of which 207 were identified as victims of THB; in 2020, there were 236 referrals and 174 identifications; and in 2019, there were 219 referrals and 142 identifications.<sup>114</sup>

<sup>113</sup><https://www.fedpol.admin.ch/dam/fedpol/de/data/kriminalitaet/menschenhandel/berichte/indikatorenopferidentifizierung-mh-d.pdf.download.pdf/indikatoren-opferidentifizierung-mh-d.pdf>

<sup>114</sup> <https://plateforme-traite.ch/actualites/statistiques-sur-les-victimes-de-la-traite-2022/>



188. Since the second evaluation report, the processes for the detection of potential victims of human trafficking and the processing of their asylum applications have been improved, with regard to the recommendations of GRETA and the conclusions of the report of the Working Group on Asylum and Human Trafficking, published on 25 May 2021.<sup>115</sup> The detection of potential victims of THB in the asylum procedure has increased significantly (see paragraph 14),<sup>116</sup> thanks to awareness-raising measures, training and close cooperation with specialised NGOs. In many cases, it is the legal representatives mandated by SEM who identify presumed victims of THB and put them into contact with specialised services. SEM has developed a concept for the identification of “persons with special needs”, which refers in particular to victims of THB. However, due to the lack of resources, this concept is only partially implemented. GRETA understands that SEM’s victim identification process does not provide for cooperation with specialised NGOs to conduct identification; however, according to the comments on the draft GRETA report, SEM can, upon request, give access to federal asylum centres to NGO representatives. Moreover, it is difficult to examine the facts relating to THB in depth within the context of the accelerated asylum procedure due to time limits. Presumed victims of THB are given a leaflet with the addresses of the cantonal victim support services (LAVI centres). Moreover, as mentioned in paragraph 46, in September 2023 SEM concluded an agreement with the NGO Platform against Trafficking in Persons and FAS Neuchâtel, which came into force on 1 January 2024 and according to which a flyer designed by specialised organisations is distributed to all victims detected by SEM. Information about a THB offence during asylum hearings is automatically transmitted to the police, but presumed victims are not informed of the follow-up to their statements except in cases in which the police opens an investigation into the case.

**189. While welcoming the increase in the number of cantonal round-tables on THB, the adoption of updated indicators and the improvements in the identification of victims of THB amongst asylum seekers, GRETA considers that the Swiss authorities should take additional steps to ensure that all victims of trafficking are identified as such and can benefit from the assistance and protection measures provided for in the Convention, in particular by:**

- **ensuring that a harmonised victim identification procedure is put into place in all cantons without further delay, defining the roles and responsibilities of all stakeholders, and involving specialised NGOs;**
- **involving specialised organisations in the procedure for the identification of victims of THB in the asylum process and providing presumed victims with follow-up on their statements;**
- **finalising and implementing without further delay the national training concept to enable the implementation of regular and mandatory training of all stakeholders who are likely to come into contact with victims of THB;**
- **enabling specialised NGOs with experience in identifying victims of trafficking to have regular access to facilities for asylum seekers, holders of international protection, detention centres for migrants and prisons.**

#### **4. Assistance to victims**

190. In its second report, GRETA urged the Swiss authorities to ensure that all victims under Swiss jurisdiction, including asylum seekers and persons exploited abroad but identified in Switzerland, benefit from assistance measures in accordance with Article 12, paragraph 1, of the Convention. Further, GRETA considered that the Swiss authorities should continue making efforts to provide a sufficient number of accommodation places, offering adequate conditions and adapted to the needs of victims of THB, in all cantons, and secure adequate funding to NGOs assisting victims of human trafficking.

<sup>115</sup> [Rapport sur la traite des êtres humains: le SEM met en œuvre les recommandations \(admin.ch\)](#)

<sup>116</sup> Reportedly, the number of asylum applications in 2023 (30,223) has increased by 23% as compared to the previous year.

191. The legal basis for the provision of assistance to victims of crime, including victims of trafficking, is provided by the Federal Law on Assistance to Victims of Crime (LAVI). Article 2 of the LAVI stipulates that assistance includes urgent advice and support, long-term assistance provided by crime victims support centres, and financial aid for third-party assistance providers. Assistance to victims of human trafficking falls within the competence of the cantons. Pursuant to Article 26 of the LAVI, the responsible canton is the canton in which the offence was committed. If the offence has been committed in more than one place, the responsible canton is the one in which the criminal investigation was first initiated; if no criminal investigation has been initiated, the responsible canton is the canton of residence of the victim; and if the victim does not have a residence in Switzerland, the responsible canton is the canton in which the first request for compensation or redress was made. In April 2023, CDAS issued recommendations on how to determine which canton has competence and should cover the costs of assistance,<sup>117</sup> but GRETA was informed that this determination can take time which can impact the provision of assistance to victims.

192. In order for a victim of trafficking to be eligible for assistance under the LAVI, the offence must have taken place in Switzerland or the victim must be domiciled in Switzerland at the time of the offence and the application for assistance (Article 17 of the LAVI). Consequently, victims who have been trafficked abroad, many of whom are identified within the asylum procedure, do not have the right to assistance under the LAVI. In 2021, an inter-disciplinary working group which included the Cantonal Conference of Social Affairs (CDAS) outlined a proposal for the creation of a case management office run by the federal government and the cantons which would be responsible for facilitating access to assistance for victims who have been trafficked abroad but are identified in Switzerland. This proposal forms part of the National Action Plan 2023-2027 (action 5.2.2). According to the authorities, the proposal has been put on hold pending the decision of the Parliament concerning the legislative initiative described below. GRETA was informed that the CDAS, in co-operation with the cantons, is working to set up a central telephone number for victims of crime which would make it easier for victims to access assistance in the cantons and which is expected to become operational in 2025.

193. In mid-2022, a legislative initiative was submitted to the Parliament with the aim of creating a legal basis for the provision of assistance to victims who have been trafficked abroad. Specifically, the proposal concerned the extension of the application of Article 17 of the LAVI to persons who were victims of criminal offences abroad in cases in which the offence can be prosecuted and punished in Switzerland or in cases involving serious offences which cannot be prosecuted in Switzerland, but in which it would not be reasonable to expect the victim to return to the country where the offence took place in order to receive assistance. The Committee for Legal Affairs (*Commission des affaires juridiques*) of the Council of States (Conseil des États), which is one of the two chambers of the Swiss Parliament, rejected the proposal on 15 August 2023.<sup>118</sup> The proposal has been passed on to the Committee for Legal Affairs of the other chamber of the Parliament, namely the National Council (Conseil National), which is expected to decide sometime in the second quarter of 2024 whether to present it to this chamber for consideration. If this is not the case, the initiative will be terminated.

194. There have been some noteworthy advances in several of the cantons visited by GRETA, such as the adoption of a law on combating THB and an ordinance on the funding of support for victims of THB in Geneva (*arrête du 6 décembre 2022 de Département de la cohésion sociale*), and the issuing of an ordinance on the funding of assistance of victims of THB exploited abroad in Aargau and Valais.

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<sup>117</sup> Conférence Suisse des offices de liaison de la loi sur l'aide aux victimes d'infractions (CSOL-LAVI), Recommandation technique concernant le libre choix du centre de consultation pour l'aide aux victimes et les responsabilités en matière de prestations financières.

<sup>118</sup> <https://www.parlament.ch/press-releases/Pages/mm-rk-s-2023-08-16.aspx>. The Committee also rejected the proposal to extend the right to compensation under the LAVI to victims of crimes committed abroad.

195. Each canton has an obligation to establish a crime victim support centre which provides services adapted to the needs of different types of victims (Article 9 of the LAVI). Assistance is granted to a victim on the basis of a decision of the crime victim support centre of the canton concerned and can be entrusted to a third-party organisation. In many cantons, the cantonal authorities in charge of assisting victims have concluded service or collaboration agreements with specialised NGOs. The type and extent of services covered by the agreements differ between cantons. In German-speaking Switzerland, the NGO FIZ has concluded agreements with nine cantons, namely, Aargau, Basel-Landschaft, Bern, Graubünden (since mid-2023), Lucerne, Schaffhausen, Schwyz, Thurgau and Zurich. Most of the agreements foresee that assistance is paid under the LAVI for six months, after which the welfare offices take over. FIZ also receives referrals from cantons with which it has not concluded an agreement, namely St. Gallen, Glarus, Basel-Stadt, Solothurn, Obwalden und Nidwalden and Zug. The NGO Trafficking.eu has concluded agreements with the cantons of Basel-Stadt, Bern, Fribourg and Solothurn for the accommodation of victims in its shelter in Bern.<sup>119</sup> In Latin Switzerland, specialised services for victims of trafficking are provided by the NGO Astrée in the canton of Vaud and NGOs Centre Social Protestant (CSP) and Au Coeur de Grottes in the canton of Geneva. In the canton of Neuchâtel, since 2021 assistance to victims of THB has been provided by the Neuchâtel Foundation for the Co-ordination of Social Action (FAS), a cantonal consultation service. In the canton of Valais, a decision was taken by the cantonal government (Conseil d'Etat) in May 2023 to set up a specialised organisation funded by the cantonal budget.<sup>120</sup>

196. In the cantons which do not have specialised organisations as well as in some which do (e.g. Ticino), assistance to victims is provided in the first place by the cantonal victim support centres. GRETA's interlocutors have noted that the lack of involvement from specialised organisations means that victims may not receive specialised support and may be placed in accommodation which is not suited to their needs (e.g. a hotel or an apartment).<sup>121</sup> The National Action Plan envisages a one-day training in 2024 for the relevant authorities, including cantonal victim support officials, on the provision of assistance to victims of THB under the Victim Support Act.

197. According to the information provided by the authorities, 193 victims received assistance in 2019, 254 in 2020, 271 in 2021, and 264 in 2022. The assistance included emergency accommodation, lawyers' fees, translation fees, medical services, transportation and other services.

198. The funding for victim assistance comes from the LAVI system and welfare services, in accordance with rules laid down by each canton. However, specialised NGOs, apart from Astrée which is funded entirely by the canton of Vaud,<sup>122</sup> also rely on other sources of funding, including private donors. NGOs met by GRETA highlighted that the funding is insufficient and that in particular federal funding remains limited, despite the increase in such funding in 2023 (see paragraph 29), and is limited to detection of victims, awareness raising and training.

199. The assistance standards are governed by the LAVI and cantonal directives. According to Article 14 of the LAVI, the services available include appropriate medical, psychological, social, material and legal assistance. The contracts concluded with NGOs ensure that these standards are complied with when services are provided. The medical and psychological assistance required from third parties is provided by the NGOs and funded in principle by the sickness insurance funds and secondarily by the cantonal authorities providing assistance to victims. However, GRETA notes that there are no uniform national standards concerning specialised assistance to victims of trafficking and there are important differences between cantons as regards the duration of victims assistance. According to the Recommendations of the

<sup>119</sup> GRETA was informed that the canton of Basel-Stadt provides around CHF 15,000 in funding to the NGO, while the canton of Solothurn does not cover any expenses. The NGO also receives around CHF 60,000 from fedpol which is around 10% of its budget.

<sup>120</sup> Canton de Valais, Décision du Conseil d'Etat du 22 mars 2023. See also <https://www.letemps.ch/suisse/valais/le-valais-veut-lutter-contre-la-traite-d-etres-humains>.

<sup>121</sup> See Angela Oriti, État des lieux des services de protection pour les victimes de traite en Suisse latine et collaborations possibles, Janvier 2023, p. 31.

<sup>122</sup> Astrée's budget, provided by the canton of Vaud, amounts to CHF 1.5 million, and additionally CHF 65,000 is provided by fedpol.

Conference of LAVI Liaison Offices<sup>123</sup> (CSOL-LAVI) of 1 January 2020, immediate assistance, which is meant to address the most urgent needs of the victim (accommodation, legal assistance and medical costs, including psychological support), is provided for a minimum of 35 days, subject to limitations or extensions imposed by the cantons. By way of example, immediate assistance is provided for 21 days in the canton of Ticino, while it can last for up to six months in the canton of Zurich.<sup>124</sup> Long-term support can be provided until the victim's state of health is stable and the impact of the crime is redressed or compensated. When the financing of assistance under the LAVI comes to an end, funding for continued assistance to victims of trafficking is generally provided by the cantonal or municipal welfare assistance system. As noted in GRETA's second report,<sup>125</sup> in 2018 the CSOL-LAVI and CDAS published a document specifying the delimitation and combination of social welfare assistance and assistance to victims.<sup>126</sup>

200. In September 2022, the report "Combating Human Trafficking in a Cantonal Context"<sup>127</sup> was published. It was prepared by a team of researchers from the University of Neuchâtel on behalf of fedpol, and was based on interviews with stakeholders from different cantons and a survey which was sent to the heads of cantonal round-tables or other cantonal authorities, as well as information from specialised prosecutors, police and NGOs. Another study entitled "Stocktaking of the protection services for victims of trafficking in Latin Switzerland" was published in January 2023.<sup>128</sup> It was commissioned by the canton of Vaud and carried out by the NGO Astrée. Amongst the conclusions of the latter study, it was noted that in Geneva, Bern and Vaud cantons, the limited number of victims who have been accommodated and have received residence permits, compared to the number of detected victims, suggested that there was a need for more accommodation options, follow-up and sensitisation of the relevant authorities. Further, the study noted that there is a conflict between the cantonal policies in the area of victim protection and the federal policies in the area of migration management. Victims have no certainty that they would be issued a long-term residence permit, even if they collaborate with the authorities.

201. Specialised shelter accommodation for victims of trafficking in German-speaking Switzerland is provided by the NGOs FIZ (Zurich) and Trafficking.eu (Bern), while the NGO Astrée operates a shelter for victims of trafficking in the canton of Vaud. The NGO FIZ operates shelters for victims of trafficking (houses and apartments) in seven locations, that can accommodate up to 22 female and male victims of trafficking, in separate locations. In Geneva, the NGO Au Coeur des Grottes runs a shelter for women victims of violence, including victims of THB. In other cantons of Latin Switzerland, female victims are accommodated mainly in institutions for victims of domestic violence. While the shelters run by FIZ and Trafficking.eu accept male victims, there is a shortage of specialised accommodation for male victims of trafficking and they are often accommodated in reception centres for adults in difficulty or independent housing (hotels or apartments). There is still a lack of specialised accommodation for victims of THB in many cantons (e.g. Neuchâtel, Fribourg, Ticino). Victims are accommodated in a hotel for a month, paid for by the LAVI provision, but after that it is not clear who should pay for the accommodation. Victims often leave and do not co-operate in the criminal proceedings.

202. GRETA visited the shelter for female victims of trafficking in the canton of Zurich, operated by the NGO FIZ. The shelter is situated in a house and it can accommodate up to five female victims, including transgender persons. In addition to four bedrooms, one of which has two beds that are separated by a wardrobe to give the occupants privacy, the shelter has a kitchen and dining room area, an office for the staff, as well as a garden. One additional bed, placed in an alcove usually used for arts and crafts, can be used for emergency cases during weekends. In case of need, a staff member can be present at all times.

<sup>123</sup> Conférence Suisse des offices de liaison de la loi fédérale sur l'aide aux victimes d'infractions.

<sup>124</sup> Angela Oriti, État des lieux des services de protection pour les victimes de traite en Suisse latine et collaborations possibles, Janvier 2023, p. 11, footnote 20.

<sup>125</sup> GRETA's second evaluation report on Switzerland, paragraph 145.

<sup>126</sup> [http://www.sodk.ch/fileadmin/user\\_upload/Fachbereiche/Opferhilfe/2018.09.18\\_Grundlagenpapier\\_SVK-OHG\\_SKOS\\_Opferhilfe\\_und\\_Sozialhilfe.pdf](http://www.sodk.ch/fileadmin/user_upload/Fachbereiche/Opferhilfe/2018.09.18_Grundlagenpapier_SVK-OHG_SKOS_Opferhilfe_und_Sozialhilfe.pdf)

<sup>127</sup> La lutte contre la traite des êtres humains dans le contexte cantonal (not available in English), available at : <https://www.admin.ch/gov/fr/accueil/documentation/communiqués.msg-id-90365.html>.

<sup>128</sup> <https://www.astree.ch/wp-content/uploads/2023/08/Etudes-AO-Titre-index.pdf>

The occupants prepare their own meals in the kitchen. The shelter has accommodated 34 persons in 2023. The length of their stay varied from several days to several months.

203. GRETA also visited the Fortis shelter operated by the NGO Trafficking.eu in the canton of Bern. The shelter, which is situated in a house in a residential area, accommodates both men and women and has the maximum capacity of eight places in four bedrooms. At the time of GRETA's visit, the shelter was fully occupied, hosting five men, victims of THB for the purpose of labour exploitation in ethnic restaurants, and three women victims of THB for the purpose of sexual exploitation. GRETA was informed that the cost of long-term stay of victims is covered by the cantonal social services. The NGO employs seven full-time staff members, some of whom have a background in social work or in the medical field, and four additional staff who are available to work night shifts and assist victims with specific needs such as accompanying them to doctor's visits. While the shelter covers all of the victims' needs, GRETA notes that the fact that men and women are housed in close quarters may not be appropriate for some victims, particularly those who have been exposed to sexual exploitation. Further, GRETA observed that the information on the notice board was only in German and did not contain information on the rights of victims of trafficking.

204. Further, GRETA visited the shelter for women victims of violence and their children operated by the NGO Au Coeur des Grottes foundation<sup>129</sup> in Geneva. The shelter had recently moved to an eight-floor building (a former hotel) near the main station of Geneva, which was in the process of refurbishment and readaptation at the time of the visit. In 2023, 10 victims of THB were accommodated there (including a child); while some of them left quickly, others have stayed for several years. Some of the victims are referred to a shelter by NGOs from other French-speaking cantons, such as Astrée. There are 39 staff members ensuring round-the-clock presence, including three psychologists, two social workers and educators. The NGO receives funding from the cantonal authorities and also relies on a local and national network of partners and donors to provide accommodation and a range of support activities, including French language courses, yoga and vocational training with a view to reintegrating victims into working life. A contract with the canton of Geneva was expected to be concluded in 2024, guaranteeing funding for four years.

205. As noted in paragraph 14, there has been an increase in the number of victims who are identified in the asylum procedure. While identified victims are granted a 30-day recovery and reflection period, their access to specialised assistance is extremely limited. GRETA was informed that victims who were trafficked in Switzerland may be referred to a LAVI centre for victims of crime or a specialised NGO. On the other hand, persons who were trafficked abroad, i.e. the majority of cases identified among asylum seekers, are not entitled to assistance under the LAVI, as explained above, and remain accommodated in centres for asylum seekers. In accordance with the accelerated asylum procedure, they spend the first 140 days in a federal asylum centre, after which they are transferred to a cantonal migration centre, provided that their case has not been resolved.

206. GRETA visited the federal centre for asylum seekers in Altstätten (canton of St. Gallen) in which the provision of care to asylum seekers is entrusted to a private company contracted by SEM. The staff, which includes persons who speak languages commonly spoken by asylum seekers, is present in the centre 24/7 and has reportedly been sensitised to recognise signs of THB. School education is mandatory for children under 18 and they regularly attend classes in local schools. GRETA was informed that there is a weekly plan which includes recreational activities. There is a presence of security officers in the centre due to previous conflicts between asylum seekers.

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<https://coeur.ch/>

207. GRETA stresses that accommodation for asylum seekers is not suited for victims of trafficking who require specialised support and protection suited to their particular needs. **GRETA once again urges the Swiss authorities to ensure that all victims under Swiss jurisdiction, including asylum seekers and persons exploited abroad but identified in Switzerland, benefit from assistance measures in accordance with Article 12, paragraph 1, of the Convention. Victims who are identified in reception centres and in the course of the asylum procedure should be systematically referred to specialised organisations and transferred to appropriate housing adapted to their needs.**

208. GRETA notes positively the cooperative networks set up in the cantons and the involvement of specialised NGOs. However, the resources allocated to anti-trafficking action vary between the cantons and the federal funding is not sufficient. There are no uniform national standards about the specialised assistance/accommodation to victims of THB. Further, GRETA notes that the LAVI framework does not make it possible to guarantee assistance in accordance with the Council of Europe Anti-Trafficking Convention. For example, under LAVI, the provision of accommodation, which could be in a hotel, is of a short duration, and is not necessarily specialised. Victims who are not accompanied by specialised NGOs often leave and do not co-operate in the criminal proceedings. While in some of the cantons solutions have been found for the assistance to victims of THB who have been exploited abroad, a general solution should be reached, if necessary through a modification of the LAVI.

209. **GRETA considers that the Swiss authorities should take further steps to fulfil their obligations under Article 12 of the Convention, in particular to:**

- **ensure that all victims of trafficking in Switzerland can receive adequate support and assistance, having regard to their individual needs, for as long as required, regardless of the canton in which they were identified;**
- **develop uniform national standards concerning specialised assistance and accommodation to be provided to victims of trafficking;**
- **ensure availability of specialised assistance for all victims of trafficking, including men;**
- **ensure adequate funding to specialised organisations providing assistance to victims of trafficking;**
- **provide systematic and continuous training on THB to representatives of cantonal victim support centres throughout the country.**

## **5. Prevention of child trafficking and identification of, and assistance to, child victims of trafficking**

210. In its second report, GRETA urged the Swiss authorities to improve the identification of, and assistance to, child victims of THB, by ensuring that a formalised procedure for identification is put in place in all cantons, and by providing training and guidance to all relevant actors.

211. The child protection services are members of the cantonal round-tables on THB. However, there are still no child-specific identification procedures and no specialised accommodation facilities for child victims of THB under 16 years of age in Switzerland (those over 16 can be accommodated together with female victims of THB). The number of identified child victims of THB, according to the police statistics, remains low: 15 in 2019-2021 (see paragraph 13). As regards presumed child victims identified by SEM in the asylum procedure, there were 31 (18 boys and 13 girls) in 2019-2022 (see paragraph 14). It is not clear if the two sets of figures are partially overlapping.

212. On 16 December 2022, fedpol published the study "Exploitation of minors in the context of human trafficking in Switzerland",<sup>130</sup> which it had commissioned from the Swiss Centre of Competence for Human Rights. The findings of the study were integrated into the third NAP which has as one of its strategic objectives to identify and assist child victims of trafficking, taking into account the best interests of the child. It is planned that the cantonal cooperation platforms raise awareness of child trafficking and provide training, based on the online handbook "Trafficking in children" published by Child Protection Switzerland (action 6.1.3). Further, it is envisaged to provide specialist training to the police and public prosecutors on dealing with children and digital investigations (action 2.2.1). In this context, GRETA was informed that the NGO Astrée has a pilot project to train all educators in all establishments run by the Youth Directorate (foyers de la Direction de la Jeunesse) in the canton of Vaud. The NAP also provides for the sensitisation of school-age children to the dangers of sexual exploitation and trafficking in human beings (objective 6.2). In this respect, the need for stronger prevention efforts was stressed by many of GRETA's interlocutors.

213. According to the study, there are only a few known cases of children corresponding to the legal definition of trafficking in human beings for the purpose of labour exploitation. However, many children find themselves in difficult and sometimes abusive situations. Many of these cases do not, however reach the threshold of criminal law, due to a lack of evidence or sometimes because of a legal vacuum or a grey area. Private households, farms and family businesses are excluded from Swiss labour law, which means that there are no clearly defined legal criteria by which to assess the employment of minors in these areas. It is in the area of sexual exploitation that the study identifies the greatest number of concrete cases, in prostitution, pornography or in connection with sexual offences on the Internet. Awareness in this area is judged to be relatively good. However, it is not always possible to draw a clear line between cases of trafficking for sexual exploitation and other phenomena or elements of crime, such as exploitation of children in prostitution, pornography involving sexual acts with children or sexual coercion. The Internet plays a central role in sexual exploitation. The most common methods to attract minors are deception or false promises, grooming through threats, blackmail and/or violence, and the "loverboy" method. In the online questionnaire, the police forces estimated that exploitation was more frequent in begging, burglary and theft than in other forms of exploitation, even if the figures for known cases are not necessarily higher. A particular difficulty in this area is identifying the victims. The initial situation is complex, and presumed victims are often perceived solely as offenders. To avoid criminalising poverty, the study stresses that it is also important to always take account of structural inequalities and economic conditions.

214. NGOs have raised concerns about failure to correctly identify child victims of THB and refer them to assistance. Reference was made to the case of a 16-year-old girl exploited in prostitution who was detained pending deportation. The cantonal authority for the protection of children and adults (KESB) did not appoint a legal guardian for several months. A criminal case was only initiated after an NGO managed to contact her guardian in her country of origin and confirmed her identity and age.

215. Further, there has been an increase in cases of girls being recruited through the "loverboy" method. Two such cases were adjudicated in 2022 and the perpetrators reportedly received penalties of 10 years' imprisonment. A documentary involving one of the survivors was broadcast with a view to raising awareness of the risks of recruitment through the "loverboy" method.

216. Unaccompanied children are accommodated for up to 140 days in federal asylum centres where they are hosted separately from adults and according to gender, supervised by specially trained staff, appointed a legal representative, a guardian and a social pedagogue as a point of contact, and provided with education and other appropriate activities. Subsequently, they are transferred to cantonal migration centres. In the first half of 2023, unaccompanied children stayed in the federal centres for an average of 108 days before being assigned to a canton. The Swiss authorities have referred to the recommendations adopted by the plenary assembly of the Swiss Conference of Cantonal Ministers of Social Affairs in May 2016 on the accommodation, care and legal representation of unaccompanied children in the asylum sector, which are reportedly followed by the majority of the cantons. According to these recommendations, particular attention should be paid to the specific needs of unaccompanied children as potential victims of

<sup>130</sup> [Exploitation of minors in the context of human trafficking in Switzerland \(admin.ch\)](#)

THB and other forms of exploitation and organised crime. If a child goes missing, the disappearance must be investigated. Further, SEM has published a manual for dealing with unaccompanied children. However, GRETA was informed of cases of child victims of THB whose disappearance from federal asylum centres was not investigated by the authorities, with the explanation that they left voluntarily. GRETA is concerned that some of these children may have been approached by their traffickers and exposed to further exploitation.

217. GRETA visited the cantonal centre for unaccompanied children and asylum seekers in Trimmis (canton of Graubünden). It consists of two floors for families and one floor for unaccompanied children, with a total of 29 bedrooms. The centre can accommodate up to 120 persons. At the time of GRETA's visit, there were 80 persons staying there, including some 30 unaccompanied children. Children under the age of 16 receive education in the centre, while older children attend classes outside. No identified victims of THB have been accommodated at the centre.

218. According to data provided by the Swiss authorities, the number of unaccompanied children who disappeared was 90 in 2019, 157 in 2020, 218 in 2021, 286 in 2022, and 195 until August 2023. The increase in the figures was explained by the Swiss authorities by the overall increase in unaccompanied children claiming asylum in Switzerland.

219. **GRETA once again urges the Swiss authorities to improve the identification of, and assistance to, child victims of trafficking, including by:**

- **ensuring that a formalised procedure for the identification of child victims of THB is put into place in all cantons, which takes into account the special circumstances and needs of child victims, involves child specialists and ensures that the best interests of the child are the primary consideration in all proceedings relating to child victims of THB and children at risk;**
- **ensuring that relevant actors take a proactive approach and increase their outreach work to identify child victims of THB, by paying particular attention to unaccompanied and separated foreign children;**
- **ensuring that child victims of THB across the country, regardless of whether they seek asylum or not, benefit from the assistance measures provided for under the Convention, including appropriate accommodation, effective access to free legal assistance and psychological support.**
- **providing further capacity-building to stakeholders (police, NGOs, child protection authorities, social workers) as well as guidance for the identification of child victims of THB for different purposes, including the exploitation of begging and exploitation of criminal activities;**
- **taking measures to deal effectively with the problem of disappearance of presumed child victims of trafficking from accommodation centres, by providing them with secure accommodation and appropriate services and a sufficient number of appropriately trained supervisors.**



## 6. Recovery and reflection period

220. As noted in GRETA's second report,<sup>131</sup> according to Article 35 of the Federal Council Order on Admission, Stay and Exercise of Gainful Activities (OASA; RS 142.201), where there are grounds to believe that an irregular migrant is a victim of, or witness to, trafficking in human beings, the cantonal migration authorities must grant him/her a recovery and reflection period of at least 30 days in order to recover and decide whether to co-operate with the authorities. According to the "Competo" procedure, devised by the SEM and the Association of cantonal immigration departments in 2016 and integrated into the directive relating to the Federal Law on Foreigners,<sup>132</sup> the request for a recovery and reflection period may be submitted by victims themselves or by any service or organisation in contact with them and it shall be approved in writing by the competent cantonal migration authority.

221. GRETA was informed that the granting of the recovery and reflection period to victims of trafficking by the cantonal authorities does not represent a problem in practice. However, the duration of the recovery and reflection period varies across the country. By way of example, while the cantons of Geneva and Vaud systematically grant a recovery and reflection period of 90 days to victims of trafficking, GRETA was informed that the recovery and reflection period granted by the authorities in Zurich is for 30 days. The length of this period is assessed on a case-by-case basis in the canton of Bern. In March 2023, the canton of Valais decided to extend the duration of the recovery and reflection period from 30 to 90 days.<sup>133</sup>

222. In its second report,<sup>134</sup> GRETA expressed concern about the fact that the recovery and reflection period can be terminated prematurely if a possible victim of THB has indicated that s/he does not want to co-operate with the authorities (Article 35(3)(a) of the OASA). According to NGOs met by GRETA, this problem persists, and some victims may feel pressured by the authorities to decide to testify even before the recovery and reflection period has expired. GRETA reiterates that victims of trafficking should be allowed the full duration of the recovery and reflection period not only to decide whether or not to co-operate with the authorities, but also to have sufficient time to recover.

223. GRETA was informed that, contrary to its previous practice,<sup>135</sup> since 1 January 2020, SEM has been granting a 30-day recovery and reflection period to victims of trafficking who have been identified in the asylum procedure. This change reflects the recommendations of the Working Group on Asylum and Trafficking in Human Beings outlined in its Report on Potential Victims of Trafficking in the Asylum Procedure which was published in May 2021, namely, that a recovery and reflection period should immediately be granted to all victims in the asylum procedure (including the Dublin procedure), regardless of the stage of proceedings. The Working Group further recommended that the duration of the recovery and reflection period granted to victims in the asylum procedure should be fixed at 90 days.<sup>136</sup> However, SEM has taken the position that a systematic increase in the duration of the recovery and reflection period would be incompatible with the deadlines related to the accelerated asylum procedure and the Dublin procedure. Instead, the SEM maintained that the recovery and reflection period can be extended on a case-by-case basis as appropriate.<sup>137</sup>

<sup>131</sup> GRETA's second evaluation report on Switzerland, paragraphs 177 and 178.

<sup>132</sup> <https://www.sem.admin.ch/sem/fr/home/publiservice/weisungen-kreisschreiben/auslaenderbereich.html>.

<sup>133</sup> Decision of the Conseil d'Etat of the canton of Valais dated 22 March 2023.

<sup>134</sup> GRETA's second evaluation report on Switzerland, paragraph 182.

<sup>135</sup> See paragraph 185 of GRETA's second evaluation report on Switzerland.

<sup>136</sup> Working Group on Asylum and Trafficking in Human Beings, Report on Potential Victims of Trafficking in the Asylum Procedure (May 2021), Recommendation 3.6.1.5. See <https://www.sem.admin.ch/.../ber-menschenhandel-202105-f.pdf>.

<sup>137</sup> Working Group on Asylum and Trafficking in Human Beings, Report on Potential Victims of Trafficking in the Asylum Procedure (May 2021), 3.6.2. See also the Conclusions of SEM issued in response to the report of the Working Group, section IV "Recommendations which will not be implemented by the SEM," available at: <ber-menschenhandel-202105-mgmt-response-f.pdf>.

224. During the recovery and reflection period, no hearing on the grounds for asylum can take place and SEM suspends all procedural actions requiring the involvement of the victim, in line with the recommendation of the Working Group. Moreover, the victim's transfer to another state under the Dublin procedure may be postponed, within the timeframes provided for in the Dublin Regulation, if the victim has been exploited in Switzerland and has lodged a criminal complaint (see also paragraph 243). Nonetheless, GRETA notes that SEM decided not to implement the Working Group's recommendation that no "take back" or "take charge" requests should be sent as part of the Dublin procedure during the recovery and reflection period.

225. GRETA's interlocutors have noted that, although the granting of the recovery and reflection period to victims identified in the asylum procedure represents a positive development, victims are still not provided with the necessary assistance measures during this period (see paragraph 205).

226. According to information provided by the authorities, the number of recovery and reflection periods granted to victims of trafficking has decreased over the years. Namely, 52 victims were granted the recovery and reflection period in 2019, 37 in 2020, 23 in 2021 and 29 in 2022.<sup>138</sup> These statistics do not include the number of recovery and reflection periods which were granted within the asylum procedure, as this information is not available. The authorities have suggested that the decrease in the number of recovery and reflection periods granted during the reporting period may be due to the Covid-19 pandemic, as well as the fact that victims frequently make requests for short-term or humanitarian residence permits without asking first for a recovery and reflection period.

227. While welcoming the fact that SEM systematically grants a recovery and reflection period to victims of trafficking identified in the asylum procedure, GRETA is concerned by the decrease in the number of recovery and reflection periods granted by the cantonal authorities, as well as the discrepancies in cantonal practices. **GRETA considers that the Swiss authorities should strengthen their efforts to ensure, in compliance with their obligations under Article 13 of the Convention, that all possible foreign victims of trafficking are systematically offered a recovery and reflection period and all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention during this period.**

## 7. Residence permits

228. As noted in GRETA's second report,<sup>139</sup> victims of human trafficking who co-operate with the investigating authorities are issued a short-term residence permit (L permit) by the competent cantonal immigration authorities, in accordance with Article 30(1)(e) of the Law on Foreigners (LEI) and Article 36(2) of the Federal Council Order on Admission, Stay and Exercise of Gainful Activities (OASA). The maximum duration of the permit is one year renewable for the length of the proceedings.

229. In a judgment of 14 February 2019 (2C\_373/2017), the Federal Tribunal found that Article 14(1) of the Convention is directly applicable in Swiss law and recognised the right of victims of trafficking to be granted a short-term residence permit when the investigating authorities consider their presence in Switzerland necessary for the purposes of criminal prosecution. The Federal Tribunal found that this right applies also to victims of THB who are identified in the asylum procedure.<sup>140</sup>

<sup>138</sup> The statistics for 2022 include information from 23 cantons.

<sup>139</sup> GRETA's second evaluation report on Switzerland, paragraphs 190 and 191.

<sup>140</sup> The right of victims of THB in the asylum procedure to obtain a residence permit was subsequently recognised by the Working Group on Asylum and Trafficking in Human Beings, in its Report on victims of trafficking in the asylum procedure of May 2021. See pp. 27 and 28.

230. GRETA was informed that in practice victims are usually issued a renewable six-month residence permit when they agree to co-operate with the investigating authorities, but the practice varies depending on the canton. It can take several months for the permit to be issued, as the cantonal authorities (e.g. in Zurich) must verify with the criminal justice authorities that the victim's presence in Switzerland is required. In other cantons, such as Vaud, the filing of the criminal report may suffice for the issuance of a residence permit. In Geneva, a criminal complaint is required to be issued with a permit and the prosecutor's opinion to renew it. Since the criminal proceedings can take several years to complete, the residence permit may be renewed several times. However, GRETA was informed of cases in which the extension of the residence permit was refused based on the opinion of the prosecutor that the victim was no longer needed for the criminal case and could always be asked to return to Switzerland if their co-operation is required at a later date. The police reportedly put pressure on third-country national victims to cooperate and testify as they need residence permits.

231. According to information provided by the Swiss authorities, the number of short-term residence permits issued based on the co-operation with the authorities was: 77 in 2019, 62 in 2020, 69 in 2021, and 50 in 2022 (the statistics for 2022 include information from 23 cantons). Only in the canton of Geneva, the number of residence permits issued to victims of THB was 46 in 2019-2021. The authorities have indicated that the high number of short-term residence permits, relative to the number of recovery and reflection periods issued within the same time-frame, could be due to the fact that the statistics for a given year include the renewal of residence permits issued the previous year.

232. Victims of trafficking who do not wish to co-operate with the authorities after the recovery and reflection period, as well as victims who have co-operated with the authorities, may be eligible to receive a residence permit on humanitarian grounds on the basis of "extremely serious situations of hardship" (Article 30(1)(b) LEI and Article 31 OASA). The cantonal immigration authority that wishes to issue such a residence permit to a victim must submit the application to SEM. GRETA was informed that the conditions for the issuance of the residence permit on humanitarian grounds are outlined in Article 31 of OASA as well as relevant SEM directives. Such a permit may be issued in exceptional cases when the person's return to the country of origin cannot reasonably be enforced owing to the risk of re-victimisation, lack of prospects of social integration or the impossibility of dealing adequately with a health problem.

233. The Federal Tribunal has recognised the right of victims of trafficking to be granted a residence permit on the basis of their personal situation, through direct application of Article 14(1) of the Convention (Judgment 2C-483/2021 of 14 December 2021).

234. Further, in a judgment of 7 June 2022 (ATA/597/2022) confirming the rejection by the cantonal immigration authorities of a request for a residence permit based on an extremely serious situations of hardship,<sup>141</sup> the Court of Justice of Geneva provided a detailed overview of the legal requirements and jurisprudence relevant for the assessment of an application for a residence permit by a victim of THB. In addition to the assessment of the conditions in the country of origin/return, the court stressed the need to consider the following factors: a long stay in Switzerland, advanced integration in Swiss society, exceptional professional development and specific professional knowledge that could not be put to use in the country of origin, grave illness that could only be treated in Switzerland, as well as children's integration in the school system. According to NGO representatives and lawyers met by GRETA these conditions are difficult for victims of THB to fulfil, especially those who are not assisted by specialised organisations in finding employment and integrating in Swiss society.

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<sup>141</sup> The application had been rejected, *inter alia*, based on the fact that the applicant had not presented sufficient proof that she is a victim of trafficking.

235. According to the information provided by the authorities, the number of residence permits based on humanitarian grounds that were issued to victims of trafficking was: 14 in 2019, 15 in 2020, 19 in 2021 and 11 in 2022. Only in the canton of Geneva, the number of humanitarian grounds permits issued to victims of THB with the approval of SEM was 8 in 2019-2021. GRETA was informed that a residence permit on humanitarian grounds is rarely granted to victims of trafficking, especially if they have not previously co-operated with the authorities. Some cantons have reportedly taken a particularly restrictive approach with regard to the issuance of humanitarian residence permits to victims of trafficking. By way of example, GRETA was informed of the case of a woman from south-eastern Europe who had been forced into prostitution by her boyfriend. The victim, who comes from a conservative family and a country where women have been subjected to honour killings, decided not to disclose the name of the alleged trafficker and testify against him due to fear that he would tell her family back home that she had engaged in prostitution. The cantonal immigration authorities rejected her application for a residence permit finding her story not credible, despite the fact that her application had been submitted by a specialised NGO and was accompanied by a letter from the police which had recognised her as a victim of trafficking. At the time of GRETA's visit, the victim was on suicide watch in a psychiatric hospital.

**236. GRETA considers that the Swiss authorities should continue making efforts to ensure that victims of trafficking can benefit in practice from the right to obtain a renewable residence permit for the purpose of co-operating with the authorities or on humanitarian grounds, in particular by ensuring that the interpretation of the requirements for the issuance of humanitarian permits is not unduly restrictive.**

## **8. Repatriation and return of victims**

237. As mentioned in GRETA's second report,<sup>142</sup> the IOM office in Bern has been mandated by SEM to implement specialised assistance for the voluntary return of victims and witnesses of human trafficking. The assisted return programme is also available to victims who are identified in the asylum procedure, as well as victims under the Dublin procedure who wish to return to their country of origin. Victims of trafficking who wish to benefit from the assisted voluntary return programme have to contact the cantonal advisory service for return (CVR), which informs them about the assistance they are entitled to before and after departure. Victims may be assisted by the NGO FIZ, which can submit a request for assistance to CVR on their behalf. Subsequently, the CVR makes an application for assisted return to the SEM, which in turn mandates IOM Bern to organise the return of the person to the country of origin, liaising with the relevant governmental agencies and NGOs.

238. Victims who return to their country of origin with the support of IOM are provided with initial financial assistance of CHF 1,000 (1,037 euros) per adult and CHF 500 (518.88 euros) per child, as well as up to CHF 5,000 (5 189,15 euros) to assist with their reintegration (housing expenses, vocational training, business start-up, etc.). Victims can also have their medical costs covered for a period of six months. GRETA was informed that the IOM has good co-operation with NGOs in a number of countries of return, such as the Hungarian Baptist Aid in Hungary, one of the main countries of origin of victims of THB in Switzerland. The IOM office in Hungary operated a programme which employed a number of social workers to assist victims returning from Switzerland, among other countries, with their reintegration. The programme was stopped due a lack of funding, but GRETA was informed that it may be relaunched in 2024 with support from the EU.

<sup>142</sup> GRETA's second evaluation report on Switzerland, paragraph 207.

239. According to the information provided by the authorities, 76 presumed victims of trafficking in the asylum procedure were returned to their country of origin in the period 2015-2023 (49 women, including two girls, and 27 men, including one boy). Of these, 27 returns were voluntary,<sup>143</sup> three cases concerned the return to third countries,<sup>144</sup> 43 cases concerned the return to a Dublin state,<sup>145</sup> and three cases concerned forced return to the country of origin.<sup>146</sup> The number of victims of THB who benefited from assisted voluntary return during the reporting period was: 27 in 2019 (20 women and seven men), 17 in 2020 (all women), 11 in 2021 (9 women, one man and one girl), 17 in 2022 (14 women and three men), and nine in 2023 (seven women, one man and one boy). The victims were returned to Bulgaria (seven), Brazil (six), Hungary (13), Nigeria (one), Philippines (four), Romania (15), Serbia (three), Spain (six), Thailand (four), and other countries (22). The majority were victims of THB for sexual exploitation, followed by THB for labour exploitation.

240. According to the authorities, SEM conducts a risk assessment prior to the forced return of victims of THB who are identified in the asylum procedure, in order to respect the principle of *non-refoulement*. This includes an assessment of the victim's personal situation and the risk of reprisals and re-trafficking upon return. SEM also looks at whether the victim would have access to state or quasi-state protection, without prejudice based on his/her gender or belonging to an ethnic or religious minority. In the case of victims who have not applied for asylum, it is for the competent migration authorities to ensure that sending the person back to the country of origin is lawful, possible and enforceable. In addition, IOM conducts a risk assessment in relation to all victims who are returned through the voluntary assisted return programme. In 2022, IOM released its internal Return and Reintegration Due Diligence Process, which places the well-being and the protection of the rights of individuals at the centre of every decision or process related to their return and reintegration.<sup>147</sup>

241. Further, a case-by-case assessment of the protections available in the country of return is conducted with regard to victims who are returned as part of the Dublin procedure. The country of return is informed of the person's status as a presumed victim of trafficking at the time a request for return is submitted. As noted in paragraph 224, SEM has decided not to implement the recommendation of the Working Group on Asylum and Trafficking in Human Beings that such requests should not be submitted during the recovery and reflection period. GRETA was informed that, in principle, SEM considers that all Dublin states have put in place measures to guarantee access to specialised support for victims of THB. NGOs supporting victims of trafficking have criticised the return of victims to Dublin states, including the fact that the short Dublin procedure (reportedly 35 days) does not allow for a proper assessment of the risks associated with return. Moreover, SEM reportedly does not co-operate with specialised organisations in the country of return and does not conduct a follow-up to ensure that victims are provided with the necessary protection and support. As noted above, 39 victims of THB were returned to a Dublin state in the period 2015-2022.

242. In this context, GRETA takes note of two decisions of the Federal Administrative Tribunal concerning the return of asylum seekers to Dublin states, which are of relevance for victims of trafficking. In a judgment of 18 October 2021, the Federal Administrative Tribunal departed from its previous jurisprudence and ruled that, based on certain legislative changes in Italy, families with children can again be transferred to that country under the Dublin procedure, as long as the Italian authorities can offer

<sup>143</sup> Victims were nationals of the following countries: Albania (1), Algeria (2), Angola (2), Bosnia and Herzegovina (2), Ethiopia (1), Ghana (1), Honduras (1), India (1), Kenya (1), Malaysia (1), Mexico (1), Nigeria (11), Romania (1) and Serbia (1).

<sup>144</sup> One person was a national of Afghanistan, one of Malaysia and one of Nigeria.

<sup>145</sup> The victims were nationals of the following countries: Angola (2), Belarus (1), Burundi (1), Ecuador (1), Eritrea (5), Gambia (2), Guinea (1), Iraq (1), Kenya (1), Democratic Republic of Congo (2), Liberia (1), Libya (1), Morocco (1), Nigeria (13), Russia (1), Senegal (1), Tunisia (1), Uganda (1), Venezuela (1), and Ethiopia (5).

<sup>146</sup> One person was returned to Bosnia and Herzegovina, one to Mongolia and one to Nigeria.

<sup>147</sup> See IOM, Return and Reintegration Key Highlights, 2022, p. 4, available at:

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiylcOT3KeCAxUH1wIHHcD2Cj8QFnoEC44QAQ&url=https%3A%2F%2Fpublications.iom.int%2Fsystem%2Ffiles%2Fpdf%2FPUB2023-057-R-KH2022-Main-Report.pdf&usq=AOvVaw3d9JoPFgQLTWjxeIxRT6Ah&opi=89978449>

individual guarantees related to care and accommodation suitable for this group.<sup>148</sup> In contrast, the Swiss Refugee Council (OSAR) has assessed that the conditions of the reception system for asylum seekers in Italy remain precarious and has recommended against returns to Italy. In a decision from March 2022, the Federal Administrative Tribunal ruled that particularly vulnerable persons, namely families with children, unaccompanied children and people suffering from serious illnesses, cannot be returned to Greece without a thorough prior assessment of the conditions in the country.<sup>149</sup>

243. According to the authorities, SEM systematically examines the conditions for the application of the "sovereignty clause" (Article 17(1)) of the Dublin III Regulation<sup>150</sup> in the case of victims of trafficking, and applies that clause whenever there is an elevated risk of re-trafficking or of reprisals in the Dublin state in question, based on the specific profile of the victim, or where cumulative vulnerability factors are present (e.g. the person requires medical care or has family in Switzerland). Among the factors considered by SEM prior to the return of victims in accordance with the Dublin Regulation are the age of the victim, the location of the trafficker and the risk that he/she may re-contact the victim, as well as previous contacts between the victim and the law enforcement authorities of the country of return. Based on data provided by SEM, the sovereignty clause was applied in relation to 33 victims of trafficking in the period 2019-2023. Specifically, eight persons were not returned to a Dublin state in 2019 (four cases concerned Italy, one Portugal and three Greece), 13 in 2020 (one case concerned Germany, five Greece, three Italy, one Malta, one the Netherlands and two Portugal), seven in 2021 (one case concerned France, two Greece, and one Italy, Croatia, Slovenia and Spain respectively), two in 2022 (both concerned Italy), and three in 2023 (one concerned Greece and two Italy).

244. **GRETA considers that the Swiss authorities should strengthen their efforts to ensure that the return of victims of trafficking is conducted with due regard for their rights, safety and dignity, is preferably voluntary and complies with the obligation of *non-refoulement*. This includes informing victims about existing support programmes, protecting them from re-victimisation and re-trafficking. Full consideration should be given to the UNHCR's guidelines on the application of the Refugees Convention to trafficked people<sup>151</sup> and to GRETA's Guidance Note on the entitlement of victims of human trafficking, and persons at risk of being trafficked, to international protection.<sup>152</sup>**

245. **Further, GRETA urges the Swiss authorities to review the application of the Dublin Procedure to presumed victims of THB and conduct risk assessments in order to prevent victims being returned to the country where they first applied for asylum, but where they face the risk of being re-trafficked.**

<sup>148</sup> <https://www.humanrights.ch/fr/pfi/droits-humains/migration-asile/procedure-dublin-renvois-familles-vers-litalie-a-nouveau-autorises>.

<sup>149</sup> <https://www.bvger.ch/fr/newsroom/communiquede-presse/criteres-plus-stricts-pour-les-transferts-vers-la-grece-1051>.

<sup>150</sup> "By way of derogation from Article 3(1), each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under the criteria laid down in this Regulation."

<sup>151</sup> UNHCR, Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking, HCR/GIP/06/07, 7 April 2006.

<sup>152</sup> <https://rm.coe.int/guidance-note-on-the-entitlement-of-victims-of-trafficking-and-persons/16809ebf44>

## **Appendix 1 – List of GRETA’s conclusions and proposals for action**

The position of the proposals for action in the text of the report is shown in parentheses.

### **Topics related to the third evaluation round of the Convention**

#### ***Right to information***

- GRETA welcomes the existence of various information materials for victims of trafficking, in different languages, and invites the Swiss authorities to ensure that:
  - information concerning victims’ rights and the services available to them is provided from the victims’ first contact with the competent authorities;
  - law enforcement officers and other authorities in contact with victims of trafficking are systematically trained and instructed on how to properly explain to victims of THB their rights, taking into account the victims’ age, maturity, intellectual and emotional capacity, literacy and any mental, physical, or other disabilities which may affect their ability to understand the information provided;
  - staff working at asylum reception centres and detention centres are trained and instructed on how to provide information, in a proactive manner, to presumed victims of trafficking, including those who have been trafficked abroad (paragraph 47).

#### ***Legal assistance and free legal aid***

- GRETA considers that the Swiss authorities should take further steps to guarantee trafficking victims’ access to legal assistance and free legal aid, in particular by ensuring that:
  - legal assistance is provided as soon as there are reasonable grounds for believing that a person is a victim of human trafficking, before the person concerned has to decide whether or not to co-operate with the authorities and/or make a criminal complaint;
  - victims of THB have access to free legal aid from a lawyer with specialised knowledge on THB cases in all relevant legal proceedings, including civil proceedings (e.g. those brought by victims who have been exploited in diplomatic households) and administrative proceedings;
  - the authorities and the Bar Associations encourage training and specialisation of lawyers in all cantons to provide legal aid to victims of trafficking;
  - lawyers providing free legal aid to victims of trafficking are remunerated for their services in a timely and adequate manner so as to allow them to provide effective assistance to victims (paragraph 58).

#### ***Psychological assistance***

- GRETA considers that the Swiss authorities should take further steps to guarantee access of victims of trafficking to psychological assistance, regardless of whether they were trafficked in Switzerland or abroad, and ensure that it is provided for as long as their individual situation requires, in order to help them overcome their trauma and achieve a sustained recovery and social inclusion (paragraph 64).

#### ***Access to work, vocational training and education***

- GRETA considers that the Swiss authorities should strengthen effective access to, and/or reintegration of, the labour market for victims of THB and their economic and social inclusion through the provision of vocational training and job placement, raising awareness amongst

employers, and the promotion of micro-businesses, social enterprises and public-private partnerships, including through state supported employment. Further, the authorities should ensure that residence permits are granted and renewed within a reasonable time, in all cantons, so as to facilitate victim's access to the labour market, and the immigration authorities should be made aware of the fact that a short-term (L) permit entitles a person to work in Switzerland (paragraph 69).

### ***Compensation***

- GRETA invites the Swiss authorities to amend the relevant provisions of LAVI to ensure that it is capable of also covering compensation for unpaid wages (paragraph 80);
- GRETA considers that the Swiss authorities should take steps to facilitate and guarantee effective access to compensation for victims of trafficking, including by:
  - systematically informing victims of trafficking of their right to seek compensation in criminal and civil proceedings and the procedure to be followed, and ensuring that they are provided with effective legal assistance from their first contact with the competent authorities in order to exercise this right;
  - ensuring that the collection of evidence about the harm the victim has suffered, including the financial gain from the exploitation of the victim, is part of the criminal investigations with a view to supporting compensation claims in court;
  - enabling victims of THB to effectively exercise their right to compensation, by building the capacity of legal practitioners to support victims to claim compensation and including compensation in the training of law enforcement officials and the judiciary;
  - making full use of the legislation on the seizure and confiscation of criminal assets to secure compensation to victims of THB;
  - enabling victims of trafficking to effectively exercise their right to obtain state compensation within a reasonable time (paragraph 86);
- GRETA urges the Swiss authorities to ensure that victims obtain a decision on compensation from the offender for unpaid wages, as part of the criminal trial, regardless of whether they held appropriate work and/or residence permits or not, and facilitate victims' access to compensation in civil proceedings (paragraph 87).

### ***Investigations, prosecutions, sanctions and measures***

- GRETA urges the Swiss authorities to bring the definition of THB in the Criminal Code fully in line with Article 4 of the Convention, including by ensuring that all forms of exploitation are adequately covered, and adding the element of 'means' for adult victims (paragraph 95);
- When examining amendments to Article 182 of the CC, GRETA invites the Swiss authorities to take into account forms of exploitation which are not specifically mentioned in the international definition of THB, such as forced marriage, forced criminality and forced begging (paragraph 96);
- GRETA once again considers that the Swiss authorities should adopt legislative measures to criminalise the use of services with the knowledge that the person is a victim of THB, as stipulated by Article 19 of the Convention (paragraph 97);
- GRETA considers that the Swiss authorities should keep under review the application of the legal provisions concerning corporate liability for THB with a view to ensuring that they are effectively applied in practice (paragraph 98);



- GRETA urges the Swiss authorities to take measures to ensure that THB offences are investigated and prosecuted effectively, leading to proportionate and dissuasive sanctions, in particular by:
  - ensuring that human trafficking offences for different forms of exploitation, including labour exploitation, are proactively and promptly investigated, by allocating sufficient resources to the police and prosecution services.
  - ensuring that human trafficking offences are classified as such every time the circumstances of a case allow it, and are not qualified as other offences, by taking into account all of the different means applicable, which are part of the international definition of human trafficking (paragraph 111);
- GRETA considers that the Swiss authorities should take steps to:
  - ensure that the length of court proceedings in cases of trafficking of human beings is reasonable, in line with the case-law of the European Court of Human Rights (Article 6, paragraph 1 of the ECHR) and the standards set by the European Commission for the Efficiency of Justice (CEPEJ);
  - ensure that THB cases are handled by specialised police officers and prosecutors and continuing to improve the knowledge of investigators, prosecutors and judges about the seriousness of THB, the severe impact of exploitation on the victims and the need to respect their human rights (paragraph 112).

### ***Non-punishment provision***

- GRETA considers that the Swiss authorities should take further steps to ensure full compliance with Article 26 of the Convention, including by:
  - ensuring that the guidelines adopted by the Swiss Conference of Public Prosecutors are transposed into cantonal directives in a manner that ensures their consistent application throughout the country;
  - providing training to public prosecutors and the police on the application of the principle of non-punishment to victims of trafficking;
  - ensuring that victims of THB are promptly identified as such, in any event before being convicted of offences they were compelled to commit;
  - encouraging prosecutors to be proactive in establishing whether an accused person is a potential victim of trafficking, and to consider that, having been trafficked, the culpability of the victim may be diminished, or even removed entirely (paragraph 122);
- GRETA considers that the Swiss authorities should keep the implementation of the non-punishment principle under review so as to determine whether legislative amendments are necessary to achieve its objectives, as set out by Article 26 of the Convention, and to guarantee consistency of practice in its implementation (paragraph 123).

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***Protection of victims and witnesses***

- GRETA considers that the Swiss authorities should make full use of the measures available in law to protect victims and witnesses of THB and to prevent intimidation and secondary victimisation during the investigation, as well as during and after court proceedings. Situations in which victims come face to face with their traffickers in courtrooms should be avoided (paragraph 131).

***Specialised authorities and co-ordinating bodies***

- GRETA considers that the Swiss authorities should continue to develop the knowledge and specialisation of police officers and prosecutors. In this respect, the expected national concept on training which is being prepared as part of the third National Action Plan (see paragraph 26) should play an important role in ensuring that there is a systematic and coherent approach to training of relevant professionals, including border and customs officials, labour inspectors, social workers and health-care staff (paragraph 139).

***International co-operation***

- GRETA welcomes the Swiss authorities' active participation in international co-operation related to combating THB, including the setting up of JITs in THB cases and co-operation in financial investigations, as well as the programmes implemented in countries of origin of victims of trafficking by the Federal Department of Foreign Affairs, and invites them to continue their efforts in this respect (paragraph 148).

***Child-sensitive procedures for obtaining access to justice and remedies***

- GRETA invites the Swiss authorities to continue to ensure that child-sensitive procedures are consistently used when investigating, prosecuting and adjudicating cases of THB, in line with the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, including measures to ensure that there is a sufficient number of child-friendly interview rooms across the country (paragraph 155).

***Role of businesses***

- GRETA welcomes the abovementioned legislative and policy measures and considers that the Swiss authorities should strengthen engagement with the private sector, in line with the UN Guiding Principles on Business and Human Rights and Council of Europe Committee of Ministers Recommendation CM/Rec(2016)3 on human rights and business, with a view to raising awareness of the important role and responsibility of businesses in supporting the rehabilitation and recovery of victims, and to provide access to effective remedies (paragraph 161).

## **Follow-up topics specific to Switzerland**

### ***Developments in the legal, institutional and policy framework for action against human trafficking***

- GRETA welcomes the setting up of two more cantonal roundtables on THB, as well as the annual meetings of the chairs of the cantonal roundtables. GRETA considers that the Swiss authorities should continue their efforts to harmonise the co-ordination structures for the fight against trafficking, as envisaged by the third National Action Plan, including by ensuring that all cantons have co-operation agreements on combating THB which involve all relevant stakeholders, address all forms of THB, and identify and assist victims of trafficking without discrimination, regardless of their place of residence in Switzerland (paragraph 24);
- GRETA welcomes the commitment of the Swiss authorities to further strengthening the fight against THB in Switzerland through the adoption of the third NAP and the fact that it reflects many of GRETA's previous recommendations, was endorsed at the political level and will be subject to regular monitoring and an independent evaluation. However, noting the gap of several years between the second and the third NAPs, GRETA considers that the Swiss authorities should ensure that national action plans against trafficking in human beings are adopted in a timely manner (paragraph 28);
- GRETA considers that the Swiss authorities should ensure that adequate funding is provided by the Confederation to action against THB to enable a harmonised approach to combating THB across Switzerland (paragraph 29);
- GRETA considers that the Swiss authorities should examine the possibility of establishing an independent National Rapporteur or designating another existing mechanism for monitoring the anti-trafficking activities of state institutions, as provided for in Article 29, paragraph 4, of the Convention (paragraph 30).

### ***Measures to prevent and combat trafficking for the purpose of labour exploitation***

- GRETA welcomes the increased attention to combating THB for the purpose of labour exploitation, including the development of awareness-raising and training on THB, as well as the including of labour inspectors in the cantonal round-tables. Nevertheless, GRETA considers that the Swiss authorities should take further measures to combat THB for the purpose of labour exploitation, taking into account Recommendation CM/Rec(2022)21 of the Committee of Ministers and GRETA's Guidance Note on combating trafficking for labour exploitation. In this regard, GRETA urges the Swiss authorities to:
  - ensure that labour inspectors can effectively detect and follow up on cases of THB, including in the agricultural sector;
  - ensure that cantonal labour inspectors, labour market inspectors, inspectors of posted workers, law enforcement officers and other relevant actors increase their capacity to proactively detect victims of THB for the purpose of labour exploitation, paying particular attention to at-risk sectors, and to collect evidence enabling the prosecution of cases of THB (paragraph 175);

- GRETA considers that the Swiss authorities should take steps to:
- develop co-operation with specialised NGOs and trade unions in identifying victims of THB, including during labour inspections, and referring them to assistance;
  - develop specific guidelines on the investigation of THB for the purpose of labour exploitation in order to gather all necessary evidence, using special investigative techniques and carrying out financial investigations, in order to decrease reliance on trafficked persons' evidence and ensure that cases of THB for labour exploitation are not requalified as profiteering or other offences which deprive victims of access to rights and protection;
  - encourage trafficked persons to self-identify as victims of trafficking, including through establishing safe reporting and effective complaint mechanisms for foreign workers, concrete possibilities of regularisation of the trafficked person's residence status and access to the labour market, the provision of targeted and tailored support services;
  - put in place practical co-operation and data sharing agreements between labour inspectors and law enforcement in order to ensure that personal information of workers, whether collected in the course of labour inspections, joint inspections, reporting or complaints mechanisms, is not used for immigration enforcement purposes, but to tackle the perpetrators of trafficking offences;
  - further train labour inspectors, as well as law enforcement officers, prosecutors and judges, on THB for the purpose of labour exploitation and the rights of victims;
  - ensure that sufficient resources are made available to labour inspectors to carry out proactive and unannounced inspections;
  - strengthen the monitoring of domestic work and agriculture;
  - raise awareness among the general public as well as, in a targeted manner, among migrant workers, about the risks of trafficking for the purpose of labour exploitation;
  - develop data collection on the number of presumed victims of trafficking detected during labour inspections and referred to the police (paragraph 176).

### ***Measures to raise awareness and discourage demand***

- GRETA considers that the Swiss authorities should adopt and strengthen legislative, administrative, educational, social, cultural or other measures to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with civil society, trade unions and the media, including by:
- implementing educational programmes at schools, stressing the importance of gender equality and respect for the dignity and integrity of every human being and the consequences of gender-based discrimination;
  - highlighting the risks of trafficking and other forms of sexual and gender-based violence linked to prostitution, and strengthening awareness-raising campaigns of such risks, targeted at men and boys in particular (paragraph 181).

### ***Identification of victims of trafficking***

- While welcoming the increase in the number of cantonal round-tables on THB, the adoption of updated indicators and the improvements in the identification of victims of THB amongst asylum seekers, GRETA considers that the Swiss authorities should take additional steps to ensure that all victims of trafficking are identified as such and can benefit from the assistance and protection measures provided for in the Convention, in particular by:
  - ensuring that a harmonised victim identification procedure is put into place in all cantons without further delay, defining the roles and responsibilities of all stakeholders, and involving specialised NGOs;
  - involving specialised organisations in the procedure for the identification of victims of THB in the asylum process and providing presumed victims with follow-up on their statements;
  - finalising and implementing without further delay the national training concept to enable the implementation of regular and mandatory training of all stakeholders who are likely to come into contact with victims of THB;
  - enabling specialised NGOs with experience in identifying victims of trafficking to have regular access to facilities for asylum seekers, holders of international protection, detention centres for migrants and prisons (paragraph 189).

### ***Assistance to victims***

- GRETA urges the Swiss authorities to ensure that all victims under Swiss jurisdiction, including asylum seekers and persons exploited abroad but identified in Switzerland, benefit from assistance measures in accordance with Article 12, paragraph 1, of the Convention. Victims who are identified in reception centres and in the course of the asylum procedure should be systematically referred to specialised organisations and transferred to appropriate housing adapted to their needs (paragraph 207);
- GRETA considers that the Swiss authorities should take further steps to fulfil their obligations under Article 12 of the Convention, in particular to:
  - ensure that all victims of trafficking in Switzerland can receive adequate support and assistance, having regard to their individual needs, for as long as required, regardless of the canton in which they were identified;
  - develop uniform national standards concerning specialised assistance and accommodation to be provided to victims of trafficking;
  - ensure availability of specialised assistance for all victims of trafficking, including men;
  - ensure adequate funding to specialised organisations providing assistance to victims of trafficking;
  - provide systematic and continuous training on THB to representatives of cantonal victim support centres throughout the country (paragraph 209).

### ***Prevention of child trafficking and identification of, and assistance to, child victims of trafficking***

- GRETA urges the Swiss authorities to improve the identification of, and assistance to, child victims of trafficking, including by:
  - ensuring that a formalised procedure for the identification of child victims of THB is put into place in all cantons, which takes into account the special circumstances and needs of child victims, involves child specialists and ensures that the best interests of the child are the primary consideration in all proceedings relating to child victims of THB and children at risk;
  - ensuring that relevant actors take a proactive approach and increase their outreach work to identify child victims of THB, by paying particular attention to unaccompanied and separated foreign children;
  - ensuring that child victims of THB across the country, regardless of whether they seek asylum or not, benefit from the assistance measures provided for under the Convention, including appropriate accommodation, effective access to free legal assistance and psychological support.
  - providing further capacity-building to stakeholders (police, NGOs, child protection authorities, social workers) as well as guidance for the identification of child victims of THB for different purposes, including the exploitation of begging and exploitation of criminal activities;
  - taking measures to deal effectively with the problem of disappearance of presumed child victims of trafficking from accommodation centres, by providing them with secure accommodation and appropriate services and a sufficient number of appropriately trained supervisors (paragraph 219).

### ***Recovery and reflection period***

- GRETA considers that the Swiss authorities should strengthen their efforts to ensure, in compliance with their obligations under Article 13 of the Convention, that all possible foreign victims of trafficking are systematically offered a recovery and reflection period and all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention during this period (paragraph 227).

### ***Residence permits***

- GRETA considers that the Swiss authorities should continue making efforts to ensure that victims of trafficking can benefit in practice from the right to obtain a renewable residence permit for the purpose of co-operating with the authorities or on humanitarian grounds, in particular by ensuring that the interpretation of the requirements for the issuance of humanitarian permits is not unduly restrictive (paragraph 236).

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

- GRETA considers that the Swiss authorities should strengthen their efforts to ensure that the return of victims of trafficking is conducted with due regard for their rights, safety and dignity, is preferably voluntary and complies with the obligation of non-refoulement. This includes informing victims about existing support programmes, protecting them from re-victimisation and re-trafficking. Full consideration should be given to the UNHCR's guidelines on the application of the Refugees Convention to trafficked people and to GRETA's Guidance Note on the entitlement of victims of human trafficking, and persons at risk of being trafficked, to international protection (paragraph 244);

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- Further, GRETA urges the Swiss authorities to review the application of the Dublin Procedure to presumed victims of THB and conduct risk assessments in order to prevent victims being returned to the country where they first applied for asylum, but where they face the risk of being re-trafficked (paragraph 245).

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## **Appendix 2 - List of public bodies, intergovernmental organisations, non-governmental organisations and civil society actors with which GRETA held consultations**

### **Public bodies**

- Federal Office of Police (fedpol)
- Federal Office of Justice
- State Secretariat for Migration (SEM)
- Federal Department of Foreign Affairs
- State Secretariat for Economic Affairs (SECO)
- Federal Office for Customs and Border Security
- Cantonal Conference of Social Affairs
- Cantonal Conference for the Protection of Children and Adults
- Coordination against Trafficking in Human Beings for the Latin Switzerland
- Unification of Cantonal Migration Offices
- Swiss Unification of Judges
- Swiss Conference of Public Prosecutors
- Roundtables against human trafficking in Aargau, Geneva, Graubünden, Neuchâtel, Valais and Zurich
- Parliamentary Group on Human Trafficking of the Swiss Parliament (Federal Assembly)

### **Intergovernmental organisations**

- International Organization for Migration (IOM)
- United Nations High Commissioner for Refugees (UNHCR)

### **NGOs and other civil society actors**

- Act212
- Au Coeur des Grottes
- Centre Social Protestant (CSP)
- Kinderschutz Schweiz (Protection de l'enfance Suisse)
- NGO Perla
- Swiss Platform against Human Trafficking
- Swiss Council for Refugees (OSAR)
- UNIA Trade Union / SGB/USS (Union syndicale Suisse) - Commission for migration
- Trafficking.eu



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## **Government's comments**

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

GRETA engaged in a dialogue with the Swiss authorities on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version.

The Convention requires that "the report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned." GRETA transmitted its final report to the Swiss authorities on 16 April 2024 and invited them to submit any final comments. The comments of the authorities, submitted on 23 May 2024 (in French only), are reproduced hereafter.



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## Commentaires finaux des autorités suisses

### Sur le rapport du GRETA concernant la mise en œuvre de la Convention du Conseil de l'Europe sur la lutte contre la traite des êtres humains par la Suisse

#### Troisième cycle d'évaluation

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##### **Paragraphe 13 :**

La statistique policière de la criminalité (SPC) est ventilée selon l'origine des auteurs et des victimes. Ces données ne sont toutefois pas publiées pour des raisons de protection des données et sont disponibles sur demande auprès de l'Office fédéral de la statistique. Les services compétents travaillent avec ces données.

##### **Paragraphe 16 :**

La Suisse fait une distinction entre la détection et l'identification des victimes de la traite des êtres humains. L'identification signifie que les victimes détectées dans le cadre du travail opérationnel sont identifiées en tant que telles et que les droits légaux à l'aide et à la protection des victimes leur sont accordés. La plupart du temps, les victimes détectées sont identifiées en tant que telles. Les processus formalisés, qu'ils soient centralisés ou décentralisés, n'ont aucune influence sur le nombre de victimes. Ce qui est essentiel, c'est la détection, une étape qui présente de nombreux défis et obstacles très pratiques et opérationnels et qui, en fin de compte, détermine le nombre de victimes en Suisse.

##### **Paragraphes 29, 198 et 203 :**

Les autorités suisses s'efforcent de soutenir autant que possible les organisations spécialisées de lutte contre la traite des êtres humains. La question du soutien financier doit toutefois être reconsidérée dans un contexte plus large. C'est à la politique de fixer les priorités dans les procédures du processus budgétaire de l'Etat. La lutte contre la traite des êtres humains ne peut pas être considérée isolément lors de l'attribution des ressources. Les menaces et les défis sociaux et politiques actuels - qui ont fortement augmenté ces dernières années - doivent également être pris en compte.

Les autorités suisses ne sont pas d'accord avec le fait de conclure que la Convention n'est que partiellement respectée en ce qui concerne les aides financières ("considère"), en se basant notamment sur les constatations et déclarations des ONG et organisations

spécialisées directement concernées. Seule une analyse plus précise des ressources financières permettrait de déterminer si l'aide financière est appropriée et conforme à la Convention.

##### **Paragraphe 30 :**

La question de la création d'un organisme chargé de faire rapport sur la lutte contre la traite des êtres humains a déjà été discutée à plusieurs reprises. Le 30 septembre 2021, le Conseil national a rejeté une

motion correspondante : 19.4589, *Rapporteur national chargé de la lutte contre la traite des êtres humains*. La Suisse maintient sa position selon laquelle un poste de rapporteur n'est pas nécessaire. Les raisons principales sont les suivantes :

- La Suisse est un petit Etat et tous les acteurs de la lutte contre la traite des êtres humains - étatiques et non étatiques - sont reliés entre eux au sein d'organes de coopération, échangent sur leurs besoins et se connaissent personnellement.
- Il existe suffisamment d'évaluations et de rapports, tant nationaux qu'internationaux, de recherches et de publications dans des revues spécialisées sur les progrès et les déficits de la lutte contre la traite des êtres humains en Suisse. Les autorités suisses connaissent les domaines où il est nécessaire d'agir et quelles sont les mesures à entreprendre.
- Il n'est pas nécessaire de créer un autre organisme chargé de recueillir des informations auprès des services compétents et d'envoyer des questionnaires. Il existe suffisamment de questionnaires et de collectes de données qui alourdissent le travail des services opérationnels et stratégiques et qui seraient mal acceptés.

Selon la Convention, la création de l'institution du rapporteur national indépendant est facultative. La Suisse ne comprend pas pourquoi, selon la recommandation, elle ne remplit que partiellement la convention sur ce point ("considère").

## **Paragraphe 58**

### **Premier et deuxième tirets :**

La Suisse fait une distinction entre le conseil juridique à la victime dans le cadre de la procédure d'aide aux victimes et la représentation juridique de la victime dans une procédure judiciaire, à laquelle appartient l'assistance judiciaire gratuite.

En Suisse, il est prévu qu'une victime, dès qu'elle est reconnue, soit remise à l'aide spécialisée aux victimes, généralement une ONG ou une organisation spécialisée mandatée par l'Etat, et qu'un temps de repos et de réflexion lui soit accordé. Ce processus a lieu avant qu'une quelconque audition ou action juridiquement pertinente n'ait lieu. Le conseil juridique de la victime est assuré par l'organisation spécialisée dès ce moment-là, sur la base de l'aide aux victimes, et il est fait appel à un avocat expérimenté et connu en matière de protection des victimes figurant sur la liste des avocats pratiquant et agréés. La procédure est adaptée à l'état de la victime et s'appuie sur l'expérience de l'organisation spécialisée. La victime peut donc être informée et conseillée sur les démarches juridiques pendant le temps de récupération et de réflexion, afin de prendre une décision sur la suite des événements. Le conseil juridique précoce de la victime est donc assuré.

Si la victime décide de participer à une procédure judiciaire en tant que partie, elle bénéficie d'une représentation juridique et d'une assistance judiciaire gratuites, conformément aux règles de la procédure pénale ou civile, car les victimes de la traite des êtres humains sont généralement démunies. Par nature, cela ne peut avoir lieu qu'après l'ouverture d'une procédure, sur décision du ministère public ou du tribunal. Cette décision se prend au début

de la procédure. En attendant la décision, la victime peut continuer à être conseillée par l'avocate en s'appuyant sur l'aide aux victimes. En règle générale, l'avocat qui a été consulté sur la base de l'aide aux victimes est également désigné et rémunéré par le ministère public ou le tribunal pour la procédure, conformément aux règles de l'assistance judiciaire gratuite.

### **Troisième tiret :**

Comme nous l'avons expliqué dans notre prise de position sur le projet de rapport du GRETA, en Suisse, les avocats sont admis par les tribunaux cantonaux supérieurs après une formation exigeante et des examens particuliers. Au cours de la pratique professionnelle, ils se spécialisent en tant qu'avocat de victimes. Il s'agit d'avocats disposant de connaissances et d'une expérience particulière dans le soutien aux victimes dans le cadre d'une procédure pénale. Ils ont suivi une formation continue pour cette activité. Ces avocats sont connus, il en existe des listes publiques et les services spécialisés d'aide aux victimes et

les autres services sont en contact avec ces avocats. Les avocats agréés peuvent représenter les victimes dans toute la Suisse, c'est d'ailleurs le cas en pratique. Il n'est donc pas nécessaire qu'un cabinet d'avocat spécialisé pour les victimes soit présent dans chaque canton, en particulier dans les petits cantons qui ont peu de cas de traite des êtres humains.

#### **Quatrième tiret :**

Lorsqu'un avocat est engagé par le ministère public ou le tribunal dans le cadre de l'assistance judiciaire gratuite, il peut à tout moment adresser des factures à la direction de la procédure pour les frais encourus jusqu'alors, pendant la durée de la procédure. C'est régulièrement le cas, en particulier dans les procédures de longue durée, et c'est une pratique courante. A la fin de la procédure, la décision sur le fond porte également sur les frais de procédure et les indemnités et tient compte des paiements à conto. C'est au cabinet d'avocats de s'organiser et d'établir les factures au bon moment. Il n'est pas nécessaire que l'Etat prenne des dispositions particulières à cet effet.

La Suisse considère que ces recommandations sont déjà respectées.

#### **Paragraphe 69**

La réglementation suisse sur les étrangers ne confère pas de droit à exercer une activité lucrative, respectivement un droit à obtenir une autorisation de travail. C'est une possibilité accordée à la personne qui remplit un certain nombre de conditions qui sont : l'existence d'une offre d'emploi (pas d'autorisation de travail dans le « vide »), des conditions de salaire et de travail respectées (éviter l'exploitation ou le dumping salarial), un logement approprié (voir art.36 al. 4 OASA). En raison de la structure fédéraliste de la Suisse, la compétence de délivrer une autorisation de séjour et de travail appartient au canton de résidence de l'étranger. La procédure de renouvellement peut prendre un certain temps, notamment si la demande de prolongation nécessite des investigations avec d'autres services concernés (par exemple les autorités judiciaires ou le service de l'emploi). Un permis L autorise la personne concernée à travailler si les conditions sont remplies (offre d'emploi, conditions de salaire et de travail).

#### **Paragraphe 71**

Il est juste d'exiger des dommages et intérêts et une réparation morale de la part des criminels, et l'on peut supposer que l'obligation de verser ces prestations aura un effet dissuasif sur les auteurs. Il convient toutefois de noter que la Suisse ne connaît pas de "punitive damages" selon le droit anglo-saxon et que les prétentions à l'encontre des auteurs ne servent qu'à compenser le préjudice subi.

#### **Paragraphe 86**

La Suisse partage l'avis du GRETA selon lequel les victimes doivent être indemnisées le plus largement et le plus complètement possible pour le préjudice matériel et moral qu'elles ont subi. Les dommages et intérêts doivent être versés en premier lieu par les auteurs de l'infraction. Les efforts doivent viser à préserver les valeurs patrimoniales et à obliger les auteurs à indemniser les victimes selon les règles du droit de la responsabilité civile.

Lorsque le GRETA constate que, dans les faits, peu de victimes obtiennent des dommages- intérêts et que - selon ses recommandations - il convient d'intervenir principalement en conseillant et en soutenant davantage les victimes, il est juste de penser que la volonté de la victime de s'engager ou non dans des procédures de demande en dommages-intérêts est également déterminante. Cela ne signifie pas nécessairement que le conseil et l'autonomisation des victimes dans le cadre du conseil aux victimes soient insuffisants et que l'Etat soit négligeant dans le recouvrement des valeurs patrimoniales. Dans la lutte contre la traite des êtres humains, le respect de la volonté des victimes est un impératif important. Si la victime renonce pour une raison ou une autre à participer à la procédure contre l'auteur de l'infraction, il convient de respecter cette volonté et de ne pas en déduire qu'il faut agir sur elle en lui prodiguant encore plus de conseils.

Dans la pratique, de nombreux défis connus se posent, et pas seulement en Suisse. Souvent, il n'y a plus de valeurs patrimoniales chez l'auteur de l'infraction ou celles-ci ont été transférées à l'étranger, ce qui rend leur confiscation beaucoup plus difficile. Pour des raisons liées à l'Etat de droit, les prétentions à l'encontre

des auteurs doivent être prouvées et il est correct, vis-à-vis des contribuables, d'exiger un jugement pour le versement des dommages-intérêts.

### **Premier, troisième et cinquième tirets :**

Nous nous référons également à nos commentaires relatifs au paragraphe 58, premier et deuxième tirets. Après l'identification des victimes, celles-ci sont remises le plus rapidement possible à l'aide spécialisée aux victimes. Durant la phase de stabilisation et de réflexion, les victimes sont conseillées de manière complète et professionnelle sur leur situation et leurs droits par l'organisation spécialisée (souvent une ONG) et un avocat spécialisé dans la protection des victimes. Ce conseil inclut également les avantages et les inconvénients d'une participation à une procédure contre l'auteur de l'infraction afin de faire valoir des droits à des dommages et intérêts. Le conseil porte également sur les demandes de dommages et intérêts fondées sur le droit de l'aide aux victimes. La victime est conseillée de manière exhaustive surtout les aspects juridiques de l'indemnisation.

Les victimes sont conseillées et représentées par des avocats spécialisés dans la protection des victimes. Comme nous l'avons déjà expliqué, il s'agit d'avocats agréés qui se sont spécialisés. Ces avocats sont recommandés aux victimes par les ONG et organisations spécialisées. Les avocats spécialisés dans la protection des victimes sont des spécialistes reconnus dans leur domaine, dotés d'une grande expérience professionnelle et qui n'ont pas besoin de suivre une formation supplémentaire.

### **Deuxième tiret :**

Pour que l'auteur soit condamné pénalement, le ministère public doit prouver les faits et, conformément au principe de l'accusation, exposer en détail l'exploitation, le moment, le lieu et la manière dont elle s'est déroulée. Le profit financier résultant de l'exploitation fait également l'objet d'une enquête. Les informations recueillies servent à la fois à l'accusation pour le procès pénal et à l'administration des preuves pour la demande de dommages et intérêts dans le cadre d'une procédure civile contre l'auteur. Dans la pratique, il existe une collaboration entre le ministère public et la partie civile contre l'auteur de l'infraction. La partie civile est partie à la procédure contre l'auteur de l'infraction et a donc également le droit de consulter les dossiers du ministère public. La tâche de la partie civile est de chiffrer le dommage sur la base des preuves recueillies par le ministère public et de l'inscrire dans la procédure pénale (action civile adhésive au procès pénal).

### **Quatrième tiret :**

La recherche et la confiscation de valeurs patrimoniales résultant d'une infraction est la norme dans les enquêtes pénales menées par le ministère public contre l'auteur de l'infraction. Dans chaque procédure contre les auteurs d'infractions, des valeurs patrimoniales sont recherchées et confisquées si elles existent. Dans certains cantons, la direction de la procédure est assistée par des procureurs spéciaux dont la tâche exclusive est de rechercher des valeurs patrimoniales.

La Suisse estime que ces recommandations sont respectées.

### **Paragraphe 92 à 95**

Selon les autorités suisses, l'affirmation et la conclusion du GRETA selon lesquelles la Suisse ne remplit pas du tout les exigences de la convention en ce qui concerne la définition de la traite des êtres humains (cf recommandation du paragraphe 95 "exhorte") sont fausses. Les autorités suisses affirment au contraire que la définition de la traite des êtres humains selon le Protocole additionnel de l'ONU sur la traite des êtres humains et la Convention du Conseil de l'Europe fait partie intégrante du droit suisse, est déterminante et directement applicable pour les autorités de poursuite pénale et les tribunaux. :

- Dans l'arrêt de principe 128 IV 117, le Tribunal fédéral a établi que la disposition pénale contre la traite des êtres humains devait être interprétée en Suisse à la lumière de la définition internationale, établissant ainsi l'applicabilité directe de cette définition. Cette pratique est toujours en vigueur et a été confirmée par le Tribunal fédéral dans de nombreux arrêts ultérieurs. L'affirmation du paragraphe 92 du rapport, selon laquelle cette jurisprudence est dépassée, est fautive dans la mesure où elle se réfère à cette pratique

du Tribunal fédéral. Les arrêts du Tribunal fédéral sont une source de droit et sont déterminants pour la justice.

- La pertinence des moyens pour la commission de l'infraction est confirmée par la doctrine en Suisse. Voir notamment à ce sujet : Annatina Schulz, *Die Strafbarkeit von Menschenhandel in der Schweiz*, Schulthess 2020, p. 85f et 105ss. Les moyens de l'infraction contenues dans la définition font partie intégrante de l'élément constitutif objectif de la traite des êtres humains selon l'art. 182 CP et les faits doivent être examinés quant à la présence de ces caractéristiques. Ainsi, dans tous les exemples cités au paragraphe 108 du rapport, l'exploitation de la vulnérabilité de la victime a été examinée et traitée. L'existence des moyens d'infraction et la pertinence du consentement de la victime sont examinées dans les procédures contre les auteurs.

Il convient de distinguer cette question de celle de savoir si la transposition de la définition internationale de la traite des êtres humains dans le code pénal suisse est une bonne solution ou non. Cette question est justifiée et fait l'objet d'un débat controversé en Suisse, tant sur la nécessité d'une adaptation que sur la formulation à adopter. Certains pensent à juste titre qu'une adaptation de la formulation de l'article 182 CP serait plus profitable à la pratique, en ce qui concerne la mention explicite des moyens utilisés pour commettre l'infraction et la précision de l'exploitation de la force de travail. La Suisse a reconnu ce défi et s'en occupera dans le cadre de la mise en œuvre du PAN contre la traite des êtres humains 2023 - 2027. Cela étant, les autorités suisses maintiennent que la définition internationale de la traite des êtres humains est valable et directement applicable en Suisse et qu'elle constitue une base suffisante pour la condamnation des auteurs, y compris en matière de traite des êtres humains aux fins d'exploitation du travail.

### Paragraphe 93

Dans le contexte de l'économie souterraine, il est souvent impossible de déterminer comment la relation de travail s'est établie et si l'acte et les moyens de l'infraction ont été commis. Il faut néanmoins partir du principe qu'il s'agit d'une situation d'exploitation du travail. Dans la situation juridique actuelle, de telles situations doivent être traitées comme de l'usure (art. 157 CP), ce qui n'est pas satisfaisant.

La définition de l'exploitation du travail nécessite un examen particulier. La définition de la traite des êtres humains mentionne le travail ou les services forcés, l'esclavage ou les pratiques analogues à l'esclavage et la servitude dans le contexte de l'exploitation du travail. Il convient de noter que des éléments du travail forcé, tel que défini dans la Convention n° 29 de l'OIT, peuvent se recouper avec les moyens définis dans la définition de la traite des êtres humains et que l'esclavage est de toute façon obsolète en l'absence de base juridique. La limite entre l'exploitation et la violation de la législation du travail n'est pas claire. Comme le relève le GRETA dans sa note d'orientation sur la prévention et la lutte contre la traite des êtres humains aux fins d'exploitation par le travail (GRETA 2020 /12), le concept d'exploitation n'est pas défini en droit international et reste ambigu, quand bien même il est un élément fondamental de l'incrimination de la traite. La Suisse appelle de ses vœux une définition internationale du concept d'exploitation. La Suisse constate souvent, y compris lors de conférences internationales et de réunions de nature opérationnelle, qu'il existe de grandes incertitudes et des divergences sur la notion d'exploitation de la force de travail au sens de la traite des êtres humains. Sur le plan national, les tentatives faites jusqu'à présent en Suisse pour formuler une définition n'ont pas abouti, les différences et les avis des experts sur la formulation concrète étant trop importants, raison pour laquelle une définition internationale en provenance du GRETA serait très utile. La Suisse a proposé l'élaboration d'une définition internationale de l'exploitation du travail au sein du groupe de travail "Drafting Committee on Trafficking for the purpose of labour exploitation (DH-TET)" du Steering Committee for Human Rights (CDDH). La proposition de la Suisse a été discutée et malheureusement rejetée.

### Paragraphes 98 à 112

Ces paragraphes critiquent à plusieurs égards l'engagement de la Suisse en matière de poursuite pénale et constatent in fine que la pratique suisse n'est pas conforme à la Convention (exhorte, paragraphe 111) ou ne la respecte qu'en partie (considère, paragraphe 112).

L'identification de la traite des êtres humains et la conduite de procédures pénales à l'encontre des auteurs sont très exigeantes. Les raisons sont les suivantes :

- De nombreuses victimes ne se reconnaissent pas comme telles. Le processus d'identification et de mise en confiance est très long et peut être infructueux. Après un soupçon initial de traite des êtres humains et suite aux premières investigations, de nombreuses procédures doivent être requalifiées et prennent une autre tournure. La protection des victimes dans la procédure peut être très coûteuse et handicapante pour les auditions.
- Un auteur présumé ne peut être condamné sur la base de simples soupçons. Les droits des prévenus ont été étendus en s'appuyant sur les garanties de procédure de la CEDH. Le droit d'être entendu et le droit des auteurs à poser des questions lors de l'audition de la victime en sont des exemples.
- De nombreuses stratégies de défense des auteurs d'infractions reposent sur le fait de prolonger et de compliquer les procédures. Souvent, des recours sont déposés contre toutes ou de nombreuses décisions incidentes et les décisions prises sont systématiquement contestées. Les autorités d'enquête et les tribunaux sont également accusés de partialité.
- La collecte des preuves est difficile. L'audition des victimes est un réel défi pour les personnes chargées des auditions en raison des traumatismes subis et de l'angoisse permanente. Le comportement des victimes est fluctuant et l'évaluation des déclarations et la communication des résultats sont difficiles. Des mesures d'investigation secrètes doivent régulièrement être mises en œuvre. Celles-ci doivent être soigneusement planifiées et doivent être autorisées par le tribunal des mesures de contrainte.
- L'audition juridique et le droit de poser des questions aux auteurs lors de l'interrogatoire des victimes en sont des exemples. Ce droit est justement un grand défi pour la poursuite pénale. Il en va de même pour le droit à une voie de droit et au contrôle des jugements des instances précédentes.
- Les procédures pénales à l'encontre des auteurs sont très gourmandes en ressources. Il s'agit souvent de réseaux d'auteurs et les procédures pénales doivent souvent être élargies après un soupçon initial.
- En règle générale, il s'agit de criminalité transnationale. La coopération avec les autorités de poursuite pénale étrangères, au niveau policier et judiciaire, est coûteuse et prend beaucoup de temps, et les résultats ne sont pas toujours satisfaisants.

Malgré ces difficultés, de nombreux progrès ont été réalisés en Suisse ces dernières années, s'agissant de la poursuite pénale de la traite des êtres humains :

- La promotion de la spécialisation au sein des forces de police a fortement augmenté dans les cantons. Chaque année, environ 30 à 35 nouveaux spécialistes et spécialistes de la répression de la traite des êtres humains sont formés dans le cadre de cours spéciaux, au cours desquels, outre la transmission de connaissances spécifiques, on s'entraîne particulièrement au contact avec les victimes avec des organisations spécialisées dans l'aide à ce type de victimes et où l'on transmet les expériences par le biais de nombreuses présentations de cas.
- La formation des membres du ministère public a été développée. Des cours sont régulièrement organisés. Les membres du ministère public peuvent également participer aux formations spécialisées de la police.

- Des dispositions organisationnelles ont été prises dans les cantons afin de mieux enquêter sur les cas de traite des êtres humains, que ce soit par la création d'unités d'enquête spéciales, l'attribution de compétences ou la création d'unités décentralisées, en fonction des besoins des cantons.
- Une plate-forme de mise en réseau contre la traite des êtres humains a été créée pour les ministères publics cantonaux. Les procureurs chargés de la traite des êtres humains se rencontrent régulièrement pour échanger leurs points de vue.
- La recherche et la confiscation des valeurs patrimoniales ont été développées. Certains cantons ont mis en place des procureurs spécialisés dans la recherche et la confiscation de valeurs patrimoniales, qui soutiennent la direction de la procédure.
- La coopération opérationnelle bilatérale et multilatérale en matière de poursuite pénale a été fortement améliorée. Des projets visant à améliorer la coopération avec les autorités de poursuite pénale des pays d'origine ont été mis en œuvre, la coopération avec Europol a été intensifiée et des équipes communes d'enquête ont été créées au niveau d'Eurojust.

La Suisse s'efforce en permanence d'améliorer la qualité des poursuites pénales contre la traite des êtres humains. Au vu des progrès réalisés dans la poursuite pénale, il est surprenant que le GRETA arrive à la conclusion selon laquelle la Suisse ne respecterait plus la convention.

### **Paragraphes 110 et 112**

En ce qui concerne le nombre de poursuites et de condamnations, la question se pose de savoir selon quels critères ils sont considérés comme faibles, car le rapport n'en fait pas état. Les déclarations et les comparaisons sur le faible nombre de condamnations ne sont justifiées que si les critères sont connus. La Suisse est un petit pays et le nombre d'enquêtes et de condamnations devrait être mis en rapport avec sa taille et sa population.

Le niveau des sanctions n'est pas analysé dans ce rapport, qui se contente de constater ici, de manière générale, que les peines ne sont pas dissuasives. En Suisse, les peines sont fixées en fonction de la culpabilité. En règle générale, elles se situent entre 6 et 10 ans de privation de liberté pour les auteurs qui ont contribué de manière déterminante à la traite des êtres humains et qui ont donc commis une faute grave. Des peines de plus de 10 ans ont également été prononcées, par exemple en 2022 pour un auteur qui a agi selon la méthode du loverboy ou en 2023 dans un cas d'exploitation de la force de travail. Les auteurs ayant contribué de manière secondaire à l'infraction reçoivent des peines plus légères. Ces peines correspondent à la pratique suisse et sont dissuasives.

La longueur des procédures s'explique par la complexité des cas, les défis posés par l'administration des preuves, la collaboration avec les autorités étrangères, les entraves à la procédure de la part des auteurs ainsi que le recours régulier à des instances supérieures pour les jugements.

La Suisse rejette les recommandations dans la mesure où elles ont été abordées dans les présentes observations et dans celles qui précèdent.

### **Paragraphes 174 et 176 (premier tiret)**

La coopération entre les acteurs de la lutte contre la traite des êtres humains dans le canton est discutée lors des tables rondes cantonales contre la traite des êtres humains et définie dans des accords de coopération. Les ONG spécialisées, les inspecteurs et contrôleurs du travail participent aux tables rondes. Des accords séparés ne sont pas exclus, mais les ONG et les inspecteurs du travail peuvent intervenir dans les discussions des tables rondes et proposer - si nécessaire - des améliorations à la coopération.



### **Paragraphe 176 (troisième et quatrième tirets)**

Les victimes identifiées de la traite des êtres humains ont des droits et sont protégées. Il s'agit notamment des droits de séjour prévus par la Convention du Conseil de l'Europe et la législation suisse. La régularisation des rapports de travail illégaux et les mesures préventives visant à les identifier sont des aspects de la politique migratoire qui vont au-delà de la lutte contre la traite des êtres humains et qui ne font pas l'objet de la mise en œuvre de la convention.

### **Paragraphe 181**

Les plans d'études des cantons sont des plans-cadre qui n'entrent pas dans le détail des matières. Concernant les thématiques mentionnées dans la recommandation, la sensibilisation intervient en lien avec les thématiques de l'égalité des genres, de la dignité et de l'intégrité de chaque personne, de la violence sexuelle, de la traite d'êtres humains que ce soit dans les plans d'études et dans différents moyens d'enseignement et fiches pédagogiques, notamment évoqués par la Fondation éducation21 (agence cantons-Confédération pour l'éducation au développement durable EDD / BNE).

Dans les plans d'études :

- PER (Plan d'Etude Romand) : notamment dans les domaines « [Formation générale](#) » et « [sciences humaines et sociale](#) »
- Lehrplan21 : notamment dans le domaine « [Ethik, Religionen, Gemeinschaft](#) »

En outre du matériel est élaboré ou diffusé par la Fondation éducation21, notamment sur les thématiques suivantes :

- Droits de l'homme : <https://www.education21.ch/fr/education-aux-droits-humains>
- Droits de l'enfant : <https://www.education21.ch/fr/dossiers-thematiques/droits-de-lenfant>
- Genre – égalité : <https://www.education21.ch/fr/dossiers-thematiques/genres-egalite>

La Suisse considère que cette recommandation est respectée.

### **Paragraphe 188 et 189, deuxième et quatrième tirets**

Le Secrétariat d'Etat aux migrations (SEM) entretient des contacts réguliers avec les organisations spécialisées et transmet directement leurs informations de contact aux victimes détectées en procédure d'asile. Comme indiqué dans la prise de position sur le premier projet de rapport, les organisations spécialisées contribuent de diverses manières à la procédure d'asile et à l'identification des victimes. Par ailleurs, elles coopèrent avec la représentation juridique financée par la Confédération dans les centres fédéraux d'asile (CFA) et peuvent, ainsi, s'entretenir directement avec les potentielles victimes. Enfin, il existe sur chaque site une personne de contact pour les ONG et les partenaires de la société civile et celles-ci ont ainsi la possibilité de formuler des propositions visant à améliorer la collaboration. La Suisse est donc d'avis qu'elle remplit ses obligations sous l'angle de la Convention en ce qui concerne la procédure d'asile.

### **Paragraphe 196**

Dans le canton du Tessin, l'organisation Antenna Mayday assume le rôle de conseil spécialisé pour les victimes de la traite des êtres humains.

### **Paragraphe 207**

La Suisse considère que les centres fédéraux d'asile (CFA) constituent de manière générale un hébergement adéquat pour les victimes de la traite des êtres humains dans la mesure où celles-ci ont accès aux mesures d'assistance prévues par la Convention, quel que soit le pays dans lequel l'exploitation a eu lieu. Cela étant, le Secrétariat d'Etat aux migrations (SEM) peut décider de loger les personnes vulnérables – en fonction de leurs besoins et des particularités du CFA – dans un « domaine séparé » des autres personnes requérant l'asile dans le CFA (par ex. dans un bâtiment réservé aux personnes vulnérables ou sur un étage particulier), dans un autre CFA, peut renoncer à leur transfert dans

un autre hébergement ou placer une personne dans un hébergement externe lorsque sa sécurité ne peut pas être garantie.

Le GRETA considère dans le paragraphe susmentionné que les centres fédéraux d'asile (CFA) sont inadaptés à l'hébergement des victimes de traite de manière générale, sans pour autant prendre en compte les différentes mesures d'hébergement possibles ni préciser les critères sur lesquels il se base.

Par ailleurs et comme déjà communiqué à plusieurs reprises au GRETA, le contact des organisations spécialisées est remis aux victimes suite à leur détection. De plus, cette mise en contact est assurée par le biais de la représentation juridique financée par la Confédération. Il appartient ensuite aux victimes de choisir si elles souhaitent faire appel aux services d'une organisation spécialisée. Une transmission des données personnelles des victimes et leur mise en contact systématique avec des organisations spécialisées serait contraire aux dispositions légales applicables en matière de protection des données.

### **Paragraphe 216 et 219**

La Suisse est également d'avis qu'il faut garantir un hébergement et des soins de qualité aux RMNA. Toutefois, il ne serait pas admissible d'enfermer les RMNA afin d'éviter leur disparition. Tous les mineurs disparus sont signalés comme personnes disparues dans les systèmes de police nationaux et internationaux. Cela permet d'obtenir des informations sur leur séjour s'ils réapparaissent quelque part. En dehors de cela, il n'existe guère de moyens d'enquête utiles pour déterminer le lieu de séjour des RMNA disparus.

### **Paragraphe 236**

Consultés sur la première version du rapport, les cantons ont indiqué ceci : *Les victimes reçoivent un permis de séjour de courte durée aussi longtemps que leur présence est nécessaire pour les autorités chargées de l'enquête. Si la collaboration avec les autorités n'est pas (ou plus) nécessaire, un permis humanitaire ou un permis pour cas de rigueur est examiné et éventuellement accordé en tenant compte notamment de la sécurité, de l'état de santé, de la situation familiale et d'autres facteurs pertinents.* Lors de l'examen d'une demande de permis pour cas de rigueur et de la pondération des critères d'octroi, une attention particulière est accordée aux circonstances susmentionnées (état de santé de la victime, obstacles à sa réinsertion dans le pays de provenance ou risque de voir la victime retomber entre les mains de trafiquants d'êtres humains, situation personnelle et familiale). Les critères d'octroi sont fixés dans une ordonnance du Conseil fédéral et précisés dans des directives du Secrétariat d'Etat aux migrations. La jurisprudence du Tribunal fédéral joue un rôle important et sert de guide pour la pratique. L'examen d'un permis humanitaire s'effectue au cas par cas.

### **Paragraphe 244 et 245**

L'obligation de non-refoulement est consacrée à l'art. 5 de la Loi suisse sur l'asile et est applicable à toutes les victimes reconnues comme réfugiées en Suisse. Conformément aux jurisprudences suisses et européennes (CEDH), les risques de re-trafficking, de représailles et de mesures d'intimidation ainsi que la situation individuelle et les facteurs de vulnérabilité particuliers de la victime sont évalués de façon approfondie dans l'examen d'éventuels obstacles à l'exécution du renvoi et peuvent, le cas échéant, justifier l'octroi d'une admission à titre provisoire pour illicéité ou inexigibilité du renvoi. Comme cela a été précisé par la Suisse lors de sa précédente prise de position, il est donc dûment tenu compte de la situation individuelle et des facteurs de vulnérabilité particuliers des victimes en procédure d'asile.

Il en va de même en procédure Dublin ; la pratique du Secrétariat d'Etat aux migrations (SEM) est d'examiner pour chaque cas individuel les éventuels obstacles à l'exécution du renvoi dans un pays Dublin. Lorsqu'il conclut qu'il existe un risque réel de re-trafficking ou de représailles, il fait usage de la clause de souveraineté.

Par conséquent, la Suisse ne considère pas qu'un changement de pratique soit actuellement nécessaire sur la base des recommandations émises par le GRETA.