



Organization for Security and Co-operation in Europe

Special Representative and Co-ordinator for Combating Trafficking in Human Beings

Foreword

On 3-5 September 2019, I had the pleasure of paying an official visit to Croatia to hold consultations with high-level government officials, law-enforcement, and judiciary as well as representatives of civil society and international organizations involved in the field of anti-trafficking.

The objectives of the visit were to identify promising practices for combating trafficking in human beings (THB) as well as to promote the full implementation of OSCE commitments in the field of anti-trafficking, notably holistic and comprehensive actions aiming to better prevent and respond to human trafficking and to protect and support its victims. I greatly appreciated the constructive discussions held and I was pleased to observe the strong political will of the Government of Croatia as reflected in the leadership of the National Co-ordinator and the inspiring commitment of practitioners to further anti-trafficking responses in the country.

The Report was presented to the Delegation of Croatia on 21 August 2020. The Delegation submitted its final comments on 10 November 2020.

Croatia's forward-looking legislative framework, which includes, among others, emerging forms of exploitation such as exploitation of individuals in pornography, in armed conflict and for the purpose for forced criminality, is a strong foundation for responding to the evolving nature of the crime in the country. Given the extensive discussions that I had with various stakeholders on the identification of trafficked persons among mixed migration flows and persons seeking international protection, I am delighted to note the efforts of Croatian authorities in increasing the training capacities of border and immigration officials to identify trafficking patterns. I was particularly pleased to see that, since the visit, these efforts have recently yielded identifications of potential trafficking victims among persons seeking asylum. And finally, I welcome the willingness of the Ministry of Justice's Expert Group tasked with drafting the act to amend the criminal code to consider inclusion of the non-punishment principle in relation to trafficking victims, as this would further enhance the good work demonstrated by Croatia to prevent and combat human trafficking.

My Office stands ready to support relevant authorities in the implementation of the comprehensive set of recommendations made in this report. I look forward to deepening our established collaboration in furthering the best interests of the most vulnerable and disadvantaged members of society.

A handwritten signature in blue ink, appearing to read 'Valiant Richey'.

Valiant Richey

Special Representative and Co-ordinator for Combating Trafficking in Human Beings

**Report by the OSCE Special Representative and Co-ordinator for Combating
Trafficking in Human Beings following the official visit to Croatia
3-5 September 2019¹**

1. This Report presents the main findings and recommendations of OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Valiant Richey (hereinafter referred to as the Special Representative), following his country visit to Croatia on 3-5 September 2019.
2. The purpose of the visit was to hold consultations with government officials and experts from state institutions and civil society to discuss ways to support and advance ongoing efforts to prevent trafficking and assist trafficked persons and protect their rights, as well as to bring perpetrators to justice in line with OSCE commitments and relevant international standards.
3. In the course of the visit, the Special Representative engaged in direct consultations with high-level government officials and representatives from departments, including the National Co-ordinator on Combating Human Trafficking, Director of the Government Office for Human Rights and Rights of National Minorities, the Ministry of Demography, Family, Youth and Social Policy, the Ministry of Labour and Pension System, the Croatian Employment Service, the Labour Inspectorate, the Ministry of Interior, the Ministry of Justice, the State's Attorney Office, the Ombudspersons for Children, and for Gender Equality, and the judges of the Municipal Criminal Court of Zagreb, the County Court of Velika Gorica.

The Special Representative also held consultations with the anti-trafficking NGOs Croatian Red Cross, Centre for Women War Victims (ROSA), Domine – Organization for Promotion of Women's Rights, Centre for Missing and Exploited Children, Women's Room, and the Dolphin.

Finally, the Special Representative met with the representatives of international organizations based in Zagreb, including the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR). The Special Representative also visited the Reception Centre for Seekers of International Protection.

4. The Special Representative wishes to thank the Croatian authorities, and in particular, the Government Office for Human Rights and the Rights of National Minorities for their co-operation, commitment and assistance in organizing and facilitating the visit. He also wishes to thank all interlocutors, including civil society and international organizations in Croatia, for their willingness to share their knowledge and insights.
5. Consultations during the visit focused on the situation of trafficking in human beings (THB) in the country and the ongoing policy, legislative, and practical responses to it. More specifically, discussions focused on the identification of, and the provision of assistance to, victims of all forms of trafficking, including of child victims of trafficking; the protection of victims' rights, including of migrants and asylum seekers; efforts in the area of prevention and countering the demand for sexual and labour

¹ The Report was finalized on 21 August 2020

exploitation of adults and children; co-operation with civil society; and prosecutions and convictions of perpetrators.

6. Over the course of the visit, the Special Representative noted with appreciation that government officials and civil society representatives demonstrated significant awareness and understanding of human trafficking as a serious violation of fundamental rights, knowledge of new human trafficking trends in the country, and a readiness to tackle new threats.
7. The Special Representative stressed the importance of maintaining the prevention of THB as one of the key priorities on the government's agenda. He notes that a decline in high-level attention to the problem could jeopardize the important results already achieved.

Legal, policy and institutional framework

8. The Special Representative commends Croatia for being a party to major international instruments that provide high standards in the fight against trafficking in human beings, such as the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, ratified on 24 January 2003, and the Council of Europe Convention on Action against Trafficking in Human Beings, ratified on 5 September 2007.

The country has also ratified a number of Conventions addressing slavery and forced labour such as the ILO Forced Labour Convention No.29, ratified in 1991; the ILO Convention on the Abolition of Forced Labour No.105, ratified in 1997; the ILO Convention on Worst Forms of Child Labour No.182, ratified in 2001; and the UN Convention on the Elimination of All Forms of Discrimination against Women ratified in 1992.

Croatia ratified the UN Convention on the Rights of the Child in 1992. The Optional Protocols on the involvement of children in armed conflict and on the Sale of Children, Child Prostitution and Child Pornography, were ratified in 2002.

9. The Special Representative recommends that Croatia signs and ratifies the Protocol of 2014 to the Forced Labour Convention 1930. The ratification of this Protocol will advance prevention, protection and compensation measures against all forms of forced labour; he further recommends that the authorities sign and ratify the ILO Convention No. 189 concerning Decent Work for Domestic Workers, which serves as an effective instrument for the prevention of THB for labour exploitation, especially for domestic servitude.²
10. The Special Representative also recommends that Croatian authorities sign and ratify the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. The ratification of this Convention is of particular

² OSCE, Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude, Occasional Paper Series No. 4, 2010. Available at <http://www.osce.org/cthb/75804>

importance to enhance protection mechanisms to migrant workers in light of the increasing number of migrant workers involved in the various sectors in the country.

11. Croatia is also bound by the Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims on combating THB; EU Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography; as well as of EU Council Directive 2004/81/EC of 29 April 2004 on the resident permit issued to third-country nationals who are victims of THB or who have been the subject of an action to facilitate illegal immigration.
12. Likewise, as a participating State to the OSCE, Croatia has pledged to implement the commitments it has undertaken in the OSCE framework, in particular the recommendations contained in the 2003 Action Plan to Combat Trafficking in Human Beings, as well as its 2005³ and 2013⁴ Addendums and numerous Ministerial Council Decisions.
13. Domestically, human trafficking was first criminalized in the Croatian Criminal Code (CC) in 2004 through the inclusion of Article 175 (Human Trafficking and Slavery). In 2013, the Government adopted a new Criminal Code and separated the offences of human trafficking and slavery into two distinct provisions: Article 105 criminalizes slavery and Article 106 criminalizes human trafficking. The definition of human trafficking provided under Article 106 is expansive covering not only the list of exploitative purposes listed in the Palermo Protocol, but also pornography, contracting an illicit or forced marriage, taking parts of the person's body, exploiting a person in armed conflict and for the commission of an unlawful act. Trafficking “means” listed under paragraph 1 of Article 106 include the use of force or threat, of deception, fraud, abduction, abuse of authority or a situation of hardship or dependence, or giving or receiving of payments or other benefits to achieve the consent of a person having control over another person or any other means. Paragraph 2 criminalizes trafficking of children and envisages punishment by a prison sentence with a duration between from one and ten years. The aggravating circumstances, set out in paragraph 3 of the article, include, *inter alia*, committing the crime against a child or by a public official in the performance of his or her duties, or the said offence was committed against a large number of persons or the life of one or more persons was consciously endangered. In these cases, the punishment is from three to 15 years of imprisonment. Paragraph 4 of the article criminalizes the knowing use of services of trafficked persons, and prescribes an equal level of punishment as in the paragraph 1. The seizure, concealment, destruction of travel or identification document as well as the attempt to commit these offences are punishable with a prison sentence not exceeding three years. The Special Representative commends Croatia for its expansive definition of human trafficking tailored to the context and patterns of human trafficking in the country, including in particular trafficking in human beings for the purpose of production of pornography.
14. Article 105 provides equal level of punishment for slavery and defines the offences as putting a person in a position of slavery or a similar position or holding the person in

³ OSCE Permanent Council Decision No. 685 [Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special needs of Child Victim of Trafficking for Protection and Assistance](#), PC.DEC/685

⁴ No.1107 [Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later](#), PC.DEC/1107/Corr.11

such a position, buying, selling, handing over to another or mediating the purchase, sale or handing over of such a person, or inciting the person to sell his or her freedom or the freedom of the person he or she provides for or takes care of. Additionally, according to paragraph 2 whoever transports people who are in a position of slavery or a position similar thereto shall be punished by imprisonment from six months to five years. In cases when this offence is committed against a child the punishment is from three to fifteen years of prison sentence.

15. Criminal Code Article 169 criminalizes the offence of forced marriage and prescribes as a punishment with a duration between six months and five years. In the cases when the person who does not have permanent residence in the country is enticed for the purpose of forced marriage the punishment term is imprisonment not exceeding three years. The criminalization of this offence is necessary to tackle harmful practices of forced marriages, including within ethnic minority groups, such as Roma and Sinti, which has been an observed pattern across the OSCE region.
16. On the policy framework, since 2002 Croatia has promulgated three-year National Action Plans (NAP) for Combating Trafficking in Human Beings as adopted by the National Committee for Combating Trafficking in Human Beings. The current NAP, covering the period of 2018-2021,⁵ is composed of eight thematic areas: legislative framework, identification of victims, monitoring the procedures for detection, prosecution and sanctioning of criminal offences related to the trafficking of persons, assistance and protection for victims, prevention, education, international and regional co-operation and co-ordination. Building upon earlier action plans, the NAP is developed based on the assessment of implementation and effectiveness of the prior NAPs conducted by the Government Office for Human Rights and Rights of National Minorities. Reports on the implementation of measures from the National Plan for Combating Trafficking in Human Beings 2018-2021 are available on the website of the Office for Human Rights and the Rights of National Minorities of the Government of the Republic of Croatia.⁶ The Special Representative is pleased to note Croatia's comprehensive NAP, which also includes indicators for measuring the effectiveness of each of the planned actions. One of the prominent features of the NAP is its focus on strengthening proactive work to detect the recruitment and exploitation of human beings via the Internet and other sources. This action envisages various measures, including enhanced international police co-operation and capacity building activities. The Special Representative invites Croatian authorities to consider this Report and its recommendations when developing the next NAP to be launched in 2022.
17. With regard to the institutional anti-trafficking framework, Croatia's National Committee for Combating Trafficking in Human Beings was set up in 2002 and further renewed in 2012. The Committee meets twice a year. Chaired by the Deputy Prime Minister for Social Welfare and Human Rights, the Committee is comprised of the representatives of the Government Office for Human Rights and Rights of National Minorities, ministries of the Interior, Health, Social Policy and Youth, Foreign and European Affairs, Justice, Education, the Public Prosecution Service, Croatian Employment Service, NGOs PETRA network, Croatian Red Cross and the Association of Croatian Journalists. The National Committee serves as an overarching body that

⁵ <https://ljudskaprava.gov.hr/suzbijanje-trgovanja-ljudima/599>

⁶ <https://ljudskaprava.gov.hr/suzbijanje-trgovanja-ljudima/599>

adopts the country's anti-trafficking policy framework. In 2018, the composition of the National Committee was revised and the Labour Inspectorate was added to the list of members. The Special Representative positively notes the inclusion of the labour inspectors in the work to address the emerging and increasing pattern of labour exploitation in the country.

18. While the Committee serves as high-level decision-making body, the Government Office for Human Rights and National Minorities acts as the country's Anti-Trafficking Co-ordinator and is led by the Head of the Office, the National Co-ordinator. The Office co-ordinates the work of the government and public agencies represented in the National Committee and chairs the Operational Team. The Office leads the development of the policy framework including the elaboration of the NAP and is directly responsible for implementation of prevention work as envisaged in the NAP.

19. The Special Representative positively notes the public reports published by the Government Office for Human Rights and National Minorities on the implementation of the measures planned in the NAP. The most recent report was published in January 2020 and provides detailed qualitative and quantitative data on implemented activities carried out in the course of 2019.⁷ Nonetheless, he notes the lack of information about the full scope of trafficking for human beings in Croatia. One challenge in assessing the effects of anti-trafficking measures was the constraint in comprehensive data on various forms of exploitation and their true prevalence in the country. While the reports referenced above recount activities, there is a significant lack of research that would establish the patterns, scale and scope of trafficking in the country and provide in depth analysis of existence and emerging forms of THB. Some officials met during the visit suggested that the scope of trafficking as not very large in Croatia as evidenced by the relatively low number of identification; however, the number of identifications is not indicative of the true scope, it is only a sign of scale of current actions. Further research is needed on the scale, not only activities, particularly given the latent nature of the crime. Such information is crucial for developing responses that match the scale of the problem. Therefore, he reiterates the need for targeted research and studies that would fill the current gap in the understanding of the true scale and scope of the trafficking, contribute to overall data and inform the development of anti-trafficking policies tailored to the needs of the country. He recommends that the Government Office for Human Rights and the Rights of National Minorities initiate - or outsource to civil society organizations and academia - research into current and emerging patterns of human trafficking, such as ICT-facilitated human trafficking, including trafficking of children and adults for the purpose of pornography, exploitation of domestic and foreign women in prostitution; trafficking in the tourism sector; exploitation of migrant workers in the seasonal work, in the construction sector; trafficking in mixed migration flows and trafficking for the purposes of forced criminality and begging.

20. The Operational Team was established within the National Committee to deal with specific anti-trafficking issues and meets on monthly basis to co-ordinate the prevention work and protection of victims. The agencies and civil society organizations represented in the National Committee are also members of the

⁷ Report on the implementation of measures from the National Plan to Combat Trafficking in Human Beings for the period from 2018 to 2021 focusing on 2018 actions, Zagreb, January 2020, available at <<https://ljudskaprava.gov.hr/suzbijanje-trgovanja-ljudima/599>>

Operational Team. Additionally, two consular officials, employees of the Ministry of Foreign and European Affairs, are members of the Operational Team. The Special Representative shares the opinion voiced by various stakeholders, including civil society organizations, that the Operational Team is effective and welcomes the multidisciplinary approach adopted by the Croatian Government—including engagement of civil society—to co-ordinate the implementation of anti-trafficking policies and discuss recurrent and emerging issues.

21. As described in the paragraph 18, the National Co-ordinator also acts as Croatia’s National Rapporteur and is mandated with the monitoring and evaluation of anti-trafficking action in the country. The Special Representative wishes to commend the active work of the National Co-ordinator while stressing the importance of independent monitoring and evaluation of anti-trafficking measures, and underlines the value of a separate function of National Rapporteur or equivalent national monitoring and reporting mechanisms as a mean to collect and utilize an accurate and evidence-based data on THB. This is particularly critical to assess and monitor the scope of trafficking, the effectiveness of the anti-trafficking measures taken by the State, and, drawing from this data collection and analysis, to produce recommendations for the government and the parliament⁸. In line with international best practice and OSCE Ministerial Council Decision 14/06, the Special Representative encourages Croatian authorities to consider separating the co-ordination role from the monitoring and evaluation role by establishing an independent National Rapporteur function.⁹
22. As part of its mandate, the Ombudspersons for Children and Gender Equality respectively also gather data related to human trafficking both from the state agencies and through the direct complaints received by the Ombudspersons. Although they are not members of the National Committee or Operations Team, the Ombudspersons are consulted on the development of the NAP and policy papers aimed at identification of and assistance to trafficked persons. While positively noting the discussions held during the visit, the Special Representative wishes to reiterate that the research is crucial to understand the true prevalence of the scale and scope of human trafficking and invites the Ombudspersons to consider collecting data through targeted research or studies and analyzing their own research in addition to the data sent by agencies.
23. The Special Representative commends the dynamic role that anti-trafficking NGOs play in Croatia in conducting a range of critical activities, including actively participating in the development of the country’s anti-trafficking policy, having a strong voice in state-led policy and co-ordination platforms, working with victims to rehabilitate and reintegrate them in society, and raising awareness. He commends the level of co-operation between civil society organizations and Croatian authorities in jointly developing the country’s anti-trafficking response and notes that this approach well reflects the recommendations set out in the recently published OSCE report on “the Critical Role of Civil Society in Combating Trafficking in Human Beings”.¹⁰

⁸ OSCE Action Plan for Combating Trafficking in Human Beings, Chapter IV, para 1, p17

⁹ OSCE, Ministerial Council Decision No. 14/06 “Enhancing Efforts to Combat Trafficking in Human Beings, including for Labour Exploitation, through a Comprehensive and Proactive Approach”, MC.DEC/14/06, 5 December 2006

¹⁰ Available at <https://www.osce.org/secretariat/405197?download=true>

Identification, referral and assistance for victims of trafficking

24. Croatia's policy framework of victim identification and referral procedure is consistent with promising practices that exist in other OSCE participating States, particularly with regard to including civil society in early engagement with victims. Nevertheless, implementation of this provision is still lacking, primarily due to lack of capacity of civil society. Full application of the law would allow for better identification of various forms of human trafficking among vulnerable population in particular, asylum seekers, migrants and persons of Roma and Sinti ethnicity. Moreover, the lack of an identification mechanism outside of the criminal justice system is a barrier to more identification and support for victims. As is described below, existing victim support mechanisms at the time of preliminary identification phase and during criminal proceedings provide a good foundation for improved victim support and protection including effective access to services and actual granting of compensation for trafficked persons.
25. According to the data provided by the National Co-ordinator's Office, Croatia's human trafficking profile has evolved in recent years making the country not only a transit but also a country of origin and destination for various forms of human trafficking. While the lack of comprehensive research makes it difficult to understand the real scale and scope of trafficking, the statistics provided by international reports and reviewed by the Special Representative's Office show a prevalence of trafficking for sexual exploitation, trafficking for labour exploitation and trafficking for the purpose of forced criminality. However, according to different interlocutors, the numbers reportedly do not show the true scale and scope of trafficking in the country, especially in terms of measuring the sexual exploitation of foreign women in particular in prostitution in touristic areas, as well as trafficking facilitated by the Internet. While the number of Croatian citizens among identified victims testifies to the existence of domestic trafficking, women from Bosnia and Herzegovina, Serbia, and the Slovak Republic have also been found in sexual exploitation in the country. The Special Representative notes that the tourism and hospitality sectors are among the main sectors with high risks for sexual and labour exploitation and that this risk requires enhanced attention from the authorities. (Of note, tourism is one of the main pillars of the Croatian economy, comprising 19.6% of Croatia's GDP.)
26. Official data as provided in the progress report published by the National Co-ordinator's Office shows an increase in detection of unregistered work involving migrants but only a handful of identified trafficking victims per annum. However, numerous international reports document an increasing number of local and foreign persons trafficked for the purposes of labour exploitation in the country. In particular, but not exclusively, men are exploited in agriculture, construction, catering and hospitality sectors. According to the Fundamental Rights Agency (FRA), current identification efforts are missing labour trafficking case among the cases of unregistered work involving migrants. This is partially due to the absence of dedicated civil society organizations specialized on assisting labour trafficking victim and also to the swift deportation of migrants upon their detection in undeclared work.¹¹

¹¹FRA, Severe Forms of Labour Exploitation, Supporting victims of severe forms of labour exploitation in having access to justice in EU Member States, Croatia 2014, available at <https://fra.europa.eu/sites/default/files/fra_uploads/severe-labour-exploitation-country_hr.pdf>

27. The Special Representative notes the identification rate of trafficking victims in Croatia as stated by the progress reports of the Government House for Human Rights and National Minorities¹². In 2014, authorities identified 40 victims, 38 in 2015, 30 in 2016, 29 in 2017 and 78 in 2018. In 2019, the authorities identified 27 victims. The decrease of 65% is due to 59 victims being identified in a single case of forced criminality in 2018.¹³
28. According to interlocutors met during the visit, since 2017, trafficking for forced criminality has been on the rise in Croatia. According to statistics from the Ministry of Internal Affairs (MIA), in 2017 the authorities identified 18 victims of forced criminality and 59 in 2018. Its spike in 2018 is due to the single case of forced criminality that involved Taiwanese males (45) and females (14) held captive and forced to commit illegal activities in an illegal call centre in two locations around Zagreb. Trafficking victims would call unsuspecting internet users claiming to be police, lawyers, or government officials. They would then threaten the targets for alleged illegal content on the target's computer or phone, demanding a payment to avoid prosecution or to remove the content.
29. Although low in numbers, trafficking for forced marriages exists in Croatia affecting primarily women within socially disadvantaged families in the Roma community. According to a report, in Croatia in many Roma communities arranged marriages, child marriages and forced marriages are still prevalent as 'traditional practices,' which opens the space for exposing the girls to sexual abuse and exploitation.¹⁴ (see para 59 for more information).
30. Children are trafficked for various exploitative purposes in Croatia, with the majority of them trafficked for sexual exploitation, pornography and committing illegal activities. Between 2014-2018, the authorities identified 55 children with the highest number of 22 in 2014. In 2019, 17 children were identified as victims of human trafficking, most of whom were Croatian citizens. According to the Croatian Ombudsman for Children, vulnerable groups, such as runaway children from institutions and homes, missing children, children engaged in begging, children with behavioural problems and children of migrant families, are all at high risk of trafficking. Reportedly, the major concern is the lack of acknowledgement of these groups as potential victims of human trafficking. Roma girls - who are exploited for the purpose of forced marriage and are targeted for online grooming are highly vulnerable group of children and yet are not being identified as trafficked victims. By way of example, Ombudsman for Children reports that in 2017, 44 children were found in begging, however they were not identified as victims nor were there sanctions imposed on the adults exploiting them.¹⁵ According to police, in 2019, several cases involving minors recruited and exploited for the purpose of pornography were identified. The main challenge however remains disagreement among practitioners on whether such situations constitute online sexual abuse of children or trafficking of children for the purpose of pornography. However, notwithstanding that, both offences involve crimes committed against children the Croatian legislation provides children

¹² <https://ljudskaprava.gov.hr/suzbijanje-trgovanja-ljudima/599>

¹³ <https://www.prs.hr/attachments/article/2913/Annual%20Report%202019.pdf>

¹⁴ Country Report on Croatia- Empowerment of Romani Women within the European Framework of National Roma Inclusion Strategies, European Parliament, Directorate-General For Internal Policies, 2013

¹⁵ Summary Report on the Work of the Ombudsman for Children for 2019, p. 24

with all the rights equal to entitlements of a trafficked person. However, a threshold barrier to these assistance measures is identification of the person as a victim, as well as the fact that the assessment of the scope of harm and seriousness of the offense may depend on the legal analysis about what crime was committed.

31. One of the key discussions during the visit included the identification of trafficked persons in mixed migration flows and in asylum procedures. According to the UNHCR, 70 percent of migrants arriving in Croatia do not stay there but move to another country, thus the opportunities for identification can be temporary. The Special Representative notes reports of increasing attention of Croatian authorities to the identification of trafficked persons among irregular migrants and persons seeking international protection, however, to date no trafficking victim was identified among this group of persons. The current NAP envisages the development of indicators, guidelines and tools for the identification of victims of human trafficking among migrants and applicants for international protection to be adopted by the end of 2019. The Special Representative would appreciate to be informed on the progress of the adoption and implementation of this guidance document as well as any follow up actions to train frontline responders on the content. In this regard, he invites the Croatian authorities to make the use of the Office's publication on Unified Guidelines for the Identification and Referral of Victims of Human Trafficking within the Migrant and Refugee Reception Framework in the OSCE region.¹⁶
32. Croatia's rate of victim identification appears low relative to the country's risk factors, various international estimates, and reports of interlocutors met during the visit. To this end, the Special Representative welcomes the progress report published by the Government Office for Human Rights and the Rights of National Minorities, which recounts measures taken by the law enforcement agencies to proactively identify trafficked persons in various location, including nightclubs, agriculture and catering sectors, the Internet and in the settlements where Roma communities reside. However, these measures did not appear to result in any increase in identification of trafficked persons. Particularly noteworthy was the fact that no trafficking victims were identified in migration flows. Although some interlocutors offered that this is because trafficking is not prevalent in Croatia, data, experience and reports instead suggest that trafficking victims are being missed. These outcomes further suggest that the mechanism of outreach and identification could benefit from an analysis as to why it did not result in more identification, consideration of better targeting of outreach of activities, enhanced training for not only for police but for all front line officers, including border, immigration, social and health services and public and private entity employees, and engagement with CSOs for possible collaborative efforts.
33. The process of identification of and assistance to trafficked persons is regulated by three protocols adopted by the National Committee: the Protocol on the Identification, Assistance and Protection of Victims of Human Trafficking; the Protocol on Procedures during Voluntary Return of Victims of Human Trafficking and the Protocol on the Integration / Reintegration of Victims of Trafficking in Human Beings. While the first two protocols were adopted in 2009 and further revised in 2019, the latter protocol was adopted in April 2019. According to the Protocol on the Identification, Assistance and Protection of Victims of Human Trafficking, the Ministry of Internal

¹⁶ https://www.osce.org/files/f/documents/2/4/413123_0.pdf

Affairs (MIA) is the key agency to identify victims and in doing so shall co-operate with civil society organizations and social welfare agencies in case of child victims of trafficking. Although in practice such involvement of civil society and social agencies identification remains limited, the Special Representative positively notes that in one case a victim was identified through the Operational Team. This specific case concerned an instance of forced criminality and the individual was initially refused victim status by the MIA due to the lack of evidence to qualify the case. The victim, however, continued to receive support from the NGO represented in the Operational Team. Such multi-agency or alternative approaches should be explored further as is addressed below (while ensuring due regard for confidentiality in a multi-agency setting). Eventually, new information was presented through a renewed application, which provided more details of the alleged exploitation, resulted in positive response from the MIA to grant the victim status to the subject individual. This case should serve as a cautionary tale regarding the challenges in attempting to quickly identify victims; some victims need additional support and time before presenting their full story.

The roadmap prepared by the Government Office for Human Rights and the Rights of National Minorities describes the National Referral Mechanism in five steps, which starts with the Interior Ministry's identification of the victims in co-operation with the Croatian Red Cross. If the victim is a child, a second step is triggered and social welfare services and child protection civil society organizations are involved in the identification process. On the third step, the competent body for identification informs the National Anti-Trafficking Co-ordinator about the case. This in turn transitions to the fourth steps in which the victim is referred to the mobile team co-ordinator and as a final step the competent mobile team provides the victim with basic assistance (see further para 31). The assistance includes safe accommodation, psychological support, legal assistance, medical assistance, and safe return and (re) integration of the victim.

To this end, the Special Representative concurs with the stakeholders consulted prior to and during the visit that the current practice of identification is strongly reliant on police identification despite the policy framework that is civil society-inclusive. He considers that a dual process for victim identification, which is practiced in several of the OSCE participating States, is a proven foundation for an effective victim-centred identification system. The dual process would allow victims to receive formal victim status either from law enforcement or from an alternative social welfare body if the victim does not wish to cooperate with law enforcement. This dual pathway to identification and victim status ensures that victims receive the assistance they need.

34. Assistance and protection for victims of human trafficking in Croatia is organized through mobile teams operating in Zagreb, Rijeka, Split and Osijek. The mobile teams are composed of representatives of the Red Cross, the social welfare center and two representatives of anti-trafficking NGOs. Red Cross acts as a co-ordinator of cases involving adult victims of trafficking. In cases of child trafficking, the coordinator of the Service for the Protection and Promotion of the Rights of Socially Vulnerable Groups appointed by the Ministry of Labour, Pension system and the Family and Social Policy coordinates the actions against child victims of trafficking. While positively noting the mechanism of mobile groups--which is based on civil society co-operation--in identifying and referring victims to an array of assistance measures, its

effectiveness in practice has been questioned by international and civil society organizations. The concerns are related to particularly civil society engagement since reportedly NGOs are not always invited to join the interview with victims or lack financial resources to travel if the victim is identified in remote areas of the country.

35. The shelters for trafficking victims are run by NGOs with the funding support provided by the Ministry of Demography, Family, Youth and Social Policy. The National Centre for Adult Victims is run by the Croatian Red Cross. The Special Representative notes that the shelter accommodates both men and women although in different areas of the facility. While acknowledging the low numbers of victims being placed in the shelter due to the fact that victims are mainly Croatian citizens and also the predominance of female victims, he notes concerns on the risks of housing mixed genders in one location and strongly urges strict division of accommodation based on gender, particularly given the increasing number of male victims in the recent years.
36. Until February 2019, the Centre for Missing and Exploited Children operated the shelter for child victims of trafficking. This role has since been transferred to the Association “Breza”. In 2019, one adult and one minor were accommodated in the shelters. According to the visit findings, an amendment made to the standard operating procedures for assistance of child victims of trafficking envisaged placement of children in any child institution. The authorities noted that child victims of trafficking can be accommodated in another child welfare institution if it is determined that it is in the best interests of the child. Nevertheless, such placement is not adequate for victims of trafficking due to the lack of specialized care necessary for a child who has serious traumatic experience and varying needs in comparison with other children in the institutions. Recalling the data on the increasing pattern of children trafficked for sexual exploitation including pornography, illegal criminality, the Special Representative calls on Croatian authorities to enhance the efforts to identify and assist child victims of trafficking to ensure that children identified as trafficked persons are assisted and protected adequately. Moreover, enhanced and regular training is also necessary for child protection agencies, institutions, educational facilities, social workers and psychologists to be able to provide trauma-informed, gender and age sensitive care and protection in accordance with the best interest of the child.¹⁷
37. The reflection and recovery period for trafficking victims is enshrined in Article 67 of the Aliens Act. According to the Act, foreign victims are entitled to 60 days of reflection and recovery period to decide on their participation in the assistance and protection programme. This period is 90 days if the victim is a child. Similarly, this right is also provided under the Protocol on Identification, Assistance and Protection of Victims of Trafficking. The Special Representative positively notes that in Croatia the reflection and recovery period is not linked to person’s decision to co-operate with the criminal proceedings and aims to ensure all victims who wishes to benefit from the assistance and protection measures are allowed to do so. While there was insufficient information to assess the actual implementation of the period, lack of identification among migrants and asylum seekers as well as the speedy deportation of irregular migrants suggest that the reflection period may not be fully respected.

¹⁷ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings Occasional Paper No. 9: Child Trafficking and Child Protection: Ensuring that Child Protection Mechanisms Protect the Rights and Meet the Needs of Child Victims of Human Trafficking, 2018 available at < <https://www.osce.org/secretariat/405095>>

38. Similar to the reflection and recovery period, trafficking victims are also eligible to residence permits on humanitarian grounds under Article 65 of the Aliens Act. Such a right is provided upon a person's acceptance of assistance measures during the reflection and recovery period and is issued with a validity period of up to one year, which may be extended. A person can receive a formal trafficking victim status certificate without requiring a work permit. The Special Representative notes that data provided in international reports show the actual granting of temporary residence permits to an average of between one and two individuals annually.
39. Victims' access to the labour market is facilitated by regional centres and offices of the Croatian Employment Service (CES). Recognized as particularly vulnerable groups in the labour market, victims of trafficking are entitled to individual counselling and career guidance provided by the CES. During counselling, CES develops professional plan/agreement containing a list of jobs and occupations as per the victims' needs and interests. Moreover, CES works with employers to raise awareness and facilitate work opportunities for trafficking victims. In 2018, one victim of labour exploitation was provided with a workplace. The Special Representative positively notes the CES activities in promoting and facilitating the victims' access to labour market and recommends that the Croatian Employment Service enhance efforts to ensure more victims benefit from the service and opportunities.
40. Victims' access to justice and remedies empowers victims and deters exploitation. A precondition for access to justice is the provision of free and qualified legal assistance, and the Special Representative positively notes that the Croatian Act on Free Legal Aid of 2014 provides free legal aid for trafficking victims. Article 17 of the Protocol on Identification, Assistance also provides that all victims who accept the assistance programme receive legal aid along with psycho-social and medical assistance as per an individual aid and protection plan tailored to their needs.
41. Pursuant to Article 153 of the Criminal Procedure Act, victims can seek restitution within criminal proceedings for any damages caused by the criminal offence; however according to the State Attorney's Office, in practice, as such claims have the tendency to prolong the procedure, the claimants are advised to take the compensation via civil claims. Victims can also be compensated under the Act on Compensation for Victims of Criminal Offences, which requires the proof of serious injury and its merits are restricted to citizens of Croatia and EEA. The Special Representative was informed about a forced begging case where the trafficker's assets were confiscated within the criminal proceedings but it was not clear if the victim was granted compensation. While acknowledging the enabling legal framework on compensation, the Special Representative notes that access of victims to compensation in practice is reportedly impeded by a lack of awareness among law enforcement and prosecution within the judicial system, a lack of adequate information given to victims, and the lengthy duration of criminal and civil proceedings. Moreover, obstacles to a victim's access to effective compensation also include difficulties in enforcing compensation orders, the non-identification of perpetrators or lack of prosecution and actual seizure and confiscation of traffickers' assets. The judges and prosecutors met during the visit did not recall any case of compensation granted to a trafficking victim. To this end, the Special Representative recommends that Croatian authorities enhance, monitor and review the practical implementation of victims' access to compensation, including by conducting regular and targeted training of prosecutors, judges and other relevant

actors to ensure compensation awards. Additionally, authorities should also ensure transparent and clear mechanisms to inform victims about their right to compensation and means to exercise this right at the early stages of victim's co-operation with law enforcement authorities.

Investigation and prosecution of human trafficking

42. The Special Representative positively notes the recent transnational cooperation of Croatia in investigating and dismantling a trafficking network that trafficked individuals for forced criminality. He further commends the work of Croatian criminal justice practitioners in addressing the trafficking for pornography and measures taken by the police in mapping and monitoring the Internet to prevent and detect its criminal use by traffickers. Ideally, all participating States shall promote efforts to advance victimless prosecutions to reduce the burden on victims, however, when the victim's presence is required, the availability of victim support and protection mechanisms within the courts is essential. Croatia's provision of legal, psychological and other assistance to victims while the criminal procedure is ongoing, contributes to efficient adjudication in human trafficking cases and is a positive national practice.¹⁸ Despite these positive observations, Croatia's criminal justice response to human trafficking is characterised by modest efforts to investigate, prosecute various forms of human trafficking and lenient penalties imposed against perpetrators. One of the key challenges for enhanced criminal justice responses is the lack of specialized prosecutor and the lack of early engagement between investigators and prosecutors. Additionally, Croatia could benefit from increased awareness and training of judges to improve understanding of nuanced legal elements, trauma to victims and technology-based exploitation.
43. Criminal investigations of THB are conducted by designated police officers deployed in all police districts across the country under the overall supervision of the Ministry of Interior's (MIA) Organized Crime Department. The police investigator leading the case should coordinate the case with the police officers of the MIA's Police Directorate and border police officers in cases involving border crossing.
44. According to data collected from international reports, Croatian police investigated twelve trafficking cases in 2018, nine cases in 2017, seven cases in 2016 and 2015, respectively, representing modest increases each year. The majority of perpetrators were mainly males from Croatia and Serbia; in 2018, two of the perpetrators were Taiwanese citizens. As stated in paragraphs above, the increase in number of investigations in 2018 is due to the single case of forced criminality involving 59 victims trafficked and exploited by two Croatian and two Taiwanese perpetrators. The case was investigated jointly with the law enforcement of Slovenia and the People's Republic of China. The Special Representative positively notes the proactive investigation and international co-operation conducted by Croatian law enforcement authorities in investigating the case.

¹⁸ OSCE, Highlights of the International Conference "The Critical Role of the Judiciary in Combating Trafficking in Human Beings" held in Tashkent, 13-14 November 2019

Article 332 of the Criminal Procedure Act allows the use of surveillance, undercover investigation and the use of informants, fictitious transactions, and interception, gathering and recording of electronic data and monitoring of suspicious persons by technical means, if the investigation cannot be carried out in any other way or would be accompanied by great difficulties. This permission is given by the investigating judge upon the written request with a statement of reasons by the State Attorney. When circumstances require that the actions should commence immediately, the order may be issued by the State Attorney prior to commencement of the investigation for the term of twenty-four hours. In such cases, the State Attorney must deliver the order with a note on the time of issue and a statement of reasons to the investigating judge within eight hours from the issue. The investigating judge shall decide immediately on the legality of the order. Nevertheless, while police use these special techniques to investigate cases, in some instances the evidence gathered was reportedly considered insufficient by the prosecution and/or not used as corroborating evidence against the perpetrator. For example, the Special Representative was informed about a case from 2018 when a father attempted to sell his daughter for prostitution on three websites. The case was positive with regard to the police conducting investigations online, however, it was ultimately rejected by prosecutors on the grounds that the father had accidentally posted his daughter's photos on the Internet while trying to upload an audio file. Additionally, the case reportedly failed because there was no renewed attempt or intention to commit the crime again by the suspect. Other interlocutors met during the visit noted that it was the early detection by investigators who were checking the websites that actually prevented the sale of the child for 1000 Croatian kunas and thus the lack of renewed efforts by the suspect should not have been dispositive. Without opining on the decision to not prosecute, the Special Representative notes that engagement of police and prosecutors in trafficking cases is an effective system for improving prosecutions. He recommends that the Ministry of Internal Affairs and State Attorney's Office enhance early engagement between police investigators and prosecutors in order to improve the current criminal justice response and consider the establishment of a specialized prosecutorial capacity aimed at delivering effective, coordinated and timely prosecution of cases of trafficking. The Special Representative recommends developing a common approach among criminal justice practitioners to reducing reliance on victim testimony—up to and including victimless prosecutions--in human trafficking cases, which might increase the effectiveness of the anti-trafficking response in this regard.

45. According to law-enforcement agencies met during the visit, the Internet is increasingly being used for the recruitment, exploitation and control of trafficked persons for prostitution and pornography. The Organized Crime Department of the Ministry of Interior examines the local internet websites and co-operates with the Cyber Crime Department and Europol in cases when the webpage is located outside of the country. According to the police, there are between two and three websites actively advertising sexual services in Croatia and being regularly checked by the police for indicators of potential trafficking. The Special Representative was informed about the case of 19 Croatian citizens who were detected by the police on a German website advertising sexual services. The case was investigated together with the German law enforcement and also resulted in the identification of victims from Bosnia and Herzegovina and Serbia exploited in the sex industry in Germany, with the perpetrator organizing and controlling the victims remotely from Croatia. The Special Representative positively notes the efforts of Croatian Police in proactively mapping,

monitoring and investigating online platforms for potential trafficking indicators and commends the enhanced attention of the authorities towards the misuse of the Internet for the purpose of human trafficking. As mentioned above, the Croatian NAP envisages measures that would advance the prevention of online recruitment and exploitation of adults and children and enhance investigative measures. The Special Representative would appreciate to be informed on the progress of implementation of these measures.

46. As stated in paragraph 13, Croatia's Criminal Code Article 106 paragraph 4 criminalizes knowing use of services of trafficked persons as encouraged by Article 19 of the CoE Convention, as well as by Article 26 of the EU Directive 2011/36/EU. The Special Representative was not provided with the data on number of investigated/prosecuted users during his visit, however, based on reports published by the European Commission, this figure is likely very few. While acknowledging the numerous efforts of Croatian authorities to reduce the demand that fosters all forms of exploitation through public awareness campaigns and facilitating discussions with the legislators (see para 55) Special Representative recommends that Croatian criminal justice practitioners enhance their proactive investigations, including by using the special investigative techniques in areas and sectors that are prone to exploitation, such as tourism and hospitality, and financial investigation into individuals and businesses to detect, investigate and prosecute all persons facilitating, abetting, aiding and profiting from the trafficking crime including users. The use of such investigative techniques will also minimize the reliance on victims' testimonies, thus significantly contribute to avoiding re-victimization of trafficking survivors.
47. The Special Representative is pleased to note that human trafficking is taught as part of the police training course in the Police Academy, and as part of in-service training. The course is led by the experts from the Police Directorate, NGOs and Croatian legal centers. In-service trainings of police officers are provided as special education on a regular basis for border police and police officers from the juvenile delinquency unit. In addition, the Police Directorate also organizes special courses in co-operation with the Ombudspersons for children and gender equality respectively, as well as attorneys and judges. In addition to the courses, a number of periodic courses are organized for counterparts from other countries in the region. According to the Ministry of Interior, in 2019, the police education unit observed the need for more enhanced training on various forms of exploitation for all levels of policing work. The Special Representative notes the plan of the MIA to organize training courses for local police stations on new patterns in human trafficking, indicators and referral and co-operation mechanism and underlines the need for mandate-specific anti-trafficking training courses to be regularly conducted for all police units, which are in contact with the population. Of note, the special courses are mandatory for crime prevention units, border police and juvenile delinquency unit officers.
48. With regard to the prosecution and adjudication of trafficking cases, the Special Representative notes the data provided by various international reports, which state that between 2015-2018, the Croatian authorities prosecuted 42 perpetrators, with the majority of them involved in trafficking of adults and children for sexual exploitation followed by labour exploitation and forced criminality. Reportedly, a majority of cases were requalified to less serious crimes due to the lack of evidence or contradicting testimonies of the victim. While the majority of persons prosecuted for trafficking

were convicted, the sentences handed down were mostly closer to the lower limit set out in the sentencing guideline on trafficking charges or were suspended sentences.

The Special Representative takes notes of the findings of the report of the European Commission on the measures that have been taken to improve the quality of the justice system in general, such as the gradual reform of the judicial structures, which led to the merging of smaller courts, and a more even distribution of workload; however, inefficiencies of the justice system, such as lengthy court proceedings, need to be continuously addressed.¹⁹ The Special Representative further notes the findings of the recently published report by Fundamental Rights Agency (FRA), which alludes the public trust in the justice system in Croatia as being as low as 47 percent.²⁰

According to the discussions held with relevant stakeholders, the overall low number of conviction and lenient sentencing is also due to difficulties encountered in proving all evidential elements of trafficking; for example, indictments brought to court are based on testimonies of victims who can be extremely traumatised and often lack corroborating evidence²¹. Practitioners report that due to high levels of trauma, particular life circumstances and various kinds of dependencies, victims often produce statements that turn out to be insufficient on their own to support a case.²²

The failure to properly investigate, prosecute and adjudicate a trafficking case is reflected in the ECHR judgement in the case of S.M. v. Croatia²³. Main shortcomings found by the Court included, in particular, a failure of the investigative and prosecutorial bodies to interview key witnesses and enquire into Facebook chat exchanges between the victims and her trafficker, which was used to recruit and control the victim. The heavy reliance of the investigation on the victim's statement resulted in dismissal of victim's testimony by the domestic courts as incoherent and unreliable evidences. Moreover, ECHR ruled that domestic courts had not taken into account the international law pertaining to human trafficking in relation to the irrelevance of the "consent" of the victim. The Special Representative acknowledges that the small number of cases heard by the courts limits the possibility for the judges to gain respective experience in such highly complicated cases. This could be mitigated by continuous training of judiciary at national and local levels.

In light of the above, additional assessment should be made to evaluate whether there are opportunities to enhance the consistent and sustained application of the anti-trafficking law by increasing the capacities of investigators, prosecutors and judges. According to a judge met during the visit, the content of the training organized by Judicial Academy is decided by the judges themselves and developed on the basis of the questionnaire results on the preferences of subjects for the training. Additional information received after the visit elaborated that the topics of the Judicial Academy judicial training programmes are decided by the Programme Council of the Judicial Academy, the expert body of the Judicial Academy consisting of judges and

¹⁹ Communication from the Commission to the European Parliament and the Council on the verification of the full application of the Schengen acquis by Croatia, p.10 available at < https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20191022_com-2019-497-communication_en.pdf >

²⁰ https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-fundamental-rights-survey-human-rights-embargoed_en.pdf

²¹ https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/report_on_prosecuting_thb_for_the_purpose_of_labour_exploitation_en_1.pdf, page 28

²² Best practices in tackling trafficking Nigerian Route (BINIs), National Report Croatia, Herzwerk- Initiative for People in Prostitution, 2018

²³ <https://hudoc.echr.coe.int/eng/#%7B%22itemid%22:%5B%22001-184665%22%5D%7D>

prosecutors. The Programme Council approves the trainers as well. Most are judges and prosecutors, as well as other specialists depending on the topics themselves (e.g. university law professors, psychologists, forensic experts, psychiatrists, media experts, journalists, political scientists, linguists, etc.). The programme is decided based on a training needs analysis (TNA) conducted every year in the way that the Judicial Academy collects the proposals from courts and the Office of the State Attorney General, directorates of the Ministry of Justice, law faculties and other relevant stakeholders (e.g. ministries, state offices, state agencies, etc.). The training is, as a rule, conducted by the judges. In this regard, the Special Representative encourages the Judicial Academy to engage with relevant authorities including the Ministry of Justice, State Attorney's Office and the Government Office for Human Rights and the Rights of National Minorities in developing the content of the training for judges and consider inviting external trainers and experts to ensure the training curriculum covers the full scope of human trafficking, including by introducing good practices of assessing corroborating evidence during court proceedings, applying victim-centered and trauma-informed approaches, and by considering evidence gathered via special investigations and financial intelligence.

49. Financial investigation into human trafficking parallel to criminal investigations is an important tool to disrupt the business model of perpetrators, as well as to enhance corroborating evidence in prosecutions. It also can be used both as a punitive measure against traffickers but also to facilitate reparation and compensation for trafficked persons. Article 206i of the Criminal Procedure Act provides for financial investigation in cases when there is a suspicion that the crime has been committed for material gain. According to the prosecutors met during the visit, financial investigations are conducted in cases where financial resources of a perpetrator are not commensurate with the person's income, in particular in money laundering cases. However, there have been no suspicious transactions with the trafficking indicator. Absence of financial incentive in trafficking offences was voiced by several interlocutors. In this regard, the Special Representative notes that trafficking is at its core a financially-motivated crime. ILO's estimates of the global average profit per victim of human trafficking vary significantly based on the type of exploitation, ranging from USD 21 800 annually for sexual exploitation and USD 2 300 annually for domestic work.²⁴ To this end, he recommends the Croatian Ministry of Interior and the State Attorney's Office to work closely with the Anti-Money Laundering Office, Financial Intelligence Unit (FIU) of Croatia and banks of Croatia in tracking, identifying and assessing human trafficking indicators in all suspicious transaction reports. He invites them to study OSR/CTHB publication, launched in November 2019,²⁵ which provides a detailed guidance for establishing such a co-operative framework.
50. Protection of the rights of trafficking persons is guaranteed in Criminal Procedure Code Article 43, which obligates that the courts, the State Attorney, the investigators or the police authority inform victims about his/her rights as an injured party. Article 44 outlines specific rights of trafficked persons and victims of crimes against sexual freedom including the provision of a free legal advisor, the right to choose to be interviewed by a person of the same sex, and-if possible-to be examined by the same person in the case of re-examination; examination by means of an audio-video device;

²⁴ <https://www.fatf-gafi.org/media/fatf/content/images/Human-Trafficking-2018.pdf>

²⁵ OSCE, Following the Money: Compendium of Resources and Step-by-Step Guide to Financial Investigations Related to Trafficking in Human Beings, 2019, available at < https://www.osce.org/files/f/documents/f/5/438323_0.pdf>

and the right to request the exclusion of the public from the hearing. However, during numerous conversations with interlocutors in the course of the visit, it was unclear which authority actually takes responsibility for informing the victim of these rights, and when and by what means the victims are informed of the rights. The lack of clarity of process and responsibility left the impression that victims are not consistently and uniformly informed of their rights in a useful manner.

51. The Special Representative recalls that UN Convention for Transnational Organized Crime recognizes the fact that victims need assistance and protection beyond their role as witnesses. It requires States to provide support and protection to victims regardless of whether they are witnesses in a case.²⁶ Similarly, Article 12 of the CoE Convention on Action against Trafficking in Human Beings calls for the adoption of legislative and other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness. Support to victims may create the conditions for them to collaborate in a trial.

Led and funded by the Ministry of Justice, the system of support and protection to victims and witnesses during criminal proceeding is organized across three levels in Croatia: the first level provides for support at the Ministry of Justice's Victim and Witness Support Service, the second level provides for support at the seven county courts in Zagreb, Zagreb, Zadar, Osijek, Split, Sisak, Vukovar, Rijeka and the third level of support is available at the level of civil society organizations in 13 counties where the Ministry of Justice departments do not operate. The Special Representative notes information provided during the visit and in the recent international report that while the victim support system is operational in these areas, victims could not access the support and protection in counties which did not have the system in place. In this regard, he notes the plan of the Ministry of Justice to extend the network of such NGOs and increase the number of counties to ensure comprehensive support to victims/witnesses. The Special Representative positively assesses the existence of various channels through which victims and witnesses of human trafficking can receive assistance for participation in the criminal proceedings in Croatia.

52. Croatian legislation does not contain an explicit provision for the non-punishment principle – that is, victims' exoneration from criminal and civil liability for illegal acts committed in the course or as a result of being trafficking. Article 22 of the Criminal Code provides that whoever commits an unlawful act in order to avert from himself or herself or from another an imminent danger not brought on by himself or herself, which cannot otherwise be averted, shall not be held culpable provided that the resulting harm was not disproportionately greater than the harm threatened and that he or she was not obliged to expose himself or herself to the danger. If such a person was obliged to expose himself or herself to the danger, the punishment may be mitigated. However, these provisions are much narrower than the non-punishment principle articulated above and do not adequately protect trafficking victims from prosecution. Reportedly, there is also a written instruction developed by the State Attorney's Office on the non-punishment principle. Nevertheless, the Special Representative concurs with the findings of international reports that that the application of the aforementioned article puts a burden of proof on the trafficking victim and that the state of necessity has to be proven beyond reasonable doubt in court. He notes that in the absence of specific statutory defences, as in Croatia's case, some OSCE participating States rely upon

²⁶ Anti-human trafficking manual for criminal justice practitioners Module 12: Protection and assistance to victim-witnesses in trafficking in persons cases, UNODC, 2009

using pre-existing criminal defences, in appropriate cases (e.g., the defences of duress or necessity, or self-defence). Yet, States should be clear as to whether the scope of the defence is adequate for any offence charged or applies to a limited set of crimes and provide clear guidance as to the basis upon which the defence can be invoked.²⁷ The Special Representative positively notes that the non-punishment principle was applied in the case of 59 Taiwanese victims exploited in forced criminality. However, victims of forced criminality in particular may still have debts to banks and businesses even though they are not prosecuted. The states should take into consideration the alternative consequences of these liabilities on victims. The Special Representative recommends that the information on the principle is widely distributed and is included in the training curricular on human trafficking for prosecutors and judges.

Prevention of human trafficking

53. Prevention and raising public awareness are priority areas of Croatia's anti-trafficking policy and programmes. Its project "Together" serves as a promising practice of how multi-sector and multi-disciplinary actors can leverage their mandates and efforts to prevent and tackle human trafficking. Nevertheless, the prevention policies and programmes can be improved with evidence based and scientifically sound research data. Additionally, opportunities remain on how to prevent alleged exploitation of asylum-seekers and irregular migrants in various sectors in the country; and increasing the capacities of all front line officers, such as border and immigration, private entities and hospitality sectors.
54. Prevention and education are among the eight thematic focuses of the current NAP. This focus mainly envisages measures to raise public awareness on the risks of THB through various information campaigns and specifically targets the role of the Internet in the recruitment and exploitation of individuals, mainly affecting women and children. There is also a focus on conducting training in education institutions and capacity building activities to all front line officers. The Special Representative positively notes the inclusion of measures to prevent the trafficking of migrants, refugees and asylum-seekers such as raising the capacity and skills of employees of the Centres for International Protection and targeted information campaigns among irregular migrants and asylum seekers. However, he notes that to date this effort has not yielded any identifications of trafficking victims in migration flows, thus enhanced attention to trafficking victims in migration flows is needed. The Special Representative recommends the Croatian authorities to include border and immigration officers in such training. Additionally he encourages the authorities to make use of the OSCE Uniform Guidelines for the Identification and Referral of Victims of Human Trafficking within the Migrant and Refugee Reception Framework in the OSCE region²⁸ to develop guidelines for the identification of trafficking among mixed migration flows and in reception facilities.
55. In 2013, the Ministry of Interior's Prevention Service launched a national prevention project called "Together". Since its launch, the project serves as a model of preventive and proactive action throughout the country. The uniqueness of the project includes its multi-stakeholder approach in which police closely engage with NGOs, the private

²⁷ ICAT, https://icat.network/sites/default/files/publications/documents/19-10800_ICAT%20Issue%20Brief%208_Ebook_0.pdf

²⁸ https://www.osce.org/files/f/documents/2/4/413123_0.pdf

sector, members of academia and the educational sector and all types of police forces, such as border, uniform, traffic, airport and marine police.

The objective of the project is mobilize the community, government and public institutions to react and eliminate potential crime before it occurs. The project includes four modules which address: training for law enforcement, prosecution and judiciary on human trafficking patterns and indicators; sensitization of communities at risk; and targeted public awareness campaigns among taxi drivers and workers in airports and sea ports, tourism and hospitality sectors, schools, student exchange, seasonal workers and vulnerable groups such as unemployed persons and persons belonging to national minorities. Activities on the ground are based on the assessment and analysis on the form of THB and related crimes and on the mapping of areas and communities at risk. During 2018, the project reached out to 5000 students in the final classes of primary and secondary schools. The Special Representative commends the efforts of the Ministry of Internal Affairs in developing and implementing a multi-agency and multi-stakeholder prevention project and requests data if the project resulted in a documented number of identified or prevented cases of human trafficking.

56. Despite the growing concerns about the prevalence of human trafficking voiced by civil society organizations consulted during the visit as well as international reports, the actual scale of trafficking of local and foreign women along the coastline of Croatia remains unknown. As mentioned above, the tourism and hospitality sector constitutes 19% of the country's economy after wholesale and retail trade, transport, accommodation and food services (23.1%), and industry (20.4%) which were the most important sectors of Croatia's economy in 2018.²⁹ While noting the efforts of Croatian police as provided under the NAP progress report for 2018, which recounted a number of raids at cafes, nightclubs, agriculture sites availing seasonal migrant workers, the Special Representative recommends that the Government Office for Human Rights and the Rights of National Minorities conducts--in close co-operation with the civil society organizations and academia--country-wide research on current and emerging patterns of trafficking. Such a research is crucial to understanding the scope and scale of various forms of trafficking and developing targeted actions.
57. Numerous legally and politically binding commitments at the international level direct States to take action to address the demand that fosters all forms of trafficking including both Article 9 of the Palermo Protocol and Article 6 of the Council of Europe Convention, which require State Parties to adopt legislative or other measures including educational, social and cultural measures to discourage demand; Article 18 of the EU Directive 2011/36/EU which tasks Member States to discourage and reduce the demand; and the OSCE Action Plan for Combating Trafficking in Human Beings which urges countries of destination to take measures to effectively address demand as a key element in their strategies. The Special Representative positively notes that as recommended by the EU Directive and COE Convention, Croatia also co-operated with Romania in developing and implementing demand-targeted campaigns, which included raising public awareness through Facebook on the harmful practices of purchasing sexual services. The Special Representative commends the Office of the Human Rights and Rights of National Minorities headed by the National Co-ordinator for the initiative to host the regional conference "Improving response to trafficking in

²⁹ https://europa.eu/european-union/about-eu/countries/member-countries/croatia_en

persons for sexual exploitation, especially women and girls through addressing demand in the South – Eastern Europe” (RC) which was initially scheduled on 18-20 March 2020. The conference has been postponed due to the COVID-19. The Special Representative looks forward to renewal of the conference and commends the efforts of Croatia to tackle human trafficking by reducing the demand and encourages the authorities to continue these efforts.

58. The current legislation in Croatia provides misdemeanour sanctions for persons in prostitution, but not for the users of their services, although a user may be liable in certain cases in accordance with Article 157, paragraph 2 of the Criminal Code.³⁰ However, the Special Representative is pleased to learn that thematic session organized by the Centre for Women Victims of War _ ROSA in cooperation with the Croatian Gender Committee of the Parliament on 17 October 2018 regarding the current status of this legal provision and discussed the demand that fuels all forms of trafficking created by users of the services of potentially trafficked individuals.
59. The Council of Europe estimates that there are approximately 30-40,000 Roma living in Croatia (1% of the population).³¹ In 2003, the Croatian government has adopted National Roma Program (NPR) which, together with the Action Plan to the Decade for Roma Inclusion 2005-2015, had constituted a basis for Roma inclusion policy until the adoption of the National Roma Inclusion Strategy 2013-2020 (NRIS)³² in 2012, and of accompanying Action Plan for the NRIS implementation 2013-2015. NRIS aims to encourage and support the process for the social and economic inclusion of the Roma minority through involvement and coordinated action to reduce disparities and socio-economic gaps. According to the NRIS, human trafficking affects the entire Roma community particularly those of lower socio-economic status, as well as women and children, who are disproportionately exposed to increased risk of being trafficked for sexual exploitation and begging. In some Roma communities, arranged and forced marriages, marriages among minors are predominant as “traditional practices”. In 2017, the Government Office of Human Rights and Rights of National Minorities conducted a survey on Roma and revealed that only 30 percent of Roma children actually attended the school. According to the National Co-ordinator more activities are envisaged with the possible funding of the European Social Fund (ESF) which is expected to improve the education of Roma community thus contribute to reduction and prevention of the risk of trafficking.
60. In August 2018, the Croatian Government adopted a new Protocol on the treatment of unaccompanied minors with the aim to establish a robust and effective national system and procedures for assisting such minors. It purports to define the obligations of various bodies and set out different strategies and deadlines regarding the treatment of unaccompanied children, with a goal of securing the timely and effective protection of their rights and interests. Furthermore, it is expected to provide guidance for all relevant actors and establishes an Interdepartmental Commission for the protection of unaccompanied minors.³³ The decision to establish the Interdepartmental Commission

³⁰ Croatian Ombudsperson for Gender Equality, Annual Report 2018, p. 20 available <<https://www.prs.hr/attachments/article/2732/Annual%20Report%202018%20-%20Summary.pdf>>

³¹ https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/roma-and-eu/roma-integration-eu-country/roma-integration-croatia_en

³² National Roma Inclusion Strategy 2013-2020, Croatia https://ec.europa.eu/info/sites/info/files/roma_croatia_strategy_en.pdf

³³ Annual Report 2018 on Migration and Asylum in Croatia, National Report (Part 2) available at <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/04a_croatia_arm2018_part2_en.pdf>

for the Protection of Unaccompanied Children was made by the Government of the Republic of Croatia at a session held on 28 February 2019 at the proposal of the Ministry of Demography, Family, Youth and Social Policy. The aim of this commission is to improve inter-ministerial cooperation between state administration bodies and other stakeholders involved in the protection of unaccompanied children. Representatives of the competent central state administration bodies and other stakeholders involved in the protection of unaccompanied children have been appointed to the Interdepartmental Commission.

According to a 2019 report from the UNHCR, unaccompanied minors constituted 32% of all asylum applicants seeking protection in Croatia. Nevertheless, the Child Ombudsman stated that as much as 71.8% of foreign unaccompanied children left or escaped institutions in which they were accommodated and went missing. The Special Representative notes the finding of the report published by FRA in 2019³⁴, which state that unaccompanied children continued to face many challenges in Croatia. Due to the absence of appropriate accommodation, these children were placed in juvenile centres for children with behavioural problems, which seriously lacked appropriate accommodation and care facilities. To this end, the Special Representative wishes to inform the Croatian authorities and Ombudsman for Children about the upcoming initiative of his Office on the establishment of National Focal Points for Child Victims of Trafficking. This initiative is aimed at assisting States in the implementation of the OSCE Ministerial Council Decision 06/18 regarding missing and unaccompanied children.³⁵ The Special Representative encourages authorities to exercise all due diligence in respect to the assistance and protection of unaccompanied children who constitute one of the highest at-risk groups for trafficking. Proper accommodation, assistance, risk assessments for identification and prevention of abuse and exploitation need to be carried out prior to the placement of the child and authorities should consider, first and foremost, the best interests of the child.

61. The Special Representative visited the Reception Centre for Seekers of International Protection in Zagreb. The Reception facility is one of the two centres for asylum-seekers during the admissibility procedure. According to the UNHCR, citizens of Afghanistan, Algeria, Iran, Iraq and Syria comprise the largest number of asylum seekers in Croatia. According to the Director of the Centre, the form for asylum application includes some questions about how the person left the country and under which circumstances they reached Croatia to understand what happened on their migration route. Additionally, developed and led by the Red Cross, guidelines for identification of human trafficking among migrants are being used to assess trafficking indicators in a person's interview. In cases where there is a suspicion of trafficking, the case is referred to the police and further interviews are conducted by the police without the involvement of the Centre's employees. The Special Representative was not provided with any information or data on the rate and form of human trafficking among asylum seekers. He further notes that the new NAP includes enhanced training activities to improve the identification of trafficking persons in the asylum procedures.
62. In Croatia, prevention of forced labour and labour exploitation are provided for in several laws. In addition to Criminal Code Article 105 (Slavery), Article 106

³⁴ FRA, Migration: Key fundamental rights concern- Quarterly bulletin 4, November 2019, available at

<<https://fra.europa.eu/en/news/2019/migrants-continue-suffer-reception-centres-remain-overcrowded-and-violence-against>>

³⁵ Decision No. 6/18 (MC.DEC/6/18) available at <<https://www.osce.org/files/mcdec0006%20child%20trafficking%20en.pdf>>

(Trafficking in Human Beings) and Article 177 (Violation of the Rights of a Child), Article 132 criminalises the non-payment of salaries, unless it is caused by the inability of the employer to make use of his/her means or by the lack of financial means of the employer's account. Articles 73 Aliens Acts prescribes that the employer shall not employ or use the services of an alien who is illegally staying in Croatia and Article 226 specifies the sanction.

To ensure a comprehensive implementation of labour law provisions and provisions of other laws, on 1 April, the labour inspection of the Labour Inspectorate which was within the Ministry of Labour and Pension System and sixteen other inspections from other ministries that are responsible for inspections in various areas, such as in agriculture, construction, protection of environment, tourism etc. were merged and become the State Inspectorate. The Special Representative is pleased to note the recent inclusion of Labour Inspectorate in the composition of the National Committee and its Operational Team. The Labour Inspectorate is the key agency conducting inspections to ensure compliance of the labour law as it relates to decent work and prevention of "undeclared work" which is at higher risk of involving trafficked labour. The Labour Law provisions enable the labour inspectors to suspend the economic activity unless the company pays 20.000,00 HRK for each undeclared Croatian worker or 30.000,00 HRK for each foreign worker without work permit. There are 220 labour inspectors who operate across the country. Since 2016, the labour inspectors have been joining the Ministry of Interior in Joint Actions Days on addressing human trafficking. During the Joint Actions Days (JAD), the labour inspectors conducted a number of workplace inspections. In 2016, the labour inspectors conducted 26 inspections, in 2017, 78 inspections, in 2018 151 inspections and in 2019 116 inspections. As a result of the joint actions, numerous incidents of labour law violations, particularly a significant number of cases involving undeclared work were detected, although no trafficking victim was identified. During the JAD inspections in 2016, two citizens of Thailand who were employed by private persons for massage services in swimming pools and hotels in Dubrovnik were discovered. The women were poorly accommodated and worked long hours. Criminal charges were brought against the employer and labour inspector filed the motion to indict to the Municipality (Misdemeanour) Court, however, the women were returned back to their country of origin. According to the Labour Inspectorate, the last training on THB was provided in 2010 and since then no targeted training has been organized for labour inspectors on human trafficking.

63. Private employment agencies act as intermediaries in bringing third country nationals to work in Croatia and also in facilitating employment of Croatian citizens abroad. Private employment agencies are regulated by Ordinance No. 8/14 on the performance of employment-related activities and Labour Act No. 93/14 regulates the temporary work agencies. According to the Croatian Employment Service private employment agencies have to prove that at least 25% of their operations are in Croatia, and that they do not only send employees abroad. Some of these agencies are registered to provide temporary work, and facilitate assigning workers to employers. Entities that are registered as temporary recruitment agencies, cannot register any other activity, except market research. The recruitment fees must be paid by the employer not the employee. The employment contract between the employee and the recruitment agency should contain the registration number of the company that acts as an employer and salary conditions should be included in the agreement. These agencies require license to operate and the procedure for obtaining such a license starts by registering with the

commercial court, after that it can receive a business registration number and obtain a license from the Ministry of Labour. The work permit is bound to the specific person and the permit cannot be transferred to another person.

64. The Special Representative notes that Croatian legislation does not include provisions on requiring businesses to exercise due diligence or leveraging public procurement to prevent trafficking for labour exploitation in supply chains nor is included in the measures envisaged under the NAP. Given the prevalence of third country nationals employed in the construction and agriculture sectors, the Special Representative notes that these sectors are in particularly high risk of having sub-contracting companies which would be assigned for certain types of work. To this end, he recalls the recommendations of the OSCE MC Decision 6/17 and recommends that Croatia develops policies, in complementarity with their national legislation, that take into account whether businesses and public sector agencies are taking appropriate and effective steps to address the risks of trafficking in their supply chains, including with regards to their subcontractors and employees when considering the awarding of government contracts for goods and services.
65. In conclusion, while positively noting the commitment and numerous steps taken in the prevention and combating of trafficking by the Government of Croatia, particularly in the area of legal and policy framework, the Special Representative encourages the authorities to continue their efforts and invites them to consider the following recommendations to enhance the implementation of OSCE anti-trafficking commitments, in particular the OSCE Action Plan to Combat Trafficking in Human Beings and its Addenda³⁶. The Special Representative and his Office stand ready to provide technical assistance, if requested, to national and local authorities, as well as civil society, and welcomes further dialogue and co-operation to promote an appropriate follow-up of these recommendations.

³⁶ OSCE Permanent Council, Decision No. 557/Rev.1 *OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005); OSCE Permanent Council, Decision No. 1107 *Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later* (Vienna, 6 December 2013).

Recommendations

1. Enhance legal, policy and institutional framework by:

- Signing and ratifying the Protocol of 2014 to the Forced Labour Convention of 1930. The ratification of this Protocol will advance prevention, protection and compensation measures against all forms of forced labour.

- Signing and ratifying ILO Convention 189 concerning Decent Work for Domestic Workers.

- Signing and ratifying the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families of 2003.

- Improving monitoring and evaluation of anti-trafficking action by separating the National Rapporteur function from the National Co-ordinator function to ensure independent assessment and reporting of anti-trafficking actions and their effectiveness; improving research and data collection and analysis in order to remain alerted about the human trafficking developments at the national and local levels and develop effective and well-targeted anti-trafficking policies and interventions.

- Developing policies, in complementarity with the national legislation, that take into account whether businesses and public sector agencies are taking appropriate and effective steps to address the risks of trafficking in their supply chains, including with regards to their subcontractors and employees when considering the awarding of government contracts for goods and services.

2. Enhance victim identification, assistance and protection by:

- Conducting country-wide research and studies into the scope and scale of various forms of exploitation, including but not limited to trafficking for the purposes of sexual and labour exploitation in the tourism and hospitality sector; labour exploitation of migrant workers and asylum seekers in seasonal and temporary work; trafficking in children and adults for the purposes of forced criminality and begging; and ICT facilitated trafficking of adults and children.

- Critically assessing and where possible revising the mechanism for outreach and identification of various forms of human trafficking. This could be done by also including through supporting NGOs, public and private sector stakeholders who might be in contact with presumed victims of trafficking - to conduct outreach work to proactively identify such victims among persons involved in prostitution in touristic areas, asylum processes, migrants, including those involved in seasonal and temporary work, children begging, and refer them for the formal identification by respective authorities.

- Providing the social welfare agencies with the mandate to grant formal identification status to victims of trafficking for assistance and reintegration purposes.

- Enhancing measures to identify victims of trafficking of various exploitative purposes, particularly of forced criminal activities and begging, including through informing at-risk populations about the assistance available, with a view to developing targeted responses.

- Reviewing the assistance and protection services available to victims of trafficking to ensure that they respond to the individual needs of the victims (including gender and age-specific needs), meet adequate quality standards, and provide for sufficient reintegration period.

- In line with the relevant OSCE Ministerial Council Decisions and the recommendations proposed in the recently published report of the OSR CTHB on “Child Trafficking and Child Protection”³⁷, strengthening the current system of child protection and the overall child protection strategy, and tackling all forms of exploitation of children in line with the best interests of the child;

- Exercising all due diligence in respect to the placement, assistance and protection of trafficked children and unaccompanied children who constitute one of the highest at-risk groups for trafficking. Proper accommodation, assistance, risk assessments for identification and prevention of abuse and exploitation need to be carried out prior to the placement of the child and authorities should consider, first and foremost, the best interests of the child.

- Developing simple and effective procedures to enable trafficked persons’ access to compensation, including by monitoring and evaluating the current practices of compensation procedures, providing training for law enforcement, legal aid providers and the judiciary on victim’s right to compensation, and standardizing when and how victims are informed of their rights.

- Developing a comprehensive and regular training for labour inspectors to identify trafficking indicators in workplaces prone to exploitation including construction, agriculture, catering and hospitality sectors and among undeclared work.

- Conducting training for the staff of reception facilities on how to detect indicators of abuse and exploitation among asylum seekers and refugees and how to refer presumed victims for assistance to service providers.

- Enhancing measures and facilitating access of all trafficking victims to employment support services available in Croatian Employment Service (CES).

3. Enhance the criminal justice response to all forms of human trafficking by:

³⁷ Available at <https://www.osce.org/secretariat/405095>

- Enhancing efforts to effectively prosecute and convict perpetrators of human trafficking by prioritizing collection of other sources of evidence, in addition to victim testimony, and by improving assistance and support to victims to secure victim cooperation with the criminal proceedings.

- Enhancing early engagement between police investigators and the State Attorney's Office in jointly investigating all cases of human trafficking in order to improve the current criminal justice response; and consider the establishment of a specialized prosecutorial capacity aimed at delivering effective, coordinated and timely prosecution of cases of trafficking.

- Reviewing existing practices of identifying means in THB cases including by expanding the focus on other subtle means of trafficking such as deception, abuse of position of vulnerability and various forms of coercion.

- Conducting a large-scale mapping of online platforms, which promote the sale of sexual services, escort services and pornography to detect and prosecute online recruitment and sexual exploitation of adults and children.

- Providing comprehensive guidance to practitioners—particularly law enforcement, prosecutors, and judges—on all laws and related jurisprudence connected to anti-trafficking within Croatia's legal framework through regular and substantive capacity building activities and engaging the Ministry of Justice, the Government Office for Human Rights and the Rights of National Minorities in establishing the content of the training materials for Judicial Academy. The guidance should contain specific attention to complex areas of THB law, including subtle forms of coercion and the irrelevance of consent.

- Making use of OSR/CTHB's new publication on financial investigations³⁸ to establish an effective financial investigation framework by closely co-operating with the Croatia's Anti-Money Laundering Office and banks to assess the risks of trafficking in suspicious financial transactions in order to help identify traffickers' funds and networks, and use it as corroborating evidence during criminal proceedings.

- Ensuring the principle of non-punishment of victims is effectively implemented in practice in accordance with Article 26 of the CoE Convention and Article 8 of the EU Directive and regular training for judges and prosecutors is conducted to ensure its proper application.

4. Enhance prevention of human trafficking by:

- Increasing and supporting prevention efforts by focusing on countering the demand that fosters all forms of trafficking, including adoption of appropriate legislative, educational, cultural and social measures to discourage demand and by closely monitoring the places and

³⁸ OSR/CTHB, *Following the Money: Compendium of Resources and Step-by-Step Guide to Financial Investigations*, 2019, available at <<https://www.osce.org/secretariat/438323?download=true>>

sites offering prostitution services to prevent exploitation of foreign and local women in this industry.

- Identify and tackle the root causes and factors increasing vulnerability to trafficking, such as economic and gender inequality, poverty and unemployment including factors that push the members of Roma community into exploitative situations.

- Taking preventive measures, aimed at eradicating deceptive and exploitative practices regarding the recruitment of migrant workers in sectors, which are prone to exploitation through providing regular inspection of work places, monitoring of the intermediaries as well as using joint operations and investigations with other relevant agencies.

- Adopting legislation and policies on due diligence and public procurement to ensure that businesses and public agencies are regulated and guided to address the risks of human trafficking, including with regards to their subcontractors and employees, when considering the awarding of government contracts for goods and services, in line with OSCE commitments.

Programme of the visit

Tuesday, 3 September	
09:30-11:00	Meeting with Anti-Trafficking NGOs Croatian Red Cross ROSA – Centre for Women War Victims Domine – organization for promotion of women’s rights Centre for Missing and Exploited Children Women's Room Dolphin
11:30 – 12:50	Working lunch with Mr Alen Tahiri, Director of the Government Office for Human Rights and Rights of National Minorities and Anti-Trafficking Coordinator
13:00 – 14:15	Meeting with the Government Office for Human Rights and Rights of National Minorities and the Ministry of Foreign and European Affairs
14:15 – 15:30	Meeting with the Ministry for Demography, Family, Youth and Social Policy
15:30 – 17:00	Meeting with the Ministry of Labour and Pension System, Croatian Employment Service and the Labour Inspectorate
19:00 – 20:30	Working dinner with IOM Croatia
Wednesday, 4 September	
08:00 – 08:30	Visit to the Reception Centre for Asylum Seekers
09:15 – 11:45	Meeting with the Ministry of Interior
13:00 – 14:20	Meeting with the Ministry of Justice and the Judicial Academy
14:20 – 15:40	Meeting with the State's Attorney Office
16:00 – 17:00	Meeting with the Ombudspersons for Children and for Gender Equality
Thursday, 5 September	
12:30 – 14:00	Meeting with the Municipal criminal court of Zagreb
14:30 – 16:00	Meeting with the County court of Velika Gorica

Comments of the Republic of Croatia to the Report of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings following the official visit to Croatia, 3-5 September 2019

(Received on 10 November 2020)

Paragraph 27.

Regarding paragraph 27. of the Amended Report, please correct the *Government House for Human Rights and the Rights of National Minorities* into *Government Office for Human Rights and the Rights of National Minorities*.

Paragraph 43.

Regarding paragraph 43 of the Report, please note the Article 213 paragraph 1 of the Criminal Procedure Act (“Official Gazette”, No. 152/08., 76/09., 80/11., 121/11., 91/12., 143/12., 56/13., 145/13., 152/14., 70/17. and 126/19; hereinafter referred to as CPA), according to which, when there are reasonable grounds for believing that the defendant committed a criminal offence punishable by a fine or by imprisonment for up to five years and there are no statutory impediments to the criminal prosecution of this person, the State Attorney may take or order the investigator to take those evidentiary actions that are expedient for deciding on the preferment of the indictment. Paragraph 5 of this Article prescribes that the State Attorney or the judge of investigation shall end the fact-finding activity when the acts laid down in the present Act have been done and the state of affairs is sufficiently clarified to allow for the preferment of the indictment or the dismissal of the crime report. The end of the fact-finding activity, of which the defendant and the injured party shall be informed, shall be entered in the crime report register.

According to the Article 216 paragraphs 1 to 3 of the CPA an investigation shall be conducted for any criminal offence punishable by imprisonment for a term of more than five years, except in the case provided for in Article 341, paragraph 3, of the present Act. An investigation is mandatory if there are reasonable grounds to believe that the defendant committed a criminal offence punishable by imprisonment for a term of more than fifteen years or long-term imprisonment and if there are reasonable grounds to believe that the defendant committed an unlawful act in a state of insanity. In the investigation evidence and information necessary for deciding whether or not the indictment is to be preferred or the proceedings stopped as well as evidence which it might be impossible to repeat at the trial or whose presentation might be made more difficult shall be collected.

On the other hand, on the basis of the Article 206h of the CPA, the State Attorney may order the police to gather the necessary information by conducting inquiries and taking other measures for the purpose of collecting information required for deciding on the crime report.

In his order the State Attorney may specify the contents of the inquiry or measure as well as order that the police inform him immediately of the inquiry conducted or the measure taken. If the State Attorney orders that he be present at the inquiry or the taking of a measure, the police shall conduct the inquiry or take the measure in a manner which allows for his presence. The police is required to proceed as ordered by the State Attorney and unless the State Attorney orders otherwise, it shall inform the State Attorney of the inquiries conducted or the measures taken no later than thirty days from receipt of the order. The State Attorney has the right and duty to continuously supervise the conduct of inquiries which the police was ordered to conduct. The police shall execute the order or comply with the request of the State Attorney concerning the supervision of the inquiries conducted and shall answer for this aspect of its work to the State Attorney. Also, according to the Article 207 paragraphs 1 and 2 of the CPA if there are grounds for suspicion that a criminal offence prosecuted ex officio was committed, the police have the right and the duty to take the necessary measures to find the perpetrator of the criminal offence, to prevent the perpetrator of or the participant in a criminal offence from going into hiding or fleeing, discover and secure the traces of a criminal offence and objects that may be used for establishing the facts; and collect all information that might be useful for the successful conduct of criminal proceedings. The police shall inform the state attorney in due time of the inquiries undertaken into criminal offences. If the State Attorney informs the police of his intention to be present at the conduct of particular inquiries or the taking of particular measures, the police shall conduct the inquiries or take the measures in a way that allows for the State Attorney's presence.

Paragraph 49.

Regarding paragraph 49 of the Report, in the part in which it states the following: „Financial investigation into human trafficking parallel to criminal investigations is an important tool to disrupt the business model of perpetrators, as well as to enhance corroborating evidence in prosecutions. It also can be used both as a punitive measure against traffickers but also to facilitate reparation and compensation for trafficked persons. Article 206 of the Criminal Procedure Act provides for financial investigation in cases when there is a suspicion that the crime has been committed for material gain.“, we stress that financial investigation does not have the nature of a punitive measure.

Paragraph 50.

Regarding paragraph 50 of the Report and remark that it is unclear which authority actually takes responsibility for informing the victims on their rights and when and by what means, please note that victims are informed of the rights, according the relevant legislation victims by police, prosecutor's officers, court, Victim and Witness support Departments at the courts and civil society organizations included in the program: The Network of support and cooperation for victims and witnesses of criminal offences.

Paragraph 52.

Regarding paragraph 52 of the Report, which concerns the principle of non-punishment of victims of trafficking for their involvement in unlawful activities committed in the course or as a result of being trafficked, we consider that this principle has already been covered by Article 22 of the Criminal Code, prescribing Necessity. Since the Report only mentions paragraph 2 of the Article 22 of the Criminal Code, we find it important to draw the attention also to paragraph 1 of the Article 22 of the Criminal Code:

(1) An act committed to avert from oneself or another an imminent danger which cannot be otherwise averted is not unlawful if the harm thus caused is less than the harm threatened.

Article 22 of the Criminal Code prescribes Necessity as a general institute of the Criminal Code which applies, according to Article 6 of the Criminal Code, to all criminal offences provided for by the Criminal Code.

However, the introduction of an explicit non-punishment provision for victims of the trafficking shall be considered by the Expert Group tasked with drafting the Act on Amendments to the Criminal Code, which will be appointed by the Minister of Justice and Administration.

The State Attorney's Office of the Republic of Croatia does not have an instruction on impunity for victims of human trafficking, nor does it have a legal framework on the basis of which it could issue such an instruction. The fact is that on the basis of the information at their disposal, they can claim that they did not initiate criminal proceedings against persons who were victims of the criminal offense of trafficking in human beings. There was probably a misunderstanding regarding this instruction.

Paragraph 62. (second section)

To ensure a comprehensive implementation of labour law provisions and provisions of other laws, on 1 April 2019, the labour inspection of the Labour Inspectorate which was within the Ministry of Labour and Pension System and sixteen other inspections from other ministries that are responsible for inspections in various areas, such as in agriculture, construction, protection of environment, tourism etc. were merged and become the State inspectorate. The Special Representative is pleased to note the recent inclusion of Labour Inspectorate in the composition of National Committee and its Operational team. The labour inspection within State Inspectorate is the key authority conducting inspections to ensure compliance of the labour law as it relates to decent work and prevention of “undeclared work” which is at higher risk of involving trafficked labour. The Special Representative notes the report that labour law provisions enables the labour inspector to suspend the economic activity unless the company pays 20.000 HRK for each undeclared Croatian worker or 30.000 HRK for each foreign worker without work permit. There are 220 labour inspectors who operate across the country. Since

2016. the labour inspectors have been joining the Ministry of Interior in Joint Actions Days on addressing human trafficking. During the Joint action days-JAD, labour inspectors conducted a number of workplace inspections. In 2016. labour inspectors within JAD conducted 26 inspections, in 2017. 78 inspections, in 2018. 151 inspection and in 2019. 116 inspections. As result of the joint actions, numerous incidents of labour law violations, particularly a significant number of cases involving undeclared work were detected, although no trafficking victim was identified. During the JAD`s inspections in 2016. two citizens of Thailand who were employed by legal entity for massage services in swimming pools and hotels in Dubrovnik were discovered. The women were poorly accommodated and worked long hours. Criminal charges were brought against the employer and labour inspector filed the motion to indict to the Municipality (Misdemeanour) Court however, the women were returned back to their country of origin. According to the labour inspection, last training on THB was provided in 2010. and since than no targeted training has been organized for labour inspectors on human trafficking.

Paragraph 63.

Employment agencies act as intermediaries between employers and jobseekers and their activities are regulated by the provisions of Labour Market Act (“Official Gazette”, No. 118/18.) and by Ordinance on performing activities related to employment (“Official Gazette”, No. 28/19.). According to those provisions activities related to employment may be performed by legal entities as companies and natural persons as an independent activity. In addition to employment mediation activities they may also perform market research and public opinion polling activities, management consulting activities and the activity of assigning workers to users for temporary work according to the provisions of Labour Act (“Official Gazette”, No. 93/14., 127/17. and 98/19.). If agencies perform employment mediation activities of Croatian citizens abroad, agencies are obliged to perform them in cooperation with the competent authorities of countries abroad. Employment of third country nationals in Croatia is regulated by Aliens Act, so they may work in Croatia after their employer obtain for them the work permits (residence and work permit or work registration certificate) from the Police Administration or Police Station. The work permit is bound to the specific person and the permit cannot be transferred to another person. Employment agency, who performs the activity of assigning workers to users for temporary work, for third country nationals first it has to obtain the work permit from the Police Administration and if the agency assigns the workers to the users abroad, whether a Croatian citizen or third country national is in question, it must provide the worker with the A1 certificate. The Croatian Pension Insurance Institute at the request of the employer issues A1 certificate if certain conditions are met, and one of these conditions is that at least 25% of their activities are operated in Croatia. The agency may perform the activity of assigning workers to the users for temporary work and activities related to employment if it`s registered with the commercial court and within the Ministry of Labour. The agency is obliged to indicate its Ministry of Labour registration number in their legal transactions, business documents, letters, advertisement and contracts. In addition to the Ministry of Labour registration number a temporary assignment contract must contain also the information from the employment contract (the title, nature or category of the work, salary,

working hours, duration of paid annual leave, etc.). According to the Labour Act salary and other working conditions applicable to the assigned workers may not be lower or less favourable when compared to the salary or working conditions applicable to the worker employed with the user for the performance of the same tasks. Employment agency who performs employment mediation between employers and jobseekers may charge for services for performed activities related to employment only from the employer and the prices of the service must be determined in fixed amounts and cannot be determined as a percentage of the agreed salary between the employer and the employee.

Regarding the last Recommendation under number 3., "Enhance the criminal justice response to all forms of human trafficking", which refers to the implementation of the non- punishment of victims principle in practice, please see the explanation given for the paragraph 52 of the Report.