

Ministry of Justice and Security

> Return address Postbus 20301 2500 EH The Hague

Ms. Petya Nestorova
Council of Europe
Secretariat of the Council of Europe Convention on Action against Trafficking in
Human Beings
F-67075 Strassbourg Cedex
France

**Directorate General for the
Administration of Justice
and Law Enforcement**
Law Enforcement and
Combatting of Crime
Department
DRC

Turfmarkt 147
2511 DP The Hague
Postbus 20301
2500 EH The Hague
www.rijksoverheid.nl/jenv

Contact

Date 16 October 2018
Concerning Comments to the report concerning GRETA's second evaluation on the
Netherlands

Dear Ms Nestorova,

The Netherlands would like to thank the Group of Experts on Action against Trafficking in Human Beings (GRETA) for its second evaluation on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings in the Netherlands. The process to come to this report has been intensive and the Netherlands would like to thank GRETA, and especially the delegation of GRETA that came to the Netherlands (composed of Mw. Dorothea Winkler, Dhr. Ola Laurell, Dhr. Mats Lindberg) for its very constructive cooperation during this process.

The Netherlands is pleased with the contents of and the recommendations contained in the final report. The report recognises the progress that has been made in many different areas since the adoption of GRETA's first report on the Netherlands in March 2014.

The recommendations offer valuable information to strengthen specific aspects of our approach. This information will be used in our new national action plan, that is currently being developed. Many issues mentioned in the recommendations are already included in this action plan.

Attached to this letter you will find some more detailed comments on GRETA's report.

Yours sincerely,

Minister for Migration

Mark Harbers

Our reference
2364919

*Please quote date of letter
and our ref. when replying. Do
not raise more than one
subject per letter.*

Comments of the Netherlands to the 2018 Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings

Directorate General for the
Administration of Justice
and Law Enforcement
Law Enforcement and
Combatting of Crime
Department
DRC

Date
16 October 2018

Our reference
2364919

Paragraph 26

Combatting human trafficking is a priority of this government. All relevant ministries are committed to the development of a new National Action Plan. Therefore, the plan is being developed with great urgency. As mentioned by GRETA in paragraph 26, this action plan is being developed in close co-operation with all relevant partners, both governmental and non-governmental. This process takes time. But it is of great importance to have the cooperation and support of all relevant stakeholders, to be able to present an effective plan this autumn.

Paragraphs 49 and 158

As part of the new national action plan, a project leader will be appointed who will make an inventory of methods and generic work processes in the field of combatting human trafficking in which information sharing plays a role. He will describe how to act in accordance with current legal frameworks. Part of the assignment is also to draw up a communication and implementation strategy to publicise the ways in which the relevant partners can share information under the General Data Protection Regulation (GDPR).

In order to be allowed to report victims to CoMensha, permission from those victims is required in accordance with the GDPR. Because many victims do not want to give permission, a second estimate will be made of the number of trafficking victims. Last year, the National Rapporteur published a first estimate in cooperation with UNODC.

Paragraph 76 & 77

There is a lot of attention for training both detectives and inspectors of the Inspectorate SZW. For example, labour market fraud inspectors also partake in the labour exploitation programme so that more attention can be paid to signs of serious labour exploitation in their inspections. The occupational health inspectors are also trained in signs of labour exploitation.

There is more collaboration with external parties. This year, the Joint Action Days took place in the week of 14-19 May. 28 countries participated in this action organised by Europol. During this week, EU inspections have taken place. The Inspectorate SZW, together with the Netherlands Food and Consumer Product Safety Authority (NVWA), Tax and Customs Administration and police, held an inspection at a meat processing company in which 11 possible victims of labour exploitation were found. Another action concerned various international checks on cross-border traffic between the Netherlands and Belgium. Various violations were identified here and a number of modus operandi have also been confirmed. Further EU elaboration of the results will follow. As an experiment, the Inspectorate also collaborated with the municipalities of The Hague, Rotterdam and Utrecht. These municipalities focused on housing.

The Inspectorate conducts research and analysis of vulnerable groups for labour exploitation to see if there are any points of reference for interventions. The Inspectorate SZW then considers which interventions may be used to prevent these groups from becoming victims. In 2017, the vulnerable groups investigated consisted of asylum seekers, minors and people with a mild intellectual disability. A meeting on the outcomes of the study of these vulnerable groups took place on 16 May 2018. Attendees included health care institutions, the Salvation Army and the Central Agency for the Reception of Asylum Seekers (COA). The most

important intervention is raising awareness among these institutions and organisations. These and other proposals were further elaborated and implemented.

In 2018, the Inspectorate SZW will focus on domestic work and Filipinos. Regarding Filipinos, interventions with partners are being developed on the basis of the barrier model. An expert meeting organised by the Inspectorate and the Ministry of Foreign Affairs took place on 25 May. The main question was how to prevent abuse of short-stay visas. Through a brainstorm session with the participants, possible preventive measures based on the barrier model were identified.

**Directorate General for the
Administration of Justice
and Law Enforcement**
Law Enforcement and
Combatting of Crime
Department
DRC

Date
16 October 2018

Our reference
2364919

Paragraph 83

This legislation has been adopted by parliament and will enter into force on 1 January 2019.

Paragraph 96

The mentioned Act is still under debate in Parliament. The new government agreement will add two new topics to the Act (an obligatory intake consultation for sex workers and an individual permit).

Paragraph 99

Since the report was written, new sectors have concluded an RBC-agreement, such as the food sector (June 2018) and the insurance sector (July 2018).

Paragraph 100

In the meantime, the Netherlands has made further efforts to stimulate companies to (recognise and) identify, prevent and mitigate risks like forced labour in their supply chains via its RBC-agreements. For example: the Textile covenant has started a pilot to discourage child labour and started a joint project called 'living wage'. Secondly, the parties in the Dutch Banking Agreement have published a report this month (August 2018) with value chain mapping on the role of banks in chains of cocoa and how to counter human rights violations, such as child labour. The report contains recommendations for parties and affiliated banks. A third example is the covenant Responsible Gold, where electronics companies and civil society organisations have jointly started a project to combat child labour in small-scale gold mines in Uganda, with the aim of integrating the gold sourced from these mines into companies' supply chains.

The Inspectorate SZW is actively looking for partnerships with companies in the private sector. The research, funded by SZW for the Inspectorate SZW, with a large bank is a good example of such a partnership.

As part of the labour exploitation program, there will also be further efforts to involve the supply chain. An example is a case with the Public Prosecution Service (PPS) on launderettes where KHN (the Royal Association of Businesses in the Catering and Related Industry) was invited to a session and a follow-up meeting. This then also led to an article in their industry magazine.

Paragraph 105

The KMar aspires to an increased commitment regarding its efforts to detect possible victims of THB at border crossings and airports, as soon as additional capacity becomes available. Finally, the actual deployment of this additional capacity will be determined after consultation and in coordination with the relevant authorities.

Paragraph 109

The Inspectorate SZW is also, materially, authorised to grant recovery and reflection periods. However, only the police and the KMar possess the formal competence to do so.

Directorate General for the
Administration of Justice
and Law Enforcement
Law Enforcement and
Combatting of Crime
Department
DRC

Paragraph 113

This protocol has been developed in the asylum center in Ter Apel, but is currently applied in all asylum application centers.

Date
16 October 2018

Paragraph 114

It should be taken into consideration that the reasons victims of THB opt for the asylum procedure or the Residence Regulation are hard to analyse. The assumption that the asylum process offers better prospects of long-term residence has not been substantiated.

Our reference
2364919

It is true that few THB cases lead to actual prosecution, but the assumption that residence permits are usually not granted does not correctly reflect the Residence Regulation. The reflection period is offered to a victim on the slightest indication, and a residence permit is granted immediately after the victim reports a case to the police. When the criminal charges are dismissed, the residence permit will be revoked but the victim is given the opportunity to apply for a non-temporary residence permit on personal circumstances.

Paragraph 118

Second bullet:

All relevant agencies are instructed to treat a person as a presumed victim of trafficking when there is the "slightest indication" of THB and to report all such cases to the NGO CoMensha. Different agencies (police, KMar, SZW, IND) have developed their own sets of indicators for the identification of victims of THB, the differences being due to the fact that these agencies usually come across THB for different forms of exploitation. Because there were differences in the reporting rate, CoMensha developed its own set of criteria which are now used by all reporting agencies.

Fifth bullet:

The fight against human trafficking is a legal task of the Dutch police, whereas combatting human smuggling is a legal task of the KMar (Royal Netherlands Marechaussee). Additionally, the Dutch police is engaged in the fight against human smuggling when it becomes a structural problem in the asylum chain and as such a serious threat to security. The KMar in turn is engaged in the fight against human trafficking when it occurs within the scope of their legal task.

The Dutch police has undertaken several initiatives to increase its expertise in human smuggling. In the working agreement between the police and the KMar, the cooperation, provision of assistance and information exchange with regard to the fight against trafficking in human beings has been regulated. The police and the KMar consult each other on these matters on a structural basis.

Paragraph 121

To clarify: when a victim of human trafficking is not able to cooperate with the investigation and prosecution because of trauma, a psychological or physical condition or security risks (i.e. the conditions of the so-called 'schrijnend pad' ('harrowing path')), the victim will receive a temporary residence permit for a year. The non-ability to cooperate has to be substantiated by declarations of the police and/or a medical practitioner. After this year, the person can apply for a permanent residence permit (residence permit on humanitarian grounds).

One of the changes which will be made in the Aliens Circular 2000 (B) is the addition of minority (i.e. being underage) as a possible condition of not being able to cooperate with the investigation. This will enter into force on October 1st.

**Directorate General for the
Administration of Justice
and Law Enforcement**
Law Enforcement and
Combatting of Crime
Department
DRC

Paragraph 125

It is not true that there are no clear arrangements for support and accommodation beyond the three month reflection period. It is regulated by law that victims who receive a temporary residence permit after the reflection period are the responsibility of the municipality and are entitled to regular care. Finding a match between 'supply and demand' for shelter can sometimes be problematic for the professionals in the COSMs. However, it is a legal responsibility of the municipality to provide follow-up shelter and assistance after the three-month period. In some municipalities, clear arrangements are in place.

Date
16 October 2018

Our reference
2364919

As for the solutions being "ad hoc", this has to do with the fact that the Social Support Act aims to facilitate that victims are provided with assistance and shelter in line with their needs and are not given 'one size fits all' solutions.

Paragraph 130

The Netherlands agrees with the fact that victims of THB need to have access to the right facilities. However, for foreign victims of THB the Council of Europe Convention gives parties the option of granting a residence permit because of the victim's cooperation in the prosecution of a perpetrator or because of the individual's personal situation. The Netherlands offers both options. The Convention therefore offers the possibility to maintain the link between the residence permit and prosecution.

We thus have some problems with this recommendation of GRETA. The Netherlands aims to maintain a balance between the prosecution of perpetrators and the assistance and care for victims. Practically this balance is maintained as follows: even the slightest indication of THB gives foreign victims access to specialised shelter and assistance. During the three-month reflection period, as part of the regulation for victims of trafficking in human beings, possible victims get assistance without having to cooperate with the investigation. After this period, or sooner, possible victims of THB can get a residence permit for trafficking in human beings. Part of the changes which will be made in the Aliens Circular 2000 (B) will entail that victims of human trafficking will receive a permanent residence permit when the Public Prosecution Service (PPS; OM) proceeds to the prosecution of a suspect. A victim who currently cooperates in the investigation will receive a permanent residence permit after the conviction of a perpetrator or when the court case takes three years or longer. This will give the possible victim more certainty in the future. These changes will enter into force on October 1st of this year.

When prosecution is not pursued, the possible victim can apply for a residence permit on humanitarian grounds. This procedure also examines if assistance and care is available in the country of origin. In practice, this process takes a couple of months. During this time assistance is still provided.

Finally, a pilot project is currently being carried out to develop a model of multidisciplinary identification of victims of THB. When a person has cooperated with the investigation but no prosecution takes place or the suspect has been acquitted, he or she can apply for this pilot. The person receives an opinion on the likelihood that he or she is a victim. This opinion can be used to apply for a residence permit.

Paragraph 141

The police still has capacity to investigate cases of criminal exploitation of minors. Currently there are several cases under investigation. Also a national, operational expert group has been set up. Both law enforcement and care partners such as the child protection service and youth care services participate in this group.

**Directorate General for the
Administration of Justice
and Law Enforcement**
Law Enforcement and
Combatting of Crime
Department
DRC

Paragraph 142

Youthcare organisations offer care and housing for children who need help or protection. The municipalities are responsible for taking care that these provisions are available. Sometimes problems are so complex or situations ask for specific action, specialised care is necessary. The organisation of municipalities (VNG) has contracted youthcare organisations who can provided specialised care for victims of sexual exploitation.

Date
16 October 2018

Our reference
2364919

After the 13 Oceans case a working group consisting of professionals working for (specialised) youthcare organisations, the public prosecution, the police, the Council for Child Protection and the organisation of municipalities discussed how shelter and care for child victims of THB for the purpose of forced criminality is best organised. Two youthcare organisations work together to provide care for child victims of THB for the purpose of forced criminality.

Paragraph 155

All underage victims have different needs. We aim to provide tailor-made support for victims in the Netherlands. Therefore, there are no standard operating procedures in place for the referral of underage victims. However, there are guidelines and tools that can help professionals in correctly referring underage victims.

The National Referral Site for Human Trafficking 'wegwijzer mensenhandel' contains a "button" on every page that says "Under-aged victims - Are you supporting an underage victim?". By clicking on this button, you are taken to the page about support for underage victims:
https://english.wegwijzermensenhandel.nl/Support_for_under-aged_victims/support-for-under-aged-victims.aspx. This contains an overview of the support available and refers people to pages with more detailed information.

Regular child protection measures and provisions, including on referral to assistance and support, apply to domestic underage victims and underage victims from EU countries. All professionals working in the field are well aware of how these measures and provisions work. The Child and Youth Act (Jeugdwet, 2015) states that within their youth policy, municipalities are responsible for the whole range of care for children, young people and families in need of support and assistance.

The ways in which municipalities ensure access to support and assistance differs. One option is that citizens can get access through the "local area teams" (multidisciplinary teams of professionals in the youth welfare, mental health and social work fields). In other municipalities the Centre for Youth and Family is responsible for handling requests from citizens for information and assistance. (The Centres for Youth and Family are centres where anyone can go with questions about raising children and growing up.) If a child needs mental youth care or specialised care, they (and their parents) can also be referred directly to these specialised care provisions by the family doctor/ GP or by a youth doctor. In emergencies, the police may also refer a child that is in urgent need of placement. Regardless of how access to these services is organised, it has to be clear to all inhabitants of a municipality, including children and their parents, where they can

turn with their questions. It is therefore important that municipalities communicate clearly and in an understandable manner how access to these services works.

To help professionals in youth care institutions with identifying victims of human trafficking who are already in care for other reasons, and giving them the proper type of care, the committee Azough has drawn up a step-by-step outline of what course of action, including referral, is available to aid workers (the "Handreiking signalering voor professionals", this can also be found on the Referral site for human trafficking: https://english.wegwijzermensenhandel.nl/Support_for_under-aged_victims/Prevention/index.aspx) and a risk evaluation instrument (which can only be accessed in a protected digital environment for safety reasons).

The page about Nidos explains how referral of unaccompanied minor asylum seekers works:
<https://english.wegwijzermensenhandel.nl/Organisations/StichtingNidos.aspx>.

Finally, the Shelter page contains an overview of the main shelters available for underage victims from EU and non-EU countries:
<https://english.wegwijzermensenhandel.nl/Protection/Shelter/index.aspx>

Because we believe in tailor-made support and leaving municipalities free in how they wish to organise the support and referral of underage victims, we see no need to develop a national referral mechanism for underage victims with standard operating procedures.

Paragraph 163

The Netherlands considers this concern appropriate. Additional steps are being taken though adjustments in the Aliens Circular 2000 (B). On October 1st different changes of the Aliens Circular 2000 (B) will enter into force. One of these changes includes the clarification and harmonisation of the authorities who offer the recovery and reflection period, including the addition of the Inspectorate SZW in the Aliens Circular.

Paragraph 170

When a victim of human trafficking is not able to cooperate with the investigation and prosecution because of trauma, a psychological or physical condition or security risks (i.e. the conditions of the so-called 'schrijnend pad' ('harrowing path')), the victim will receive a temporary residence permit for a year. After this year, the person can apply for a permanent residence permit (residence permit on humanitarian grounds).

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Paragraph 213

The application of the non-punishment principle is an important part of the Dutch approach to fighting THB. As the GRETA report mentions, the non-punishment principle has been included in the guidelines on THB of the Public Prosecution Service (PPS) issued by the Board of Procurators-General on 21 June 2013. The guidelines state that victims should not be prosecuted or punished for offences which they have been compelled to commit as a direct consequence of their situation as a victim. Dutch prosecutors learn about the principle during their training and are proactive in establishing whether a suspect is in fact a victim of trafficking. They have discretionary power to decide whether or not to prosecute a case and can therefore decide whether to prosecute a presumed victim of THB on

**Directorate General for the
Administration of Justice
and Law Enforcement**
Law Enforcement and
Combatting of Crime
Department
DRC

Date
16 October 2018

Our reference
2364919

a case by case basis. Such weighing of the merits of the individual case can lead to a decision not to prosecute a victim who committed a punishable offence, thus giving effect to the non-punishment principle. In many cases, they take the decision not to prosecute. This discretionary power is referred to as the "opportunity principle" and forms an important feature of criminal procedure in the Netherlands. In addition, judges can also give effect to the non-punishment principle through a court verdict. In the event that a victim is, in fact, prosecuted for a punishable offence and the court regards him/her to be guilty, the court may as yet decide, given the circumstances, not to impose a sentence (article 9a of the Dutch Criminal Code).

**Directorate General for the
Administration of Justice
and Law Enforcement**
Law Enforcement and
Combatting of Crime
Department
DRC

Date
16 October 2018

Our reference
2364919

There are several examples available in Dutch jurisprudence of cases where judges considered whether the non-punishment principle should apply. Clearly there can be grey area cases, for instance when a former victim gradually evolves into an accomplice of the main perpetrator and profits from the exploitation of other victims. In such cases the guidelines to the Prosecution Service give prosecutors the leeway to prosecute the former victim if they consider this to be warranted.

GRETA's report does not make clear why it believes that the Netherlands should make improvements to the way the non-punishment principle is applied. With the PPS guidelines on THB and the relevant provisions in the Criminal Code, there are sufficient instruments available to ensure the correct application of the non-punishment principle at different stages of the criminal procedure. The PPS guidelines contain rules and regulations that are generally valid and applicable, meaning that citizens can derive rights from these guidelines. The Netherlands therefore does not see the need for the adoption of a provision on the non-punishment principle.

Paragraph 245

The Ministry of Foreign Affairs provides funding for various projects in Africa, some of which include as objectives prevention of THB by addressing root causes. Also, there is support for programmes aimed at enabling African origin and transit counties to identify and prosecute perpetrators, providing assistance to victims and to cooperate regionally on addressing this transnational crime.