

The phenomenon

Georgia mainly is the source country of trafficking in persons (TIP), the majority identified in 2008-2010, 83 out of 88 people – are Georgians. The main destination countries are Turkey, United Arab Emirates, Egypt and Greece. Cases of forced prostitution of Georgian citizens were registered in Russia, Germany and Austria.

To a lesser extent, Georgia is used as a transit country for the victims of human trafficking to Turkey, UAE, and Western Europe. Most of the identified victims were women, victims of sexual exploitation.

Official data show a small number of victims HT within the country: four in 2008, five in 2009. The number of children identified as victims of human trafficking is also small: one in 2008, two in 2009, and two in 2010.

Over the past three years, there has been an increase in trafficking in persons, both women and men for labor exploitation, which are more than 60% of the total number of identified: 33 out of 48 in 2009 and 12 out of 19 in 2010. Men and women, who have suffered from forced labor, were found in Georgia, as well as in Libya and Turkey. Men from Turkey were subjected to forced labor in Abkhazia, which is out of the control of the Government of Georgia. Official data show a small number of victims

of international trafficking in Georgia: four in 2008, five in 2009.

The vulnerability to human trafficking of the citizens of Georgia has increased due to the severe socio-economic situation in the country since the beginning of Perestroika, especially in disadvantaged rural areas, it is also linked with high unemployment rates, as well as armed conflicts that led to a large number (approximately 250 000) internally displaced persons (IDPs) from the regions of Abkhazia and South Ossetia.

Georgia is primarily a country of origin for trafficked persons, the vast majority of victims of trafficking in human beings (THB) identified in 2008-2010 (83 out of a total 88) being Georgian nationals. To a lesser extent, Georgia has also been used as a country of transit for foreign victims of trafficking in the direction of Turkey and Western Europe. The majority of the victims of trafficking identified by the Georgian authorities have been women subjected to sexual exploitation.

That said, in the last three years, trafficking of women and men for the purpose of labor exploitation has been on the rise, with 33 such victims identified in 2009 (out of a total of 48 identified victims) and 12 in 2010 (out of a total of 19 victims). Men and women are subjected to conditions of forced labor within Georgia and also in Libya and Turkey. Men from Turkey are subjected to conditions of forced labor in the breakaway region of Abkhazia, which was outside of the Georgian government's control.

The main destination countries for Georgian victims of trafficking are Turkey, the United Arab Emirates, Egypt and Greece. Cases of forced prostitution of Georgian victims were also documented in Russia, Germany, and Austria. Official data show low numbers of victims of national trafficking (i.e. within Georgia): four in 2008, five in 2009. The number of children identified as victims of THB has also been

¹ *The material is prepared on the base of: Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Georgia; Group of Experts on Action against Trafficking in Human Beings GRETA (2011)24, First evaluation round, Strasbourg, 7 feb.2012, <http://www.coe.int/trafficking> and Trafficking in Persons Report 2008 – 2011 by Office To Monitor and Combat Trafficking in Persons, US Department of State <http://www.state.gov/j/tip/rls/tiprpt/> and materials of NGO People's Harmonious Development Society (Georgia)*

low (one in 2008, two in 2009, two in 2010).

The vulnerability to trafficking of many Georgian citizens is increased by the country's socioeconomic situation, with disadvantaged rural areas, a high unemployment rate and an estimated number of 250 000 internally-displaced persons (IDPs) from the regions of Abkhazia and Tskhinvali (South Ossetia).

National anti-trafficking legislation and institutions

Georgia joined with a number of international conventions and treaties on human rights in 1994, mutual assistance between governments and activities against crime and in the structure of the Security Council was created by the Department of Human Rights. Decree of the President of Georgia Eduard Shevardnadze, "On measures to ensure protection of human rights in Georgia" № 240 of May 17, 2002 A8 directly concerned measures to prevent trafficking of women and children. May 18, 2002 the Resolution of the Parliament of Georgia № 1454 "About carrying out of appropriate measures to combat trafficking in persons, especially women and children", recommended to the President of Georgia to submit international documents for ratification before the end of the year. By the end of 2002 there was already a draft article, which was to enter into the Criminal Code of Georgia as an amendment. It contained a definition of trafficking (trafficking), and provided penalties for committing the crime of trafficking. In January 2003 in the Ministry of Internal Affairs of Georgia a subdivision was established in order to combat trafficking, even before the introduction of

amendments to the Criminal Code, before criminalization of trafficking.

Only after publishing the in the U.S. State Department report in June 2003, which was made on the basis of monitoring the situation in Georgia in accordance with the U.S. Anti-trafficking law ², Georgia settled in the third group of countries, amendments were made in the Criminal Code, Art. 143 (1.2) which entered into force in July 10, 2003. The situation in combating trafficking in human beings was also developing: created in January 2003 Anti-trafficking Department was disbanded in July 2004, and renewed in November 2004 as a re-manned office in the Department for Combating Organized Crime which consisted of 10 people. In February of 2005, as part of the Special Operations Department the Main Directorate for combating the illegal circulation of narcotics, trafficking and illegal migration was created.

Events related to the ratification of international documents and the elaboration of a national referral mechanism were accelerated after an active collaboration with the support of the OSCE Mission in Georgia, representatives of NGO sector, international organizations and government agencies³ in 2004. As a result of

² H. R. 3244 AN ACT To combat trafficking of persons, especially into the sex trade, slavery, and slavery-like conditions, in the United States and countries around the world through prevention, through prosecution and enforcement against traffickers, and through protection and assistance to victims of trafficking

³ The project was coordinated jointly by the OSCE Mission in Georgia and the Society for promoting the harmonious development of man, see information about the joint work of the Anti-trafficking Working Group and the OSCE Mission to Georgia in 2004 with financial support from the OSCE / ODIHR, "Plan of Action to Combat trafficking of human beings (trafficking) 2005-2006 ", Tbilisi, Society for the harmonious development of man, 2005, pp. 60-62

joint work "The Plan of Action to Combat Trafficking in Persons for 2005 - 2006," has been developed and approved by Presidential Decree № 623 of December 29, 2004. Charter for creating Interim Interagency Commission on Combating Trafficking in Persons under the Security Council of Georgia and its members were approved by the Decree № 50 of February 1, 2005 April 28, 2006 the President signed the "Law of Georgia on the fight against human trafficking (trafficking).

At the international level, in addition to the Council of Europe Anti-Trafficking Convention, Georgia is Party to the United Nations (UN) Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (both of which it ratified in September 2006). Georgia is also Party to other UN treaties relevant to action against THB, in particular the UN Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, and the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol. Further, Georgia is Party to a number of Council of Europe Conventions which has relevance to action against human trafficking.

The Georgian national legal framework in the field of action against trafficking in human beings has evolved in the light of the country's international commitments. In 2003, provisions criminalizing trafficking in human beings were introduced in the Criminal Code (CC), namely Articles 143(1) and 143(2) criminalizing the trafficking of adults and children, respectively. The anti-trafficking provisions of the CC were amended and supplemented in 2006 and 2007, leading to significantly increased sanctions for the crime of THB, the introduction of the

criminal liability of legal persons and Article 143(3) on the criminalization of the use of services of victims of THB.

The Law on Combating Trafficking in Human Beings (hereinafter "the Anti-Trafficking Law") entered into force on 28 May 2006. It defines the competences of the different state agencies involved in preventing and combating THB and protecting, assisting and rehabilitating victims. It also establishes the basis for Georgia's international co-operation to combat THB, including with other countries and international governmental and non-governmental organizations. The law provides for the setting up of an Interagency Co-ordination Council for Carrying out Measures against Trafficking in Human Beings to implement anti-trafficking measures, as well as of a State Fund for the protection and assistance of victims of THB. Further, the Anti-Trafficking Law includes a variety of measures to protect and assist victims, including setting up of shelters providing temporary housing, granting the status of victim of trafficking, and safe repatriation of victims.

The Georgian national legislation and mechanisms for its implementation were formed under the influence of the international commitments of the country in the fight against human trafficking.

Chronology of the establishment of mechanisms to combat trafficking in human beings: July 18, 2006 Presidential Decree № 437 was approved by the Charter of the State Fund to protect and assist victims of trafficking (trafficking), September 1, 2006 Presidential Decree № 534 - Composition of the Interagency Coordinating Council for conducting activities against human trafficking (trafficking) and the Charter, January 25, 2007 the Presidential Decree number 23 approved the Plan of Action to Combat trafficking in Persons (trafficking) for 2007 - 2008., February 1, 2007 Presidential Decree № 78 approved

uniform standards and procedures to identify victims of trafficking (trafficking).

Pursuant to the new Code of Criminal Procedure (CCP), in force since 1 October 2010, victims of trafficking who testify in court have the right to request the application of special protection measures (Article 49(1)(f)), as well as the right not to be interrogated as witnesses during the reflection period (Article 50(1)(j)). The special protection measures are detailed in Articles 67 to 71 of the CCP.

The Georgian authorities have indicated that draft amendments to Anti-Trafficking Law will be submitted to Parliament in the spring of 2012, with the aim of adding a new chapter on child victims of trafficking in human beings, including individual risk assessment on the basis of the child's best interests, appointment of a guardian and prohibition to keep children in detention.

The Anti-Trafficking Law provides for the establishment of the Interagency Co-ordination Council for Carrying out Measures against Trafficking in Human Beings (the "Co-ordination Council"), which was set up by Presidential Decree No. 534 in September 2006. It is chaired by the Minister of Justice, with Deputy Ministers, being full members and invited members including representatives of International organizations, Georgian NGOs, journalists, experts and scientists. According to the Georgian authorities, invited members have the same participatory capacity in the meetings and the decision making process as full members. The difference between full and invited members is that the former are obliged to act on the basis of decisions taken, while the latter are not obliged to do so.

The Co-ordination Council is responsible for coordinating all national actors, preparing the NAPs and monitoring actions against THB. It also coordinates the collection of information from relevant

sources, including international organizations and local NGOs working on anti-trafficking issues. The Co-ordination Council acts as an advisory body to the President of Georgia on anti-trafficking matters.

As a rule, the Co-ordination Council should meet every three months, but its Chair can call for additional meetings when necessary. The Council does not have a separate budget and the State agencies represented in it contribute with human and financial resources from their own budgets. The Co-ordination Council receives quarterly reports by the State bodies concerning the implementation of actions envisaged in the NAP and prepares an activity report every six months.

Biannual national action plans (NAP) to combat THB have been developed by the Georgian Government since 2005. The current NAP for 2011-2012 was adopted in December 2010 by a Decree of the President of Georgia (No. N11/03/01). NAP includes activities aimed at prevention of THB, protection of victims, effective prosecution of traffickers, and co-operation and co-ordination of activities at national and international level.

The State agencies represented in the Interagency Co-ordination Council for Carrying out Measures against Trafficking in Human Beings are responsible for the implementation of the NAP. They submit quarterly and annual reports to the Co-ordination Council regarding the implementation of the activities envisaged in the NAP. There has been no assessment of the implementation of previous NAPs in Georgia carried out by the Georgian authorities. However, the NAP for 2011-2012 includes the planning of activities based on the results of the monitoring of the implementation of the NAP by the relevant State bodies on a quarterly basis. Further, the next NAP will be prepared on the basis of a co-ordinate analysis of future needs.

People's Harmonious Development Society (PHDS) in the frame of project "Prevention of trafficking in human beings, monitoring and support to the implementation of the National Action Plan on counter trafficking" (2006-2007) with the support of EU made an attempt to assess the implementation of the action plan on the basis developed by the anti-trafficking working group, composed of government representatives, NGOs and international organizations, which were the actions performance indicators⁴. Recommendations for improvement of mechanisms to combat trafficking in human beings were developed and submitted for inclusion in the National Report of the institute of the Ombudsman. The work was continued in 2007-2009 at the regional scale of "NGO and Governmental Cooperation Across the South Caucasus to Develop a Joint Response to Trafficking in Women and Children" project with Women Research and Resource Center (Estonia), with the emphasis on international cooperation on the issue and raising the professional level is included in the work on the problem of specialists. The project was further developed during the next PHDS project "Program of Cooperation in the Black Sea region in the Area of Migration between Countries of Origin, Transit and Destination" (2009-2011). Permanent component of all projects was monitored protection of victims of trafficking, which identified a number of shortcomings in the legislation and mechanisms to protect victims, their redirection, and ensuring confidentiality of personal data during the investigation, safe return to home, compensation. Recommendations for improving the quality of cooperation of state agencies and NGO sector was also investigated and conducted in 2009-2010 in the South Caucasus, including Georgia.

⁴ "The plan of action to combat Human Trafficking 2005-2006" Tbilisi, People's Harmonious Development Society, p. 47-59, 2005

In 2009-2010, the International Centre for Migration Policy development (ICMPD) carried out a project aimed at enhancing the effectiveness of national action plans to combat THB in Armenia, Azerbaijan and Georgia, by supporting the governments of these three countries to amend and update their anti-trafficking strategies and action plans, as well as carrying out relevant capacity building measures. In the case of Georgia, the ICMPD carried out an assessment of the first year of implementation of the NAP for 2009-2010 and made recommendations for the future. Some of these recommendations have been taken on board in the NAP 2011-2012, such as introducing deadlines for the implementation of activities and providing for a "special analysis" by the Co-ordination Council in the first half of 2012 in order to identify future needs and strategic plans for the drafting of the next NAP.

Identification, protection of rights, and referral

Article 3 of the Georgian Anti-Trafficking Law, on the definitions of key terms, does not include a definition of THB but refers to the definition of the crime of trafficking in human beings under Articles 143(1) and 143(2) of the CC. Under Article 143(1), THB is defined as the "buying or selling of a person or subjecting him/her to other illegal deals, as well as enticing, conveying, hiding, recruiting, transporting, handing over, harboring or receiving a person by means of threat, violence, or other forms of coercion, abduction, blackmail, fraud, deception, using vulnerable position of a person or by abusing power, granting or receiving remuneration or other benefits, to obtain the consent of a person capable to influence another, for the purpose of exploitation". Further, Article 143(2) of the CC defines trafficking in children as "buying or selling a minor or subjecting him/her to other forms of illegal deals, as well as enticing, conveying, hiding,

hiring, transporting, handing over, harboring or receiving a minor for the purpose of exploitation”.

In order to clarify the meaning of the definition of THB, the Anti-Trafficking Law contains definitions of “exploitation”, “sexual exploitation” and “putting a person in modern conditions of slavery” as follows:

- Article 3(d): “Exploitation - use of a person for forced labor or service, involvement of a person in criminal or other anti-societal behavior or prostitution, putting a person in slavery-like conditions or conditions of modern slavery, sexual exploitation or coercion to provide other type of services, as well as use of a person for transplantation of his/her organ, part of organ or tissue, or use of a person for other purposes”.
- Article 3(f): “Sexual exploitation – involvement of a person in prostitution, other sexual services or production of pornographic material by use of threat, violence, coercion or blackmail against him/her or by use of his/her vulnerable situation, by abuse of power, or by provision of false information on the nature and conditions of work”.
- Article 3(h): “Putting a person in modern conditions of slavery – deprivation of a person of his/her identity documents, restriction to the person of his/her right to free movement, prohibition to the person of communication with his family, including written correspondence and telephone communication, cultural isolation of a person, coercion of a person to work in degrading conditions and/or without any compensation or with inadequate compensation”.

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

Georgia’s Anti-Trafficking Law contains two definitions of “victim of THB”:

- Article 3(j): “Victim of THB - a natural person who suffered moral, physical or material damage as a result of the commission of the crime of trafficking in persons and who has been, in accordance with the Georgian legislation, recognized as victim of trafficking in human beings by the Permanent Group at the Interagency Co-ordination Council for Carrying out Measures against Trafficking in human beings”;
- Article 3(o): “Statutory Victim - a person recognized as such in pursuance of the Criminal Procedure Code of Georgia, as a result of the commission of crimes envisaged by Articles 143(1) and 143(2) of the Criminal Code of Georgia”.

This dual approach to the definition of victim of THB is linked to the process of identification. There are two words for “victim” in the Georgian language: “dazaralebuli” is the term used to designate a victim of crime and refers to a person who has been granted the status of victim by the police, in the context of criminal proceedings, while “msxverpli” designates a person who has been identified as a victim of trafficking by the Permanent Group. The Georgian authorities have explained that both types of victims have the same rights to assistance and protection.

The National Victim Referral and Assistance Mechanism (NRM) was developed by the Co-ordination Council

and covers the procedures from the moment a potential victim is identified as a victim of THB, to the moment a victim is safely returned to his/her country or city of origin. It also determines the procedures for providing the victim assistance measures which are contained in the Anti-Trafficking Law.

The NRM offers protection and assistance to victims of THB regardless of whether they cooperate or not with law enforcement bodies.⁵ It provides for granting the legal status of victim of THB through the Permanent Group established by the Co-ordination Council or by law enforcement bodies. The persons granted the status of victim of THB benefit from a protection mechanism which includes shelter accommodation and assistance (e.g. victim assistance allowance, medical treatment, legal support, etc.).

It provides for granting the legal status of victim of THB through the Permanent Group established by the Co-ordination Council or by law enforcement bodies. The persons granted the status of victim of THB benefit from a protection mechanism which includes shelter accommodation and assistance (e.g. victim assistance allowance, medical treatment, legal support, etc.) to obtain the status of a potential victim even if he/she has nowhere to live, cannot use the services of shelter, there is no structure that can provide them with decent living conditions.

In November 2006, the Co-ordination Council developed operational instructions for the protection of victims of THB in the framework of the NRM. These instructions are included in the new “Standards and Operational Procedures for the Identification, Protection, Assistance,

⁵ PHDS actually had the facts, when the potential victim doesn't receive the status of a “lack” of evidence, even though these same people have received the status of the IOM and national NGOs (2006-2007), or by the police as victims (2011) and received no assistance in Georgia

Rehabilitation and Reintegration of Victims of Human Trafficking”, adopted in October 2011.

In July 2007, the Co-ordination Council adopted a Strategy for the Rehabilitation and Social Reintegration of Victims of Trafficking in Human Beings, which determines the main directions of State policy in these areas. The aim of this strategy is to promote the rehabilitation and social reintegration of victims of THB, following a needs-based approach. Rehabilitation activities are carried out on the basis of individual plans drawn up by social workers with the participation of victims of trafficking.

According to the Georgian authorities, the Strategy for Rehabilitation and Reintegration of victims of THB is the natural extension of the NRM. Both instruments provide detailed guidelines for the effective co-operation of State agencies, NGOs and international organizations in the identification of victims and the implementation of assistance.

The State Fund was established in 2006 in accordance with Article 9 of the Anti-Trafficking Law and is under the control of the Ministry of Labor, Health and Social Protection. The purpose of the State Fund is the effective protection, assistance and rehabilitation of victims of THB, including through the provision of a one-off compensation payment.⁶ The Fund is governed by a Director, appointed by the President of Georgia, and its activities are coordinated by a Supervisory Council which includes State agencies, NGO representatives, relevant international organizations, experts and scientists. The State Fund's budget has increased more than two-fold in the last five years: from 300 000 GEL in 2007, to 773 000 GEL in 2011 (i.e. some 320 000 Euros). The State

⁶ Although, as revealed in the case of injured A. (2011), foundation can't pay it, if victims have no bank account and passport or if you do not have a passport and she can't open a bank account.

Fund was initially funded jointly by the State budget, international organizations and other donors, but in 2011 all the funding came from the State budget.⁷

The State Fund is responsible for implementing the Rehabilitation and Reintegration Strategy and overseeing the provision of assistance to victims of trafficking. Further, the State Fund operates the two shelters for victims of trafficking (in Batumi and Tbilisi).

According to data cited in the report the U.S. State Department in 2007 were assisted and provided shelter to victims 12 and 2008 - 10, 2009 - 15, 2010 - 10. Compensation of \$ 1,000 lari (approximately 450 Euros) paid in 2008, two injured in 2009 - no one asked for compensation, in 2010 two people were compensated.⁸

Over the years, NGOs have worked in close co-operation with the Georgian authorities to develop the legal and policy framework to combat THB and have played an important role in its implementation, including through the provision of assistance to victims.

As regards children, Article 18(6) of the Anti-Trafficking Law contains a general provision establishing that child victims of THB are subject to the protection afforded under the 1989 UN Convention on the Rights of the Child, the Council of Europe Anti-Trafficking Convention and the guidelines adopted by international organizations in the field of protection of child victims of trafficking. Further, this law provides that shelters for victims of THB must take into consideration the special needs of children regarding appropriate housing, education and care. However, no specific measures have been taken to

ensure that the identification, protection, assistance and rehabilitation of child victims of trafficking are carried out by respecting the best interest of the child. Draft amendments to the Anti-Trafficking Law concerning children will be submitted to Parliament in 2012. The Georgian authorities have indicated that a new Special Steering Group, set up in November 2011 under the Ministry of Labor, Health and Labor Protection, will address the protection of street children, including their vulnerability to THB.

NGOs and trade unions have pointed out to a low level of awareness of THB for the purpose of labor exploitation; the majority of such cases prosecuted in Georgia have concerned domestic servitude (taking place on farms in isolated rural areas). Further, there have been cases of THB involving foreign nationals exploited in sectors such as agriculture, heavy industry, construction and domestic services.

In 2006, the Labor Inspectorate was abolished and the police are since responsible for monitoring the implementation of labor legislation, include child labor. The minimum legal age to work is 15 years, but the Labor Code allows children between 14 and 16 years to perform "light work", while there is no definition of "light work" activities permitted or of the number of hours and other conditions with which such work should comply. This increases the vulnerability of children to trafficking, which is compounded by lack of information on child labor in Georgia. In this context, the ILO has requested the Georgian Government to provide information on the employment of children working in the streets and in the agricultural sector, as well as the types of violations detected by the authorities with regard to child labor.

As victims of trafficking are extremely vulnerable after the trauma they have experienced, Article 13 of the Convention introduces the obligation for

⁷ *Trafficking in Persons Report 2011* by Office To Monitor and Combat Trafficking in Persons, US Department of State, p. 169, <http://www.state.gov/documents/organization/164454.pdf>

⁸ *Trafficking in Persons Report 2008 – 2011* by Office To Monitor and Combat Trafficking in Persons, US Department of State <http://www.state.gov/j/tip/rls/tiprpt/>

Parties to provide in their internal law for a recovery and reflection period of at least 30 days. The minimum 30-day period constitutes an important guarantee for victims and potential victims and serves a number of purposes, including to allow them to recover and escape the influence of traffickers and to take a decision on cooperating with the competent authorities. During this period, Parties must authorize the person concerned to stay on their territory and expulsion orders cannot be enforced.

Pursuant to Article 12 of the Anti-Trafficking Law, victims of trafficking are entitled to a 30-day reflection period to decide whether they wish to cooperate with law enforcement bodies in the criminal proceedings. The reflection period is calculated from the date when a potential victim of THB contacts a shelter or a law enforcement body.

The 2006 Operational Instruction for the Protection of Victims of THB did not provide guidelines or information on the application of the reflection period. However, the Standards and Operational Procedures adopted in October 2011 foresee that a foreign national victim of trafficking enjoying the right to a reflection period will be issued with a temporary residence card. At the expiry of the reflection period or after the completion of criminal proceedings, the authorities should take steps to safely return the victim of trafficking to his/her country of origin. In addition, the Anti-Trafficking Law establishes that during the reflection period, victims of THB are not subject to criminal liability envisaged by Article 371 of the CC (on refusal to provide evidence).

Article 14(1) of the Convention provides for two possibilities when it comes to the issuing of renewable residence permits to victims of trafficking: on the basis of their personal situation and/or their cooperation with the competent authorities in

the investigation or criminal proceedings. Article 19(1) (g) of the Law on the Legal Status of Aliens provides that in case of reasonable doubt that a person may be a victim of trafficking, he/she must be issued with a temporary residence permit. A similar provision is found in Article 20 the Anti-Trafficking Law: "If there is reasonable doubt that a person may be a victim of trafficking, he/she cannot be expelled from the country and will be issued with a residence permit if he/she decides to cooperate with the law enforcement bodies. The resident card will be valid until the completion of the relevant criminal and/or civil proceedings and during such period the victim of trafficking will have the right to work in Georgia and enjoy the rights and guarantees established in the Labour Code". Further, the Anti-Trafficking Law establishes that foreign victims of trafficking are to be issued with a residence card by the Ministry of Justice during the reflection period, on the basis of a motion by the shelter or the body in charge of the proceedings.

Article 15 of the Convention establishes the obligation for Parties to provide in their internal law for the right of victims of trafficking to legal assistance and free legal aid. Parties must also provide for the right of victims of trafficking to compensation from the perpetrators as well as adopt legislative or other measures to guarantee compensation for victims from the State. Further, Article 15(1) of the Convention establishes that victims of trafficking must have access to information on relevant judicial and administrative proceedings in a language which they can understand.

In accordance with Article 16 of the Anti-Trafficking Law, victims of trafficking have the right to claim compensation in a civil court for moral, physical or material damages suffered. In addition, victims have the right to request compensation from the State Fund, pursuant to the Operational Instructions for the Protection of Victims of

THB and the “Rules and amounts for compensating victims of THB”, adopted by the Co-ordination Council on 26 November 2006. According to these provisions, if it is impossible to get compensation from traffickers, victims of trafficking receive a one-off compensation payment of 1 000 GEL from the State Fund. In order to receive this payment, victims need to submit a document confirming their status⁹. There is a link between compensation from the trafficker and State compensation: if three months after initiating the investigation of a case for THB, it is impossible to identify and arrest the suspected trafficker, or if after six months of delivering a guilty verdict it is impossible to get compensation from the offender, the agency which granted the status of victim of trafficking issues a document indicating that the person concerned can get compensation from the State Fund. If a victim of trafficking is granted such compensation and the trafficker is later convicted, the allowance received does not prevent the victim from demanding reparation of material, moral and property damages from the trafficker.

According to the Georgian authorities, five victims of trafficking received compensation from the State Fund in 2008, none in 2009 and two in 2010. The Georgian authorities have informed GRETA that compensation from the State Fund is granted on an application basis and that all victims of trafficking who applied for it got the compensation.

Article 16 of the Convention requires Parties to establish repatriation programmes which aim at avoiding re-victimization and involve relevant national or international institutions and NGOs, as well as to make efforts to favor the reintegration of victims into the society of the State of return. Parties must also make available to victims of trafficking contact

information or structures that can assist them in the country of return, such as law enforcement offices, NGOs, legal professionals and social welfare agencies. The return of victims of trafficking must preferably be voluntary and needs to be carried out with due regard for the rights, safety and dignity of the person and for the status of any legal proceedings related to the fact that the person is a victim of THB.

Access to justice

Article 14 of the Anti-Trafficking Law guarantees the legal protection of victims of trafficking, including access to justice and the provision of information on their rights, applicable legislation and legal status in the language of the victim or in a language that he/she can understand. Further, the Anti-Trafficking Law provides for access to a lawyer and an interpreter, as well as to documents and materials related to the proceedings.

As mentioned above, the State Fund provides free legal assistance to victims of trafficking, including court representation in civil cases to sue traffickers for financial compensation. In addition, free legal aid is in principle available to victims of trafficking through the Free Legal Aid Service established in 2007, although this facility has not yet been used by victims of trafficking. Further, the State Fund provides free legal aid to victims of trafficking, both for criminal and civil proceedings. The State Fund can hire lawyers, but it also uses the *pro bono* services of law firms.

Pursuant to Article 13(6) of the Anti-Trafficking Law, the measures to protect, assist and rehabilitate victims of trafficking prescribed in this Law are to be applied before, during and after criminal proceedings. Investigators, prosecutors and judges must inform victims of trafficking about their rights and legal status in a language that they can understand. The

⁹ *But if she/he don't have account in bank it's not possible to receive compensation.*

Ministry of Internal Affairs is responsible for ensuring the security of victims and witness. Statutory victims, as well as persons providing legal protection and assistance to them, have the right to request protection for their own security and the security of their family members, in accordance with procedures established by the Georgian legislation (Article 14(7) of the Anti-Trafficking Law).

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

There are two mechanisms to protect victims of trafficking and witnesses during criminal proceedings. Witnesses who are also victims of trafficking are placed in shelters for victims of trafficking, while witnesses in criminal proceedings are protected under the witness/victim protection procedures, in accordance with the criminal procedure. A new protection programme, including witnesses and victims of trafficking, has been developed and is scheduled for adoption in December 2011. A special unit has been set up at the Ministry of Internal Affairs (“WitSec Unit”) to implement the witness protection program.

Article 13(2) of the Anti-Trafficking Law establishes that a closed court hearing on the crime of THB may be held, based on a motion by the prosecutor, the victim or

his/her representative. In addition, the special protective measures prescribed in Chapter IX of the CCP may be applied for victims of trafficking who are witnesses in criminal cases. Such measures include physical protection, relocation, and change of the identity and appearance of victims. The provision of special protection measures is crucial to ensure the ability and confidence of victims and witnesses to give evidence.

The NAP for 2011-2012 provides for the analysis of trafficking cases, including data on statutory victims of trafficking, while protecting their anonymity. Such analysis is to focus on the place or origin of victims of trafficking, the reasons that led them to becoming victims of trafficking, and information on the investigations and criminal prosecution of traffickers. Pursuant to Article 14(8) of the Anti-Trafficking Law, the identity, address and other personal data of victims and witnesses of trafficking are confidential and their disclosure is prohibited except in cases envisaged by law.

Prevention

Article 5(2)(d) of the Anti-Trafficking Law establishes that preventive measures should include the comprehensive legal regulation of migration and the implementation of measures facilitating legal labor migration. According to this provision, the risk of illegal labor migration and THB should be reduced through informational and educational measures (including ‘hotlines’), educational programs and the distribution of information materials on legal labor and the prevention of trafficking of Georgian nationals abroad. That said, no measures are envisaged in the 2011-2012 NAP regarding private employment agencies, which are considered to be one of the main elements involved in trafficking for the purpose of labor exploitation.

Some NGOs have stressed the need for prevention and protection efforts against THB throughout the territory of Georgia and not only in the capital and larger towns. More work should be carried out in the regions in order to raise awareness about THB, detect potential victims and provide them with protection and assistance for their rehabilitation and reintegration. The public awareness campaigns on THB have been carried out in remote villages in the regions of Kvemo Kartli, Samtskhe-Javakheti, Ajara, Imereti, Kakheti and Shida Kartli, where the majority of victims of trafficking come from. In addition, concerns have also been expressed by both public officials and NGO representatives about the need to pay attention to Abkhazia and Tskhinvali (South Ossetia), and the need to co-operate with the NGOs present there.

Under the 2009-2010 NAP, training was provided to judges, prosecutors, border officials, social workers, police officers and staff of special education facilities for children, including orphanages. In 2009, the Co-ordination Council and the State Fund, in co-operation with the IOM, provided training to police officers working at the borders, the mobile teams of the Co-ordination Council and consular officials, in order to improve the identification of victims of trafficking.

The 2011-2012 NAP contains plans to provide specialized training and organize study visits for the following target groups: health professionals, staff of the Ministry of Internal Affairs, prosecutors, media professionals, teachers, diplomatic staff and judges. The IOM continues to play a very important role in providing THB-related training.

The Georgian authorities have reported that all Georgian police officers are trained on THB issues, including on how to identify victims of trafficking and how to address suspected THB activity. As part of the basic curriculum for border guards,

patrol policemen and precinct policemen, the Police Academy provides four hours of training on trafficking issues, including practical training. All new police officers are required to complete this basic training, which addresses the difference between THB and smuggling of migrants and covers the Anti-Trafficking Law, trafficking-related offences, types of exploitation and guidelines concerning child victims of trafficking. More advanced, specialized anti-THB training is mandatory for the border police and SOD members.

Since 2006, training on THB issues is mandatory for all prosecutors, and prosecutors working on this type of crime are offered specialized training. THB-related training is provided in co-operation with the IOM Mission to Georgia, covers the whole country and in some cases is carried out jointly for prosecutors and police officers, with the involvement of NGOs and other international organizations.

Monitoring and evaluation system

The Co-ordination Council is responsible for co-coordinating all national actors, preparing the NAPs and monitoring actions against THB. It also co-ordinates the collection of information from relevant sources, including international organizations and local NGOs working on anti-trafficking issues. The Co-ordination Council acts as an advisory body to the President of Georgia on anti-trafficking matters.

As regards the implementation of the biannual national action plans, it has not been subject to evaluation, except for the ICMPD assessment mentioned above. The 2011-2012 NAP contains plans for a “special analysis” to be carried by the Co-ordination Council in the first half of 2012. Building on the assessment of the 2009-2010 NAP undertaken by ICMPD, the possibility of commissioning and independent evaluation of the 2011-2012

NAP should be considered as it could assist the authorities in assessing the impact of the activities and help them plan future policies and measures to combat THB.

Co-operation between all competent agencies is part of the goals of the NAP for 2011-2012. In addition, the NAP provides for co-ordination and further enhancement of co-operation within the National Referral Mechanism. The Georgian authorities have highlighted the importance of working in close co-operation with NGOs in every sphere of anti-trafficking policy. However, while NGOs generally share the opinion that co-operation and co-ordination among NGOs is good, their views differ as regards the level of co-operation with State bodies.

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

Article 5(4)(c) of the Anti-Trafficking Law provides for the need to conduct research and collect data on the forms and scale of THB in Georgia, in order to develop effective prevention measures. Further, Article 8 of the Anti-Trafficking Law provides for the setting up of a unified

information database within the Ministry of Internal Affairs, for the purpose of identifying and systematizing existing information on traffickers. The database is to include information obtained through criminal intelligence measures, pre-trial investigations and court hearings and/or information received from Interpol and other relevant organizations. The law also provides that the information kept in the database is confidential and may only be accessed and released in accordance with the established legal procedures on confidential information.

The NAP for 2011-2012 provides for the analysis of trafficking cases, including data on statutory victims of trafficking, while protecting their anonymity. Such analysis is to focus on the place or origin of victims of trafficking, the reasons that led them to becoming victims of trafficking, and information on the investigations and criminal prosecution of traffickers. Pursuant to Article 14(8) of the Anti-Trafficking Law, the identity, address and other personal data of victims and witnesses of trafficking are confidential and their disclosure is prohibited except in cases envisaged by law.

The ILO and the ICMPD are developing databases on traffickers and on victims of trafficking, in co-operation with the Prosecutor's Office and the State Fund, respectively. These databases are expected to be finalized in 2011. As part of these projects, a manual on data collection and a model Memorandum of Understanding have been prepared in order to encourage State bodies to share data and produce reports, taking account of the applicable confidentiality rules. The Georgian authorities have indicated that these two databases will supplement databases already compiled by the State Fund, the police and the Prosecutor's Office, which include information on victims of trafficking and the crime of trafficking, respectively.

As far as research is concerned, the Ministry of IDPs from the Occupied

Territories, Accommodation and Refugees carries out research on the socio-economic conditions of IDPs in order to identify priorities and options to resettle them, but this research is not focused on THB-related issues. Research on the vulnerability of IDPs to THB could be carried out as part of general research on vulnerable groups to trafficking.

Recommendations

Recommendation for Georgia from Office To Monitor and Combat Trafficking in Persons, US Department of State¹⁰:

Increase efforts to investigate, prosecute, and convict both labor and sex trafficking offenders; increase efforts to identify and refer victims for assistance; continue strong funding for victim assistance programs; continue to ensure that victims are not fined or otherwise penalized for unlawful acts committed as a direct result of being trafficked; maintain and strengthen cross-border cooperation between law enforcement bodies; improve training of consular officers in trafficking destination countries in victims' assistance; continue to proactively screen for victims at border points and increase efforts to identify victims at the border; and focus training efforts on making these officers a more active part of the referral process.

List of GRETA's proposals¹¹

Core concepts and definitions

I. GRETA considers that the Georgian authorities must ensure that no additional conditions of

damage or loss and in particular no evidence of such damage or loss are required from a person who has been subjected to THB in order to qualify as a victim of trafficking under the Anti-Trafficking Law and to benefit from the protection measures provided for in this law.

Comprehensive approach, co-ordination and international co-operation

2. GRETA urges the Georgian authorities to step up their efforts aimed at ensuring that national action to combat THB is comprehensive, in particular by:

- paying increased attention to prevention and protection measures among vulnerable groups, such as IDPs;
- paying increased attention to prevention and protection measures addressing the particular vulnerability to trafficking of children, in particular those without parents and IDPs;
- increasing efforts to prevent and detect THB taking place within Georgia;
- stepping up action to combat THB for the purpose of labour exploitation;
- ensuring that gender issues are addressed in a gender-sensitive way, and that gender mainstreaming is reflected in all elements of Georgia's anti-trafficking policy.

3. Further, GRETA considers that the Georgian authorities should step up their efforts to ensure that national action to combat THB is comprehensive, in particular by:

- taking measures to detect and address he trafficking of foreign nationals to or through Georgia;
- ensuring that anti-trafficking measures extend beyond big towns.

4. While welcoming the efforts made by the Georgian authorities in the area of international cooperation against THB, GRETA considers that efforts should be intensified outside the criminal field.

GRETA invites the Georgian authorities to pursue and strengthen co-operation with Turkey and other countries of destination,

¹⁰ *Trafficking in Persons Report 2011 by Office To Monitor and Combat Trafficking in Persons, US Department of State, p 168*,
<http://www.state.gov/documents/organization/164454.pdf>

¹¹ *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Georgia; Group of Experts on Action against Trafficking in Human Beings GRETA (2011)24, First evaluation round, Strasbourg, 7 feb.2012*

as well as continue exploring possibilities for international co-operation with a view to preventing and combating THB and assisting the victims of trafficking.

Training of relevant officials

5. GRETA considers that the Georgian authorities should improve the system of proactive identification of victims through more advanced training of relevant professionals.

6. Further, GRETA invites the Georgian authorities to take full account of gender and child specific aspects when designing future trainings on THB.

Data collection and research

7. GRETA considers that, for the purpose of preparing, monitoring and evaluating its anti-trafficking policies, the Georgian authorities should develop and maintain a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical information from all main actors and allowing disaggregation (concerning sex, age, type of exploitation, country of origin and/or destination, etc.). This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection.

8. GRETA invites the Georgian authorities to make operational the databases under construction as a matter of priority.

9. Further, GRETA invites the Georgian authorities to conduct and support research on THB related issues, in particular in areas which have received little attention, such as trafficking among IDPs, national trafficking, and trafficking for the purpose of labour exploitation. More attention should also be paid to research on trafficking routes in and out of Georgia by sea, given that the scope of this phenomenon is still little known. The results of the research should be used as a source of information for future policy measures in the field of action against THB.

Prevention of THB

10. GRETA urges the Georgian authorities to step up their efforts to address the

socio-economic vulnerability of IDPs, potential migrants and children (including those held in special schools and institutions for persons with disabilities). In this context, GRETA invites the Georgian authorities to consider including specific references to the prevention of THB in the National Strategy for IDPs.

11. GRETA considers that the Georgian authorities should continue their efforts to discourage demand for services from trafficked persons, paying particular attention to the sectors with a higher risk of THB.

12. Further, GRETA considers that the Georgian authorities should continue developing awareness raising and information campaigns to prevent THB for the purpose of labour exploitation, both within Georgia and abroad, targeting the most vulnerable groups (IDPs, children, potential migrants).

13. GRETA welcomes the efforts of the Georgian authorities to strengthen the prevention of THB through information and education measures. That said, GRETA considers that future actions in this area should be designed in the light of the assessment of previous measures and be focused on the needs identified.

14. In addition, GRETA considers that further efforts should be made to:

- detect cases of THB through proactive screening during border control;
- address the role and involvement of private employment agencies in cases of THB for the purpose of labour exploitation;
- introduce a checklist to identify potential THB-related risks during the visa application system.

15. Further, GRETA invites the Georgian authorities to consider carrying out information campaigns to alert potential foreign victims of trafficking of THB-related risks and how to get help, in co-operation with countries of origin.

16. GRETA invites the Georgian authorities to monitor and evaluate the effectiveness of

the new travel and identity documents in the prevention and detection of cases of THB.

Identification of victims of THB

17. GRETA considers that the Georgian authorities should step up their efforts to improve the proactive detection and identification of victims of trafficking.

18. GRETA invites the Georgian authorities to evaluate the implementation of the mandatory referral mechanism for cases of violence against children and to explore the possibility of expanding it to THB, as an additional tool to improve the identification of child victims of trafficking.

Assistance measures

19. GRETA considers that the Georgian authorities should address the low number of victims of trafficking who agree to take part in individual rehabilitation and reintegration plans.

20. Further, GRETA considers that the Georgian authorities should step up their efforts to protect and safeguard the best interest of child victims of trafficking, including legal guardianship, appropriate accommodation, education and support programmes tailored to the needs of the child.

21. GRETA invites the Georgian authorities to:

- continue offering vocational training to victims of trafficking and providing them with access to the labour market in order to facilitate the reintegration of victims of trafficking into society and to avoid re-trafficking;
- consider developing further the system of shelters for victims of trafficking, in particular by providing appropriate accommodation for children;
- address the need for sufficient and well-trained social workers so that victims of trafficking can receive appropriate assistance.

Recovery and reflection period

22. GRETA urges the Georgian authorities to ensure that trafficked persons are systematically informed of the possibility to use a reflection period and that they are effectively granted such a period if they so wish.

23. GRETA considers that the Georgian authorities should expand the aims of the 30-day reflection period to include the recovery of victims of trafficking from the trafficking experience, in line with the Convention.

Residence permits

24. GRETA considers that the Georgian authorities should take steps to ensure that foreign victims of trafficking can take full advantage of the right to be granted a temporary residence permit by systematically providing them with information concerning their right to apply for such a permit, the procedure to be followed and the conditions to be met.

25. GRETA invites the Georgian authorities to consider granting temporary residence permits to victims of trafficking on the basis of their personal situation and not only to those victims who agree to co-operate with the law enforcement authorities.

Compensation and legal redress

26. GRETA urges the Georgian authorities to provide information to all victims of trafficking concerning possibilities to obtain compensation and to ensure that they have effective access to legal aid in order to enable them to exercise their right to compensation from the State Fund and/or from the traffickers.

27. In order to facilitate access to compensation by victims of trafficking, GRETA urges the Georgian authorities to ensure that they have an effective possibility of claiming compensation from traffickers, in either civil or criminal proceedings.

Repatriation and return of victims

28. GRETA invites the Georgian authorities to consider conducting a review of the institutional and procedural framework for

the return of victims of trafficking to ensure that due regard is taken to their safety, dignity and protection and to avoid their re-victimisation. In the case of children, a specific risk assessment and process to determine the best interest of the child should be carried out.

29. Further, GRETA invites the Georgian authorities to continue their co-operation with the national authorities, NGOs and international organisations in countries from which Georgian nationals victims of THB are repatriated, as well as in countries of return of victims of trafficking identified in Georgia.

Investigation, prosecution and procedural law

30. GRETA urges the Georgian authorities to review the legislation in order to fully reflect the aggravating circumstances included in the Convention, in particular when the crime of THB is committed by a public official in the performance of his/her duties.

31. Further, GRETA urges the Georgian authorities to explore the reasons for the non-application of the measure for confiscation of assets in cases of THB.

32. GRETA considers that the Georgian authorities should:

- step up the proactive investigation of cases of THB for the purpose of sexual and labour exploitation;
- continue to ensure that the life and safety of victims of trafficking and of those assisting them are adequately protected during court proceedings;
- address the lack of application of the special protection measures to victims of trafficking;
- address the significant reduction of prosecutions and convictions since 2010.