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## Concerted action against human trafficking and the smuggling of migrants

**Reply to Recommendation<sup>1</sup>:** Recommendation 2171 (2020)  
Committee of Ministers

1. The Committee of Ministers has carefully examined Parliamentary Assembly [Recommendation 2171 \(2020\)](#) "Concerted action against human trafficking and the smuggling of migrants", which it forwarded to the Steering Committee for Human Rights (CDDH), the European Committee on Crime Problems (CDPC), the Group of Experts on Action against Trafficking in Human Beings (GRETA), the European Committee on Organ Transplantation (Partial Agreement) (CD-P-TO), the Committee on Bioethics (DH-BIO), the Governmental Committee of the European Social Charter and the European Code of Social Security, and the European Committee of Social Rights (ECSR) for information and possible comments.
2. At its 129<sup>th</sup> Ministerial Session in Helsinki, the Committee of Ministers instructed its Deputies to examine ways of strengthening action against trafficking in human beings and a number of steps have been taken in this direction which take into account the Parliamentary Assembly resolutions highlighted in paragraph 1 of the recommendation.
3. The Committee of Ministers takes note of the Parliamentary Assembly's recommendation that the CDDH be instructed to examine the means of strengthening the prohibition of human trafficking. While the protection of victims of human trafficking is a cross-cutting theme throughout the work of the CDDH on migration, the Committee of Ministers considers that the monitoring mechanism established under the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) may be better placed to make proposals in this respect in the light of its expertise in the field.
4. The Committee of Ministers recalls that it has instructed the CDPC in its terms of reference for 2020-2021 to ensure concrete follow-up to the work carried out on the smuggling of migrants, by co-ordinating the implementation of a series of actions aiming at assisting member States in fostering international co-operation and investigative strategies in fighting the smuggling of migrants, including considering the preparation of an international legal instrument. An action plan intended to help member States overcome the investigative, prosecutorial and judicial challenges in migrant smuggling-related cases, facilitating the information knowledge and exchange amongst relevant stakeholders, and boosting co-operation amongst source, transit and destination countries, has been prepared and approved by the CDPC. The Committee invites the CDPC to bear in mind the views of the Parliamentary Assembly on the need for a Council of Europe convention to combat the smuggling of migrants (paragraph 2.2.1 of the recommendation) in taking forward its reflexion in this field and to report back. It also invites the Steering Committee to proceed with the analysis requested in paragraph 2.2.2 of the recommendation. The Committee of Ministers will inform the Assembly of any development in this regard.
5. At its 35<sup>th</sup> meeting (8-12 July 2019), GRETA set up an *ad hoc* working group on strengthening action to combat trafficking for the purpose of labour exploitation. GRETA has noted in its country evaluation reports that asylum seekers and migrants are particularly vulnerable to human trafficking and deserve special attention from States Parties in the framework of their action against trafficking. It dedicated a thematic section

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1. Adopted at the 1386<sup>th</sup> meeting of the Ministers' Deputies (21 October 2020).



in its 5<sup>th</sup> General Report to the identification and protection of victims of trafficking amongst asylum seekers, refugees and migrants. GRETA has also published a guidance note aimed at strengthening implementation of the obligation to provide international protection to victims of trafficking, as well as persons at risk of being trafficked, on 19 June 2020.

6. In order to ensure a pan-European response to the challenges posed by human trafficking, the Committee of Ministers encourages the remaining member State which has not yet signed and ratified the Convention on Action against Trafficking in Human Beings to consider doing so without delay. It assures the Parliamentary Assembly that it will examine speedily any requests by non-member States, whose citizens are frequently victims of human trafficking to Europe, to accede to the Convention on Action against Trafficking in Human Beings.

7. As regards trafficking in human organs, the Committee of Ministers calls upon those States which have not yet done so to sign and ratify without delay the Council of Europe Convention on Action against Trafficking in Human Organs (CETS No. 216). Moreover, since this is a transnational crime, often involving several States – the country of the “donor”, the country of origin of the recipient purchasing the illicitly obtained organ and the country where the transplant procedure takes place – the Committee of Ministers will examine speedily any requests by non-member States whose citizens are frequently victims of human trafficking to Europe, but also those whose citizens purchase the organs, to accede to the Convention on Action against Trafficking in Human Organs. Furthermore, given the importance of systematic and comprehensive data collection as a means of identifying transplant tourism hotspots and understanding not only the nature and scope of human trafficking for the purpose of organ removal in this context but also how the criminal networks involved are organised and operate, the Committee of Ministers encourages member States to appoint National Focal Points (NFP) to join the Council of Europe international network on Travel for Transplantation and to submit relevant data to its international database on this topic. This call is extended to any non-member State with an interest in understanding and combatting transplant-related crimes in co-operation with the Council of Europe.

8. Finally, the Committee of Ministers invites the Secretary General and her Special Representative on migration and refugees to continue to address human trafficking and the smuggling of migrants in their work.

## Appendix to the reply

### *Comments by the Bureau of the Steering Committee for Human Rights (CDDH)*

1. The Steering Committee for Human Rights (CDDH) takes note of and appreciates the Parliamentary Assembly's recommendation to examine the means of strengthening the prohibition of human trafficking.
2. The protection of vulnerable persons, including victims of human trafficking, is a cross-cutting theme throughout the work of CDDH on migration and the Steering Committee expresses its serious concern in respect of these issues.
3. The CDDH considers however that the monitoring mechanism established under the Convention on Action Against Trafficking in Human Beings (CETS No. 197) is best placed to consider this recommendation of the Parliamentary Assembly in the light of its mandate and expertise in this field. The CDDH stands, of course, ready to offer its contribution, support and co-operation on the topic.

### *Opinion of the European Committee on Crime problems (CDPC)*

1. Following the adoption by the Parliamentary Assembly of [Recommendation 2171 \(2020\)](#) "Concerted action against human trafficking and the smuggling of migrants", the Committee of Ministers decided to send it to the European Committee on Crime Problems (CDPC) for information and possible comments.
2. The Committee recalls that its terms of reference for the years 2020-2021, as adopted by the Committee of Ministers, state that one of its specific tasks to be implemented is to "ensure concrete follow-up to the work carried out on the smuggling of migrants, by co-ordinating the implementation of a series of actions, aiming at assisting member States in fostering international co-operation and investigative strategies in fighting the smuggling of migrants, including considering the preparation of an international legal instrument.". In this regard, a draft action plan was elaborated, intended to help member States overcome the investigative, prosecutorial and judicial challenges in migrant smuggling-related cases, facilitating the information knowledge and exchange amongst relevant stakeholders; and, boosting co-operation amongst source, transit and destination countries. The draft action plan will be submitted to the next CDPC plenary meeting in June.
3. The CDPC supports the recommendation of the Parliamentary Assembly regarding the need to fight the smuggling of migrants and ensure the rights of potential migrant victims who have been smuggled to Europe. It will take the views of the Parliamentary Assembly on the need for a Council of Europe convention to combat the smuggling of migrants into consideration in taking forwards its reflexion in this field.
4. The CDPC stands ready to collaborate with the other relevant competent Council of Europe bodies, notably GRETA and the Special Representative of the Secretary General on Migration and Refugees, and other international partners in this endeavour.

### *Comments by the European Committee (Partial Agreement) on Organ Transplantation (CD-P-TO)*

1. The Committee of Ministers agreed to communicate to the European Committee (Partial Agreement) on Organ Transplantation (CD-P-TO), as well as to the Steering Committee for Human Rights (CDDH), to the European Committee on Crime Problems (CDPC), to the Group of Experts on Action against Trafficking in Human Beings (GRETA) and to the Committee on Bioethics (DH-BIO), Parliamentary Assembly [Recommendation 2171 \(2020\)](#) "Concerted action against human trafficking and the smuggling of migrants" for information and possible comments.
2. Due to the very short deadline given to the CD-P-TO to provide an opinion on [Recommendation 2171 \(2020\)](#), the committee has not been able to carefully debate and elaborate a consensus opinion on its contents. However, the CD-P-TO Secretariat collected comments from the CD-P-TO delegations, prepared a draft response in line with the feedback received and distributed it to the Committee for adoption by written procedure.
3. The work of the Council of Europe in the area of organs, tissues and cells for human application started in 1987, contributing actively to the implementation of high standards for the protection of public health and for the promotion of human rights and dignity. As part of its initiatives to ensure quality and safety of organs, tissues and cells for transplantation, the CD-P-TO has committed to developing guidance within its remits of competence on how to promote their safe and ethical use.

4. The CD-P-TO welcomes the initiative taken by the Parliamentary Assembly through its [Recommendation 2171 \(2020\)](#). Human trafficking for the purpose of organ removal is fuelled by the demand of desperate patients who are willing to pay large amounts to obtain a kidney or, less frequently, a liver lobe. Victims are vulnerable and destitute persons induced to sell an organ through fraudulent or coercive means or through the exploitation of their financial desperation. Smuggling of migrants and refugees has been linked to organ trafficking by investigative journalism and scattered reports, involving desperate individuals who sell a kidney to pay smugglers for a trip to another destination. This recommendation is an opportunity to define concrete actions for co-operation to address this type of highly organised crime.

5. The CD-P-TO recalls that human trafficking for the purpose of organ removal differs from other forms of human trafficking in several ways, including the operational and geographical complexity of the trafficking networks, the serious violation of the victim's physical integrity, and the critical involvement of a range of healthcare professionals and facilities. It is precisely this latter distinctive feature that provides a unique opportunity to help prevent, detect and combat these crimes. In their daily practice, nephrologists and other transplant professionals attend to patients who may be considering purchasing an organ. Healthcare professionals are also responsible for evaluating donor-recipient pairs and ensuring the legitimacy and motivations of potential donors. Additionally, both the sophisticated care that is required for monitoring organ function following transplantation and the need for lifelong immunosuppression in recipients inevitably bring physicians into contact with illicitly transplanted patients. Healthcare professionals may also come into contact with victims. Therefore, success in combating human trafficking for the purpose of organ removal and, more broadly, organ trafficking, depends heavily on co-operation between the areas of health (healthcare authorities and professionals), justice (law enforcement authorities) and other stakeholders, i.e. multidisciplinary co-operation.

6. In its recommendation, the Assembly invites "those non-member States, whose citizens are frequently victims of organ trafficking to Europe including trafficking in human beings for organ removal, to sign and ratify the Convention on Action against Trafficking in Human Organs (CETS No. 216)". In this context, the CD-P-TO wishes to draw attention to the work of the international network of National Focal Points (NFP) on Travel for Transplantation, carried out in the context of Council of Europe Resolution CM/Res(2013)55 and CM/Res(2017)2, whereby NFP officially designated by Ministries of Health collect and record anonymised information on patients who travel abroad for transplantation on an International Database on Travel for Transplantation. Preliminary data reported by 26 European countries revealed that of the 261 patients who travelled for transplantation during 2015-2017, 24% had received an organ in a third country from a living unrelated or an unknown donor and without proper referral for transplantation, i.e. in situations that could be consistent with human trafficking for the purpose of organ removal and/or organ trafficking. This international database provides an invaluable picture of the countries of origin and destination of transplant tourists and organ "donors", which can be very useful in the context of the fight against human trafficking and smuggling of migrants associated with organ trafficking.

7. This data highlights the importance of both member and non-member States adopting comprehensive legal frameworks to prevent and combat illicit transplant activities that violate basic human rights. In addition, the invitation to sign and ratify the Convention on Action against Trafficking in Human Organs should not be restricted to just those States whose citizens are frequently victims of organ trafficking since no country is self-sufficient in organ transplantation and, in some countries, kidney transplantation has not been developed or relies exclusively on living donation. The shortage of organs available for transplantation and the lack of universal access to transplantation therapy may lead desperate patients to resort to an illicit transplant (involving paid "donors" or victims of exploitation or coercion). Moreover, trafficking in human organs is a transnational crime, often involving several States: the country of the "donor", the country of origin of the recipient purchasing the illicitly obtained organ and the country where the transplant procedure takes place. The involvement of different countries raises numerous problems in terms of criminal prosecution due to the lack of extraterritorial jurisdiction in national courts. Therefore, harmonised legislation against organ trafficking is essential to ensure criminal investigations and prosecutions can be undertaken. Furthermore, the responsibility to combat these crimes must be taken by all countries, including those whose citizens are frequently victims of organ trafficking and those whose citizens purchase the organs, since experience has shown that trafficking networks are constantly on the run, moving their activities to regions with weaker legal frameworks or where the existing laws are poorly enforced. Thus, the worldwide problem of organ trafficking can only be addressed through concerted and decisive action at global level, including the adoption of the Convention against Trafficking in Human Organs.

8. Transplant-related crimes have a global dimension but are still largely underestimated. It is essential to gain better knowledge on human trafficking for the purpose of organ removal and organ trafficking, in particular through systematic data collection, to understand the nature and scope of these crimes, the

organisation of the criminal networks involved and their modus operandi. Therefore, the CD-P-TO calls on all Council of Europe member States to nominate NFP to join the international network on Travel for Transplantation and to submit anonymised data on patients having received an organ transplant abroad to its International Database on Travel for Transplantation. This call is extended to any non-member State with an interest in understanding and combatting transplant-related crimes in co-operation with the Council of Europe.

9. Similarly, the CD-P-TO would welcome initiatives aimed at examining the link between smuggling of migrants and trafficking in human organs, including the appointment of a designated body to undertake research in this field, as well as regular exchanges of views and information with GRETA. In addition, the invitation to the Secretary General of the Council of Europe and her Special Representative on migration and refugees could be expanded to also address organ trafficking.

10. The CD-P-TO recalls that victims of human trafficking for the purpose of organ removal have suffered permanent and severe physical harm and will require life-long medical follow-up and maybe even an organ transplant themselves. This may be particularly difficult to guarantee in the case of migrants. Thus, appropriate victim protection measures should take these circumstances into account in order to adequately address the needs of the victims.

11. The CD-P-TO emphasises the need for collaboration between international organisations, as well as national and international law enforcement agencies, customs authorities, and Health Authorities for the prevention, detection and prosecution of human trafficking for the purpose of organ removal and smuggling of migrants in the same context.

12. The CD-P-TO is committed to continue addressing human rights and medical and ethical issues raised by organ transplantation, and recalls in this respect that it regularly updates its "Guide to the Quality and Safety of Organs for Transplantation". It also monitors practices in Europe, examines questions of interest and contributes to raising public awareness on the donation and use of substances of human origin. As a result, it publishes booklets for the general public on relevant topics and celebrates, on an annual basis, the European Day for Organ Donation and Transplantation to raise awareness of the importance of safe and ethical organ, tissue and cell donation as a way to improve and save lives.

*No comments from the Committee of Bioethics (DH-BIO)*

*Comments of the Group of Experts on Action against Trafficking in Human Beings (GRETA)*

1. At its 1367<sup>th</sup> meeting (12-13 February 2020), the Committee of Ministers communicated to the Group of Experts on Action against Trafficking in Human Beings (GRETA), for information and possible comments, three Parliamentary Assembly recommendations: 2171 (2020) "Concerted action against human trafficking and the smuggling of migrants", 2172 (2020) "Missing refugee and migrant children in Europe" and 2173 (2020) "Combating trafficking in human tissues and cells" to the Group of Experts on Action against Trafficking in Human Beings (GRETA). GRETA has decided to provide the following joint comments on these three recommendations.

2. GRETA takes note with great interest of Parliamentary Assembly [Recommendation 2171 \(2020\)](#) "Concerted action against human trafficking and the smuggling of migrants" and the related report, which are both very timely. Since its setting up in February 2009, GRETA has been monitoring the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings. The number of Parties to the Convention has grown over the years and currently stands at 47, including one non-member State, Belarus. Repeated calls have been made to the Russian Federation, the only remaining Council of Europe member State which has not signed and ratified the Convention, to do so as a matter of priority in order to ensure a pan-European response to the challenges posed by human trafficking. At the same time, the Convention's standards are being promoted in countries beyond Europe (for example, Israel, Morocco and Tunisia) and GRETA trusts that new ratifications of the Convention will follow.

3. By the end of 2019, GRETA had completed the second evaluation round of the Convention in respect of 42 of the 47 State Parties and has started the third round of evaluation. GRETA has published over 80 country evaluation reports, as well as eight general activities reports, which contain a wealth of information, analysis and recommendations and thereby contributes to the interpretation of the Council of Europe Convention on Action against Trafficking in Human Beings and Article 4 of the European Convention of Human Rights.<sup>2</sup> GRETA's 9<sup>th</sup> general report, covering the calendar year 2019, which is about to be published, takes stock of the implementation of the Convention on the basis of the second evaluation round reports drawn up by GRETA.

4. As noted in this report, in the period between the first and the second evaluation by GRETA, 26 State Parties amended their Criminal Code provisions on trafficking in human beings. In addition to the “at a minimum” list of forms of exploitation contained in the Convention, many State Parties have added to the criminalisation of trafficking in human beings the exploitation of begging and the exploitation of criminal activities. Some countries have included additional forms of exploitation, such as forced marriage, using a woman for reproductive purposes, removal of cells and tissues, illegal adoption, or using a person in armed conflicts. Several countries have adopted open-ended lists of exploitative purposes. GRETA recalls that the Convention provides a minimum list of exploitative purposes, and national legislation may therefore target other forms of exploitation. GRETA has stressed the importance of ensuring that all forms of exploitation related to human trafficking are adequately covered by law and practice. In this context, bearing in mind that trafficking in human beings is an evolving phenomenon, GRETA has paid attention to how State Parties address new trends and challenges.

5. GRETA has also emphasised that stating explicitly the irrelevance of the consent of a victim to the intended exploitation could improve the implementation of anti-trafficking provisions. After the first evaluation by GRETA, several State Parties have amended their criminal law provisions on human trafficking in order to state explicitly that the victim’s consent to the intended or actual exploitation, where any means have been used, is irrelevant.

6. Referring to GRETA’s findings, the former Secretary General’s report “Ready for Future Challenges – Reinforcing the Council of Europe” identified trafficking for labour exploitation as one of the major challenges in Europe.<sup>3</sup> Subsequently, at the 129<sup>th</sup> Ministerial Session in Helsinki, the Committee of Ministers instructed its Deputies to examine ways of strengthening action against trafficking in human beings.<sup>4</sup>

7. At its 35<sup>th</sup> meeting (8-12 July 2019), GRETA held an exchange of views on ways to strengthen action against trafficking for the purpose of labour exploitation. GRETA members agreed that there was no need for a new legal instrument and that the Council of Europe Convention on Action against Trafficking in Human Beings, together with the European Convention on Human Rights, provided an adequate legal basis for capturing human trafficking for the purpose of labour exploitation. Nevertheless, GRETA’s monitoring has shown that the interpretation of “forced labour” might be too narrow, resulting in a low number of prosecutions and convictions. The concept of “labour exploitation” in the context of human trafficking should be better defined through guidance and case law. Labour inspectors, NGOs and trade unions should be involved in national referral mechanisms which identify victims of trafficking. It is also important to discourage demand for the services of victims of trafficking, as well as to engage with the private sector and address the risks of trafficking through supply chains and public procurement, was also noted.

8. GRETA decided to set up an *ad hoc* working group on strengthening action to combat trafficking for the purpose of labour exploitation. The terms of reference of this group include the drafting of a compilation of good practices in the area of combating human trafficking for the purpose of labour exploitation, on the basis of GRETA’s country evaluation reports, as well as a guidance note on preventing and combating human trafficking for the purpose of labour exploitation.

9. The far-reaching effects of human trafficking require innovative solutions and a robust approach. Governments and civil society must increase private sector awareness about human trafficking, as well as corporate responsibility. Sharper regulation is needed in the area of public procurement and supply chains. GRETA also stresses the need for a more effective enforcement of corporate liability provisions to ensure that human trafficking abuses are punished and remedied.

10. GRETA has noted in its country evaluation reports that asylum seekers and migrants are particularly vulnerable to human trafficking and therefore deserve specific attention from State Parties within the framework of their action against trafficking. GRETA dedicated a thematic section in its 5<sup>th</sup> general report to the identification and protection of victims of trafficking amongst asylum seekers, refugees and migrants. More recently, GRETA agreed on the preparation of a guidance note aimed at strengthening the implementation of the obligation to provide international protection to victims of trafficking, as well as persons at risk of being trafficked, which will be published in the course of 2020. The note aims to provide guidance for relevant authorities, agencies and organisations in their dealings with victims of trafficking and those at risk of being trafficked, with the objective that no such person should be compelled to return to another country if such a return would threaten their lives or basic human rights.

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2. *Chowdury and others v. Greece*, application No. 21884/15 (ECtHR, 30 March 2017), paragraph 104.

3. <https://edoc.coe.int/en/an-overview/7915-ready-for-future-challenges-reinforcing-the-council-of-europe.html>.

4. [CM/Del/Dec\(2019\)129/2a](#).

11. GRETA has regularly highlighted the distinction between “human trafficking” and “migrant smuggling”, which continue to be erroneously conflated or referred to interchangeably. Clarifying the differences between these two offences is critical to the development and implementation of sound policies. A key difference is that the aim of human trafficking is to profit from the exploitation of the victims, who are treated as commodities, in violation of their fundamental human rights and freedoms, which is why in addition to being a criminal offence, trafficking in human beings falls under the scope of Article 4 of the European Convention of Human Rights. It is true that smuggled migrants can be highly vulnerable and an easy prey for those who want to profit from their labour or services. Their irregular status exposes them to various risks and they may become victims of trafficking and exploitation. If this happens, they should be afforded the protections envisaged by international and national law for victims of trafficking. GRETA has stressed the obligation of State Parties to put in place adequate procedures in order to ensure the identification of victims of trafficking among asylum seekers and migrants. In this context, it is important to screen migrants who are detained pending removal for indicators of human trafficking, and if such are found, to stop the procedure for their extradition/deportation and to ensure their access to the rights that victims of trafficking are entitled to, including assistance, protection and compensation. Better awareness of the distinctions between human trafficking and migrant smuggling can improve victim protection and avoid the re-exploitation of victims. Furthermore, GRETA recalls that the Council of Europe Convention on Action against Trafficking in Human Beings provides that the prevention of trafficking in human beings should encompass measures to enable migration to take place legally.

12. GRETA’s stocktaking of the second evaluation round also shows that the punishment of traffickers remains unsatisfactory. While all State Parties to the Convention have criminalised human trafficking, not all forms of exploitation are adequately covered in practice. The number of prosecutions and convictions for human trafficking offences is still low in many State Parties, and the sentences imposed are sometimes not sufficiently dissuasive. Further, the confiscation of traffickers’ assets remains all too rare. GRETA stresses that failure to convict traffickers and the absence of effective, proportionate and dissuasive sanctions undermines efforts to combat human trafficking and guarantee victims’ access to justice.

13. The third evaluation round of the Convention was launched by GRETA in November 2018, with a thematic focus on “Access to justice and effective remedies”. GRETA chose this focus because access to information and legal assistance remains a challenge for many victims of trafficking, in particular those who are in an irregular migration situation. GRETA highlights the importance of ensuring that victims are not criminalised, and can secure access to compensation and effective legal redress. In addition to the thematic focus, the third-round questionnaire contains a country-specific section closely aligned to the context of each State and the most urgent priorities for action.