



**Committee of the Parties
to the Council of Europe Convention
on Action against Trafficking in Human Beings**

**Recommendation CP(2014)5
on the implementation of the Council of Europe Convention
on Action against Trafficking in Human Beings
by Luxembourg**

*adopted at the 13th meeting of the Committee of the Parties
on 7 February 2014*

The Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings (hereinafter referred to as “the Convention”), acting under the terms of Article 38(7) of the Convention;

Having regard to the purposes of the Convention to prevent and combat trafficking in human beings, while guaranteeing gender equality, protect the human rights of victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, ensure the effective investigation and prosecution of the offences related to trafficking in human beings, and promote international co-operation;

Bearing in mind the provisions of Article 36(1) of the Convention concerning the monitoring role of the Group of Experts on Action against Trafficking in Human Beings (GRETA) in the implementation of the Convention;

Having regard to the Rules of Procedure of the Committee of the Parties;

Having regard to the instrument of ratification deposited by Luxembourg on 9 April 2009;

Having examined the Report concerning the implementation of the Convention by Luxembourg, adopted by GRETA at its 18th meeting (4-8 November 2013) in the framework of the first evaluation round;

Having examined the comments of the Luxembourg Government on GRETA’s report, submitted on 2 January 2014;

Welcoming the measures to combat trafficking in human beings taken by the Luxembourg authorities, and in particular:

- the setting up of an inter-ministerial committee with a view to co-ordinating state action against human trafficking;
- the adoption of legislation criminalising trafficking in human beings and providing for the rights of victims of human trafficking;
- the provision of adequate funding for NGOs assisting and accommodating women victims of human trafficking;
- the provision in law of a recovery and reflection period for possible victims of human trafficking lasting 90 days;

- the possibility of granting residence permits to victims of human trafficking both on the ground of their personal situation and when co-operating within the framework of criminal proceedings;

Taking note of the areas where further action is required in order to improve the implementation of the Convention by Luxembourg, in particular:

- increasing their efforts to combat human trafficking for the purpose of labour exploitation;
- adopting, in consultation with civil society, an action plan on combating human trafficking for the purpose of the different forms of exploitation as well as measures aimed at preventing human trafficking;
- improving the identification of victims of human trafficking, in particular by adopting a multidisciplinary approach, officialising the role and input of specialised NGOs, involving other relevant stakeholders, such as labour inspectors, and developing guides and indicators in co-operation with these actors;
- ensuring that the assistance provided to victims of human trafficking is not linked to criminal prosecutions being lodged or continued, and providing specific assistance for child victims of human trafficking in line with the best interest of the child;
- making sure that possible victims of human trafficking are systematically offered a recovery and reflection period which is not made conditional on the victim's co-operation and is offered to victims before formal statements are made to investigators;
- ensuring that the return of trafficking victims to their countries of origin is carried out with due regard for their rights, safety and dignity, and in this context developing co-operation with countries of origin to ensure that a reliable risk assessment is carried and that reintegration is effective.

1. Recommends that the Government of Luxembourg implement the proposals of GRETA listed in Appendix I to the Report concerning the implementation of the Convention by Luxembourg (see addendum);
2. Requests the Government of Luxembourg to inform the Committee of the Parties of the measures taken to comply with this recommendation by 7 February 2016;
3. Invites the Government of Luxembourg to continue the ongoing dialogue and co-operation with GRETA and to keep GRETA informed of the measures taken in response to its proposals.

Addendum

List of GRETA's proposals concerning the implementation of the Convention by Luxembourg

Comprehensive approach and co-ordination

1. GRETA urges the Luxembourg authorities to strengthen their action against trafficking for the purpose of labour exploitation and, in this connection, co-ordination between the public actors concerned.
2. GRETA urges the Luxembourg authorities to adopt, in consultation with civil society, an action plan or strategy for state action aimed specifically at combating trafficking in human beings and covering the different types of exploitation.

Training of relevant professionals

3. GRETA considers that the Luxembourg authorities should ensure that all the professionals concerned receive periodic training to improve detection of potential THB victims, the identification of victims and the assistance provided to them as well as compensation procedures. This training should be aimed at members of the law-enforcement agencies, judges, prosecutors, labour inspectors, lawyers, staff working in shelters for trafficking victims, staff involved in child welfare, social workers, staff working in reception centres and the immigration removal centre for irregular migrants, diplomatic and consular staff, healthcare professionals as well as trade union staff.

Data collection and research

4. GRETA urges the Luxembourg authorities to render operational, for the purpose of preparing, monitoring and evaluating anti-trafficking policies, 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.
5. GRETA considers that the Luxembourg authorities should carry out and provide backing for research into THB issues, so that the findings of that research help the public authorities to devise future anti-trafficking measures. Areas in which in-depth research is required include trafficking for the purpose of labour exploitation (particularly in the construction and catering sectors and domestic work) and child trafficking.

International co-operation

6. GRETA invites the Luxembourg authorities to continue developing international cooperation with a view to preventing THB, assisting victims of trafficking and prosecuting offenders, including through exploring further possibilities for co-operation with governmental and non-governmental actors in countries of origin and transit.

Measures to raise awareness and discourage demand

7. GRETA invites the Luxembourg authorities to ensure that NGOs are granted without delay the official authorisation that will enable them to expand their awareness-raising efforts.
8. GRETA considers that the Luxembourg authorities should take awareness-raising and socio-economic measures for groups vulnerable to trafficking and in high-risk sectors of the economy in order to prevent human trafficking.

9. GRETA considers that the Luxembourg authorities would benefit from placing heavier emphasis on the sanctions faced by individuals using the services of a person in the knowledge that they are a victim of trafficking as a co-perpetrator or accomplice of the offence of trafficking in accordance with the Criminal Code. They could include this aspect in any information campaigns concerning trafficking for example, particularly in the risk sectors (prostitution, cabarets, catering, construction, domestic work, etc.).

10. GRETA considers that the Luxembourg authorities should continue their efforts aimed at discouraging demand for services provided by victims of any type of human trafficking, in particular in high-risk sectors.

Border measures to prevent THB and measures to enable legal migration

11. GRETA considers that the Luxembourg authorities should strengthen their efforts to:

- introduce a checklist to facilitate the detection of trafficking risks as part of the visa application and processing procedure;
- provide regular training to staff involved in issuing visas and residence permits to improve their ability to detect possible victims of trafficking in human beings;
- provide information to foreigners envisaging travel to Luxembourg who belong to vulnerable groups, including domestic workers and in particular those working in diplomatic households, in a language they understand, warning them of the risks of trafficking in human beings, informing them of the services to which they can turn for assistance and guidance and advising them of their rights.

Identification of victims of trafficking in human beings

12. GRETA urges the Luxembourg authorities to:

- ensure that the identification of possible victims is not linked to criminal proceedings being initiated or continued;
- adopt a multidisciplinary approach to the identification of victims by officialising the role and input of specialised NGOs and by involving other relevant stakeholders, such as labour inspectors;
- develop tools (guides, indicators, etc.) for the different actors involved, including NGOs, to be able to identify victims of human trafficking and with a view to formalising and co-ordinating efforts made to improve detection and identification of trafficking victims;
- pay specific attention to the identification of victims of trafficking for the purpose of labour exploitation, including by strengthening proactive detection by the labour inspectorate;
- devote particular attention to the identification of child victims of human trafficking and, to that end, adopt tools and a procedure geared to their specific situation in accordance with the best interests of the child;
- ensure adequate training for all stakeholders involved in the identification process;
- take measures to improve the identification of victims of human trafficking for the purpose of forced begging, in particular children.

Assistance to victims

13. GRETA urges the Luxembourg authorities to:

- not link the assistance provided to victims to criminal prosecutions being lodged or continued;
- ensure that all victims detected have access to the assistance provided by the specialised NGOs;
- provide for the concluding of contractual agreements specifically relating to trafficking in human beings with NGOs in order to make assistance to THB victims a permanent fixture and facilitate the NGOs' efforts to assist all victims (women, men and children);
- grant access to the labour market and to training to victims from third countries who are lawfully resident in Luxembourg;
- provide for specific assistance for child victims of trafficking that takes their specific circumstances into account.

Recovery and reflection period

14. GRETA urges the Luxembourg authorities to ensure, in compliance with the obligations under Article 13 of the Convention, that all possible victims of trafficking are offered a recovery and reflection period and all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention during this period. Officers performing identification should be issued with clear instructions stressing the need to offer the recovery and reflection period as defined in the Convention, i.e. not making it conditional on the victim's co-operation and offering it to victims before formal statements are made to investigators.

Residence permits

15. GRETA urges the Luxembourg authorities to ensure that victims of trafficking can fully benefit from the right to obtain a residence permit, in accordance with Article 14 of the Convention.

Compensation and legal redress

16. GRETA considers it important to add Article 382-1 to the list of provisions for which damage to physical or mental integrity may be presumed, dispensing with the requirement to establish incapacity.

17. GRETA urges the Luxembourg authorities to ensure that victims of human trafficking who are not EU nationals have access to compensation.

18. GRETA considers that the Luxembourg authorities should ensure that victims and those assisting them are fully informed of the possibilities of compensation which exist in domestic law (including before the Compensation Committee) and that training in the sphere of human trafficking for the personnel concerned (police, prosecutors and judges) covers the compensation of victims.

Repatriation and return of victims

19. GRETA urges the Luxembourg authorities to take steps to:

- ensure that the return of trafficking victims is carried out with due regard for the rights, safety and dignity of the individuals concerned, which implies protection against reprisals and revictimisation;
- develop co-operation with trafficking victims' countries of origin to ensure that a reliable risk assessment is carried out, that their return is safe and that their reintegration is effective.

Substantive criminal law

20. GRETA invites the Luxembourg authorities to consider the possibility of incorporating in the Criminal Code the offence punishing the retaining, removing, altering, damaging or destroying of another person's travel or identity document intentionally with a view to facilitating trafficking.

Non-punishment of victims of trafficking in human beings

21. GRETA encourages the Luxembourg authorities to draw attention within THB-related training programmes, particularly for the police, prosecutors and judges, to the Criminal Code provision stipulating the non-responsibility of trafficking victims for the illegal activities in which they were forced to participate.

Investigation, prosecution and procedural law

22. GRETA considers that the Luxembourg authorities should ensure that offences qualified as human trafficking result in deterrent sentences proportionate to the crime and, to that end, ensure that training on THB for members of the judiciary (prosecutors and judges) is strengthened.

Protection of victims and witnesses

23. GRETA urges the Luxembourg authorities to take all necessary steps to provide victims and witnesses with efficient and adequate protection against possible reprisals or intimidation (including through a victim and witness protection programme and the possibility of a change of identity), in particular during and after investigations and prosecutions.