

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



**Recommendation CP(2013)3
on the implementation of the Council of Europe Convention
on Action against Trafficking in Human Beings
by Malta**

*adopted at the 10th meeting of the Committee of the Parties
on 15 February 2013*

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 Malta on 30 January 2008;

Having examined the Report concerning the implementation of the Convention by Malta, adopted by GRETA at its 15th meeting (26-30 November 2012) in the framework of the first evaluation round;

Having examined the comments of the Maltese Government on GRETA's report, submitted on 20 December 2012;

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

- the appointment of a Trafficking in Persons Co-ordinator and the setting up of the Human Trafficking Monitoring Committee and the Stakeholder Task Force, which involves non-governmental organisations;
- the adoption of the first National Action Plan on Combating Trafficking in Persons in October 2011;
- the efforts made to review the victim identification procedure through the adoption of a Victim Referral System and Standard Operating Procedures for the referral of victims of trafficking;
- the steps taken to train relevant professionals working in the field of prevention of human trafficking, identification and protection of victims, and prosecution of traffickers.

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

- reinforcing prevention through measures to raise awareness about human trafficking and discourage demand for the services of trafficked persons;
- applying a proactive approach to the identification of victims of trafficking by ensuring multi-agency involvement, with clearly defined responsibilities and procedures of all relevant actors and providing them with operational indicators, guidance and toolkits;
- improving the identification of victims among irregular migrants and ensuring that potential victims benefit from a recovery and reflection period;
- stepping up efforts to provide assistance to victims of trafficking, from their identification through to their recovery, including the provision of information on the services and assistance measures available and how to access them;
- adopting a clear framework for the return of victims of trafficking, with due regard to their rights, safety and dignity, and in co-operation with the countries of origin of victims to ensure proper risk assessment and avoid re-trafficking;
- taking steps to ensure that crimes related to human trafficking are investigated and prosecuted promptly and effectively, including through improving the knowledge and sensitivity of judges, prosecutors, police investigators and lawyers regarding human trafficking and the rights of victims of trafficking.

1. Recommends that the Government of Malta implement the proposals of GRETA listed in Appendix I to the Report concerning the implementation of the Convention by Malta (see addendum);

2. Requests the Government of Malta to inform the Committee of the Parties of the measures taken to comply with this recommendation by 15 February 2015;

3. Invites the Government of Malta 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 Malta

Core concepts and definitions

1. GRETA urges the Maltese authorities to include the action of "abuse of a position of vulnerability" in the legal definition of trafficking in human beings.
2. GRETA urges the Maltese authorities to explicitly include forced labour or services amongst the forms of exploitation in the definition of trafficking in human beings.
3. GRETA considers that spelling out the irrelevance of the consent of the victim to the intended exploitation where any of the means have been used would improve the implementation of anti-trafficking legislation.

Comprehensive approach and co-ordination

4. GRETA urges the Maltese authorities to strengthen co-ordination between the national authorities and civil society and to ensure that NGOs are involved in the planning and implementation of national anti-trafficking policy. This could involve the conclusion of written agreements between government departments and NGOs setting out the specific framework for co-operation, as well as periodic reviews of their application.
5. Further, GRETA urges the Maltese authorities to take further steps to ensure that national action to combat THB is comprehensive, in particular by:
 - adopting a proactive approach to detecting human trafficking for the purpose of labour exploitation and child trafficking, as well as re-trafficking cases within Malta;
 - ensuring that the gender dimension is reflected in all elements of Malta's anti-trafficking policy.
6. Further, GRETA invites the Maltese authorities to introduce an independent evaluation of the Action Plan as a tool for assessing the impact of its activities and for planning future policies and measures to combat THB.

Training of relevant professionals

7. GRETA considers that the Maltese authorities should take further steps to provide specialised, regular training about THB and the rights of victims of trafficking to all relevant authorities and professionals (such as law enforcement officials, labour inspectors, visa officers, judges and prosecutors). Future training programmes should be designed with a view to improving the knowledge and skills of relevant professionals which enable them to identify victims of trafficking and assist and protect them, as well as to secure convictions of traffickers. During the training, particular attention should be paid to overcoming negative attitudes and prejudices vis-à-vis victims of trafficking.

Data collection and research

8. GRETA considers that, for the purpose of preparing, monitoring and evaluating anti-trafficking policies, the Maltese 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, including when NGOs working with victims of trafficking are asked to provide information for the national database.

9. GRETA considers that the Maltese authorities should conduct and support research on THB-related issues as an important source of information for future policy measures. Areas where research is needed, in order to shed more light on the extent of the problem of THB, include trafficking for the purpose of sexual and labour exploitation, both to and within Malta, child trafficking, and trafficking among irregular migrants and asylum seekers.

International co-operation

10. GRETA considers that the Maltese authorities should continue to explore further possibilities for international co-operation to investigate and prosecute trafficking cases, as well as develop international co-operation to protect and assist victims of trafficking, in particular with the countries of origin of victims of trafficking.

Measures to raise awareness

11. GRETA considers that future actions in the area of awareness raising should be designed in the light of the assessment of previous measures and be focused on the needs identified. Increased emphasis should be placed on awareness-raising and education aimed at eradicating gender-based violence and the stigmatisation of victims of trafficking.

Border measures to prevent THB and measures to enable legal migration

12. GRETA considers that the Maltese authorities should make further efforts to:

- detect cases of THB in the context of border control, including through the provision of regular training to immigration officers and staff employed in diplomatic and consular offices;
- introduce a checklist to identify potential THB-related risks during the visa application system;
- provide information to foreign nationals planning to travel to Malta, in a language that they can understand, in order to alert them about the risks of THB for sexual and labour exploitation, inform them of their rights and where to turn to for advice and assistance.

Identification of victims of trafficking

13. GRETA urges the Maltese authorities to involve child specialists in the development and assessment of anti-trafficking policies, including in the preparation of the manual of procedures and guidelines to identify victims of trafficking, which should include a special referral mechanism for unaccompanied children.

14. GRETA urges the Maltese authorities to improve the identification of victims of trafficking by ensuring:

- multi-agency involvement in victim detection and identification, with clearly defined responsibilities and procedures of all frontline actors who may come into contact with victims of trafficking (including law enforcement officials, labour inspectors, social workers, medical staff and NGOs);
- the provision of operational indicators, guidance and toolkits to frontline staff for the identification of victims of trafficking for sexual and non-sexual forms of exploitation, and training on how to use those identification tools in order to ensure that they adopt a proactive approach to detecting potential victims of trafficking;
- improved identification of victims of trafficking among irregular migrants in detention and asylum seekers, including through regular training of immigration police officers and AWAS staff, and enhanced co-operation with UNHCR.

15. Further, GRETA considers that the Maltese authorities should:

- ensure that clear instructions are given to all relevant officials involved in the identification of victims of trafficking so that the identification procedure is carried out in a proactive manner and regardless of the willingness of potential victims to co-operate with the authorities in the criminal investigations;
- address the need for interpretation services regarding the languages of the main countries of origin of victims of trafficking identified in Malta.

16. GRETA encourages the Maltese authorities to ensure that all relevant professionals are informed of the new indicators and receive instructions to apply them consistently.

Assistance to victims of trafficking

17. GRETA urges the Maltese authorities to ensure that all persons who have been subjected to THB as defined in Article 4 of the Convention are granted access to the assistance and protection they are entitled to under the Convention.

18. Further, GRETA urges the Maltese authorities to step up their efforts to provide assistance to victims of trafficking, from their identification through to their recovery, and in particular to:

- ensure that safe and suitable temporary accommodation is provided to all victims of trafficking, adapted to their special needs, gender and age;
- ensure that the system for providing assistance to child victims of trafficking is specifically tailored to their needs;
- provide training to all professionals responsible for the provision of assistance and protection to victims of trafficking;
- ensure that victims of trafficking are provided with information on the services and assistance measures available, including the provision of legal advice or assistance, and how to access them. In this context, written information materials on the rights of potential and identified victims should be drawn up in an appropriate range of languages;
- facilitate the reintegration into society of victims of trafficking who are lawfully resident in the country and help them avoid re-trafficking by giving them access to education, vocational training and the labour market.

19. In addition, GRETA considers that the Maltese authorities should conclude protocols of co-operation with NGOs in order to provide assistance to victims, complementing the services provided by the Appoġġ Agency. The application of such protocols should be regularly monitored and assessed.

20. GRETA also invites the Maltese authorities to invest in the human and financial resources of the Appoġġ Agency so that it can effectively carry out the task of providing support and assistance to adult and child victims of trafficking.

Recovery and reflection period

21. GRETA urges the Maltese authorities to:

- ensure that all victims and potential victims of trafficking are systematically informed of the possibility to use a recovery and reflection period and its implications, and are effectively granted such a period;
- remove the need to co-operate with the authorities as a pre-condition for being granted a recovery and reflection period;
- establish the minimum duration of the recovery and reflection period at 30 days, during which time it is not possible to remove the victim or potential victim of trafficking from the country's territory;
- ensure that victims and potential victims of trafficking have access to all the assistance measures provided for in Article 12 (1) and (2) of the Convention during the recovery and reflection period;
- ensure that no termination of the recovery and reflection period is carried out on the ground that victims or potential victims have "actively, voluntarily and on their own initiative renewed contact with the perpetrators" without due regard to the person's individual situation, which involves an examination of his/her case;
- ensure that law enforcement officials are aware of the need to grant and respect the recovery and reflection period.

22. GRETA also invites the Maltese authorities to address the reasons why victims of trafficking refuse the recovery and reflection period.

Residence permits

23. GRETA urges the Maltese authorities to ensure that victims of trafficking can take full advantage of the right to be granted a temporary residence permit.

24. Further, GRETA invites the Maltese authorities to consider granting a temporary residence permit not only to victims of trafficking who co-operate with the authorities but also on the basis of the vulnerable situation of victims of trafficking.

Compensation and legal redress

25. GRETA urges the Maltese authorities to provide information to victims of trafficking about their right to compensation and ways to access it, and to ensure that victims have effective access to legal aid in this respect.

26. Further, GRETA considers that the Maltese authorities should amend the Criminal Injuries Compensation Regulations (S.L. 9.12) so that all victims of trafficking have access to State compensation, without needing to have sustained grievous bodily harm as a result of THB.

Repatriation and return of victims of trafficking

27. GRETA urges the Maltese authorities to develop the institutional and procedural framework for the repatriation and return of victims of trafficking, with due regard for their rights, safety and dignity, which implies protection from re-victimisation and re-trafficking and, in the case of children, full respect for the principle of the best interest of the child. Particular attention should be paid to ensuring financial means for the travel of victims of trafficking.

28. Further, GRETA encourages the Maltese authorities to develop co-operation with countries of origin of victims of trafficking in order to ensure proper risk assessment and safe return, as well as their effective reintegration.

Substantive criminal law

29. GRETA urges the Maltese authorities to:

- introduce as an aggravating circumstance the offence of THB committed against a child, for any type of exploitation;
- introduce a specific criminal offence regarding the concealment, damaging or destruction of travel or identity documents in relation to THB.

30. GRETA considers that the Maltese authorities should conduct an assessment of the Criminal Code provisions concerning THB and the provisions of the White Slave Traffic (Suppression) Ordinance, with a view to avoiding any overlaps and improving legal clarity and certainty.

31. GRETA also invites the Maltese authorities to review the adequacy of legislation concerning the confiscation of criminal assets and the reasons for the lack of confiscation orders in THB cases.

Non-punishment of victims of trafficking

32. GRETA urges the Maltese authorities to provide for the possibility of not imposing penalties on victims of trafficking for their involvement in unlawful activities to the extent that they were compelled to do so.

33. Further, GRETA urges the Maltese authorities to improve the identification of victims among irregular migrants in order to ensure that victims of trafficking are not punished for immigration-related offences. GRETA recalls that while the identification procedure is on-going, potential victims of trafficking should benefit from a recovery and reflection period and should not be removed from the Maltese territory.

Investigation, prosecution and procedural law

34. GRETA urges the Maltese authorities to take measures to ensure that crimes related to THB are investigated and prosecuted promptly and effectively, in order to speed up criminal proceedings.

35. Further, GRETA considers that the Maltese authorities should facilitate the stay in Malta of victims of trafficking, so that they can testify and assist those victims who have returned to their countries of origin before the court proceedings to testify through video-conference or travel back to Malta.

36. Further, GRETA considers that there is need for improvement of the knowledge and sensitivity of judges, prosecutors, police investigators and lawyers about THB and the rights of victims of trafficking (see paragraph 7 above).

Protection of victims and witnesses

37. GRETA considers that the Maltese authorities should make full use of the available measures to protect victims and to prevent intimidation during the investigation and during and after the court proceedings. In this context, the Maltese authorities should take additional measures to ensure that victims of trafficking are adequately informed of their rights and existing remedies, and assisted during the pre-trial and court proceedings.