



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

Recommendation CP(2015)2 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany

*adopted at the 16th meeting of the Committee of the Parties
on 15 June 2015*

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 Germany on 19 December 2012;

Having examined the Report concerning the implementation of the Convention by Germany, adopted by GRETA at its 22nd meeting (16 - 20 March 2015) in the framework of the first evaluation round;

Having examined the comments of the German Government on GRETA's report, submitted on 19 May 2015;

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

- the setting up of the Federal Working Group on Trafficking in Human Beings, bringing together representatives of federal and *Länder* authorities and civil society organisations;
- the setting up of roundtables on combating human trafficking in most of the *Länder* and the conclusion of co-operation agreements between the authorities and civil society organisations on the identification of and providing assistance to victims of trafficking;
- the existence of specialised counselling centres providing assistance to victims of trafficking for the purpose of sexual exploitation;
- the steps taken to train relevant professionals and to raise public awareness about human trafficking;
- the efforts to promote international co-operation against trafficking in human beings through the financing of anti-trafficking projects worldwide and in the framework of police and judicial co-operation;

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

- developing a comprehensive national strategy to address trafficking in human beings for all forms of exploitation, paying particular attention to trafficking for the purpose of labour exploitation, and further involving civil society in the designing, implementation and evaluation of anti-trafficking measures;
- strengthening prevention measures addressing the particular vulnerability of children to trafficking and setting up a procedure for the identification and referral to assistance of child victims of trafficking;
- improving the identification of victims of trafficking by strengthening multi-agency involvement and promoting a proactive approach to identification;
- enhancing the assistance provided to victims of trafficking, in particular by developing counselling centres for victims of trafficking for the purpose of all types of exploitation, and ensuring that assistance is not made conditional on the victim's willingness to act as a witness;
- ensuring that all possible victims of trafficking are offered a recovery and reflection period and all the measures of protection and assistance envisaged under the Convention during this period;
- adopting further measures to facilitate and guarantee access to compensation for victims of trafficking;
- ensuring that victims of trafficking are not punished for offences committed in the course, or as a consequence, of being trafficked.

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

2. Requests the Government of Germany to inform the Committee of the Parties of the measures taken to comply with this recommendation by 15 June 2017;

3. Invites the Government of Germany 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 Germany

Definition of trafficking in human beings

1. GRETA considers that the German authorities should ensure that all the means included in the Convention are appropriately taken into account.
2. GRETA urges the German authorities to ensure that the definition of THB in the Criminal Code fully complies with the Convention.

Comprehensive approach and co-ordination

3. GRETA considers that the German authorities should strengthen and harmonise the institutional frameworks and co-ordination structures for action against THB at federal level, between federal and *Länder* level, between the *Länder* as well as within each *Land*. The aim should be to ensure greater coherence and effectiveness of the actions of all public bodies playing a role in combating and preventing THB in all its forms, and to protect trafficking victims without discrimination, irrespective of their place of residence in Germany.
4. Moreover, GRETA considers that the German authorities should strengthen co-ordination between public bodies and NGOs engaged in anti-trafficking action by involving civil society in the development and implementation of anti-trafficking policy, including the evaluation of anti-trafficking efforts, at federal and *Länder* level.
5. GRETA also urges the German authorities to take steps to ensure that national action to combat THB is comprehensive, in particular by:
 - developing a comprehensive national action plan or strategy against THB which addresses trafficking for all forms of exploitation;
 - paying particular attention to trafficking in children, through dedicated co-ordination and co-operation measures linking existing child protection structures, especially at the *Länder* level, with anti-trafficking expertise from state and non-state actors;
 - strengthening action to combat THB for the purpose of labour exploitation by involving civil society, trade unions, the Financial Monitoring Unit to Combat Illicit Employment and the private sector, and improving the identification of and assistance to victims of THB for the purpose of labour exploitation.
6. In addition, GRETA invites the German authorities to consider the establishment of an independent National Rapporteur or designate another independent mechanism to monitor the anti-trafficking activities of state institutions (see Article 29, paragraph 4, of the Convention and paragraph 298 of the Explanatory Report).

Training of relevant professionals

7. GRETA considers that the German authorities should continue to invest in providing regular training on issues related to THB for different forms of exploitation and the rights of victims of trafficking, to all professionals who may come into contact with victims of THB, in particular police officers, prosecutors, judges, social workers, medical staff, labour inspectors, staff of counselling centres, migration officials, asylum officials and staff of detention centres for irregular migrants. Training programmes should be designed with a view to improving the knowledge and skills of relevant professionals to enable them to identify victims of trafficking, to assist and protect them, to facilitate compensation for victims and to secure convictions of traffickers.

Data collection and research

8. For the purpose of preparing, monitoring and evaluating anti-trafficking policies, GRETA urges the German authorities to develop and maintain a comprehensive and coherent data collection 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). 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. The collection of data should also cover the recovery and reflection period granted to victims of trafficking and the compensation paid to them.

International co-operation

9. GRETA commends the efforts made in the area of international co-operation by the German authorities and invites them to continue developing international co-operation with a view to preventing human trafficking, assisting victims of trafficking, and investigating and prosecuting human trafficking offences, including through exploring further possibilities for co-operation with governmental and non-governmental actors in countries of origin and transit.

Measures to raise awareness

10. GRETA considers that the German authorities should continue raising awareness on THB and plan future information and education campaigns in a comprehensive manner, with the involvement of civil society and in the light of the assessment of previous measures, focusing on the needs identified. Moreover, GRETA urges the German authorities to develop measures to raise awareness of trafficking of children and other forms of trafficking (such as for the purpose of forced begging, forced criminality and organ removal).

Measures to discourage demand

11. GRETA considers that the German authorities should make further efforts to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with the private sector and civil society, including trade unions and employers.

Social, economic and other initiatives for groups vulnerable to THB

12. GRETA welcomes the measures supported by the German authorities in countries of origin in favour of groups vulnerable to THB. At the same time, GRETA considers that the German authorities should strengthen prevention of THB through social and economic empowerment measures for groups vulnerable to THB who are in Germany.

Border measures to prevent THB and measures to enable legal migration

13. GRETA invites the German authorities to further strengthen efforts to prevent THB among private domestic staff in diplomatic households and encourage participation in the annual information sessions for this target group.

Identification of victims of trafficking in human beings

14. GRETA urges the German authorities to:

- strengthen multi-agency involvement in the identification of victims of trafficking by giving a formal role in the identification process to frontline actors such as NGOs, the Financial Monitoring Unit to Combat Illicit Employment (FKS), labour inspectors and other bodies which may come into contact with victims of trafficking;
- provide all frontline staff with harmonised operational indicators, guidance and toolkits for the identification of victims of trafficking subjected to different forms of exploitation;
- ensure that the police, FKS, labour inspectors and other relevant actors adopt a more proactive approach and increase their outreach work to identify possible victims of trafficking, including for forms of exploitation other than sexual (labour exploitation, forced begging, forced criminality);
- set up a procedure for the identification and referral of child victims of trafficking which takes into account the special circumstances and needs of child victims and involves child specialists, child protection services and specialised police and prosecutors.

15. Moreover, GRETA considers that the German authorities should improve the identification of victims of trafficking among asylum seekers and irregular migrants in detention facilities, including through training of staff working in asylum and detention centres.

Assistance to victims

16. GRETA urges the German authorities to strengthen their efforts to provide assistance to victims of trafficking, and in particular to:

- ensure that assistance to victims is not made conditional on their willingness to act as a witness;
- provide adequate funding to maintain the provision of assistance; when assistance is delegated to NGOs as service providers, the state has an obligation to provide adequate financing and ensure the quality of the services delivered by the NGOs;
- ensure, if necessary by legislative measures, that all victims of trafficking, including EU citizens, can fully benefit from the rights set out in the Convention;
- develop adequate assistance structures across the country for victims of THB for the purpose of all types of exploitation, including labour exploitation and other non-sexual forms of exploitation;
- ensure that safe and suitable temporary accommodation is provided to male victims of THB, according to their needs;
- ensure that child victims of trafficking benefit from the assistance measures provided by the Convention, including guardianship, interpretation, services, dedicated shelters and medical, legal and psychosocial assistance.

Recovery and reflection period

17. GRETA urges the German authorities to ensure, in compliance with the obligations contained in Article 13 of the Convention, that all possible victims of trafficking, including victims of THB for labour exploitation and of child 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. Public officials 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

18. GRETA considers that the German authorities should take further steps to ensure that victims of trafficking are able to benefit from a residence permit in Germany and the rights attached to it.

19. GRETA also considers that the German authorities should take additional steps to ensure that child victims of trafficking may be granted a residence permit on the basis of their best interests and not on the basis of their willingness or ability to co-operate with judicial bodies.

20. Further, GRETA invites the German authorities to consider reviewing the relevant legislation so as to provide residence permits to victims of THB who unable to co-operate with the authorities, on the basis of their personal situation.

Compensation and legal redress

21. GRETA considers that the German authorities should systematically provide information to victims of trafficking, in a language that they can understand, on their right to compensation from the traffickers and/or the state and the procedures to be followed, and ensure that victims have effective access to legal aid in this respect.

22. GRETA also urges the German authorities to ensure that all victims of trafficking, including children, have effective access to state compensation, regardless of their nationality, type of exploitation and without needing to have sustained a physical assault.

Repatriation and return of victims

23. GRETA considers that the German authorities should take further steps to:

- ensure that return procedures for victims of trafficking are implemented with due regard for their rights, safety and dignity. This means informing victims about existing programmes, protecting them from re-victimisation and re-trafficking and, in the case of children, fully respecting the principle of the best interests of the child;
- 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;
- ensure compliance with the *non-refoulement* obligation under Article 40, paragraph 4, of the Convention.

Substantive criminal law

24. GRETA considers that the German authorities should conduct a thorough and comprehensive assessment of the criminal law provisions concerning THB for the purpose of labour exploitation and be prepared to readjust on the basis of such an assessment the content and/or the application of the relevant provisions, with a view to addressing any shortcoming identified.

25. Further, GRETA invites the German authorities to consider the criminalisation of the use of services of a victim of THB with the knowledge that the person is a victim of THB, for all forms of exploitation.

Non-punishment of victims of trafficking in human beings

26. GRETA urges the German authorities to ensure that victims of THB are not penalised for offences committed in the course, or as a consequence, of being trafficked. The German authorities should assess the implementation by the judicial and other relevant authorities of the principle of non-punishment of victims of THB for their involvement in unlawful activities, to the extent that they were compelled to do so, and be prepared to readjust on the basis of such an assessment the content and/or the application of the relevant provisions with a view to addressing any shortcoming identified. In this context, the issuance of guidance to prosecutors and other relevant professionals on how to apply the non-punishment principle to victims of THB should be envisaged.

Investigation, prosecution and procedural law

27. GRETA considers that the German authorities should take steps to guarantee the effective application of the legal provisions concerning the confiscation of traffickers' assets.

28. GRETA considers that the German authorities should take further steps to ensure that THB is investigated and prosecuted effectively, resulting in proportionate and dissuasive sanctions. In this context, GRETA considers that there is need for continuing to improve the specialisation and training of judges and prosecutors regarding THB.

Protection of victims and witnesses

29. GRETA considers that the German authorities should make full use of the measures available to protect victims and witnesses of THB and to prevent intimidation during the investigation and during and after court proceedings.

30. Moreover, GRETA invites the German authorities to review the practical application of legal and other measures to protect victims and witnesses of THB in order to establish whether these measures are effectively being applied in favour of victims and witnesses of THB and actually help to protect them.