



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

Recommendation CP(2015)13 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland

*adopted at the 17th meeting of the Committee of the Parties
on 30 November 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 Switzerland on 17 December 2012;

Having examined the Report concerning the implementation of the Convention by Switzerland, adopted by GRETA at its 23rd meeting (30 June - 3 July 2015) in the framework of the first evaluation round;

Having examined the comments of the Swiss Government on GRETA's report, submitted on 25 September 2015;

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

- the adoption of legislation criminalising trafficking in human beings and providing for the rights of victims of trafficking;
- the setting up of the Swiss Co-ordination Unit against Trafficking in Persons and Smuggling of Migrants which brings together relevant public actors and civil society organisations at federal level, as well as roundtables on combating human trafficking in most of the cantons;
- the possibility of issuing residence permits to victims of trafficking both on the basis of their personal situation and when co-operating with the competent authorities;
- the setting-up of a voluntary return assistance programme specifically for victims and witnesses of human trafficking;

- the existence of a state compensation scheme accessible to victims of human trafficking;
- the efforts to promote international co-operation in combating trafficking in human beings, including through funding projects in countries of origin in favour of groups vulnerable to trafficking;

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

- developing the aspect of prevention of trafficking in human beings, through awareness raising measures, economic and social measures for vulnerable groups, and measures to discourage demand for services of victims of trafficking;
- strengthening action to combat trafficking for the purpose of labour exploitation by involving civil society, trade unions, labour inspectorates and the private sector;
- improving the identification of victims of trafficking by strengthening multi-agency involvement and promoting a proactive approach to identification;
- setting up a procedure for the identification of child victims of trafficking and specialised assistance taking into account their particular vulnerability;
- ensuring that all victims of trafficking have effective access to assistance and protection, including by securing a sufficient number of shelter places;
- ensuring that victims of human trafficking have effective access to compensation from the perpetrators;
- taking additional measures to ensure that human trafficking offences are investigated and prosecuted effectively, leading to proportionate and dissuasive sanctions.

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

2. Requests the Government of Switzerland to inform the Committee of the Parties of the measures taken to comply with this recommendation by 30 November 2017;

3. Invites the Government of Switzerland 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 Switzerland

Core concepts and definitions

1. GRETA considers that stating explicitly in the definition of trafficking in human beings, as contained in the Criminal Code, the notions of forced labour or services, slavery, practices similar to slavery, and servitude as types of exploitation could improve the implementation of this provision.
2. GRETA considers that stating explicitly in law the irrelevance of the consent of a victim to the intended exploitation could improve the implementation of anti-trafficking provisions.

Comprehensive approach and co-ordination

3. GRETA urges the Swiss authorities to:
 - allocate sufficient financial and human resources to ensure that the KSMM can achieve the objectives set out in the National Action Plan on combating THB and, in particular, that the working groups on labour exploitation and on specialised assistance can meet and fulfil the tasks specified in the National Action Plan;
 - strengthen efforts in addressing child trafficking, including in ensuring regular meetings of the working group on child trafficking.
4. Furthermore, GRETA considers that the Swiss authorities should:
 - ensure that all cantons develop some form of THB co-ordination mechanisms bringing together the main actors or, where justified, taking into account the specificities of each cantons (in particular their size, population, geographical situation), associating smaller cantons to existing mechanisms in neighbouring cantons, and continue promoting cross-cantonal co-operation;
 - take steps to ensure that national action to combat THB adequately addresses THB for the purpose of labour exploitation, by involving civil society, the labour inspectorate, cantonal authorities responsible for monitoring illegal work, businesses, trade unions and employment agencies.
5. GRETA also invites the Swiss authorities to consider the establishment of an independent National Rapporteur or to designate another existing mechanism for monitoring 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

6. GRETA considers that the Swiss authorities should pursue their efforts to ensure that all relevant professionals are trained periodically on THB and the rights of victims across the country. Further steps should be taken to sensitise and/or train in particular prosecutors, judges, labour inspectors, officials dealing with asylum seekers and irregular migrants, staff of crime victims support centres, child welfare staff, education staff and medical professionals. 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.
7. GRETA considers that the Swiss authorities should ensure that the initial training of all police officers includes a module on human trafficking.

Data collection and research

8. GRETA considers that, for the purpose of preparing, monitoring and evaluating anti-trafficking policies, the Swiss authorities should refine the existing data collection system on trafficking in human beings by compiling statistical information on measures to protect and promote the rights of victims from all main actors, including specialised NGOs, and allowing disaggregation, including by type of exploitation. This should be accompanied by all the necessary measures required to respect the right of data subjects to personal data protection.

9. GRETA considers that the Swiss authorities should conduct and support further research on THB in Switzerland 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 human trafficking in Switzerland include trafficking for the purpose of labour exploitation, child trafficking, trends amongst vulnerable groups, including asylum seekers and irregular migrants, and internal trafficking.

International co-operation

10. GRETA welcomes the efforts made by the Swiss authorities in the area of international co-operation and invites them to continue their efforts in engaging in international co-operation with a view to preventing human trafficking, assisting victims of trafficking, as well as investigating and prosecuting human trafficking offences.

Measures to raise awareness

11. GRETA considers that the Swiss authorities should carry out information and awareness-raising campaigns on different forms of THB. Special attention should be paid to raising awareness of THB for the purpose of labour exploitation and child trafficking. Future awareness-raising measures should be designed in the light of the assessment of previous measures and be focused on the needs identified.

Measures to discourage demand

12. GRETA considers that the Swiss authorities should continue their efforts to discourage demand for services of trafficked persons, for all forms of exploitation, in partnership with NGOs, trade unions, international organisations and the private sector, bearing in mind that such measures should be balanced and not lead to the criminalisation of victims of trafficking.

Social, economic and other initiatives for groups vulnerable to THB

13. GRETA welcomes the measures supported by the Swiss authorities in countries of origin in favour of groups vulnerable to THB. At the same time, GRETA considers that the Swiss authorities should strengthen prevention of THB through social and economic empowerment measures for groups vulnerable to THB who are in Switzerland, by mainstreaming the prevention of human trafficking in the policies for persons engaged in prostitution, at-risk children, including unaccompanied children and those in childcare institutions, migrant workers in risk sectors, irregular migrants and asylum seekers.

Border measures to prevent THB

14. GRETA invites the Swiss authorities to continue their efforts towards the detection of THB cases in the context of border controls through the involvement of the Border Guard Corps in anti-trafficking action and co-operation with neighbouring countries.

Identification of victims of trafficking in human beings

15. GRETA urges the Swiss authorities to ensure that all victims of trafficking are properly identified and can benefit from the assistance and protection measures contained in the Convention, in particular by:

- ensuring that throughout the country a formalised victim identification procedure, including common indicators and tools, is applied so that steps for the detection and identification of trafficking victims are clearly set out and co-ordinated;
- improving the identification of victims of human trafficking for the purpose of labour exploitation, by ensuring that law enforcement officials, labour inspectors, trade unions and other relevant actors adopt a more proactive approach and increase their outreach work to identify potential victims;
- setting up a procedure for the identification 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, in accordance with the best interests of the child;
- ensuring the proper identification of victims of trafficking amongst migrant workers and asylum seekers.

Assistance to victims

16. GRETA urges the Swiss authorities to strengthen their efforts to ensure that all assistance measures provided for in the Convention are guaranteed in practice to victims of human trafficking and:

- make sure that all victims under Swiss jurisdiction benefit from assistance measures in accordance with Article 12, paragraph 1, of the Convention;
- secure a sufficient number of places across the country offering adequate conditions and adapted to the needs of victims of THB;
- ensure that suitable accommodation is provided to male victims of human trafficking and that they can fully benefit from the assistance measures provided for in law;
- provide for specific assistance for child victims of trafficking that takes their specific circumstances into account in accordance with the best interests of the child.

17. GRETA considers that the Swiss authorities should maintain adequate funding of NGOs assisting victims of human trafficking to allow them to provide short-term and long-term assistance, depending on the victims' needs, irrespective of the canton where they are assisted.

Recovery and reflection period

18. GRETA considers that the Swiss authorities should continue and increase their efforts to ensure the application of the recovery and reflection period across the country in accordance with Article 13 of the Convention, including by strengthening the training of cantonal police forces, prosecuting authorities, crime victims support centres and migration authorities of all cantons.

Residence permits

19. While welcoming the legal possibility of victims of trafficking being granted a renewable residence permit both on the basis of their personal situation as well as for co-operating with the authorities, GRETA considers that the Swiss authorities should continue and increase their efforts to ensure that victims can fully benefit from the right to obtain a renewable residence permit regardless of the canton competent for issuing it.

Compensation and legal redress

20. GRETA considers that the Swiss authorities should ensure that victims of THB enjoy effective access to compensation from the perpetrators, by building the capacity of legal practitioners to support victims to claim compensation and by adding compensation issues into existing training programmes for law enforcement officials, prosecutors and judges.

Repatriation and return of victims

21. While welcoming the existence of a voluntary return scheme specifically for victims of trafficking in human beings, GRETA considers that the Swiss authorities should take steps to ensure that victims of THB who are irregular migrants are not subjected to forced return, in contravention of the obligations stemming from the principle of *non-refoulement*, and are identified and assisted accordingly.

Substantive criminal law

22. GRETA invites the Swiss authorities to encourage the full use of the provisions of the Criminal Code concerning the liability of legal entities and the seizure and confiscation of criminal assets in human trafficking cases, including by publishing guidance for law enforcement officials and prosecutors.

Non-punishment of victims of trafficking in human beings

23. GRETA considers that, in order to ensure compliance with Article 26 of the Convention, the Swiss authorities should adopt a specific provision on the non-punishment of victims of trafficking for their involvement in unlawful activities, to the extent that they were compelled to do so, or issue and promote guidance to public prosecutors encouraging them to be proactive in establishing if an accused is a potential victim of trafficking. While the identification procedure is ongoing, potential victims should not be punished for unlawful acts related to public order or immigration legislation.

Investigation, prosecution and procedural law

24. GRETA considers that the Swiss authorities should make further efforts to ensure that THB offences for all types of exploitation are proactively investigated and prosecuted promptly, leading to proportionate and dissuasive sanctions, by building further the capacity and specialisation of police officers, prosecutors and judges.

Protection of victims and witnesses

25. While welcoming the availability of witness protection programmes to victims and witness of human trafficking, GRETA invites the Swiss authorities to ensure that they benefit from adequate protection wherever needed.