

Regional expert workshop on international legal co-operation in the fight against trafficking in human beings and the protection of victims' rights

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Sofia, Bulgaria



CONCEPT NOTE



Secretariat of the Council of
Europe Convention on Action
against Trafficking in Human
Beings

COUNCIL OF EUROPE



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Background and purpose of the workshop

Article 32 of the Council of Europe Convention on Action against Trafficking in Human Beings (THB) requires Parties to co-operate to the widest extent possible to prevent and combat THB, to protect and provide assistance to victims, and to investigate and prosecute cases of THB. The Explanatory Report to the Convention makes it clear that as regards international co-operation in criminal matters, the relevant Council of Europe instruments¹ in this area, which are cross-sectoral and apply to different offences and not just to THB, other international instruments,² as well as reciprocal arrangements between Parties and the relevant provisions of domestic law, will apply.

The Convention currently has 47 States Parties, the majority of which have undergone the first round of evaluation of their compliance with the Convention's provisions by the Group of Experts on Action against Trafficking in Human Beings (GRETA), and in respect of 22 of them, GRETA has already completed the second round of evaluation of the Convention.

GRETA's monitoring of the Convention has brought to light certain difficulties in the areas of international co-operation, both when it comes to effective investigations in transnational cases of THB and in the area of protection of the rights of victims in such cases. GRETA has recommended that co-operation be reinforced between countries of destination and countries of origin, by further developing police and judicial co-operation, as well as enhancing co-operation in the area of prevention of THB and assistance to victims.

Most of the countries evaluated by GRETA are parties to relevant Council of Europe treaties in the criminal field which are relevant to action against THB. International co-operation also takes place through Interpol, Europol and Eurojust. At regional level, international co-operation in South-East Europe takes place through the Southern European Law Enforcement Centre (SELEC) and the Police Co-operation Convention for South-East Europe.

However, despite the availability of international instruments whose direct use in THB cases is possible, it would appear that in a number of cases international co-operation is governed by the provisions of the national criminal procedure legislation. This may result in lengthy and less effective procedures. Further, evidence collected in accordance with the legislation of one country may not be admissible in another, which may further hamper international co-operation in THB cases.

While a number of countries have referred to their participation in Joint Investigation Teams (JITs) which have been successful in bringing to justice organised trafficking groups operating internationally, this tool is still not sufficiently used in human trafficking cases.

Some countries have referred to difficulties in co-operating with countries which are not parties to the Convention when it comes to the exchange of information and obtaining evidence to help the detection and investigation of cases of THB.

The obligations of States under Article 4 of the European Convention on Human Rights (which prohibits slavery, servitude and forced or compulsory labour) entail a positive obligation to protect victims or potential victims, as well as a procedural obligation to investigate trafficking. This has been confirmed by the European Court of Human Rights in its judgments in the case of *Rantsev v. Cyprus and Russia*.³

¹ The European Convention on Extradition (ETS No. 24) and its Additional Protocols, the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) and its Additional Protocols, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime the European Convention on Extradition (ETS No. 141) and its Additional Protocols, the European Convention on the Transfer of Proceedings in Criminal Matters, the European Convention on the International Validity of Criminal Judgments

² In the case of European Union member States, the European arrest warrant introduced by the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States is relevant.

³ *Rantsev v. Cyprus and Russia*, application No. 25965/04, judgment of 7 January 2010, ECHR 2010.

Through the organisation of this expert workshop, the Council of Europe aims to promote better co-operation between Parties to the Convention in the investigation and prosecution of human trafficking cases, while respecting the human rights of victims of trafficking, in accordance with the provisions of the Convention.

The workshop will bring together experts from countries primarily of origin of victims of trafficking and countries of destination. Human trafficking criminal groups operate across borders and often seek to evade detection and punishment by relocating to other jurisdictions. That is why comprehensive, multi-agency and flexible cross-border co-operation is essential to ensure the effective investigation and prosecution of THB cases. At the same time, the protection of the rights of victims and witnesses in such cases also requires international co-operation, including at the stages of identification, assistance, protection, compensation and safe return.

In addition to Article 32 of the Convention (general principles and measures for international co-operation), other Convention provisions which will form the basis of the discussions are Articles 10 (identification of victims), 12 (assistance for victims of trafficking), 15 (compensation and legal redress), 16 (repatriation and return of victims), 23 (sanctions and measures), 26 (non-punishment provision) 28 (protection of victims/witnesses), 30 (court proceedings), 33 (measures relating to endangered or missing persons) and 34 (information).

Methodology

The first part of the workshop will give participants the opportunity to hear presentations from experts representing international organisations involved in combating human trafficking (Council of Europe, Eurojust, Europol, ICMPD, Interpol, IOM, OSCE, UNODC). The aim of these presentations will be to:

- Introduce the Council of Europe conventions on co-operation in criminal matters and their application to cross-border cases of trafficking of human beings;
- Present international tools for facilitating and supporting the co-ordination of investigations and prosecutions of cross-border cases of trafficking in human being, including Joint Investigation Teams (JITs);
- Introduce tools and models for transnational co-operation in the identification, referral and return of trafficked persons and for ensuring the protection of their rights.

In the second part of the workshop, participants will split into three working groups (two of which will work in English and one will work in English and Russian with simultaneous interpretation). Participants will have the opportunity to take part in two different working groups, one in the afternoon of 8 November and another in the morning of 9 November. The topics of the working groups are as follows:

1. Setting up of Joint Investigation Teams (JITs) in human trafficking cases.
2. Overcoming problems in international co-operation in human trafficking cases: mutual legal assistance, exchange of information and evidence, co-ordination of investigations between countries, confiscation of criminal assets, protection of victims/witnesses.
3. Protection of victims' rights in cross-border cases of human trafficking: identification, referral, safe return and reintegration.

Key issues for discussion

In order to prepare for the workshop, participants are kindly requested to reflect on the following questions and, if necessary, collect information and relevant cases:

- *Have you encountered problems in international co-operation in transnational cases of trafficking in human beings? What were the main obstacles? Can you provide examples of solutions found to the problems (“good practices”) and/or examples of unsuccessful attempts to overcome these problems?*
- *The differences in the criminalisation of trafficking in human beings in the criminal codes of different countries may pose problems when it comes to using instruments of international co-operation, such as the European arrest warrant and extradition. Have such difficulties been experienced by your country? If yes, what solutions were found?*
- *Are there inconsistencies between your country’s national legislation and international legal co-operation instruments in the areas of exchange of information, legal assistance, admissibility of evidence, confiscation of assets, etc.?*
- *Have there been Joint Investigation Teams (JITs) in human trafficking countries set up between your country and other countries? If yes, what were the lessons learned from them? If not, what are the reasons (obstacles) for the absence of JITs?*
- *In case of parallel or co-ordinated investigations in THB cases involving several countries, have you encountered obstacles and/or good practices? Please provide examples.*
- *Have there been cases of freezing and confiscation of assets of traffickers in your country which were used to compensate victims in another country? Please provide examples of any obstacles or good practices.*
- *Have you experienced international co-operation problems related to the status of victims in transnational THB cases when it comes to victim identification, protection, compensation, return and the application of the non-punishment provision? What solutions were found?*
- *Can you provide examples of direct application of the Council of Europe Convention on Action against Trafficking in Human Beings in transnational cases requiring international co-operation?*
- *What processes, structures or agreements would you welcome the development of that are not currently in place? Do you see the need for new bilateral and/or multilateral agreements?*
- *Is there need for training on the use of international legal co-operation instruments?*