

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



CP(2018)12

Report submitted by the Portuguese authorities
on measures taken to comply with
Committee of the Parties Recommendation
CP(2017)4 on the implementation
of the Council of Europe Convention
on Action against Trafficking in Human Beings

Second evaluation round

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Recommendation CP (2017)4 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Portugal

Adopted at the 20th meeting of the Committee of the Parties on 10 March 2017

REPORT FROM THE GOVERNMENT OF PORTUGAL

Recommends that the Portuguese authorities take measures to address the following issues for immediate action identified in GRETA's report:

- make efforts to improve the identification of and assistance to, child victims of trafficking, in particular by:

- ensuring that relevant actors take a proactive approach and increase their outreach work to identify child victims of THB, by paying particular attention to migrant children and unaccompanied foreign minors;
- providing further training and guidance to stakeholders (police, child protection authorities, social workers, NGOs) for the identification of child victims of trafficking for different forms of exploitation;
- providing adequate support and services which are adapted to the needs of child victims of trafficking, including appropriate accommodation, access to education and vocational training;
- taking steps to address the problem of unaccompanied minors disappearing by providing suitable safe accommodation and adequately trained supervisors or foster parents;
- ensuring the timely appointment of guardians, including by reviewing the legal provisions in this regard;
- ensuring long-term monitoring of the reintegration of child victims of trafficking

Reply:

The IV National Plan to Prevent and Combat Trafficking in Human Beings foresees, and in line with the GRETA recommendations in this matter, the implementation of several measures that will directly address this issue, such as:

Elaboration of guidelines and action protocols related to intervention with children;

Protocol of collaboration between the General Directorate of Health (DGS) and the Immigration and Borders Service (SEF), for the implementation of a signalling and monitoring mechanism for children identified in the National Health Service (SNS), under the National Child and Youth Health Program (PNSIJ) and the Health Action for Children and Young People at Risk (ASCJR).

It is foreseen the creation of a protocol of action for the diffusion of alert in case of disappearance of children victim of TSH of the place where it is institutionalized. So, consistent steps will be implemented to address the problem of unaccompanied minors.

Long-term monitoring of reintegration of child victims of trafficking will be strengthened.

The training is carried out using the training kit developed by the Child Support Institute (IAC) resulting from its participation in the project "Platform for the Exchange of European Actors for Child Traffic Victims, in the Methodological Construction for Prevention and Sustainable Inclusion - CATCH & SUSTAIN ". One of the project's products was the creation and implementation of a Training Kit for the various actors involved in this area, introducing preventive methods based on risk identification and assessment, training and approach to education, and data collection through participatory research.

One of the main areas regarding strategic objectives in the IV National Plan to Prevent and Combat Trafficking in Human Beings is the training of professionals for intervention in THB in order to consolidate, reinforce and qualify the intervention, assignment under the RAPVT. It will be implemented

further training and guidance to stakeholders (this training will be widely spread to other stakeholders in comparison to what was implemented in the III National Plan to Prevent and Combat Trafficking in Human Beings).

Portugal, at the present moment has a shelter for children victims of trafficking. In this house, child victims of trafficking are entitled to subsistence, access to adequate and urgent medical treatment, psychological assistance, protection services, translation and interpretation, access to education and vocational training, as well as adequate legal services because they are minors. All support and services are tailored to the needs of children and with adequately specific trained technicians. The CAP for children has a capacity for 6+1.

In the National Reference Mechanism (system of signalling and identification of trafficking victims) special attention is given to the situations of children - Chapter "signalling victims"; Identification as a vulnerable group in some types of exploitation; Guidelines for professionals on how to proceed if the (presumed) victim is a child; Contact of specialized child support organizations, including the European telephone line for missing children (116 000).

In the case of unaccompanied minors, the SEF training program has a strong component and concern to detect situations of victims of trafficking in unaccompanied foreign minors. Upon detection, the family (if identified) and the court are immediately contacted. The appointment of a tutor and referral, where appropriate, of the child to a host institution may be promoted. Once welcomed, their movements are supervised.

- Take steps to facilitate and guarantee access to compensation to victims of THB, in particular by:
 - enabling victims of trafficking to exercise their right to compensation, by making available free legal aid to support victims to claim compensation;
 - including victim compensation in training programmes for law enforcement officials, prosecutors and judges;
 - making full use of the existing legislation on the freezing and forfeiture of assets to secure compensation to victims of trafficking.

Reply:

The legislation on compensation to victims is being reviewed in order to ensure that the award of compensation to victims of violent crime can be more clearly attributed to them. It is one of the measures in the IV National Plan to Prevent and Combat Trafficking in Human Beings. Also in this new Plan, a workshop is going to be implemented for law enforcement officials, prosecutors and judges.

With regard to the recovery of assets, it should be noted that the Asset Recovery Office (GRA) - Law No. 45/2011, of 24 June, was created under the jurisdiction of the Judicial Police.

With Law No. 60/2013 of August 23 (that altered Law No. 45/2011, of June 24), the proceeds of the income from assets related to the crime of trafficking in persons revert to the coordinating entity of the National Plan against Trafficking in Human Beings, to support for actions, measures and programs to prevent trafficking in persons and to assist and protect their victims.

- establish repatriation programmes that ensure that the return of victims of human trafficking is preferably voluntary, and is conducted with due regard to their rights, safety and dignity, including the right to *non-refoulement* and, in the case of children, by fully respecting the principle of the best interests of the child;

- take additional measures to ensure compliance with the principle of non-punishment of victims of human trafficking for their involvement in unlawful activities, to the extent that they were compelled to do so, as contained in Article 26 of the Convention, including the adoption of a specific legal provision and/or the development of guidance for police officers and prosecutors on the scope of the non-punishment provision;

- take measures to ensure that human trafficking cases are investigated proactively, including financial investigations, prosecuted successfully and lead to effective, proportionate and dissuasive sanctions, including by:

- issuing sentencing guidelines for human trafficking cases;
- encouraging the development of specialization among prosecutors and judges to deal with human trafficking cases;
- addressing gaps in the legislation, the investigation and prosecution procedure, the protection of victims and witnesses, and the presentation of cases in court.

Reply:

IOM's integration, in the Network for Support and Protection of Human Trafficking Victims (RAPVT), reinforces best practices in this area, always guaranteeing the rights of victims.

Border and Immigration Service (SEF) and IOM Mission in Portugal have a Protocol on Assisted Voluntary Return (ARvoRe Program) - financed by the Asylum, Migration and Integration Fund.

APF's Specialized Regional Teams as well as Shelter and Protection Center had positive experiences regarding to the arrangements for victims safe return to the country of origin (eg. groups of families). The length continues to greatly diminishing, as a result of partnerships created with NGO's and other Organizations in the countries of origin, as well as the articulated work carried directly with Portuguese IOM mission.

In what refers to Assisted Voluntary and Reintegration Support, every case is referred well in advance to IOM Country Offices for guidance (both in pre-departure and post-arrival phases), reintegration support and monitoring.

Trafficking cases are managed in a case by case basis and all are given high priority bearing in mind specific needs beneficiaries might have. Besides support with air ticket, VoTs are also eligible to benefit from reintegration support up to 2000 €.

One thing that has improved is the communication between IOM and other stakeholders when it comes to refer and manage cases regarding AVRS beneficiaries, especially with Shelter and Protection Center (CAP). In fact IOM has been working closely with APF, Saúde em Português and APAV.

As this Protocol covered only third-country nationals to the EU, a specific support fund for the repatriation of EU nationals was established in 2015.

The amount allocated every year for this specific item (repatriation of EU nationals) is 15.000€.

One of the main purposes of the IV National Plan to Prevent and Combat Trafficking in Human Beings is to implement a more efficient, timely and tailored response processes to the needs of victims of trafficking and the implementation of a mechanism that guarantee standard quality of intervention in THB.

Regarding the principle of non-punishment of victims of human trafficking, Article 280º of the Code of Criminal Procedure may be applied to victims of trafficking, who have taken part in unlawful activities under duress, if the proceeding is for a crime in relation to which the criminal law expressly establishes the possibility of "discontinuance for discharge".

The Portuguese Criminal Code includes several types of crime that expressly comprise the possibility of exemption of punishment, namely in cases of exculpatory necessity set for in Article 35 of the Penal Code:

1- Whoever commits an unlawful act appropriate to avoid a present danger, not differently removable, that threatens life, physical integrity, honour or freedom of the agent or of a third person, acts without guilt when it is not reasonable to demand, according to the circumstances of the case, a different behaviour)

The requirements of discharge are provided by Article 74 (1) CC, and, in these cases, the judge may decide to the "discontinuance for discharge" of the proceeding.

So, Portugal applies entirely what is stated in the article 26° of the Convention (principle of non-punishment of victims of human trafficking).

Concerning the issue of human trafficking cases being investigated proactively, it is important to highlight that the criminal offence of trafficking in human beings is expressly included in the concept of 'highly organized crime', but it is also comprised in the concept of violent crime and, in certain cases, in that of especially violent crime.

The procedural repercussions are felt at the level of the restraining measures and of the procedural means for obtaining evidence, of the delays applicable to the Inquiry and of the measure of pre-trial detention (see, in particular, articles 1(1)(n), 174(5)(a), 177(2)(a), 187(2)(a) and 202(1)(b) of the Criminal Procedure Code in the wording given by Law No. 48/2007 of 29 August 2007).

Thus, special investigation techniques may be used in the investigation of the criminal offence of trafficking in human beings, such as interception of telecommunications, covert surveillance including electronic surveillance, searches, mobile phone tracking, infiltration, monitoring of bank accounts, seizing assets, DNA exams and also financial investigations, when appropriate.

The provisions of Law No. 5/2002 (amended by Law No. 60/2013) do also apply, in particular as regards the special regimes of breach of professional secrecy (including banking secrecy), obtaining of evidence and confiscation of property, including the so-called 'extended confiscation'.

Financial investigations performed by experts have determined the amounts earned by criminals, but so far didn't allow us to seize those values because they were taken away via informal ways (couriers, ...).

In order to provide legal practitioners with materials on best practices, Portugal has translated several United Nations manuals on these subjects, which are online.

In addition, Portugal has developed numerous training programs for magistrates in the scope of their initial and continuing training.

This concern will be strength in the IV National Plan to Prevent and Combat Trafficking in Human Beings.

All the other recommendations were one of the major orientations for the preparation of the IV National Plan to Prevent and Combat Trafficking in Human Beings, and are embodied in several measures of this National Plan.

Finally, Portugal is highly committed to continue the dialogue in progress with GRETA and also involved in maintain a regular channel of updating GRETA´s conclusions.

Portugal also reiterates that it is obviously fully engaged in this combat.