



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

Recommendation CP(2018)23 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Estonia

*adopted at the 23rd meeting of the Committee of the Parties
on 9 November 2018*

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 Estonia on 5 February 2015;

Having examined the Report concerning the implementation of the Convention by Estonia, adopted by GRETA at its 31st meeting (19-23 March 2018) in the framework of the first evaluation round;

Having examined the comments of the Estonian Government on GRETA's report, submitted on 4 June 2018;

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

- the adoption of legislation criminalising trafficking in human beings and the criminalisation of the purchase of sex from a victim of trafficking, with the knowledge that the person concerned is a victim;
- the setting up of a national anti-trafficking co-ordination structure comprising representatives of relevant public bodies, academic institutions and specialised NGOs;
- the appointment of specialised police investigators and prosecutors to deal with human trafficking offences;
- the measures taken to prevent human trafficking, through awareness raising, education, training of relevant professionals, and economic and social initiatives for groups vulnerable to trafficking in human beings;
- the provision of specialised assistance to victims of trafficking funded by the State and delivered by specialised NGOs selected through a public tender;

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

- bringing the national definition of trafficking in human beings into conformity with Article 4 of the Convention;
- adopting a dedicated action plan against trafficking in human beings which addresses all forms of exploitation while taking into account the gender dimension of trafficking and the particular vulnerability of children;
- improving the identification of victims of trafficking by introducing a formalised national referral mechanism, ensuring that victim identification does not depend on the presence of elements to prove an offence of human trafficking, and developing an integrated mechanism for the identification of child victims of trafficking which takes into account the special circumstances and needs of children, involves child specialists and ensures that the best interests of the child are the primary consideration;
- ensuring that the recovery and reflection period is defined in national law as provided for in Article 13 of the Convention and that all presumed victims of trafficking are offered and effectively granted such a period;
- adopting measures facilitating and guaranteeing access to compensation for victims of trafficking;
- ensuring compliance with the principle of non-punishment of victims of trafficking for their involvement in unlawful activities, to the extent that they were compelled to do so, as provided in Article 26 of the Convention.

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

2. Requests the Government of Estonia to inform the Committee of the Parties of the measures taken to comply with this recommendation **by 9 November 2020**.

3. Invites the Government of Estonia to continue the on-going 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 Estonia

Core concepts and definitions

1. GRETA urges the Estonian authorities to bring the definition of THB into conformity with Article 4 of the Convention, in particular, by:
 - including the component of "action" in the definition of THB under Article 133 of the CC and ensuring that all the "means" provided for in the Convention are adequately reflected;
 - explicitly including forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs among the forms of exploitation under Article 133 of the CC;
 - clearly stating the irrelevance of the consent of a victim of THB to establishing a trafficking offence where any of the means have been used;
 - ensuring that the criminalisation of trafficking in children fully reflects the provisions of Article 4 of the Convention.

Comprehensive approach and co-ordination

2. GRETA urges the Estonian authorities to ensure that national action to combat THB is comprehensive, through the adoption of a dedicated action plan against THB, in which priorities, objectives, concrete activities and stakeholders responsible for their implementation are clearly defined and budgetary resources allocated. The action plan should be accompanied by a mechanism for monitoring of its implementation and should aim to:
 - address all victims of trafficking, including migrants and asylum seekers, for all forms of exploitation (including sexual exploitation, forced labour and services, the removal of organs, exploitation of criminal activities, forced begging, exploitative sham marriages), while taking into account the gender-dimension of trafficking and the particular vulnerability of children;
 - strengthen action to combat both transnational and internal trafficking for different types of exploitation, by reviewing the legislative framework, improving the identification of, and assistance to victims of THB, and involving labour inspectors, civil society, trade unions and the private sector;
 - strengthen action to combat THB for the purpose of labour exploitation by reviewing the legislative framework, improving the identification of, and assistance to, victims of THB for the purpose of labour exploitation, and involving civil society, trade unions, labour inspectorates and the private sector.
3. GRETA invites the Estonian authorities to set up formalised procedures or agreements clarifying the roles and responsibilities of different stakeholders.
4. GRETA considers that the Estonian authorities should examine the possibility of designating as a National Rapporteur a separate organisational entity or another independent mechanism for monitoring the anti-trafficking activities of State institutions.

Training of relevant professionals

5. GRETA urges the Estonian authorities to step up their efforts to provide regular training on issues related to THB for different forms of exploitation to all professionals who may come into contact with victims of THB, including labour and tax inspectors, social workers, prosecutors, judges, staff of reception centres for asylum seekers and migrants, health-care staff, specialists working with children. 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

6. For the purpose of preparing, monitoring and evaluating anti-trafficking policies, GRETA urges the Estonian authorities to develop and maintain a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical data on measures to protect and promote the rights of victims, as well as on the investigation, prosecution and adjudication of human trafficking cases. Statistics regarding victims should be collected from all main actors and allow 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.

7. GRETA considers that the Estonian authorities should conduct and support further research on THB as an important source of information for the evaluation and planning of policy measures. Areas where research should be carried out include trafficking for the purpose of labour exploitation, trafficking taking place within Estonia, including for the purpose of sexual exploitation, child trafficking, as well as recruitment of victims through the Internet.

International co-operation

8. GRETA considers that the Estonian authorities should continue to develop international co-operation in the field of action against THB, with a view to preventing THB, identifying and assisting victims of THB, and prosecuting THB cases.

Measures to raise awareness

9. GRETA considers that the Estonian authorities should take additional measures to inform the general public of THB for different purposes of exploitation, including exploitative sham marriages. Targeted measures should be implemented for groups particularly vulnerable to THB, such as children in residential institutions, persons seeking employment abroad, migrant workers and asylum seekers. Future information, awareness-raising and education campaigns should be planned with the involvement of civil society, on the basis of the assessment of the impact of previous preventive measures.

Measures to discourage demand

10. GRETA invites the Estonian authorities to ensure the effective application in practice of the provision criminalising the purchase of sex from a victim of trafficking, with the knowledge that the person is a victim.

11. GRETA considers that the Estonian authorities should enhance 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. Particular attention should be paid to prevention of trafficking in supply chains and outsourced services.

12. GRETA invites the Estonian authorities to consider establishing as a criminal offence the use of services which are the object of labour exploitation, with the knowledge that the person is a victim of trafficking in human beings.

Social, economic and other initiatives for groups vulnerable to THB

13. GRETA considers that the Estonian authorities should continue strengthening prevention of THB through targeted social and economic empowerment measures for persons vulnerable to THB, which address root causes of THB, such as gender inequality, gender-based violence, and absence of employment opportunities.

Border measures to prevent THB

14. GRETA considers that the Estonian authorities should strengthen their efforts to detect cases of THB in the context of border controls, including through further training of border guards on the identification of victims of THB.

Identification of victims of trafficking in human beings

15. GRETA urges the Estonian authorities to take further steps to ensure that all victims of trafficking are identified as such and can benefit from the assistance and protection measures provided for under the Convention, and in particular to:

- ensure that the formal identification of a person as a victim of human trafficking does not depend on the presence of elements to prove THB or a related offence;
- introduce a formalised NRM for the identification of victims of THB for different purposes of exploitation, which defines the roles and responsibilities of all relevant actors, including specialised NGOs, and provide training for its implementation;
- adopt harmonised indicators, guidance and toolkits to be used in the identification process, disseminate them to all relevant professionals to ensure that they adopt a proactive approach to detecting and identifying victims of trafficking; the indicators should be regularly updated in order to reflect the changing nature of human trafficking, types of exploitation and any amendments in the relevant legislation and used for training purposes;
- enhance the role and capacity of labour inspectors in the detection of THB for labour exploitation in Estonia and improve the identification of victims of THB among foreign nationals;
- strengthen the monitoring of recruitment agencies, including by introducing licensing procedures and reviewing the legislative framework for any loopholes;
- improve the identification of victims of THB among children by developing an integrated identification mechanism which takes into account the special circumstances and needs of child victims of THB, involves child specialists and ensures that the best interests of the child are the primary consideration, including refugee and migrant children;¹
- improve the identification of victims of trafficking among asylum seekers, migrant workers and irregular migrants.

¹ Reference is made to the Council of Europe's Action Plan on protecting refugee and migrant children (2017-2019), accessible via the following link: <https://www.coe.int/en/web/children/-/council-of-europe-action-plan-on-protecting-refugee-and-migrant-children-adopted>

Assistance to victims

16. GRETA considers that the Estonian authorities should strengthen their efforts to provide assistance to victims of trafficking, and in particular to:

- ensure that assistance is provided for as long as necessary to presumed and formally identified victims of trafficking and is not discontinued after 60 days if the presumed victim is not formally identified in criminal proceedings or if no such proceedings are initiated;
- ensure that all assistance measures provided for in law are guaranteed in practice, including by respecting the State's obligation to provide adequate financing and to guarantee the services when assistance is delegated to NGOs or other non-state actors as service providers;
- provide gender-sensitive support services, including safe accommodation with a sufficient number of places, and ensure that the services available are adapted to the specific needs of trafficking victims;
- facilitate the reintegration of victims of trafficking into society and prevent re-trafficking by providing them with long-term assistance, including vocational training and access to the labour market.

17. Further, GRETA urges the Estonian authorities to take steps to improve the specific assistance for child victims of trafficking, taking into account the best interests of the child, to ensure effective access to guardianship and to train all professionals working with child victims of trafficking to recognise and respond appropriately to their needs.

Recovery and reflection period

18. GRETA urges the Estonian authorities to review the legislation with a view to ensuring that the recovery and reflection period is defined in law as provided for in Article 13 of the Convention and that all presumed victims of trafficking are offered and effectively granted such a period with all the measures of assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention.

Residence permits

19. GRETA considers that the Estonian authorities should take steps to ensure that victims of THB can fully benefit from the right to obtain a renewable residence permit, including owing to their personal situation, without prejudice to the right to seek and enjoy asylum.

Compensation and legal redress

20. GRETA urges the Estonian authorities to adopt measures to facilitate and guarantee access to compensation for victims of trafficking and in particular to:

- ensure that victims of trafficking are systematically informed in a language that they can understand of the right to seek compensation and the procedures to be followed;
- enable victims of trafficking to exercise their right to compensation by ensuring their effective access to legal aid, by building the capacity of legal practitioners to support victims to claim compensation and by including the issue of victim compensation in training programmes for lawyers, law enforcement officials, prosecution and the judiciary;
- examine the reasons for the lack of applications for state compensation from victims of THB and ensure that victims are informed of the possibility to apply for state compensation and are effectively enabled to receive it.

21. GRETA invites the Estonian authorities to develop a system for recording compensation claims of and awards to victims of trafficking and to consider using assets confiscated from perpetrators for paying compensation to victims of THB.

Repatriation and return of victims

22. GRETA considers that the Estonian authorities should take additional steps to:

- ensure that the return of victims of trafficking is conducted with due regard for their rights, safety and dignity. This means informing victims about existing return 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 international co-operation in order to ensure pre-return risk assessment, safe return and reintegration of victims of THB;
- ensure compliance with the *non-refoulement* obligation under Article 40, paragraph 4, of the Convention.

23. Further, GRETA urges the Estonian authorities to introduce pre-return risk and security assessment procedures by specialised bodies prior to returning unaccompanied and separated migrant children, to ensure that the best interests of the child are effectively respected, protected and fulfilled, in co-operation with relevant partners in countries of return.

Substantive criminal law

24. GRETA considers that the Estonian authorities should conduct a comprehensive assessment of the criminal law provisions related to THB which are currently contained in several articles (in particular Article 133, Article 1331, Article 1381, Article 175) with a view to clarifying the differences and avoiding overlaps which risk creating legal uncertainty and inconsistent application.

Non-punishment of victims of trafficking in human beings

25. GRETA urges the Estonian authorities to ensure compliance with 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, as contained in Article 26 of the Convention. Such measures should include 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. While the identification procedure is ongoing, presumed victims of trafficking should not be punished for their involvement in unlawful activities, to the extent that they have been compelled to do so.

Investigation, prosecution and procedural law

26. GRETA urges the Estonian authorities to strengthen their efforts to ensure that THB offences for the purposes of different types of exploitation are proactively investigated and prosecuted. In this context, the Estonian authorities should:

- identify gaps in the investigation and prosecution of THB cases, including by reviewing the existing legal provisions and court rulings on THB and related offences;
- develop the training and specialisation of investigators, prosecutors and judges to deal with THB cases;
- provide law enforcement agencies with the necessary resources and tools to detect and investigate THB cases, including by making use of special investigation techniques;

- carry out financial investigations to locate and seize the traffickers' assets and take steps to guarantee the effective application of the legal provisions to confiscate such assets.

Protection of victims and witnesses

27. GRETA urges the Estonian authorities to review the legislation in order to provide all protection measures envisaged under CPC to all child victims of trafficking and to ensure their application in practice.

28. GRETA considers that the 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.