

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



CP(2017)5

Report submitted by the authorities of Andorra
on measures taken to comply with
Committee of the Parties Recommendation
CP(2014)14 on the implementation
of the Council of Europe Convention
on Action against Trafficking in Human Beings

Received on 5 December 2016

List of GRETA's proposals concerning the implementation of the Convention by Andorra - CP(2014)14

Definition of trafficking in human beings

1. One of the recommendations of the Group of Experts on Action against Trafficking in Human Beings (GRETA) emphasised the necessity of defining the offence of trafficking in human beings (THB) in more precise and specific terms in relation to the purposes of exploitation and the interests to be legally protected. Consequently, Qualified Law 40/2014 of 11 December, amending Qualified Law 9/2005 of 21 February, forming part of the Criminal Code, established the criminal offences of trafficking for the purpose of organ removal, trafficking for the purpose of slavery and servitude and trafficking for the purpose of sexual exploitation, pursuant to Articles 121bis, 134 bis and 157bis, respectively.

Qualified Law 40/2014 of 11 December amending Qualified Law 9/2015 of 21 February, forming part of the Criminal Code, is set out in Appendix 1 to this report. Appendix 1.1 provides a summary in French of the specific provisions which have changed as a result of this law being introduced. Appendix 1.2 is a comparison table, in French, clearly summing up the situation before and after the law.

Similarly, Law 40/2014 amends the rules governing confiscation provided for in Article 70 of the Criminal Code, which are applicable to the specific offences of trafficking mentioned above.

In addition, Qualified Law 10/2015 of 16 July amending Qualified Law 9/2015 of 21 February, forming part of the Criminal Code, amended Article 409 of the Criminal Code with a view to criminalising the laundering of the proceeds of the criminal offences provided for in Articles 121bis, 134bis and 157bis. (see Appendix 2)

Comprehensive approach and co-ordination

2. For the purpose of co-ordinating the different stakeholders who would be involved in the event of there being a case of trafficking in human beings, the government has drawn up a draft protocol on action to protect THB victims. (Appendix 3)

The protocol is intended to establish measures for detecting, identifying, assisting and protecting victims within the framework of the Council of Europe Convention on Action against Trafficking in Human Beings, as well as ensuring co-ordination between the institutions concerned and defining mechanisms forging relations between the authorities with competence in this field. It also establishes the procedure for communication and co-operation with organisations and entities providing assistance to victims of trafficking in human beings, and civil society.

The effectiveness of this draft protocol hinges on the approval of the preliminary draft law establishing measures to combat THB and protect its victims, described below.

Training of relevant professionals

3. Numerous training courses have been run in this area by the professionals concerned.

Concerning the recommendation on the training of professionals, the numerous possibilities for training in the judicial sector should be emphasised. A protocol on collaboration between the public prosecution authorities of Spain and Andorra operates in this respect. The Andorran Public Prosecutor's office is part of IberRed (Ibero-American Network of International Judicial

Cooperation). In both cases, training courses on THB are organised and may be attended by judges and prosecutors.

Under the agreement granting Andorra's judicial authorities access to the training courses of the French École Nationale de la Magistrature, one investigating judge and one prosecutor attended the Trafficking in human beings course at the ENM in Paris in 2015.

Along similar lines, the Andorran Higher Council of Justice included training in this area in its 2017 training programme.

Regarding the other professionals concerned, the Police service is very active in organising conferences on human rights issues in order to raise this group's awareness of THB and train it in this area.

The Andorran Bar association is keen to incorporate specific training and also to take advantage of collaboration with the Institute of Legal Affairs of Catalonia and the Association of European Lawyers to carry out training on this topic.

The Institute of Human Rights organises an annual human rights competition with 6th grade pupils.

Data collection and research

4. GRETA encourages the Andorran authorities to:

Consider how data on victims of trafficking in human beings (disaggregated by gender, age, type of exploitation, country of origin and/or destination) would be collected, having due regard to their right to personal data protection.

Under Article 41 of the Qualified law on Justice "the prosecutor's office shall present an annual review of its activity setting out its assessment of offending and prevention". In this respect, the review gathers the criminal law statistics generated by records of offending, according to the number of cases arriving in the first instance court and by type of offence, which provides a means of analysing trends in offending, including THB offences.

As there is currently no court specifically tasked with collecting data on victims of THB, each authority or any other stakeholder involved in the field of THB is required to collect personal data on THB victims.

The fact that no THB offences have been committed in our country has meant that, up to now, there has been no interest in supporting research work on THB-related matters. That does not mean, however, that the government cannot grant aid and support for such research work in the future.

International co-operation

5. In addition to the training received by the different stakeholders concerned, the police service is considering developing these kinds of partnerships with other countries in the near future, such as Belgium or France.

6. GRETA also invites the Andorran authorities to continue supporting initiatives aimed at the prevention of trafficking in human beings in countries of origin.

Measures to raise awareness, social, economic and other initiatives in favour of persons vulnerable to trafficking in human beings and measures to discourage demand

7. Given the zero incidence of THB in Andorra to date, there have been no initiatives geared to activities or programmes in this area.

However, given the importance of raising public awareness as a preventive measure, the government will run an awareness-raising campaign aimed at the general public in 2017.

This awareness-raising initiative will be backed up by the distribution of leaflets in public services establishments as well as information published on institutional websites.

8. In this connection, the initiatives aimed at raising awareness of trafficking in human beings in the school context must be emphasised. The Andorran education system has included explicit references to action against all forms of discrimination in its general compulsory teaching objectives.

The inclusion in the upper secondary curriculum of a teaching unit entitled "Remembering history: what happens with refugees?" should also be highlighted.

Leaflets are distributed in public departments, particularly the Immigration Service, the Department of Social Affairs, and the Welfare Department, among others.

Border measures to prevent THB and measures to enable legal migration

9. The Police will ensure that police officers assigned to border duties make use of the indicators for detecting trafficking victims and will organise training for these officers in the proactive identification of possible THB victims.

In this connection, the government has plans to make a request for training on the identification of THB victims.

Identification of victims of trafficking in human beings

10. The draft Protocol on action to protect THB victims stipulates in the paragraph concerning the identification of trafficking victims that the police service is the competent authority to conduct victim identification procedures.

A preliminary draft law establishing measures to combat THB and protect its victims was recently drawn up and is scheduled to go through parliament in early 2017. The preliminary draft law stipulates that, as soon as the competent authority considers that there are reasonable grounds to believe that someone has been a victim of trafficking in human beings, and throughout the entire identification process, the necessary steps must be taken to ensure that their rights are protected, that no associates of the alleged traffickers have contact with them and they are provided with medical and social care and legal assistance.

The preliminary draft law is set out in Appendix 4.

Assistance to victims

11. Article 8 of the preliminary draft law establishing measures to combat THB and protect its victims provides for welfare assistance for trafficking victims. Trafficking victims are to receive assistance to enable them to recover from a physical, psychological and social viewpoint. Victims may be granted financial assistance to guarantee the protection needed by them and their family, covering basic needs in terms of upkeep, personal hygiene, housing, clothing and health provision.

In the case of a child victim, Andorra's education system takes in any child of compulsory school age who is in the Principality of Andorra, regardless of the administrative status or personal circumstances of the parents. They also have access to the study grants system even if the application period has closed.

In both cases, the costs of assisted repatriation to the country of origin are also guaranteed, where necessary.

Moreover, everyone is entitled to receive all the information they need for the effective exercise of their rights from the administrative authorities, in any sphere of administration. In this connection, every possible effort is made to provide the information in a language which the applicant understands, even if there is no specific service for that purpose.

However, a victim of THB who is a party involved in criminal proceedings may request technical assistance where they see fit, to be guided through the procedure, provided, free of charge in some cases, by lawyers practising in the Principality of Andorra; this is without prejudice to the duty incumbent on judicial bodies to provide those they consider to have suffered injury with information in relation to the criminal procedure in question.

Recovery and reflection period

12. Article 7 of the draft law establishing measures to combat THB and protect its victims provides for a recovery and reflection period. A period of three months is granted in order to escape the influence of traffickers, recover and decide whether to co-operate with the authorities in the investigation of the offence. It is to be noted that this recovery and reflection period may be extended once, by a further three-month period where necessary.

Furthermore, this article of the law states that, for as long as this period runs, the person concerned cannot be subjected to any of the administrative policing measures provided for in the following section.

Residence permits

13. Article 2 of the draft law establishing measures to combat THB and protect its victims states that once the recovery and reflection period has expired, a foreigner who so requests and meets the relevant conditions may obtain a stay and work permit for an initial period of one year, renewable three times for two-year periods. Once seven years have elapsed after the initial granting of the permit, the successive renewals are granted for periods of ten years.

Compensation and legal redress

14. Our domestic law guarantees the right of a victim to receive compensation from the perpetrators of criminal law offences, including victims of acts of trafficking. Article 94 of the Criminal Code establishes that anyone liable for a criminal offence is also liable under civil law if damages are to be paid. These damages are in line with the civil liability deriving from the criminal offence, entailing the repair of or compensation for the damage caused and compensation for non-pecuniary and pecuniary damage.

Any mitigation of or discharge from criminal liability does not give exemption from civil liability.

Civil liability is maintained in the event of an error of law being recognised or other circumstances resulting in exemption from criminal liability, such as the following:

- acting out of necessity or to avoid harm to oneself or another person,
- committing an act without understanding that it is illegal or committing it in the knowledge that it is illegal but as a result of a mental defect or impairment,

- being in a state of intoxication resulting from the consumption of alcohol, toxic or other drugs producing similar effects, unless the person deliberately became intoxicated in order to commit the offence, or foresaw or should have foreseen that they would commit the offence in this state,
- experiencing withdrawal symptoms caused by dependency on substances inhibiting the person's understanding of the illegality of their acts or making them act in the knowledge that their acts are illegal,
- suffering impaired perceptions since birth or childhood preventing the person from understanding that the act is illegal or allowing them to commit it despite understanding that it is illegal,
- attempting to avoid harm to their own life, health or freedom or that of others,
- acting out of an insurmountable fear.

In all these cases, the court may, when passing sentence and at the request of the person concerned, establish appropriate civil liability.

More specifically, when the court's resolution takes the form of a sentence, Article 181.1a) of the Code of Criminal Procedure states that it must rule on the civil liability established in the event of restitution, and where this is not possible on compensation corresponding to the reparation of damage and compensation for non-pecuniary and pecuniary harm.

A civil liability suit against the perpetrators of the offence may be brought by victims themselves, in a private prosecution and/or as the party claiming damages in a case where the Public prosecutor's office is assigned the authority to lodge a civil suit jointly with the criminal suit, or in an independent claim before a general civil court.

There are no other provisions in our domestic law guaranteeing compensation for victims under the terms set forth in Article 15.4 of the Convention.

Repatriation and return of victims

15. Article 9 of the draft law establishing measures to combat THB and protect its victims provides for the assisted return of a trafficking victim who has been granted a recovery and reflection period to their country of origin. This assisted return is granted once the recovery and reflection period has elapsed on condition of the person concerning requesting it. The return must be conducted in such a manner as to respect the victim's safety and dignity, while assessing the risks to which they may be exposed in the event of a return.

Substantive criminal law

16. Criminalisation is already provided for in similar terms in Articles 121, 134 and 151 of the Criminal Code.

"Article 121

Trafficking in human organs, tissues, cells or gametes

1. Anyone who, without administrative or judicial authorisation, offers, accepts or trafficks in human organs, tissues, cells or gametes shall be punished with imprisonment of between three months and three years and

declared ineligible to exercise any profession in the health sector or in connection with scientific research for a maximum period of five years.

2. When the trafficking is carried out for the purpose of illegally obtaining an organ, the prison sentence shall be from two to five years.

3. If the victim is a minor or an individual rendered particularly vulnerable by an illness or physical or mental impairment, the prison sentence shall be between four and eight years. The sentence imposed shall be in the upper half of this bracket for persons with parental authority or guardianship status who collude in the act of trafficking.

4. If such acts are perpetrated within the framework of a criminal organisation, the sentence imposed may be the maximum limit increased by half.

5. Attempting to commit this offence shall be punishable."

"Article 134

Slavery and servitude

1. Anyone subjecting a person to slavery or servitude shall be punished with a prison sentence of between four and 12 years.

The sentence imposed shall be in the upper half of this bracket where the victim is a minor.

Attempting to commit this offence shall be punishable.

2. "Slavery or servitude" shall be taken as meaning the situation of a person over whom another person exercises, even de facto, any or all of the powers attached to the right of ownership, such as buying, selling, lending or donating."

"Article 151

Encouraging prostitution

1. A person recruiting others for prostitution, promoting, facilitating or encouraging prostitution of third parties shall be punished with a prison sentence of between three months and three years.

2. If the prostitution of children is involved or the victim is an individual rendered particularly vulnerable by an illness or physical or mental impairment, the prison sentence shall be from two to five years. The sentence imposed shall be in the upper half of this bracket for persons with parental authority or guardianship status.

3. If such acts are perpetrated within the framework of a criminal organisation, the sentence imposed may be the maximum limit increased by half.

4. Attempting to commit this offence shall be punishable. The proposal, made through the use of information and communication technologies, to meet a minor aged under 14 years with a view to committing the criminal offence described in the first paragraph of the present article shall be considered an attempt if the proposal is followed by material actions resulting in that meeting. "

In this respect, Article 121 punishes those who "offer, accept or traffick in human organs", Article 134 punishes those who "subject a person to slavery or servitude" and Article 151 punishes those "encouraging" prostitution.

Consequently, this implies that the use of the services resulting from the exploitation covered by paragraph a) of Article 4 of the Convention, in the knowledge that the person in question is a victim of trafficking in human beings, falls within punishable conduct, making the user criminally liable as the perpetrator of the offence.

17. GRETA urges the Andorran authorities to adopt legislative measures:

Qualified Law no. 40/2014 of 11 December amending Law no. 9/2005 created new criminal offences of trafficking in human beings for the purposes of organ removal, slavery or servitude and sexual exploitation, provided for in Articles 121 bis, 134 bis and 157 bis respectively. Consequently, we consider that the criminal offence of trafficking in human beings is comprehensively provided for in these three articles.

"Article 121 bis

Trafficking in human beings for the purpose of organ removal

1. Anyone who, for the purpose of organ removal, recruits, transports, transfers, harbours or receives one or more persons, shall be punished with a prison sentence of between two and six years, without prejudice, where appropriate, to the penalties applicable for the other offences committed, where at least one of the following means is used:

- a) where there is use of violence or other forms of intimidation or constraint, or the threat thereof,
- b) where there is fraud, deception, abuse of power or of a position of vulnerability,
- c) where there is the offer or acceptance of payments or benefits to achieve the consent of a person having *de facto* or *de jure* control over another person.

Attempting to commit this offence shall be punishable.

2. Where none of the means mentioned in the previous paragraph is used, the committing of the act defined therein, if perpetrated against a minor, shall be considered as trafficking in human beings for the purpose of organ removal, without prejudice, where appropriate, to the penalties applicable for the other offences committed.

Attempting to commit this offence shall be punishable.

3. In the cases provided for in paragraph 2 and in paragraph 1 if the victim is rendered particularly vulnerable by their physical or mental condition or a disability, the sentence imposed shall be in the upper half of the bracket.

4. In all cases, endangerment of the life of the victim shall constitute an aggravating circumstance for criminal liability."

"Article 134 bis

Trafficking in human beings for the purpose of slavery or servitude

1. Anyone who, for the purpose of slavery or servitude, recruits, transports, transfers, harbours or receives one or more persons, shall be punished with a prison sentence of between two and six years, without prejudice, where appropriate, to the penalties applicable for the other offences committed, where at least one of the following means is used:

- a) where there is use of violence or other forms of intimidation or constraint, or the threat thereof,
- b) where there is fraud, deception, abuse of power or of a position of vulnerability,
- c) where there is the offer or acceptance of payments or benefits to achieve the consent of a person having *de facto* or *de jure* control over another person.

Attempting to commit this offence shall be punishable.

2. Where none of the means mentioned in the previous paragraph is used, the committing of the act defined therein, if perpetrated against a minor, shall be considered as trafficking in human beings for the purpose of slavery or servitude, without prejudice, where appropriate, to the penalties applicable for the other offences committed.

Attempting to commit this offence shall be punishable.

3. In the cases provided for in paragraph 2 and in paragraph 1 if the victim is rendered particularly vulnerable by their physical or mental condition or a disability, the sentence imposed shall be in the upper half of the bracket.
4. In all cases, endangerment of the life of the victim shall constitute an aggravating circumstance for criminal liability."

"Article 157 bis

Trafficking in human beings for the purpose of sexual exploitation

1. Anyone who, for the purpose of prostitution of others or other offences against sexual freedom, recruits, transports, transfers, harbours or receives one or more persons, shall be punished with a prison sentence of between two and six years, without prejudice, where appropriate, to the penalties applicable for the other offences committed, where at least one of the following means is used:

- a) where there is use of violence or other forms of intimidation or constraint, or the threat thereof,
- b) where there is fraud, deception, abuse of power or of a position of vulnerability,
- c) where there is the offer or acceptance of payments or benefits to achieve the consent of a person having de facto or de jure control over another person.

Attempting to commit this offence shall be punishable.

2. Where none of the means mentioned in the previous paragraph is used, the committing of the act defined therein, if perpetrated against a minor, shall be considered as trafficking in human beings for the purpose of sexual exploitation, without prejudice, where appropriate, to the penalties applicable for the other offences committed.

Attempting to commit this offence shall be punishable.

3. In the cases provided for in paragraph 2 and in paragraph 1 if the victim is rendered particularly vulnerable by their physical or mental condition or a disability, the sentence imposed shall be in the upper half of the bracket.

4. In all cases, endangerment of the life of the victim shall constitute an aggravating circumstance for criminal liability."

The aforementioned articles also include effective, proportionate and dissuasive sanctions as stipulated by Article 23.2 of the Convention. In this connection, Articles 121 bis, 134 bis and 157 bis of the Criminal Code provide for prison sentences of between two and six years.

Pursuant to Article 21 of the Convention, each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the aiding or abetting or an attempt to commit the criminal offences provided for in Articles 121 bis, 134 bis and 157 bis. Under those three articles, accomplices are criminally liable and attempts to commit the offence are also punished.

At present, Article 24 of Andorra's Criminal Code stipulates that "criminal liability is personal. Only physical persons may be liable. The person acting as de facto or de jure administrator of a legal person, or on behalf of or as the legal or voluntary representative of that entity or of a physical person, is personally liable, even if they do not fulfil the conditions, qualities or relations required to be considered as the perpetrator of the offence or infringement, if the entity or person on behalf or as representative of which/whom they are acting fulfils those conditions, provided that the conditions stipulated in Article 21 are met."

However, adoption of the criterion of non-liability of legal persons does not mean that the Criminal Code cannot impose sanctions on legal persons, thus attaining the goal of Article 22 of the Convention. In fact Article 71 of the Criminal Code stipulates that the judicial authorities can

impose certain measures on legal persons. Among other things, the judicial authorities can dissolve the company, association or foundation, make it cease its activities for up to six years, impose the temporary or definitive closure of the company, impose a pecuniary sanction, curtail dealings with the public administration or place the company in judicial administration.

With regard to the confiscation of the instruments and proceeds linked to trafficking, Andorra's Criminal Code states in Article 70 (Appendix 4) that the court may grant the confiscation of the assets of the person convicted where there are sufficient objective grounds to believe that they are the direct or indirect proceeds of illegal activities and their legal origin is unproven, in offences of unlawful association, where they are linked with offences of trafficking in human beings for the purposes of organ removal, slavery or servitude or sexual exploitation, criminalised in Articles 121 bis, 134 bis and 157 bis, respectively.

18. Qualified Law no. 40/2014 of 11 December amending Qualified Law no. 9/2005 of 21 February, forming part of the Criminal Code provides for aggravating circumstances for criminal liability: where the offence has endangered the life of the victim or has been committed against a victim rendered particularly vulnerable by their physical or mental condition or a disability. The penalty imposed must be in the upper half of the bracket in such cases.

In addition, the basic offences relating to prostitution (Article 151 of the Criminal Code) and organ removal (Article 121 of the Criminal Code) stipulates that committing the offence within the framework of a criminal organisation is an aggravating circumstance.

Non-punishment of victims of trafficking in human beings

19. Pursuant to the principle of non-punishment provided for in Article 26 of the Convention, Article 27 of the Criminal Code provides for three circumstances exempting a person from criminal liability, listed below:

- acting out of necessity or to avoid harm to oneself or another person,
- acting in an attempt to avoid harm to their own life, health or freedom or that of others,
- acting out of an insurmountable fear.

In addition to the legal provisions in the Criminal Code, the government will propose that the Higher Council of Justice organise a round table of judges, magistrates and prosecutors to examine this principle in our domestic law.

Protection of victims and witnesses

20. In our domestic law, Article 423 of the Criminal Code provides for the protection of those involved in proceedings, stipulating that "anyone who influences or seeks to influence, through violence or intimidation, a complainant, party or defendant, a lawyer or solicitor, a court expert, interpreter or witness in a trial, in order to change their actions in the procedure, shall be punished with a prison sentence of between one and four years, without prejudice to punishment to be imposed for the consequences of the act".

The judge may also order a banning measure prohibiting the trafficker from contact with the victim, provided for in Article 51 of the Criminal Code. If this measure is breached, the judge may order immediate imprisonment (Article 110.2 of the Code of Criminal Procedure).

In this connection, a witness who becomes a victim of THB may benefit from the protection indicated in the previous paragraph.

Article 38 of the Criminal Code states that in offences against life, physical and moral integrity, sexual freedom and in offences involving threats, in view of the relations between the offender and the victim and the necessity of protecting the victim or a third party, the court can impose a supplementary sanction banning contact with the victim, for up to 12 years.

Lastly, in the event of the measures provided for in our domestic law not being sufficient and the victim needing closer protection, police surveillance of the victim can be arranged to safeguard their physical integrity.