



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

**Recommendation CP(2014)18
on the implementation of the Council of Europe Convention
on Action against Trafficking in Human Beings
by Ukraine**

*adopted at the 15th meeting of the Committee of the Parties
on 5 December 2014*

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 Ukraine on 29 November 2010;

Having examined the Report concerning the implementation of the Convention by Ukraine, adopted by GRETA at its 20th meeting (30 June – 4 July 2014) in the framework of the first evaluation round;

Having examined the comments of the Ukrainian Government on GRETA's report, submitted on 9 September 2014;

Welcoming the measures to combat trafficking in human beings taken by the Ukrainian 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 anti-trafficking co-ordination structures and specialised police units to combat human trafficking;
- the adoption of a comprehensive national action plan against trafficking in human beings and the involvement of non-governmental organisations in its planning and implementation;
- the adoption of a formalised procedure for the identification of victims of trafficking and the adoption of standards aimed at ensuring the quality of the services provided to victims of trafficking;

- the efforts to raise awareness of human trafficking through information campaigns, school education and training of relevant professionals;

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

- enhancing co-ordination of anti-trafficking activities by ensuring the effective and regular functioning of the Interdepartmental Council and the co-ordinating councils at *oblast* level;
- strengthening prevention of trafficking through social and economic empowerment measures for vulnerable groups and continuing efforts to ensure the registration of all children at birth as a preventive measure against trafficking;
- taking further measures to ensure that all victims of trafficking are properly identified and referred to assistance, including by ensuring that all professionals likely to come into contact with potential victims are fully aware of the identification procedure and receive periodic training to identify victims of trafficking;
- ensuring that all assistance measures provided for in law are guaranteed in practice and making full use of the measures available to protect victims and witnesses of trafficking during criminal proceedings;
- ensuring that the recovery and reflection period envisaged by Article 13 of the Convention is specifically defined in law and that victims of trafficking can benefit from the right to obtain a renewable residence permit;
- adopting measures to ensure that avenues for compensation are effectively accessible to trafficked persons;
- developing the training and specialisation of investigators, prosecutors and judges with a view to ensuring that trafficking offences are effectively investigated and prosecuted, leading to proportionate and dissuasive sanctions.

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

2. Requests the Government of Ukraine to inform the Committee of the Parties of the measures taken to comply with this recommendation by 5 December 2016;

3. Invites the Government of Ukraine 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 Ukraine

Definition of "trafficking in human beings"

1. GRETA invites the Ukrainian authorities to align the two definitions of THB in national law with a view to ensuring that they cover all the concepts in Article 4 of the Convention in a manner consistent with the principles of the Convention.
2. GRETA considers that spelling out the irrelevance of the consent of the victim to the intended exploitation could improve the implementation of the anti-trafficking provisions and provide victims with greater confidence in self-reporting.

Comprehensive approach and co-ordination

3. GRETA urges the Ukrainian authorities to enhance co-ordination of anti-trafficking activities by ensuring the effective and regular functioning of the Interdepartmental Council and the interdepartmental councils at the *oblast* level. While the Ministry of Social Policy has been designated as the national co-ordinating body on action against THB, GRETA considers that the establishment of the post of National Co-ordinator supported by a dedicated office can be instrumental for strengthening co-ordination.
4. GRETA also considers that the authorities should further develop co-ordination between public bodies and civil society actors engaged in anti-trafficking action, and increase the involvement of NGOs and trade unions in the planning and implementation of national policy, for example by encouraging the conclusion of Memoranda of Understanding.
5. GRETA invites the Ukrainian authorities to introduce a periodic independent evaluation of the national anti-trafficking programme as a tool for assessing the impact of the activities and for planning future policies and measures to combat THB, and to consider establishing an independent National Rapporteur or designate another existing independent 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).
6. Further, GRETA urges the Ukrainian authorities to take further steps to ensure that national action to combat THB is comprehensive, and in particular to:
 - strengthen action to combat THB for the purpose of labour exploitation by involving labour inspectors, trade unions, employment agencies, businesses and civil society in a joint platform and improving the identification of and assistance to victims of THB for the purpose of labour exploitation;
 - pay increased attention to identifying foreign victims of trafficking in Ukraine, including among unaccompanied minors, irregular migrants and asylum seekers;
 - address the particular vulnerability to trafficking of persons from groups affected by unfavourable social and economic conditions;
 - take steps to address internal trafficking.

Training of relevant professionals

7. GRETA considers that the Ukrainian authorities should take further steps to provide periodic training on THB and the rights of victims to all relevant professionals (such as law enforcement officials, prosecutors, judges, labour inspectors, child protection specialists, social workers and medical professionals). Future training programmes should be designed with a view to improving the knowledge and skills of relevant professionals which enable them to identify victims of trafficking for different forms of exploitation, to assist and protect them, to facilitate compensation for victims, and to secure convictions of traffickers.

Data collection and research

8. For the purpose of preparing, monitoring and evaluating anti-trafficking policies, GRETA urges the Ukrainian authorities to develop and maintain a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical information from all main actors, including NGOs involved in victim identification and assistance, and allowing disaggregation (concerning sex, age, type of exploitation, country of origin and/or destination, etc.). This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection.

9. GRETA considers that the Ukrainian authorities should conduct and support research on THB-related issues as an important source of information for the evaluation of current programmes and for planning future policy measures. Areas where more research is needed in order to shed light on the extent and new trends of human trafficking in Ukraine and inform policy makers include trafficking for the purpose of labour exploitation, trafficking of foreign nationals to Ukraine for different types of exploitation, trafficking for the purpose of removal of organs and trafficking within Ukraine.

International co-operation

10. GRETA considers that the Ukrainian authorities should enhance international co-operation in the non-criminal field with a view to preventing THB and providing assistance to Ukrainian and foreign victims of trafficking.

Measures to raise awareness

11. GRETA considers that the Ukrainian authorities should continue their efforts to prevent THB and design future awareness-raising measures in the light of the assessment of previous measures, focussing on the needs identified. Awareness raising should target vulnerable groups and inform the general public of new trends in THB, such as trafficking for the purpose of labour exploitation, removal of organs and trafficking within Ukraine, and should engage all relevant professionals.

Measures to discourage demand

12. GRETA invites the Ukrainian authorities to consider establishing as a criminal offence the use of services which are the object of exploitation as defined in Article 4 of the Convention, with the knowledge that the person is a victim of trafficking in human beings.

13. Further, GRETA urges the Ukrainian authorities, in the light of the recent trends of trafficking of foreigners to Ukraine and trafficking within the country, to enhance their efforts to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with NGOs, trade unions, international organisations and the private sector.

Social, economic and other initiatives for groups vulnerable to THB

14. GRETA urges the Ukrainian authorities to strengthen prevention of THB through social and economic empowerment measures for groups vulnerable to THB. Such measures should be based on the identified root causes of THB (economic and social conditions, poverty, inadequate education, absence of employment opportunities) and should aim to decrease and ultimately eliminate these causes.

15. GRETA also urges the Ukrainian authorities to continue their efforts to ensure the registration of all children at birth as a preventive measure against trafficking.

Border measures to prevent THB and measures to enable legal migration

16. While welcoming the measures taken by the Ukrainian authorities to prevent THB at the borders, GRETA considers that the Ukrainian authorities should make further efforts to improve the detection of THB cases in the context of border control, in particular of possible foreign victims entering Ukraine. For this purpose, the competent authorities should consider drawing up a list of indicators to facilitate detection of potential victims of THB among foreign nationals coming to Ukraine and unaccompanied minors and introduce a checklist to identify potential THB-related risks during the visa application process.

Identification of victims of trafficking in human beings

17. While welcoming the adoption of a formalised procedure for the identification of victims of THB, GRETA urges the Ukrainian authorities to take further steps to ensure that all victims of trafficking are properly identified and can benefit from all the assistance and protection measures provided for under the Convention, and in particular to:

- ensure that all professionals who are likely to come into contact with potential victims of THB, including staff of the structural units of local state administrations, are fully aware of the victim identification and status procedure and receive periodic training to enable them to identify victims of THB;
- provide frontline staff with operational indicators, guidance and toolkits to be used in the identification process and train them to use these tools in order to ensure that they adopt a proactive and harmonised approach to detecting and identifying victims of trafficking; the indicators should be regularly updated in order to reflect the changing nature of human trafficking and types of exploitation;
- review the application of the Victim Status Procedure in order to reduce reliance on the victims themselves applying for identification;
- enhance the role of labour inspectors and other relevant professionals in the detection of THB for labour exploitation in Ukraine;
- improve the identification of victims of THB among unaccompanied foreign minors and take steps to address the problem of disappearance of unaccompanied foreign children by providing suitable safe accommodation and assigning adequately trained legal guardians;
- provide periodic training and guidance on the identification and protection of victims of THB to all persons involved in safeguarding children's rights;
- improve the identification of victims of trafficking among asylum seekers, including through the provision of training and clear, binding procedures to be followed by State Migration Service officials.

Assistance to victims

18. GRETA urges the Ukrainian authorities to take further measures to provide victims and potential victims of THB with adequate assistance and protection, and in particular to:

- ensure that all assistance measures provided for in law are guaranteed in practice and that all victims of THB, including children, have effective access to it;
- allocate the necessary human and financial resources, as appropriate, to all providers of assistance to victims of THB, including when such assistance is delegated to NGOs as service providers;
- guarantee the quality of the services delivered by all service providers, for instance by establishing a set of mandatory quality standards and an effective supervision of their observance.

Recovery and reflection period

19. GRETA urges the Ukrainian authorities to ensure that the recovery and reflection period, as provided for in Article 13 of the Convention, is specifically defined in law and that all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention are made available during this period to persons for whom there are reasonable grounds to believe are victims of THB. It should be made clear that the recovery and reflection period should last at least 30 days and should not be conditional upon submitting an application for victim status or any other additional requirement.

Residence permits

20. GRETA urges the Ukrainian authorities to ensure that victims of trafficking can benefit from the right to obtain a renewable residence permit, including when they are unable to cooperate with the authorities but need to remain in the country owing to their personal situation.

Compensation and legal redress

21. GRETA urges the Ukrainian authorities to adopt measures to facilitate 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 both primary and secondary legal aid, building the capacity of legal practitioners to support victims to claim compensation and including compensation into existing training programmes for law enforcement officials and the judiciary.

22. Further, bearing in mind that a very limited number of victims of trafficking are awarded compensation from the perpetrators, GRETA urges the Ukrainian authorities to set up a State compensation scheme accessible to victims of THB, regardless of their citizenship and residence status.

Repatriation and return of victims

23. GRETA urges the Ukrainian authorities to take further steps to ensure that the return of victims of trafficking is conducted with due regard for their rights, safety and dignity and the status of related legal proceedings; this implies risk assessment before a person is sent back to his/her country, protection from retaliation and re-trafficking and, in the case of children, fully respecting the principle of the best interests of the child.

Substantive criminal law

24. GRETA urges the Ukrainian authorities to adopt such legislative and other measures as may be necessary to ensure that a legal person can be held liable for a criminal offence established in accordance with the Convention, as required under Article 22 of the Convention.

Non-punishment of victims of trafficking in human beings

25. GRETA considers that the Ukrainian authorities should take further steps to ensure compliance with Article 26 of the Convention through the adoption of a provision on non-punishment of victims of THB for their involvement in unlawful activities, to the extent that they were compelled to do so, or by issuing guidance to public prosecutors and migration officials on this issue. While the identification procedure is ongoing, possible victims of THB should not be punished for immigration-related violations.

Investigation, prosecution and procedural law

26. While acknowledging the pertinence of mitigating circumstances, GRETA stresses the importance of sensitising judges to the grave violations of human rights which result from THB and the need to provide redress and protection for victims of THB.

27. GRETA urges the Ukrainian authorities to develop the training and specialisation of investigators, prosecutors and judges with a view to ensuring that human trafficking offences are effectively investigated and prosecuted, leading to proportionate and dissuasive sanctions.

Protection of victims and witnesses

28. GRETA urges the Ukrainian authorities to make full use of the measures available to protect victims and witnesses of THB, including children, and to take additional measures to ensure that victims of trafficking are adequately informed of their rights and existing remedies and assisted during pre-trial and court proceedings.