

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



**Recommendation CP(2012)9
on the implementation of the Council of Europe Convention
on Action against Trafficking in Human Beings
by Montenegro**

*adopted at the 8th meeting of the Committee of the Parties
on 13 November 2012*

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 Montenegro on 30 July 2008;

Having examined the Report concerning the implementation of the Convention by Montenegro, adopted by GRETA at its 14th meeting (25-29 June 2012) in the framework of the first evaluation round;

Having examined the comments of the Montenegrin Government on GRETA's report, submitted on 5 September 2012;

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

- the setting up of the Office for Fight against Trafficking in Human Beings as a body co-ordinating the anti-trafficking activities of relevant public bodies, non-governmental and international organisations, as well as of the Working Group for monitoring the implementation of the national anti-trafficking strategy;
- the signing of a Memorandum of Co-operation between State institutions and non-governmental organisations, defining the responsibilities of each stakeholder for handling human trafficking cases;
- the considerable efforts to develop the aspect of prevention through awareness-raising campaigns, education in schools, training of relevant professionals, and social and economic measures for groups vulnerable to human trafficking;

- the setting up of a State-funded shelter for victims and potential victims of trafficking;
- the development of the national legal framework related to action against trafficking in human beings and the adoption of a legislative provision criminalising the use of services of a person with the knowledge that the person is a victim of trafficking.

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

- paying increased attention to preventive measures among vulnerable groups, such as the Roma, Askali and Egyptian communities, internally displaced persons and children without parental care residing in institutions;
- improving the identification of victims of trafficking by disconnecting it from victims' participation in criminal proceedings, stepping up proactive investigations (including for labour exploitation) and strengthening multi-agency involvement in victim identification;
- further developing the knowledge and sensitivity of relevant professionals (in particular investigators, prosecutors, judges, lawyers, social workers and labour inspectors) about human trafficking and the rights of victims;
- ensuring that the recovery and reflection period provided for in Article 13 of the Convention is defined in law and that victims are systematically informed of the possibility to use such a period;
- improving victims' access to compensation by providing them with information and legal aid, as well as through setting up a State compensation scheme accessible to victims of trafficking;
- taking measures to ensure that crimes related to human trafficking are investigated and prosecuted effectively, leading to proportionate and dissuasive sanctions.

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

2. Requests the Government of Montenegro to inform the Committee of the Parties of the measures taken to comply with this recommendation by 13 November 2014;

3. Invites the Government of Montenegro 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 Montenegro

Definition of "trafficking in human beings"

1. In order to be fully consistent with the definition of THB in the Convention, GRETA considers that the Montenegrin authorities should include abduction as one of the means for committing trafficking in human beings.
2. In order to be fully consistent with the definition of THB in the Convention, GRETA considers that the Montenegrin authorities should explicitly include "slavery and practices similar to slavery" in the forms of exploitation resulting from trafficking.
3. GRETA considers that stating explicitly the irrelevance of the consent of a victim of trafficking to the intended exploitation could improve the implementation of anti-trafficking provisions.
4. GRETA considers that the Montenegrin authorities should expand the scope of Article 445 of the CC to include children up to the age of 18, in line with the Convention.

Definition of "victim of trafficking"

5. GRETA urges the Montenegrin authorities to review the definition of victim of THB, in the light of the above considerations and amend the relevant legislation.

Comprehensive approach and co-ordination

6. GRETA considers that the Montenegrin authorities should further strengthen the co-ordination between the national authorities and NGOs active in the field of action against THB to ensure that NGOs are involved in the planning and implementation of national policy.
7. Further, GRETA considers that the Montenegrin authorities should take further steps to ensure that the national action to combat THB is comprehensive, and in particular:
 - encourage more effective participation of all public bodies involved in the implementation of anti-trafficking measures at the national and local levels, and increase the co-ordination of their activities; in this context, it is important to further raise awareness of the Memorandum of Co-operation and the responsibilities arising from it;
 - pay increased attention to preventive measures among vulnerable groups, such as the RAE communities, internally displaced persons, and children without parental care residing in institutions;
 - ensure that gender mainstreaming is reflected in the national anti-trafficking policy and practice;
 - include in the National Strategy measures to address THB for the purpose of labour exploitation.
8. GRETA also considers that the Montenegrin authorities should ensure that the status of the Office for the Fight against THB be clarified as a matter of priority and that the Office be put in a position to fulfil its co-ordinating mandate effectively. GRETA invites the Montenegrin authorities to invest in the human and financial resources of the Office for the Fight against THB so that it can effectively carry out the full range of tasks within their mandate.

9. Further, GRETA invites the Montenegrin authorities to introduce an independent evaluation of the National Strategy and Action Plans as a tool for assessing the impact of the activities and for planning future policies and measures to combat THB.

Training of relevant professionals

10. GRETA considers that the Montenegrin authorities should take further steps to improve the knowledge and sensitivity of relevant professionals about THB and the rights of victims, in particular social workers, law enforcement officials, lawyers, prosecutors, judges, etc. 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, to assist and protect them, and to secure convictions of traffickers. During the training, particular attention should be paid to overcoming entrenched negative attitudes and prejudices vis-à-vis victims of trafficking.

Data collections and research

11. GRETA considers that, for the purpose of preparing, monitoring and evaluating anti-trafficking policies, the Montenegrin authorities should develop and maintain a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical information from all main actors 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, including when NGOs working with victims of trafficking are asked to provide information for the national database.

12. GRETA invites the Montenegrin authorities to continue conducting and supporting research on THB-related issues as an important source of information for future policy measures. Areas where research is needed in order to shed more light on the extent of the problem of THB include trafficking for the purpose of labour exploitation and trafficking in children.

International co-operation

13. GRETA invites the Montenegrin authorities to continue exploring possibilities for international co-operation in the fields of protecting and assisting victims of THB, and the investigation and prosecution of trafficking cases.

Measures to raise awareness and discourage demand

14. GRETA considers that future actions in the area of awareness raising should be designed in the light of the assessment of previous measures and be focused on the needs identified. Awareness-raising campaigns, education in schools and training of relevant professionals should aim at promoting gender equality and eradicating gender-based violence and the stigmatisation of victims of trafficking.

15. Further, GRETA considers that the Montenegrin authorities should continue their efforts to discourage demand for services from trafficked persons.

Social, economic and other initiatives for groups vulnerable to THB

16. GRETA considers that there is scope for strengthening measures for groups vulnerable to THB on the basis of the identified root causes of THB (economic and social conditions, poverty, inadequate education, absence of employment opportunities, etc.).

17. GRETA also urges the Montenegrin authorities to ensure the registration of all children at birth, as a preventive measure against trafficking. Further, GRETA urges the Montenegrin authorities to take steps to secure the registration of all persons from vulnerable groups for social services, both as a prevention measure and in order to avoid re-trafficking.

Border measures to prevent THB and measures to enable legal migration

18. GRETA considers that the Montenegrin authorities should make further efforts to:
- detect cases of THB in the context of border control;
 - introduce a checklist to identify potential THB-related risks during the visa application system;
 - provide regular training to Border Police officers, with a view to improving their capacity to detect potential victims of trafficking.
19. Further, GRETA invites the Montenegrin authorities to consider carrying out information campaigns to alert potential foreign victims of THB-related risks, in co-operation with countries of origin.

Identification of victims of trafficking in human beings

20. GRETA urges the Montenegrin authorities to:
- disconnect victim identification from criminal proceedings (see also paragraph 51 concerning the definition of victim of THB);
 - strengthen multi-agency involvement in victim identification by introducing a national referral mechanism which defines the roles and procedures of all frontline staff who may come into contact with victims of trafficking;
 - provide frontline staff with operational indicators, guidance and toolkits to be used in the identification process; these indicators should be regularly updated in order to reflect the changing nature of victimhood of human trafficking;
 - develop multi-agency training on the identification of victims for frontline staff (including law enforcement officials, labour inspectors, social workers, medical staff, staff of special institutions for children and NGOs);
 - ensure that law enforcement officials, social workers, labour inspectors and other relevant actors adopt a more proactive approach and increase their outreach work to identify potential victims of trafficking.

Assistance to victims

21. GRETA urges the Montenegrin authorities to step up their efforts to provide assistance to victims of trafficking, and in particular to:
- ensure that conditions provided in shelters for victims of trafficking are adequate and adapted to their special needs. In this context, better balance should be struck between the need to place victims of THB in a safe accommodation and the need to achieve their recovery and rehabilitation; this requires greater awareness among staff working with such victims as regards the need to respect the victims' privacy and to assist in their rehabilitation;
 - facilitate the reintegration of victims of trafficking into society and avoid re-trafficking by providing them with vocational training and access to the labour market;
 - improve the system for providing assistance to child victims of trafficking, both in terms of accommodation and as regards medium and long-term support programmes tailored to the needs of the children;
 - ensure that all the signatories of the Memorandum of Co-operation effectively fulfil their responsibilities related to the provision of assistance to potential victims of trafficking;
 - provide training to all professionals responsible for the provision of assistance and protection measures to victims of trafficking.

Recovery and reflection period

22. GRETA urges the Montenegrin authorities to review the legislation in order to ensure that the recovery and reflection period provided for in Article 13 of the Convention is specifically defined in law.

23. Further, GRETA urges the Montenegrin authorities to ensure that trafficked persons are systematically informed of the possibility to use a recovery and reflection period and are effectively granted such a period.

Residence permits

24. GRETA urges the Montenegrin authorities to ensure that victims of THB can take full advantage of the right to be granted a renewable residence permit.

Compensation and legal redress

25. GRETA urges the Montenegrin authorities to step up their efforts to provide information to victims of THB about their right to compensation and ways to access it, and to ensure that victims have effective access to legal aid in this respect.

26. Further, bearing in mind that no victims of trafficking have received compensation from the perpetrators, GRETA encourages the Montenegrin authorities to set up a State compensation scheme accessible to victims of THB, as envisaged by the draft Law on Compensation for Damages to Victims of Crime.

Repatriation and return of victims

27. GRETA considers that the Montenegrin authorities should take additional steps to develop the institutional and procedural framework for the repatriation and return of victims of THB, with due regard to their safety, dignity and protection. Particular attention should be paid to ensuring financial means for the travel of victims of THB.

Substantive criminal law

28. In order to be fully consistent with requirements under Article 24 of the Convention, GRETA considers that the Montenegrin authorities should include commission of a criminal offence by a public official in the performance of his/her duties and deliberately or by gross negligence endangering the victim's life as aggravating circumstances.

29. GRETA considers that the Montenegrin authorities should take the necessary measures to establish as criminal offences the acts of providing, procuring, concealing, damaging or destroying a travel or identity document of another person when committed intentionally and for the purpose of enabling THB.

30. GRETA considers that the Montenegrin authorities should to take steps to ensure the application in practice of the legal provisions concerning the confiscation of assets of persons convicted for THB offences.

31. GRETA considers that in the context of the drafting of the new Criminal Code, the Montenegrin authorities should conduct a thorough assessment of the effectiveness of the criminal law provisions concerning THB and the above-mentioned related provisions of the CC, with a view to avoiding any overlap in their scope and improving legal clarity and legal certainty.

Non-punishment of victims of trafficking in human beings

32. GRETA urges the Montenegrin authorities to take legislative measures allowing for the possibility of not imposing penalties on victims of THB for their involvement in unlawful activities to the extent that they were compelled to do so.

Investigation, prosecution and procedural law

33. GRETA urges the Montenegrin authorities to take measures to:

- identify gaps in the investigation procedure and the presentation of cases in court, *inter alia*, with a view to ensuring that crimes related to THB are investigated and prosecuted effectively, leading to proportionate and dissuasive sanctions;
- strengthen investigation and prosecution of trafficking cases with the involvement of public officials by imposing and enforcing proportionate and dissuasive sanctions upon those convicted.

34. GRETA also considers that the Montenegrin authorities should make full use of all measures available to protect victims and to prevent intimidation during the investigation and during and after the court proceedings. In this context, the Montenegrin authorities should take additional measures to ensure that victims of THB are adequately informed and assisted during the pre-trial and court proceedings.

35. Further, GRETA considers that there is need for improvement of the knowledge and sensitivity of judges, prosecutors, investigators and lawyers about THB and the rights of victims. 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, to assist and protect them, and to secure convictions of traffickers. During the training, particular attention should be paid to overcoming entrenched negative attitudes and prejudices vis-à-vis victims of trafficking.