



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

Recommendation CP(2017)26 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belarus

*adopted at the 21st meeting of the Committee of the Parties
on 13 October 2017*

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 accession deposited by Belarus on 26 November 2013;

Having examined the Report concerning the implementation of the Convention by Belarus, adopted by GRETA at its 28th meeting (27-31 March 2017) in the framework of the first evaluation round;

Having examined the comments of the Belarusian Government on GRETA's report, submitted on 19 June 2017;

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

- the adoption of a specific law on combating trafficking in human beings and related secondary legislation;
- the setting up of specialised law enforcement structures for combating and investigating trafficking in human beings offences as well as regional multi-disciplinary groups co-ordinating anti-trafficking action and the exchange of information at regional level;
- the setting up of the International Training Centre on Migration and Combating Trafficking in Human Beings and the efforts made to provide training to relevant professionals;
- the efforts to raise general public awareness of the risks of trafficking and to target specific groups, in particular young people and persons travelling to work abroad;
- the adoption of regulations on the identification of victims of trafficking and the legal amendments enabling specialised civil society organisations to apply for public funding of services they provide to victims of human trafficking;
- the initiatives aimed to enhancing international co-operation in the field of action against human trafficking;

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

- strengthening action to prevent and combat human trafficking for the purpose of labour exploitation by involving all relevant actors, including labour inspectors, trade unions, businesses and civil society;
- improving the identification of victims of trafficking by disconnecting it from the initiation of criminal proceedings, promoting a multi-agency involvement in the decision-making process and paying increased attention to detecting trafficking victims among asylum seekers and irregular migrants;
- introducing a procedure for the identification of child victims of trafficking and taking steps to provide them with specific assistance by trained professionals, taking into account the best interests of the child;
- defining in law the recovery and reflection period provided for in Article 13 of the Convention and ensuring that trafficked persons are effectively granted such a period;
- facilitating access to compensation for victims of trafficking by setting up a State compensation scheme which is accessible to them and ensuring their effective access to legal aid;
- ensuring that the return of victims of trafficking is conducted with due regard for the rights, safety and dignity of the person, is preferably voluntary, and in the case of children, fully respects the principle of the best interests of the child;
- taking additional measures to ensure 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, in pursuance to Article 26 of the Convention.

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

2. Requests the Government of Belarus to inform the Committee of the Parties of the measures taken to comply with this recommendation **by 14 October 2019**;

3. Invites the Government of Belarus 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 Belarus

Core concepts and definitions

1. In order to be fully consistent with the definition of THB in the Convention, GRETA considers that the Belarusian authorities should include "abuse of a position of vulnerability" as one of the means for committing trafficking in human beings.
2. GRETA urges the Belarusian authorities to take legislative measures to fully align the definition of THB with the provisions of the Convention as regards trafficking in children by removing the requirement of "prior knowledge that the person is a child".
3. GRETA therefore invites the Belarusian authorities to specify in the Criminal Code and the regulations on the identification of victims of trafficking the irrelevance of victim's consent to the intended exploitation when any of the means are used with a view to ensuring the effective application of this principle in practice.
4. GRETA invites the Belarusian authorities to 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.

Comprehensive approach and co-ordination

5. GRETA considers that the Belarusian authorities should consolidate the co-ordination of anti-trafficking activities at the national level by ensuring regular exchange of information between all public bodies involved in prevention of THB, identification and assistance to victims, and prosecution of traffickers. GRETA considers that the establishment of the post of National Co-ordinator on action against THB, supported by a dedicated office, would significantly strengthen co-ordination.
6. 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 involvement of specialised NGOs and other relevant civil society actors in the planning, drafting, implementing and evaluating of national anti-trafficking policies.
7. Moreover, GRETA urges the Belarusian 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 introducing measures to prevent this form of trafficking, by involving all relevant actors (labour inspectors, trade unions, employment agencies, businesses and civil society), and improving the identification of and assistance to victims of THB for the purpose of labour exploitation;
 - address the particular vulnerability to trafficking of children and persons from groups affected by unfavourable social and economic conditions;
 - take steps to address internal trafficking.

Training of relevant professionals

8. GRETA welcomes the setting up of the International Training Centre on Migration and Combating Trafficking in Human Beings and invites the Belarusian authorities to use this training platform to disseminate information about legislative changes, new trends and the application of the new National Referral Mechanism.

Data collection and research

9. For the purpose of preparing, monitoring and evaluating anti-trafficking policies, GRETA considers that the Belarusian authorities should develop and maintain a comprehensive statistical system on trafficking in human beings by compiling reliable statistical data on presumed and formally identified victims of THB from all main actors, including specialised NGOs and international organisations, as well as on the investigation, prosecution and adjudication of human trafficking cases, allowing disaggregation concerning sex, age, type of exploitation, and 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.

10. GRETA considers that the Belarusian authorities should conduct and support research on THB issues as an important source of information for the evaluation of current programmes and for planning future policy measures. More research is needed in order to shed light on new trends of human trafficking in Belarus and inform policy makers, to establish root causes and groups most vulnerable to THB, including among foreign nationals, the extent and characteristics of trafficking for the purpose of labour exploitation, as well as the misuse of the Internet for the commission of THB, including through social networks.

International co-operation

11. GRETA commends the efforts of the Belarusian authorities to develop international co-operation in the field of action against THB and invites them to continue these efforts with a view to preventing THB, providing assistance to Belarusian and foreign victims of trafficking, and prosecuting traffickers.

Measures to raise awareness

12. GRETA considers that the Belarusian authorities should continue their efforts to prevent THB, in particular for the purpose of labour exploitation, in co-operation with countries where Belarusian nationals are exploited. Future awareness-raising measures should be designed in the light of the assessment of previous measures, focussing on the needs identified and new trends.

Measures to discourage demand

13. GRETA considers that the Belarusian authorities should 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.

14. Further, GRETA invites the Belarusian 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.

Social, economic and other initiatives for groups vulnerable to THB

15. GRETA considers that the Belarusian authorities should further strengthen the prevention of THB through social and economic empowerment measures for groups vulnerable to THB. Such measures should be based on the root causes of THB (economic and social conditions, gender inequality, gender-based violence, vulnerability of children, and absence of employment opportunities) and should aim to decrease and ultimately eliminate these causes.

Border measures to prevent THB

16. GRETA invites the Belarusian authorities to continue their efforts to detect and prevent THB through border control measures, and to enable migration to take place legally.

Identification of victims of trafficking in human beings

17. GRETA urges the Belarusian authorities to take further steps to improve the identification of victims of THB, in accordance with the provisions of Article 10 of the Convention, and in particular to:

- ensure that, in practice, the determination of reasonable grounds to believe that a person is a victim of human trafficking does not depend on the presence of elements to prove a criminal offence of THB or related offence;
- promote a multi-agency involvement in the decision-making process leading to the identification of victims of trafficking, taking account of the findings and expertise of all relevant organisations and entities, including labour, employment and social protection services and public associations;
- introduce a procedure for the identification of child victims of trafficking which takes into account the special circumstances and needs of child victims of THB, involves child specialists, includes outreach activities and ensures that the best interests of the child are the primary consideration;
- provide frontline staff (in particular police officers, border guards, social workers and health-care professionals) with operational indicators, manuals and instructions which are regularly updated in order to reflect the changing nature of human trafficking and types of exploitation;
- pay increased attention to detecting victims of THB among asylum seekers and persons detained as irregular migrants and provide additional training to staff who come in contact with such persons. In this context, GRETA stresses the importance of providing presumed victims of THB with access to interpretation and information on their rights, in a language they can understand, from the early stages of the procedure.

Assistance to victims

18. GRETA considers that the Belarusian authorities should enhance their efforts to provide assistance to victims of trafficking, and in particular to:

- ensure that assistance is provided for as long as needed to presumed and formally identified victims of trafficking and is not discontinued if no criminal proceedings are initiated;
- ensure that all assistance measures provided for in law are guaranteed in practice; when assistance is delegated to NGOs or other non-state actors as service providers, the State has an obligation to provide adequate financing and ensure the quality of the services delivered by the NGOs;
- provide appropriate and safe accommodation with a sufficient number of places for victims of trafficking, including men and children, in the light of the assessment of trafficking trends in Belarus;

- ensure that the services available are adapted to the specific needs of trafficking victims and that minimum standards are guaranteed when victims of trafficking are accommodated in structures not specifically designed them;
- 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;
- provide regular training to all professionals responsible for implementing assistance measures for victims of trafficking.

19. Further, GRETA urges the Belarusian authorities to take steps to provide for specific assistance for child victims of trafficking which takes into account their specific circumstances and the best interests of the child, and to train all professionals working with child victims of trafficking to recognise and respond appropriately to their needs.

Recovery and reflection period

20. GRETA urges the Belarusian authorities to ensure that the recovery and reflection period provided for in Article 13 of the Convention is specifically defined in law and that possible victims of THB, especially those at threat of expulsion from the country, are systematically informed of the possibility to use a recovery and reflection period and are effectively granted such a period.

Residence permits

21. GRETA considers that the Belarusian authorities should take additional steps to ensure that victims of human trafficking can effectively benefit from the right to obtain a renewable residence permit, as specified in Article 14 of the Convention, without prejudice to the right to seek and enjoy asylum. The relevant legislation should be amended to provide for the issuing of residence permits for child victims of trafficking, when legally necessary, in accordance with the best interests of the child and, where appropriate, renewed under the same conditions (Article 14, paragraph 2, of the Convention).

22. Further, GRETA invites the Belarusian authorities to consider granting temporary residence permits to victims of THB on the basis of their personal situation, in addition to the residence permit on the basis of the victim's co-operation in the investigation or criminal proceedings.

Compensation and legal redress

23. GRETA considers that the Belarusian authorities should adopt further 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 legal aid, by building the capacity of legal practitioners to support victims to claim compensation and by including the issue of victim compensation into training programmes for law enforcement officials, prosecution and the judiciary.

24. Further, GRETA urges the Belarusian authorities to set up a State compensation scheme accessible to victims of THB, regardless of their citizenship and residence status.

25. GRETA also invites the Belarusian authorities to collect statistical information concerning compensation awarded to victims of THB and related offences.

Repatriation and return of victims

26. GRETA urges the Belarusian authorities to take steps to:

- review the legal and procedural framework for the return of victims of THB in order to ensure that it is conducted with due regard for the rights, safety and dignity of the person and the status of any legal proceedings related to the fact that the person is a victim, is preferably voluntary and complies with the obligation of *non-refoulement* (Article 40(4) of the Convention);
- develop co-operation with the authorities and relevant NGOs in countries of origin of victims of trafficking in order to ensure proper risk assessment prior to the return/repatriation of the victims, and their rehabilitation and reintegration;
- ensure that the best interests of the child are effectively respected, protected and fulfilled, including through pre-removal risk and security assessments, in particular for unaccompanied children, by specialised bodies, working with relevant partners in countries of return.

Substantive criminal law

27. GRETA considers that the Belarusian authorities should conduct a thorough and comprehensive assessment of the effectiveness of the criminal law provisions concerning THB and related offences, with a view to clarifying the differences between trafficking offences and offences related to organising or facilitating prostitution, on the one hand, and between trafficking and illegal acts to send people for work abroad, on the other hand. The authorities should be prepared to readjust on the basis of such an assessment the content and/or the application of the relevant provisions with a view to addressing any shortcoming identified.

Non-punishment of victims of trafficking in human beings

28. GRETA urges the Belarusian authorities to take additional measures to ensure compliance with the provision on the non-punishment of victims of THB for their involvement in unlawful activities, to the extent that they were compelled to do so, in pursuance to 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, including with regard to criminal offences. Further, the Belarusian authorities should examine the possibility of repealing administrative sanctions imposed against victims of THB and providing compensation or reimbursement of fines paid by victims of THB.

Investigation, prosecution and procedural law

29. GRETA considers that the Belarusian authorities should take further measures to ensure that THB offences are prosecuted as such, and lead to effective, proportionate and dissuasive sanctions, including by:

- identifying gaps in the investigation and prosecution of THB cases;
- reviewing the existing legal provisions and court rulings on THB and related offences;
- carrying out proactive investigations of alleged cases of THB for the purpose of labour exploitation, including through co-operation with other countries;
- training investigators, prosecutors and judges on the rights of victims of THB and developing further their capacity and specialisation to deal with THB cases.

Protection of victims and witnesses

30. GRETA considers that the Belarusian authorities should make full use of the available measures to protect victims, including children, and to prevent intimidation during the investigation and during and after the court proceedings.

31. GRETA also considers that the “green rooms” should be used systematically to interview children and other vulnerable victims of THB, and to use the testimony given in such rooms in court, thus avoiding repeated questioning of victims. The Belarusian authorities should issue national guidance on the use of the “green rooms” with a view to clarifying and harmonising the procedure.