



Strasbourg, 7 September 2013

THB-CP(2013)13prov
CONFIDENTIAL

COMMITTEE OF THE PARTIES COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

12th meeting of the Committee of the Parties

Strasbourg, 7 October 2013
Meeting Room G03, Agora Building
Opening at 14:00

**Draft Recommendation on the implementation of the Council of Europe
Convention on Action against Trafficking in Human Beings by Spain**

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 Spain on 2 April 2009;

Having examined the Report concerning the implementation of the Convention by Spain, adopted by GRETA at its 17th meeting (1-5 July 2013) in the framework of the first evaluation round;

Having examined the comments of the Spanish Government on GRETA's report, submitted on ... 2013¹;

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

- the efforts to combat trafficking in human beings for sexual exploitation, particularly through the adoption of the National Action Plan to Combat Trafficking in Human Beings for Sexual Exploitation, the setting up of an Inter-ministerial Committee to evaluate its implementation, and the funding of specialised NGOs assisting women and girls victims of trafficking for the purpose of sexual exploitation;
- the adoption of legislation criminalising trafficking in human beings for the different types of exploitation as well as regulations providing for the rights of victims of trafficking;
- the adoption of the Framework Protocol for the Protection of Victims of Trafficking to improve the identification, assistance and protection of victims by all relevant actors;
- the possibility of extending the recovery and reflection period beyond 30 days in light of the needs and personal circumstances of the victim;
- the inclusion of a non-punishment clause in the Criminal Code and the issuing of instructions to prosecutors regarding it.

¹ The deadline for submitting comments was 16 September 2013.

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

- adopting a comprehensive approach to anti-trafficking action, in particular by paying increased attention to trafficking for the purpose of labour exploitation and strengthening prevention and protection measures addressing the particular vulnerability of children to trafficking;
- improving the identification of victims of trafficking, by strengthening multi-agency approach, providing regular training to relevant professionals and encouraging them to adopt a proactive approach to detecting victims, in particular among irregular migrants and unaccompanied minors;
- providing adequate assistance to all victims of trafficking, irrespective of the type of exploitation, and taking into account the particular needs of children;
- ensuring that all possible victims of trafficking are systematically informed of the possibility of benefitting from a recovery and reflection period and are effectively granted such a period without having to apply for it;
- adopting measures to ensure that avenues for compensation are effectively accessible to trafficked persons;
- ensuring that victims and possible victims of trafficking are not forcibly removed from the country and that the assisted voluntary return scheme is made available to them and is to their needs, with due regards for their rights, safety and dignity;
- protecting effectively victims and witnesses of human trafficking, both adults and children, during criminal proceedings, trials and beyond, if necessary.

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

2. Requests the Government of Spain to inform the Committee of the Parties of the measures taken to comply with this recommendation by 7 October 2015;

3. Invites the Government of Spain 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 Spain

Human rights-based approach to action against trafficking in human beings

1. GRETA encourages the Spanish authorities to strengthen their human rights approach to combating THB in the next human rights plan, including by addressing THB as a serious violation of the human rights of victims of trafficking.

Definition of "trafficking in human beings"

2. GRETA considers that the Spanish authorities should include the means of "abduction" and "giving or receiving of payments or benefits to achieve the consent of a person having control over another person" in the legal definition of trafficking in human beings.

Comprehensive approach and co-ordination

3. GRETA urges the Spanish authorities to take steps to ensure that national and regional action to combat THB is comprehensive, in particular by:

- addressing all victims of trafficking for all forms of exploitation in the anti-trafficking legal and policy framework, while taking into account the gender-dimension of trafficking, including through a comprehensive national action plan against THB;
- increasing efforts to prevent and detect THB within Spain, as well as addressing the situation of Spain as a country of transit;
- strengthening prevention and protection measures that address the particular vulnerability of children to trafficking.

4. Further, GRETA urges the Spanish authorities to strengthen co-ordination and co-operation:

- between State and regional authorities, including between the National Police, Civil Guard and regional police forces;
- between all competent authorities and civil society, in particular by clarifying the modalities of the participation of civil society in the development, implementation and evaluation of anti-trafficking measures and policies in Spain (at state level and in the autonomous communities), and by including civil society in the monitoring process established by the Framework Protocol for the Protection of Victims of Trafficking.

5. GRETA also considers that the Spanish authorities should analyse the implications of having different legal bases for the identification, referral and assistance of victims of trafficking depending on whether they are EU or third-country nationals, as this may negatively affect their rights under the Convention.

6. GRETA invites the Spanish authorities to commission an independent evaluation of the Action Plan to Combat THB for Sexual Exploitation, as a tool for assessing the impact of its activities and for planning future policies and measures to combat THB.

7. Further, GRETA invites the Spanish authorities to consider appointing a national rapporteur or other mechanism for monitoring the anti-trafficking activities of public authorities and the implementation of national legislation requirements (see Article 29, paragraph 4, of the Convention and paragraph 298 of the Explanatory Report).

Training of relevant professionals

8. GRETA considers that the Spanish authorities should take further steps to provide specialised and regular training about THB to all relevant professionals, in particular national and regional law enforcement agents (including border police), labour inspectors, social workers, child protection officers, visa officers, asylum officials, judges and prosecutors. Such training should address THB as a serious violation of human rights and cover the rights of victims of trafficking, including the protection needs of child victims of trafficking. Future 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, taking into consideration their gender and age, to facilitate compensation for victims, and to secure convictions of traffickers.

Data collection and research

9. GRETA urges the Spanish 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 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. The data collection system should contribute to the preparation, monitoring and evaluation of anti-trafficking policies.

10. GRETA considers that the Spanish authorities should continue conducting and supporting research on THB-related issues as an important source of information for future policy measures. Areas where further research is needed in order to shed more light on the extent of THB in Spain include trafficking for the purpose of labour exploitation, internal trafficking, child trafficking and the incidence of trafficking among irregular migrants and asylum seekers.

International co-operation

11. GRETA considers that the Spanish authorities should continue their efforts to strengthen international co-operation with governmental and non-governmental actors in order to prevent and combat all forms of THB, assist and protect victims of trafficking, and investigate and prosecute human trafficking cases.

12. Further, GRETA invites the Spanish authorities to evaluate the international co-operation activities carried out so far in order to focus future action on key priorities with a view to maximising the impact of the reduced financial resources.

Measures to raise awareness and discourage demand

13. GRETA urges the Spanish authorities to develop measures to raise awareness of THB for the purpose of labour exploitation. Information and education activities should also be taken to raise awareness about THB among Spanish nationals, including children. The Spanish authorities should plan future information and awareness-raising and education campaigns with the involvement of civil society, on the basis of research and impact assessment of previous measures, and focusing on the needs identified.

14. GRETA also urges the Spanish authorities to:

- continue efforts to discourage demand for the services of victims of trafficking for the purpose of sexual exploitation, bearing in mind that such measures should be balanced and not lead to the criminalisation of victims of trafficking;
- strengthen their efforts to discourage demand for the services of victims of trafficking for the purpose of labour exploitation, including by reinforcing labour inspections, in particular in sectors at high risk such as agriculture, textile industry, domestic service, construction and the hotel/catering trade.

15. GRETA invites the Spanish authorities to consider adopting legislative and other measures to criminalise the use of services provided by victims of trafficking, with the knowledge that the person is such a victim.

16. Further, GRETA invites the Spanish authorities to continue contributing to prevention activities to raise awareness of THB in the main countries of victims trafficked to Spain.

Border measures to prevent THB and measures to enable legal migration

17. GRETA urges the Spanish authorities to strengthen their efforts to detect cases of THB at the borders and when tackling irregular migration, in particular by providing specialised and regular training on THB, from a human rights and a victim-centred approach, to law enforcement officers, including border police, with clear instructions on how to proceed.

18. GRETA also considers that Spanish authorities should:

- keep under review the application of the new instructions to register undocumented children arriving in Spain and check the relationship between the child and the accompanying adult(s);
- keep under review the issuing of visas and accreditations for domestic workers in diplomats' households;
- take further steps to provide written information to foreign nationals seeking employment in Spain, in a language that they can understand, in order to alert them about the risks of THB for sexual and labour exploitation, as well as to inform them of their rights and where to go for help and advice.

Identification of victims of trafficking in human beings

19. GRETA urges the Spanish authorities to review the identification procedure of victims of trafficking with a view to ensuring that possible victims are treated, in the first place, as persons who have been exposed to human rights violations rather than as a source of evidence for criminal investigations. To this end, the Spanish authorities should:

- strengthen multi-agency involvement in the decision-making process leading to the identification of victims of trafficking, including giving a formal role in the identification process to other frontline actors, such as labour inspectors, social workers, medical staff and NGOs;
- ensure appropriate co-ordination and exchange of information between all relevant actors involved in the identification procedure;
- ensure that the indicators and other tools used for the identification of victims of trafficking cover all types of THB and that their application is duly monitored and evaluated;

- allow enough time for the identification of victims of trafficking, taking into account the traumatic experience suffered and the need for sufficient time to gather all the necessary information and decide on the identification;
- ensure the quality and availability of interpreters during the identification process, and provide the information document with the rights of victims of trafficking in a language that they can understand;
- inform in writing the persons concerned, in a language that they understand, about the outcome of the identification procedure;
- adopt a proactive approach to the identification of victims of trafficking for the purpose of labour exploitation, in particular in the sectors most at risk such as agriculture, construction, textile, restaurants, hotels and domestic work;
- improve the detection and identification of victims of trafficking among irregular migrants through a proactive approach which requires regular training on THB and the rights of victims for immigration, border police and asylum officers, including staff working at the CIEs and CETIs;
- take into account the special needs and circumstances for the identification of child victims of trafficking, which includes the setting up of a specific referral mechanism for children involving child specialists, child protection services, and specialised police and prosecutors.

Assistance to victims

20. GRETA considers that a specialisation of lawyers providing free legal assistance to victims and presumed victims of trafficking, not only in the case of sexual exploitation but all types of exploitation, should be reproduced in other parts of Spain.

21. GRETA urges the central and regional authorities in Spain to ensure that all victims of trafficking are provided with adequate support and assistance, from their identification through to their recovery, and in particular to:

- adopt minimum standards for assistance to all victims of trafficking, regardless of their sex, age, nationality and type of exploitation, and providing adequate funding to maintain these standards;
- ensure that safe and suitable temporary accommodation is provided to all victims of trafficking, adapted to their needs;
- ensure access to health services for all victims of trafficking in Spain;
- enable victims of trafficking lawfully resident in Spain to have access to the labour market, vocational training and education as a form of rehabilitation;
- ensure that undocumented foreign victims of trafficking have effective access to assistance measures by providing them with temporary identity documents;
- ensure that children victims of trafficking benefit from the assistance measures provided by the Convention, in a way which is tailored to their needs;

- provide specialised training to all professionals responsible for the provision of assistance and protection measures to victims of trafficking, including to lawyers giving free legal assistance to victims of trafficking;
- monitor the system of assistance to victims of trafficking and adapt it accordingly to ensure that it corresponds to the victims' needs.

Recovery and reflection period

22. GRETA urges the Spanish authorities to review the rules and application of the recovery and reflection period with a view to ensuring, in compliance with the obligations under Article 13 of the Convention, that all possible victims of trafficking, including EU nationals, are systematically informed of the possibility to benefit from a recovery and reflection period, and offered one without having to apply for it. As part of this review, the authorities should establish clear criteria for determining the duration of the recovery and reflection, taking into account the personal situation and need to recover of the possible victim, and provide training to the competent authorities in order to ensure that these criteria are applied in a harmonised way throughout Spain. The Spanish authorities should also address the reasons why so few victims of trafficking apply for and are granted a recovery and reflection period.

23. Further, GRETA considers that the Spanish authorities should take additional steps to ensure that victims and possible victims of trafficking have access to all the assistance measures provided for in Article 12 (1) and (2) of the Convention during the recovery and reflection period.

Residence permits

24. GRETA considers that the Spanish authorities should strengthen their efforts to ensure that victims of trafficking can take full advantage of the right to be granted a temporary residence permit for their personal situation and/or for co-operating with the authorities, in particular by:

- setting up clear criteria for granting a residence permit to victims of trafficking on the basis of their personal situation and for co-operation with the authorities;
- ensuring that the competent authorities are provided with updated information and receive adequate training to ensure a harmonised application of those criteria across Spain;
- setting a timeframe for the processing of applications for residence permits for victims of trafficking;
- taking due account of the information submitted by specialised NGOs when considering applications for residence permits on the basis of the victim's personal situation.

25. Further, GRETA considers that the Spanish authorities should strengthen their efforts to ensure that measures taken to implement the Convention do not affect the rights of adult and child victims of trafficking under international human rights law, in particular regarding access to international protection and the respect of the principle of *non-refoulement*, in line with Articles 14(5) and 40(4) of the Convention.

Compensation and legal redress

26. GRETA urges the Spanish authorities to systematically provide information to victims of trafficking, in a language that they can understand, on their right to compensation from the traffickers and/or the State and the procedures to be followed, and to ensure that victims have effective access to legal aid in this respect.

27. GRETA considers that the Spanish authorities should amend Law 35/1995 on the Assistance to Victims of Violent Crimes and Crimes against Sexual Freedom so that all victims of trafficking have access to State compensation, regardless of their nationality, type of exploitation and without needing to have sustained grievous bodily harm or serious physical or mental damage as a result of THB.

28. Further, GRETA considers that the Spanish authorities should strengthen their efforts to ensure that convicted traffickers pay compensation to victims of trafficking, including through appropriate training and co-ordination between the police, judges and prosecutors so that they can investigate, identify and freeze assets as well as verify the profits made by traffickers.

Repatriation and return of victims

29. GRETA urges the Spanish authorities to ensure that victims and possible victims of trafficking are not forcibly removed from the country and that the assisted voluntary return scheme is made available to them and adapted to their needs, with due regard for their rights, safety and dignity. This implies informing victims of trafficking about existing programmes, protecting them from re-victimisation and re-trafficking and, in the case of children, fully respecting the principle of the best interest of the child.

30. Further, GRETA considers that the Spanish authorities should take steps to develop co-operation with countries of origin of victims of trafficking in order to ensure proper risk assessment and safe return, as well as their effective reintegration.

Substantive criminal law

31. GRETA consider that the Spanish authorities should review the legislation in order to fully reflect the substantive provisions of Article 20 of the Convention regarding the criminalisation of acts relating to travel or identity documents.

Non-punishment of victims of trafficking in human beings

32. GRETA urges the Spanish authorities to remove the reference to collaboration with the authorities for victims of trafficking to be exempted from the responsibility derived from their irregular stay in Spain.

33. GRETA considers that the Spanish authorities should keep under review the application of the non-punishment provision in Article 177 bis, paragraph 11, of the CC and the guidance provided by Circular 5/2001 of the Prosecution Service, and draw attention to the non-punishment principle in the training provided to relevant professionals (in particular law enforcement officials, prosecutors and judges).

Investigation, prosecution and procedural law

34. GRETA considers that the Spanish authorities should strengthen their efforts to ensure that crimes related to THB for all types of exploitation are investigated and prosecuted promptly and effectively.

35. Further, GRETA considers that there is need for continuing to improve the specialisation and training of judges, prosecutors, police investigators and lawyers regarding THB and the rights of victims of trafficking.

Protection of victims and witnesses

36. GRETA urges the Spanish authorities to ensure that victims and witnesses of human trafficking are effectively protected during the criminal proceedings and beyond, if necessary, in accordance with Article 28 of the Council of Europe Convention. To this end, the Spanish authorities should review the appropriateness of the current system for the protection of victims and witnesses of THB, both adults and children.