
Monitoring access to compensation: findings of the Council of Europe Group of Experts on Action against Trafficking in Human Beings(GRETA)



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Europe Convention on Action against
Trafficking in Human Beings

Council of Europe Convention on Action against Trafficking in Human Beings

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- ❑ Entry into force: 1 February 2008
 - ❑ 47 State Parties
 - ❑ The Convention is not restricted to Council of Europe member states
 - ❑ Monitoring mechanism: GRETA, composed of 15 independent multi-disciplinary experts, and Committee of the Parties
 - ❑ First evaluation round: 2010 – 2014
 - ❑ Second evaluation round: 2014 – 2019
 - ❑ Third evaluation round: launched November 2019



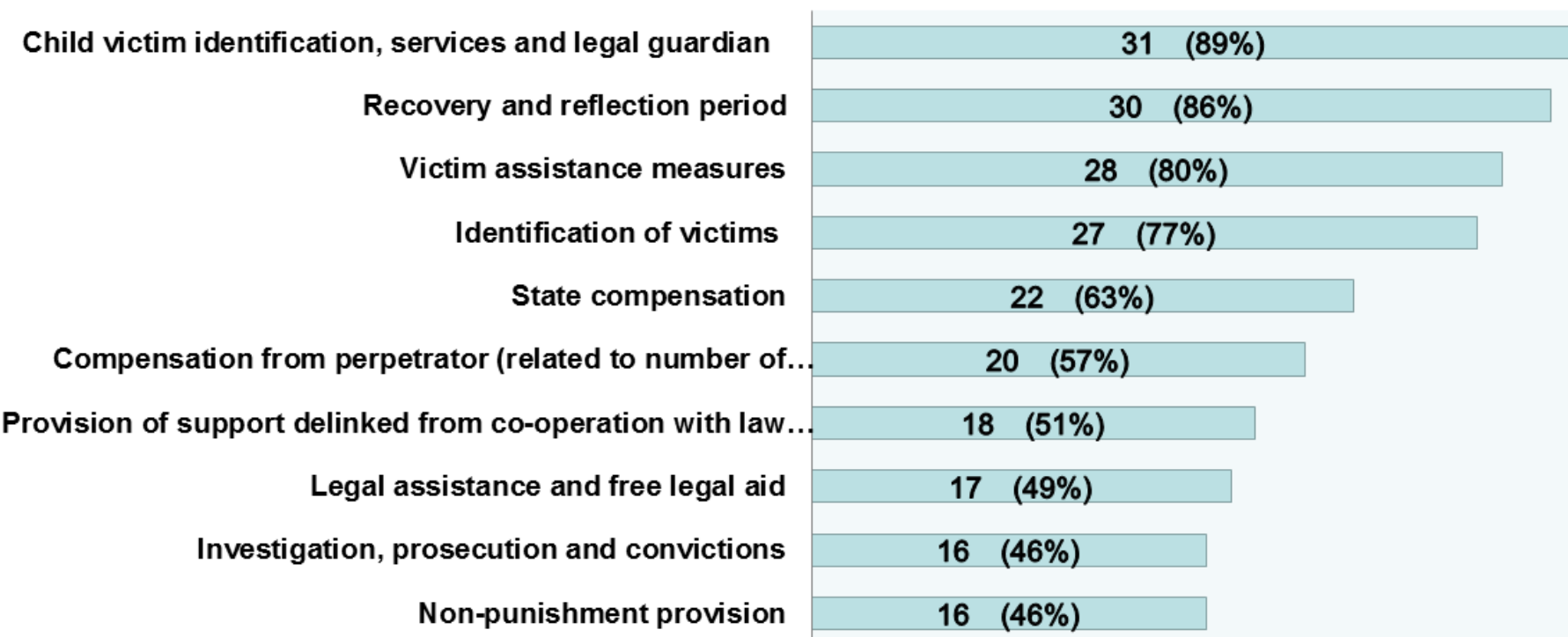
Treaty obligations

Article 15 – Compensation and legal redress

- ❑ Each Party shall ensure that victims have access, as from their first contact with the competent authorities, to **information** on relevant judicial and administrative proceedings in a language which they can understand.
- ❑ Each Party shall provide, in its internal law, for the right to **legal assistance and to free legal aid** for victims under the conditions provided by its internal law.
- ❑ Each Party shall provide, in its internal law, for the right of victims to **compensation from the perpetrators**.
- ❑ Each Party shall adopt such legislative or other measures as may be necessary to **guarantee compensation** for victims in accordance with the conditions under its internal law, for instance through the establishment of a **fund** for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23.

Main gaps identified by GRETA in the first 35 evaluated countries (4th General report, 2014)

Ten main gaps in the implementation of the Convention: number of countries "urged" by GRETA to take action





First evaluation round findings re. compensation (35 Parties)

- ❑ Only a few countries provided information concerning compensation from the perpetrator.
- ❑ In general, very few victims of trafficking received compensation from the perpetrators, the amounts awarded were low and often the compensation orders were not enforced because the perpetrators did not have identifiable assets.
- ❑ The procedures to access compensation were complex.
- ❑ While the majority of evaluated countries had legislation which made it possible for victims of trafficking to claim compensation from the state under certain conditions, state compensation was not available in 7 countries (Andorra, Armenia, Bosnia and Herzegovina, North Macedonia, San Marino, Serbia, Ukraine).



First evaluation round findings re. compensation (35 Parties)

- ❑ GRETA urged 20 countries to take steps to facilitate and guarantee access to compensation for victims of trafficking, including by systematically providing information to victims on their right to claim compensation and the procedures to follow, and guaranteeing their effective access to legal aid.
- ❑ GRETA urged 22 countries to improve the provision of state compensation, including by setting up state compensation schemes accessible to victims of THB, regardless of their citizenship and residence status.
- ❑ GRETA welcomed the introduction of a system of advance payment of state compensation to victims of trafficking in Iceland, Netherlands and Sweden.



Second evaluation round findings (preliminary)

- ❑ More countries have provided information concerning compensation from the perpetrator
- ❑ More compensation awards and/or good practices noted in some countries (e.g. Austria, Belgium, Luxembourg, the Netherlands, Norway...)
- ❑ But: no improvements noted in most countries (e.g. Armenia, Albania, Bulgaria, Croatia, Italy, Romania, Serbia ...)
- ❑ State compensation still not available in some countries (Albania, Bosnia and Herzegovina, Moldova, Montenegro, North Macedonia, Serbia, Ukraine)
- ❑ Attempts to develop State compensation schemes through various projects, but difficulties due to political and financial problems.
- ❑ Bulgaria: there has been forfeiture of assets of convicted traffickers, but assets forfeited in human trafficking cases are not earmarked for the compensation of victims of THB.

GRETA recommendations re. compensation

- 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.
- Ensure that all victims of human trafficking, regardless of nationality and residential status, are eligible for State compensation.
- Set up a State compensation scheme effectively accessible to victims of trafficking.
- Review the maximum amount of compensation paid by the State in order to ensure that it corresponds to the actual harm suffered by victims.

GRETA recommendations

- ❑ Review the criminal and civil procedures regarding compensation from perpetrators.
- ❑ Make full use of the existing legislation on the freezing and forfeiture of assets to secure compensation to victims of trafficking.
- ❑ Enable victims of trafficking who have left the country to benefit from the possibility of claiming compensation.
- Enable victims of trafficking to exercise their right to compensation, by building the capacity of legal practitioners to support victims to claim compensation.
- Include victim compensation into training programmes for law enforcement officials, prosecutors and judges.
- Develop a system for recording compensation claims and awards.

Third evaluation round

- ❑ Thematic focus: “Access to justice and effective remedies for victims of trafficking in human beings” - essential for victims’ rehabilitation and reinstatement of rights, and reflects a victim-centred and human rights-based approach to the fight against human trafficking.
- ❑ Access to justice and effective remedies must be guaranteed to all victims of trafficking subject to the jurisdiction of State Parties, irrespective of their immigration status or presence on the national territory and notwithstanding their capacity or willingness to co-operate in any criminal investigation.
- ❑ Victims of trafficking, by virtue of their status as victims of human rights violations, are entitled to effective remedies under the European Convention on Human Rights.



Questions re. compensation from the perpetrators

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- ❑ What measures are in place to enable courts to award compensation to victims of THB, including children, from the perpetrators as part of criminal proceedings? What is the role of prosecutors in this respect?
 - ❑ How is the amount of compensation calculated and are there specific criteria or models for calculating it? What types of injury/damage and costs are covered? Are there any circumstances/conditions that would lead to a reduction of the amount of compensation?
 - ❑ How are compensation orders/verdicts enforced? What measures are in place to guarantee and ensure effective payment of compensation?
 - ❑ When foreign victims of THB are removed from or choose to leave the country where the exploitation took place, what measures are in place to enable them to obtain compensation and other remedies?

Questions re. compensation from the perpetrators, access to legal aid

- ❑ What procedures are in place to ensure effective access to compensation for victims of THB for the purpose of labour exploitation? Can such victims bring civil claims for compensation and/or recovery of unpaid wages and social contributions on the basis of tort, labour, employment or other laws? Please specify the relevant measures. Can victims of THB working in irregular employment or without a contract claim unpaid wages and other compensation and if yes, how is the amount of unpaid wages and other compensation established?
- ❑ What training is provided to build the capacity of relevant professionals, such as lawyers, law enforcement officers, prosecutors and judges, to enable victims of THB to obtain compensation and other remedies?
- ❑ Is free legal aid available to help victims claim compensation and execute compensation orders?



Questions re. State compensation

- ❑ Do the eligibility criteria for State compensation schemes for victims of crimes exclude some victims of THB (e.g. due to irregular residence status, nationality, nature of the offence)? Does access to State compensation depend on the outcome of the criminal case and on failure to obtain compensation from the offenders?
- ❑ How is the amount of State compensation calculated so as to address the gravity of the harm endured by the victim?
- ❑ Is it possible for foreign victims of trafficking to submit claims for State compensation in your country after being returned or repatriated to their countries of origin? Please provide examples of any such cases and indicate the measures stipulating such a possibility.
- ❑ Are victims seeking State compensation liable for lawyers' costs and fees? Are State compensation awards subject to taxation? Does the receipt of compensation have consequences for access to social security or other benefits?

Questions re. international co-operation, cross-cutting questions

- ❑ How does your country co-operate with other countries to enable victims of THB to realise their right to redress and compensation, including recovery and transfer of unpaid wages after they leave the country in which the exploitation occurred?
- ❑ Has your country co-operated with other countries in the investigation and prosecution of THB cases through financial investigations and/or Joint Investigation Teams? Please provide statistics on such cases and examples from practice.
- ❑ What steps are taken to ensure that victims of THB have equal access to justice and effective remedies, irrespective of their immigration status and the form of exploitation?
- ❑ What options exist for victims of trafficking to access effective remedies from businesses implicated in human trafficking?

THANK YOU

**For further information and
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