ARTICLE 37

COMMITTEE OF THE PARTIES

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1 The Committee of the Parties shall be composed of the representatives on the Committee of Ministers of the Council of Europe of the member States Parties to the Convention and representatives of the Parties to the Convention, which are not members of the Council of Europe.

2 The Committee of the Parties shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within a period of one year following the entry into force of this Convention in order to elect the members of GRETA. It shall subsequently meet whenever one-third of the Parties, the President of GRETA or the Secretary General so requests.

3 The Committee of the Parties shall adopt its own rules of procedure.

A. INTRODUCTION

The inclusion of Article 37, establishing the ‘Committee of the Parties’, was a rather late development in the negotiations leading to the Council of Europe (CoE) Convention on Action against Trafficking in Human Beings.\(^1\) The Committee eventually became the second pillar of the Convention’s monitoring mechanism, next to the CoE Group of Experts on Action against Trafficking in Human Beings (GRETA), set up in Article 36 of the CoE Convention against Trafficking. Together, these two bodies seek to ensure effective monitoring of anti-trafficking standards through a combination of technical expertise by an independent body (GRETA) and of political commitment for following up on these assessments by state representatives (Committee of the Parties).

\(^1\) Convention on Action against Trafficking in Human Beings, CETS No. 197, 16 May 2005 (thereinafter Convention or CoE Convention against Trafficking).
The Committee of the Parties (CoP) is comprised of all State Parties to the CoE Convention against Trafficking, which includes both CoE Member States and non-members, as the Convention is open to signature and accession by CoE Non-member States as well.

Apart from its specific role in the monitoring process, the CoP also regards itself as an international ‘observatory on trafficking in human beings’ in order to support international cooperation among anti-trafficking stakeholders, as requested by Article 32 of the Convention.

B. DRAFTING HISTORY

Early drafts of the CoE Convention against Trafficking did not specifically mention the CoP. Instead, discussion at the Ad hoc Committee on Action against Trafficking in Human Beings (CAHTEH) initially centred around the question of which body should bear primary responsibility for the monitoring of the Convention: According to the Draft Convention from November 2003, prepared after the first meeting of the CAHTEH, the ‘Committee of Ministers of the Council of Europe shall monitor the implementation of this Convention by the Parties’. They would merely ‘be assisted in carrying out’ the monitoring procedure by an independent expert body called ‘Group of experts on action against trafficking in human beings’. In the ensuing debate, several delegations, however, were in favour of GRETA taking the lead regarding monitoring. Also, non-governmental organisations (NGOs) lobbied for a strong independent monitoring body.

In order to break the political stalemate, at the seventh and almost final meeting of the CAHTEH, agreement was reached on a compromise setup of the monitoring machinery: the first pillar would be GRETA, consisting of 15 independent experts, explicitly tasked with monitoring compliance of the Convention by State Parties (Art 36 of the CoE Convention against Trafficking). And, for the second pillar, a new provision was introduced, providing for the CoP (Art 37 of the CoE Convention against Trafficking), comprised of as many state representatives as there are State Parties to the Convention. According to Article 38 of the CoE Convention against Trafficking, based on GRETA’s findings, they should adopt recommendations at peer level to the State Parties under review, and, thus, provide for a strong ‘political dialogue between the Parties’ and follow-up to GRETA.

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However, controversy continued over a connected issue, in respect to relations between CoE Convention against Trafficking standards and relevant European Communities legislation, as far as monitoring is concerned. The European Community proposed to set up its own, separate monitoring process for 'matters falling within the competence of the European Community' – for this purpose:

the Commission of the European Communities shall be responsible to monitor the proper implementation of these provisions of the Convention by the Member States of the European Community who have transferred their competence in these matters to the European Community, which would include a separate Commission report and conclusions, then, sent to the respective State Party, to GRETA and to the Committee of the Parties.10

And, as far as voting in the CoP is concerned, the European Commission would also vote on behalf of the European Community member states that are also State Parties to the CoE Convention against Trafficking.11 These proposals could have led to a parallel monitoring structure and were met with strong criticism.12 Since no agreement could be reached at the CAHTEH, only a political decision by the Committee of Ministers (CM) could solve the crisis, ultimately rejecting such double monitoring structure and procedure.13

C. ARTICLE IN CONTEXT

The establishment of a distinct mechanism monitoring compliance of State Parties with standards set by the CoE Convention against Trafficking is considered as one of the main achievements of the Convention,14 and commentators have noted its potential for strengthened anti-trafficking accountability.15 While most of the attention is usually drawn to GRETA as the technical, analytical body, comprised of individuals sitting in their expert

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11 See ibid., 59, footnote 3 (in relation to the CoP). At that time, there was political consideration given to the possibility of the European Communities becoming a Party to the Convention, see CAHTEH, 8th Meeting – Meeting Report, CAHTEH(2005)RAP8, paras 87–97.

12 Ibid., para 93–97. See also the strong critical words by the Parliamentary Assembly on the CAHTEH draft Convention and the controversial relationship between the CoE and the European Union, in its Recommendation No. 1695 (2005) Draft Council of Europe Convention on action against trafficking in human beings, 18 March 2005, para 9: 'The Assembly considers that the way in which this convention has been drafted within CAHTEH raises questions regarding the competences and procedures of Council of Europe treaty-making.'


14 Council of Europe, Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, CETS No. 197, 16 May 2005, para 36.

capacity, the role and importance of the political CoP for the functioning of the monitoring process should not be underestimated. Linked together through a procedure as described in Article 38 which designates tasks to both bodies at different stages of the evaluation process, the CoP has a particular role to play to ensure follow-up measures based on the analysis by GRETA. At the same time, as the body responsible for the election of GRETA members, the CoP is trusted with significant power in ensuring a multi-disciplinary and balanced composition of GRETA.

In structural, organisational terms, the CoP might be compared to the monitoring structure under the CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. According to Article 39 of the Lanzarote Convention, another ‘Committee of the Parties’ is established, with provisions in terms of composition and meetings worded almost identically to Article 37 of the CoE Convention against Trafficking. Consequently, that ‘Lanzarote Committee’ also consists of representatives from all State Parties to that Convention, being CoE members or not. Still, several differences should be noted: Article 41 of the Lanzarote Convention explicitly mandates its Committee with the task to ‘monitor the implementation of this Convention’ – in the absence of a dedicated independent body under that Convention. It also describes the Lanzarote Committee’s function to identify any implementation problems, express opinions on any relevant subject and to act as a facilitator for the ‘collection, analysis and exchange of information, experience and good practice between States’ for the prevention and combatting of sexual exploitation and sexual abuse of children.

Following from this, the Lanzarote Committee adopted Rules of Procedure, which set criteria both for its membership and evaluation procedure. According to Rule 2.1., State Parties should ‘nominate – as their representatives – experts of the highest possible rank in the field of children’s rights, in particular in the protection of children against sexual exploitation and sexual abuse’. On the procedural side, in its Rules of Procedure, the Lanzarote Committee has also decided to work in evaluation rounds and through questionnaires addressed to State Parties. Published reports based on the responses aim to provide a general overview of the legal, institutional and policy framework, covering specific thematic issue (such as ‘protection of children against sexual abuse in the circle of trust’), or may be issued as special reports on
urgent situations (Rule 28). After all, while the Lanzarote Committee and the CoP under the CoE Convention against Trafficking may structurally be similar, their roles and working methods differ significantly and conceptually, since the Lanzarote mechanism lacks a comparable complementary independent expert body similar to GRETA.

D. ISSUES OF INTERPRETATION

1. Functions of the Committee of the Parties

Article 37 forms part of chapter VII of the CoE Convention against Trafficking, establishing its monitoring mechanism. As the political body consisting of state representatives, it is placed between Article 36 on GRETA, and Article 38 on the evaluation procedure, involving both structures. The text of Article 37 itself does not directly specify the functions of the CoP. Still, Article 37(2) of the CoE Convention against Trafficking implicitly refers to one of its essential functions, namely, the election of members of GRETA, which is stated in Article 36(2) of the Convention.

Next to that, the CoP plays an essential role in the country evaluation process by adopting recommendations to each State Party ‘concerning the measures to be taken by that party to implement the conclusions of GRETA’ and for the promotion of cooperation with that State Party ‘for the proper implementation of the Convention’. Article 38(7) of the CoE Convention against Trafficking also provides for the possibility of the CoP to designate a date to the country concerned on which the CoP expects further information regarding the implementation of its recommendation. The CoP has consistently made use of this competence. During the first evaluation round, after adopting the recommendations, governments were given a two-year period for reporting back on measures taken to comply with the recommendations, based on GRETA’s findings. A modified approach was taken by the CoP in 2015, starting with the second evaluation round. Since then, more focused information on follow-up to the recommendations about ‘issues for immediate action identified by GRETA in its second evaluation report’ is requested, within a deadline of one year. In order to maintain further dialogue with the State Party until the next evaluation round, follow-up cooperation activities such as the organisation of multi-stakeholder national round tables have been implemented.

22 The Committee has published such special reports under two ‘urgent monitoring rounds’, on ‘Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse’ (March 2017), and on a Committee delegation visit to the ‘transit zones’ at the border of Hungary (July 2017), see the Lanzarote Committee: <https://www.coe.int/en/web/children/monitoring1> accessed 4 February 2020.

23 On an operational level, see the overview of functions in CoP Rules of Procedure, Rule 1.

24 For further information, see also the Commentary on Art 36 of the CoE Convention against Trafficking.

25 CoE Convention against Trafficking, Art 38(7).

26 See Committee of the Parties, 17th meeting of the Committee of the Parties (30 November 2015) – Meeting Report, THB-CP(2015)RAP17 (8 February 2016), para 12. For further details on the involvement of the CoP in the evaluation process, see on this also the Commentary on Art 38 of the CoE Convention against Trafficking.

Finally, apart from its monitoring role, and according to the Convention’s Explanatory Report, the CoP is intended to ‘ensure equal participation of all the Parties alike in the decision-making process and in the monitoring procedure of the Convention’, and to strengthen cooperation between the Parties as well as between the Committee and GRETA.\textsuperscript{28} In this regard, the Committee’s Rules of Procedure speak of the Committee to ‘function as an international observatory on the prevention and combating of trafficking in human beings and the protection of the human rights of the victims of trafficking’.\textsuperscript{29}

Both its functions in the monitoring process as well as in providing a platform of exchange for governments and anti-trafficking stakeholders have helped to install the CoP as an important bridging structure between external critical assessment by GRETA and peer-level political push for State Parties to follow-up and implement the recommendations. Such a role is particularly necessary to keep the political momentum for anti-trafficking efforts between the regular four-year country assessments by GRETA. An indication for the successful establishment of political dialogue at the Committee level may be seen in the – so far – overall strong compliance by State Parties with their reporting obligations under the Convention, such as replying to the GRETA questionnaire or reporting on COP recommendations – to a large extent within the deadlines set by the bodies.\textsuperscript{30}


2. Composition and meetings

The CoP constitutes the body in which all State Parties to the CoE Convention against Trafficking are represented. This includes Member States of the CoE and non-members.\textsuperscript{31} It should be noted that according to Article 42(1), the Convention is open for signature also to all non-CoE member states which participated in the drafting process. Furthermore, the Convention is open for accession by all other non-CoE members interested to join at a later stage, upon invitation by the CoE CM.\textsuperscript{32} Consequently, there is no fixed final number of members of the CoP. All members have voting rights.

Apart from members, other ‘participants’ and ‘observers’ may join the deliberations of the Committee, without the right to participate in votings. Participants\textsuperscript{33} include those states having signed but not yet ratified or acceded to the Convention as well as the following CoE entities: the CM, the Parliamentary Assembly, the Congress of Local and Regional Authorities, the Commissioner for Human Rights, the Conference of International Non-Governmental Organisations of the Council of Europe. In addition, the European Commission has participant status. Moreover, the Committee ‘may authorise’ other States,
D. ISSUES OF INTERPRETATION

international governmental\textsuperscript{34} as well as NGOs\textsuperscript{35} to join meetings as observers on an ad hoc basis.\textsuperscript{36} As a regular item on the agenda, the President of GRETA is invited to the Committee meetings for an exchange on the monitoring process.\textsuperscript{37}

State Parties are represented by officials from the respective state, typically at ambassador level, one of them being elected as chair of the Committee for a term of one year, with the possibility of being re-elected once.\textsuperscript{38} Next to members, participants and observers, provision has been made to encourage expert participation in the Committee meetings.\textsuperscript{39}

The CoP meets regularly at the CoE seat in Strasbourg; it held its first meeting in December 2008, followed by one to three meetings per year until 2014. Since 2015, there have been two meetings every year. Administrative support to the Committee is provided through the Executive Secretary of the Convention and further Secretariat staff.

As provided for in Article 37(3), the CoP has adopted its own Rules of Procedure,\textsuperscript{40} addressing functions, composition, decision-making and working methods; in addition, it contains provisions for the practical implementation of the GRETA election process (Rule 21), complementing the CM Rules on the election procedure of the members of GRETA.\textsuperscript{41}

\textsuperscript{34} Explicit mention (‘in particular’) is made of UNODC, ILO, UNICEF, OHCHR, UNHCR, IOM, OSCE, Interpol and Europol.
\textsuperscript{36} CoP Rules of Procedure, Rule 2(c).
\textsuperscript{37} The President of GRETA, on the other hand, may also request to convene an extra meeting of the CoP, see Art 37(2) and CoP Rules of Procedure, Rule 9.
\textsuperscript{38} CoP Rules of Procedure, Rule 4.
\textsuperscript{39} At the Committee meeting in October 2019, CoP Rules of Procedure, Rule 2(a) was amended to make participation of such national experts possible with reimbursement of expenses by the CoE, see Committee of the Parties, 25th meeting (18 October 2019) – Meeting Report, THB-CP(2019)RAP25 (16 January 2020), para 41–43. See also Rule 15 for the organisation of additional experts hearings.
\textsuperscript{40} CoP Rules of Procedure.