

**Handbook
for parliamentarians**

The Council of Europe Convention
on Action against Trafficking
in Human Beings

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Contents

The Council of Europe	5
Preface by the President of the Parliamentary Assembly	7
Overview	9
The convention: purposes, scope, non-discrimination principle and definitions	17
<i>Prevention, co-operation and other measures</i>	21
<i>Protection of victims</i>	24
<i>Prosecution of traffickers</i>	36
<i>Investigation, prosecution and procedural law</i>	42
<i>Monitoring mechanism</i>	46
<i>International co-operation and co-operation with civil society</i>	48
<i>Relationship with other international instruments</i>	51
<i>Amendments to the convention</i>	53
<i>Final clauses</i>	54
Postface by the Deputy Secretary General of the Council of Europe...	55
Appendix I: the Council of Europe Convention on Action against Trafficking in Human Beings	57
Appendix II: Chart of signatures and ratifications	89

The Council of Europe

The Council of Europe (www.coe.int) is the continent's oldest political organisation. Founded in 1949, it has 46 member states, representing more than 800 million Europeans, and five observers (Canada, the Holy See, Japan, Mexico and the United States of America).

The main aims of the organisation are:

- ▶ to protect human rights, parliamentary democracy and the rule of law in all member states;
- ▶ to develop continent-wide agreements to approximate member countries' social and legal practices;
- ▶ to promote awareness of a European identity based on shared values and cutting across different cultures.

Since November 1990, the accession of 21 countries of central and eastern Europe has given the Council of Europe a genuine pan-European dimension. Since then, its main job has become to act as a political anchor and human rights watchdog for Europe's post-communist democracies, to assist them in carrying out and consolidating political, legal and constitutional reform in parallel with economic reform, and to provide know-how in areas such as human rights, local democracy, education, culture and the environment.

The Council of Europe has its permanent headquarters in Strasbourg (France). By Statute, it has two constituent organs: the Committee of Ministers, composed of the Ministers of Foreign Affairs of the member states, and the Parliamentary Assembly, comprising delegations from the national parliaments.

The 630 men and women who constitute the Council of Europe Parliamentary Assembly (www.assembly.coe.int) come together

four times a year from the parliaments of the organisation's member states to debate the issues of the moment, to request action from Europe's governments, and to hold those governments to account. They speak, in the name of the 800 million Europeans whom they represent, on any subject they choose, and Europe's governments – represented in the Council of Europe by the Committee of Ministers – are obliged to answer them. They are the democratic conscience of Greater Europe.

Preface by the President of the Parliamentary Assembly

Every year, thousands of women, children and men are victims of human trafficking, whether for sexual exploitation or other purposes, both within and beyond the borders of their country. This phenomenon has taken on such unprecedented proportions that it can be described as a new form of slavery.

The Council of Europe decided to elaborate a new European convention to serve as a proper tool for combating trafficking in human beings. The convention was opened for signature in Warsaw on 16 May 2005, on the occasion of the 3rd Summit of Heads of State and Government of the Council of Europe.

The Council of Europe Parliamentary Assembly is firmly committed to the Council's Campaign to Combat Trafficking in Human Beings, launched in 2006, and particularly supports efforts to promote the signing and ratification of the new convention.

This handbook is intended as a practical tool for parliamentarians. It is designed to suggest working approaches for elected representatives who want to combat this scourge and promote the convention. It comprises an outline of the phenomenon of trafficking in human beings, a description of the main provisions of the convention – concerning the prevention of trafficking, the protection of victims and the prosecution of traffickers – and a series of questions and answers. To enable parliamentarians to have concrete references, the handbook quotes examples of legislation as a guide, without prejudging the assessment of this legislation by the Group of Experts against trafficking in human beings (GRETA), the monitoring system set up under the convention.

Because it is time to do away with the twofold persecution of trafficking victims, exploited as they are by their tormentors and treated as criminals in countries in which they are subjected to what is nothing short of slavery, I would urge you to use the handbook to convince your respective governments and/or parliaments to sign and/or ratify the Council of Europe Convention on Action against Trafficking in Human Beings as soon as possible.

René van der Linden

President of the Parliamentary Assembly of the Council of Europe

Overview

Trafficking in human beings: an attack on human rights

Every year, hundreds of thousands of women, children and men are trafficked into conditions amounting to slavery. Due to the multiform nature and secrecy of this type of crime, it is very difficult to know exactly how many people have been subjected to trafficking in Europe. Police forces, NGOs and international organisations all agree that statistics are not accurate. On the other hand, two facts are quite clear: the first is that women and children are the main victims of this trade, and the second is that trafficking is constantly increasing.

Trafficking has to be fought in Europe just as vigorously as drugs and money laundering are currently fought. Indeed, trafficking in human beings is today a global business and the source of lucrative profits for the traffickers and crime syndicates. According to certain estimates, trafficking in human beings is the third largest illicit money-making venture in the world after trafficking of weapons and drugs. According to the International Labour Organization (ILO), the total illicit profits produced in one year by trafficked labourers are estimated to be about US\$32 billion. It is therefore urgent that this crime is properly prosecuted and that preventive measures are taken to avoid it spreading any further.

Trafficking in human beings is an affront to human dignity, which often involves psychological terror and physical violence. Trafficking encompasses issues of human rights and rule of law enforcement and crime control, of inequality and discrimination, of corruption, economic deprivation and migration. Action to combat this assault on humanity is one of

a number of fronts on which the Council of Europe is battling on behalf of human rights and human dignity.

As either countries of origin, of transit or of destination, trafficking in human beings affects all the Council of Europe member states. This is why the organisation is well placed to ensure that its members adopt measures to fight it, paying particular attention to the protection of the rights of victims.

Indeed, to be effective, a strategy for combating this phenomenon must adopt a multi-disciplinary approach incorporating prevention, protection of human rights of victims and prosecution of traffickers, while at the same time seeking to harmonise relevant national laws and ensure that these laws are applied uniformly and effectively.

Protection of and assistance to victims are paramount in any anti-trafficking strategy. Anti-trafficking initiatives that focus exclusively on law enforcement can leave victims exposed to further exploitation and sometimes criminal prosecution themselves. States must hold all perpetrators accountable whether recruiters, intermediaries or users of exploited persons. Trafficking inside national borders must be taken no less seriously than global trafficking.

By its very nature, trafficking nearly always involves several states. To address the question effectively, international co-operation is a must. Co-operation among countries of origin, of transit and of destination is fundamental for human trafficking to be eliminated. Individual countries address the question from different angles, use different tools and achieve different results.

Finally, legal measures to combat trafficking will fail without mechanisms to implement and monitor the laws.

What can parliaments do to fight against trafficking in human beings?

National parliaments have a very important role to play in the fight against trafficking in human beings as they can create the political and legislative climate for the successful development

and implementation of anti-trafficking initiatives. For example, parliaments can:

- ▶ ratify the Council of Europe convention on the subject and any other international instrument related to trafficking in human beings;
- ▶ promote the signature by their governments of this convention and any other international instrument related to trafficking in human beings;
- ▶ draft and ratify bilateral and multilateral agreements to make certain acts criminal offences, as harmonisation facilitates action against crime. These agreements could also give mutual assistance in criminal matters providing for, among others, cooperation in investigating criminal activities, prosecuting offenders, implementing extradition agreements and seizing illicit proceeds;
- ▶ strengthen and review national legislation and law enforcement to end trafficking in human beings, taking into account the need to prosecute not only the traffickers but also the consumers of the “services” that victims of trafficking are forced to provide;
- ▶ allocate sufficient funds for anti-trafficking programmes, which include prevention measures, implementation of assistance programmes, awareness raising campaigns as well as the protection of victims and compensation for the suffering;
- ▶ ensure that there are legal instruments in place which prohibit the trafficking of persons for the purpose of organ or tissue transplantation and the trafficking of organs and tissues themselves;
- ▶ adopt and ratify international agreements to ensure full cooperation with other states and with international agencies, including law enforcement agencies, in order to combat organ trafficking.

Action of the Council of Europe

Given that one of the primary concerns of the Council of Europe is the safeguarding and protection of human rights and human dignity, and that trafficking in human beings directly undermines the values on which the Council of Europe is based, it is logical that finding solutions to this problem is a top priority for the organisation.

The Council of Europe has been sounding the alarm for over ten years, drawing the attention of member states and other international organisations to the vital need for co-operation to combat trafficking.

As far back as 1991, a Seminar on Action against Trafficking in Women, considered as a violation of human rights and human dignity, was organised by the Council of Europe. That same year, the Committee of Ministers adopted Recommendation No. R (91) 11 on sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults, which was the first international instrument dealing comprehensively with these matters.

Then, through the Group of Experts on traffic in women (1992-93), which reported to the Steering Committee for Equality between Women and Men (CDEG), the Council of Europe identified the most urgent areas for action, which were included in a plan of action against trafficking in women. The plan proposed areas for reflection and investigation in view of making recommendations to the member states on legislative, judicial and punishment aspects of trafficking; on assisting, supporting and rehabilitating its victims and on prevention programmes.

In Recommendation 1325 (1997) on traffic in women and forced prostitution in Council of Europe member states, the Assembly recommended that the Committee of Ministers elaborate a convention on traffic in women and forced prostitution, which would also be open for signature by states not members of the Council of Europe. This convention should focus on human rights, stipulating repressive measures to combat trafficking through harmonisation of laws especially in the penal field, opening new channels for improved police and

judicial communication, co-ordination and co-operation, and organising a certain degree of assistance and protection for victims of trafficking, especially those willing to testify in court. This should also include physical protection if necessary, and in any case the granting of temporary residence permits as well as legal, medical and psychological assistance. The convention should establish a control mechanism to monitor compliance with its provisions and to co-ordinate further action at the pan-European level to combat trafficking in women and forced prostitution.

Trafficking aroused the collective concern of Heads of State and Government of the Council of Europe at the Strasbourg Summit (October 1997): the final declaration states that violence against women and all forms of sexual exploitation of women constitute a threat to citizens' security and democracy.

Numerous activities have been organised since the summit. The first type of activity was concerned both with awareness raising and action. The Council of Europe organised seminars to heighten the awareness of governments and civil society to this new form of slavery in order to alert the different players (police, judges, social workers, embassy staff, teachers, etc.) to their role vis-à-vis trafficking victims and the dangers facing certain individuals. In addition, member states were encouraged to hatch national action plans against trafficking.

On top of this, two Council of Europe legal instruments have been produced which specifically deal with trafficking in human beings for sexual exploitation:

- ▶ Recommendation No. R (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation;
- ▶ Recommendation Rec(2001)16 of the Committee of Ministers to member states on the protection of children against sexual exploitation.

The Parliamentary Assembly repeated its request for a new convention on the fight against trafficking in human beings in its Recommendation 1545 (2002) on a “Campaign against trafficking in women”, and, this time, its request was heard.

The Parliamentary Assembly was very much involved in the elaboration of the new convention within the committee of experts responsible for drafting the text (CAHTEH) and adopted an Opinion No. 253 (2005) on the draft convention, as well as a Recommendation 1695 (2005) asking the Committee of Ministers to strengthen the draft convention before opening it for signature – an appeal which did not go unheard.

During the 3rd Summit of the Council of Europe (Warsaw, May 2005) the heads of state and government of the member states firmly condemned trafficking in human beings which undermines the enjoyment of human rights and which is an offence to the dignity and integrity of the human being.

For the first time, countries of origin, of transit and of destination decided to use a binding instrument to develop a common policy against trafficking, with due regard to the victims and which included a monitoring mechanism, and the Committee of Ministers adopted on 3 May 2005 the Convention on Action against Trafficking in Human Beings.

The convention was opened for signature on 16 May 2005, and has so far been signed by 33 member states of the Council of Europe, and one non-member state, and ratified by 3 (see chart of signatures and ratifications in Appendix II). It has not yet entered into force.

Main international instruments

There are other international instruments dealing with the fight against trafficking in human beings:

- ▶ the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized

Crime (the Palermo Protocol) was adopted on 15 November 2000 and entered into force on 25 December 2003. It laid the first legal foundations for international action against trafficking;

- ▶ in the European context, the EU Council Framework Decision of 19 July 2002 on combating trafficking in human beings and the Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who co-operate with the competent authorities, regulate some of the questions concerning trafficking in human beings;
- ▶ the OSCE Action Plan to combat trafficking in human beings was adopted on 24 July 2003 in order both to incorporate best practices plus an advanced approach into its anti-trafficking policies, and to facilitate co-operation among participating states;
- ▶ an EU action plan on trafficking in human beings is under preparation.

With all these existing international instruments, why did the Council of Europe decide to produce a European convention against trafficking in human beings?

First of all, because trafficking in human beings affects virtually all the Council of Europe member states either as countries of origin, of transit or of destination. For this reason, the members wanted to have an instrument with more *binding force* than mere political recommendations, which in legal terms are not as effective as an international treaty. Second, because the purpose of this convention is to deal with *all* the different aspects of the people trade: by taking preventive action, but also by protecting victims, introducing criminal proceedings against traffickers and developing international co-operation. Lastly, the establishment of a *monitoring mechanism* is one of the main added values of the convention. The possibility for

an independent body to examine the situation in the states parties and to draw conclusions likely to help them to make the necessary progress is an enormous asset. The Committee that drafted the convention adopted an approach based on *human rights*.

The convention:¹ purposes, scope, non-discrimination principle and definitions

Purposes

The convention provides the parties with a comprehensive toolkit for carrying out their commitments to combating trafficking in human beings. It addresses the problem comprehensively, covering:

- ▶ prevention of trafficking in human beings, guaranteeing gender equality;
- ▶ protection of the human rights of the victims;
- ▶ prosecution of those who commit or facilitate the crime;
- ▶ control with the monitoring mechanism.

Scope

The convention applies:

- ▶ to all forms of trafficking in human beings, whoever the victim of the trafficking, man, woman or child;
- ▶ to both national and transnational trafficking, whether or not related to organised crime;
- ▶ in the case of transnational trafficking, it applies both to victims who legally entered or are legally present in the territory of the receiving party and those who entered or are present illegally.

1. See Appendix I of the handbook for the full text.

Non-discrimination principle

The convention prohibits discrimination in parties' implementation of its provisions, in particular the enjoyment of measures to protect and promote victims' rights. It establishes a list of common grounds for discrimination (sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status), which is identical to the one given in the Convention on the Protection of Human Rights and Fundamental Freedoms.

Definition of trafficking in human beings

The convention has taken over the definition of trafficking included in the Palermo Protocol which is the first agreed, internationally binding definition of the term "trafficking in persons".

In the definition, trafficking in human beings consists of a combination of three basic components:

- ▶ the action of "recruitment, transportation, transfer, harbouring or receipt of persons";
- ▶ by means of "the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person";
- ▶ for the purpose of exploitation, which includes "at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".

Trafficking in human beings is a combination of these constituents and not the constituents taken in isolation. For there to be trafficking in human beings ingredients from each of the three categories (action, means, purpose) must be present together. In the case of children under

the age of 18, the absence of the means of coercion and the existence of consent are irrelevant because the victims are minors.

Definition of victim

The convention defines “victim” as “any natural person who is subjected to trafficking in human beings as defined in this Article” (Article 3).

Is there any difference between illegal migration and trafficking in human beings?

While the aim of smuggling of migrants means the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a state of which the person is not a national or a permanent resident, the purpose of trafficking in human beings is exploitation. Furthermore, trafficking in human beings does not necessarily involve a transnational element: it can exist at national level. The additional factor which distinguishes trafficking from migrant smuggling is the consent: the smuggling of migrants, while often undertaken in dangerous or degrading conditions, involves migrants who have consented to the smuggling. Trafficking victims, on the other hand, have either never consented or, if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the traffickers.

Does the convention go further than the Palermo Protocol in its purposes?

The convention is wider in scope than the Palermo Protocol, as it applies to both national and transnational trafficking, whether or not related to organised crime, while the Palermo Protocol applies to certain offences of a transnational nature and involves an organised criminal group.

The convention has taken over the definition of trafficking included in the Palermo Protocol, but does it provide any new element?

For the first time, an international instrument provides a definition of “victim” of trafficking in human beings. The Council of Europe convention defines what a “victim” is, while all the other international instruments leave it to each state to define who is a victim and therefore who deserves the measures of protection and assistance.

Prevention, co-operation and other measures

To be effective, preventive action against trafficking must be co-ordinated. The convention requires that parties take measures to establish or strengthen co-ordination nationally between the various bodies responsible for preventing and combating trafficking in human beings.

In the countries of origin, prevention measures include, among others, research on combating trafficking, information, awareness-raising and education campaigns, as well as social and economic initiatives that tackle the underlying and structural causes of trafficking. Specific preventive measures should be taken with regard to children. The convention refers to creating a “protective environment” for children, to make them less vulnerable to trafficking and enable them to grow up without harm and to lead decent lives.

The concept of a “protective environment”, as promoted by UNICEF, has eight key components:

1. protecting children’s rights from adverse attitudes, traditions, customs, behaviour and practices;
2. government commitment to and protection and realisation of children’s rights;
3. open discussion of, and engagement with, child protection issues;
4. drawing up and enforcing protective legislation;
5. the capacity of those dealing and in contact with children, families and communities to protect children;
6. children’s life skills, knowledge and participation;
7. putting in place a system for monitoring and reporting abuse cases;
8. programmes and services to enable child victims of trafficking to recover and reintegrate.

The pull factors of trafficking in the receiving countries are:

- ▶ demand for inexpensive labour;
- ▶ demand for sex services;
- ▶ restrictive immigration policies.

The convention places a positive obligation on parties to adopt and reinforce measures to fight this demand and discourage consumers in the receiving countries. Tackling demand is of paramount importance in order to prevent and combat the trafficking itself.

What role can parliamentarians play in the prevention of trafficking in human beings?

Parliamentarians can adopt some important preventive measures. Examples of these could be:

shared measures in countries of origin and of destination:

- ▶ parliaments can enact legislation to strengthen border controls as may be necessary to prevent and detect trafficking in persons;
- ▶ parliaments can ensure that travel or identity documents delivered in their own states are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued;

in the countries of origin:

- ▶ parliamentarians can be involved in information campaigns targeting relevant groups that are of particular importance;
- ▶ parliamentarians can address the specific needs of extremely vulnerable groups exposed to trafficking and make poverty alleviation the cornerstone of a development strategy;
- ▶ parliamentarians could strengthen laws and the policy framework to enable effective action against trafficking in human

beings for labour or sexual exploitation through training and capacity building;

- ▶ parliamentarians can draft and enforce legislation to create a protective environment for children;

in the receiving countries:

- ▶ parliamentarians can adopt or strengthen legislative measures to discourage the demand (whether it is for sexual exploitation, forced labour or services, slavery and practices similar to slavery, servitude and organ removal) in order to achieve effective dissuasion;
- ▶ parliamentarians can adopt the legislative measures necessary so that traffickers could be refused entry to their territory or have their visas revoked.

Protection of victims

Correct identification of the trafficking victims in order to protect and assist them

The authorities dealing with trafficking should co-operate with each other and be assisted by trained and qualified experts who will help them to identify the victims and to issue residence permits when appropriate. In those cases where there are reasonable grounds to believe that a person has been a victim of trafficking, states are asked to refrain from expelling that person from their territory until the identification process is completed. There are special provisions for child victims who are particularly vulnerable.

Protection of private life

Protection of private life should be done through appropriate management of data by the authorities and through the promotion of responsible behaviour of the media as it is essential for the victim's physical safety but also to preserve their chances of social reintegration.

Assistance for the victims of trafficking

The objective is to ensure their physical, psychological and social recovery, and the provision of appropriate and secure housing, medical and material assistance, counselling and information (in particular legal advice) in a language they understand, financial support, employment and training opportunities (including the possibility of obtaining work permits).

Romanian legislation

Law on the Prevention and Combat of Trafficking in Human Beings

Chapter V. Protection and assistance for the victims of trafficking

Article 26

1. Victims of the crimes stipulated in this Law, as well as other victims of these crimes, shall be granted special physical, legal and social protection and assistance.

2. Victims of trafficking in human beings shall have their privacy and identity protected by this Law.

3. Victims of the crimes stipulated in this Law are entitled to physical, psychological and social recovery.

4. Under-age victims of the crimes stipulated in this Law shall be granted special protection and assistance, as appropriate for their age.

5. Female victims of the crimes stipulated in this Law, as well as females at high risk of becoming victims of such crimes shall be granted special social protection and assistance.

United States of America

Administration's Legislative Proposal to provide a comprehensive programme to combat trafficking in persons (especially women and children) and to protect and assist victims of trafficking

Section 6 – Protection and assistance for victims of trafficking

a. Victims in other countries. The Secretary of State and the Administrator of the US Agency for International Development are authorised to establish programs and initiatives abroad to assist victims of trafficking and their children, including mental and physical health services, shelter, legal assistance, and safe reintegration efforts. In carrying out this subsection, the Secretary and the Administrator should consult with the Attorney General, NGOs, and other experts on trafficking, seek enhanced co-operative efforts with the countries of origin of victims of trafficking to facilitate protections for victims of trafficking who are reintegrated into their countries of origin, and assist in the appropriate reintegration of stateless victims of trafficking.

b. Victims in the United States.

1. Notwithstanding title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Attorney General, the Secretaries of Health and Human Services and Labour, and the Board of Directors of the Legal Services Corporation are authorised to provide assistance to victims of trafficking, without regard to the immigration status of such victims. This assistance may include physical and mental health services, social and legal services, or any other related programs or activities.

Recovery and reflection period

Countries of destination and transit are obliged to allow a victim to stay in their territory over a period of time (a minimum of **thirty days**) which will have to be sufficient to allow the victim to recover, escape from the influence of traffickers and to be in a position to take an informed decision on co-operating with the competent authorities.

Does this provision favour illegal immigration?

Illegal immigration and trafficking in human beings should not be confused. Persons who are victims of trafficking are, as a rule, deceived and misled by traffickers and brought to a situation in which their human rights are severely violated. They are no longer free to decide their fate.

Experience shows that most of the victims are exposed to tremendous hardships which seriously affect their mental and physical health. No-one would voluntarily submit him- or herself to such ordeals in order to gain a thirty-day residence period in a given country.

That is why the convention envisages a **thirty-day minimum** recovery and reflection period, offering the victims an opportunity to recover and escape the influence of the traffickers.

Belgian legislation

Instructions to the Foreigners Department, the Prosecuting Authorities, the Police and the Social Law Inspection Service and Social Inspection Services Concerning Assistance to Victims of Human Trafficking

Published in the Belgian Official Gazette on 13 January 1997.

8. Practical application of the circular of 7 July 1994 [the Ministerial circular concerning the granting of residence permits and work permits (work cards) to foreigners who are victims of trafficking in human beings]

Residence and work permits are issued to victims of human trafficking in successive stages in parallel to the legal proceedings.

8.1 Stage 1: issue of an order to leave the country within 45 days

This 45-day period should allow the victim who is leaving a human trafficking environment and embarking upon counselling provided by the support centre to recover mental stability. During this period, victims can decide if they wish to make statements concerning the persons or human trafficking networks that exploited them or if they wish to prepare for a return to their native country .

Therefore, when the police or a social inspection service encounter a presumed victim of human trafficking, it is important that they establish immediate contact with a victim support centre, following the procedure set out in paragraph 5.

The police unit in question must also contact the Foreigners Department and, if appropriate, inform them that the presumed victim has been directed to a support centre.

If the victim immediately lodges a complaint or makes a statement, the support centre responsible for his or her counselling can request that the Foreigners' Department move on to the second stage.

Residence permits

An important provision tackles this controversial question. It requests states to provide, in conformity with their national laws, for the possibility of delivering a renewable residence permit to victims. The convention does not condition the delivery of a residence permit to the victims' co-operation with law enforcement authorities.

Italian legislation

Immigration Law, Legislative Decree No. 286 of 25 July 1998, on immigration and aliens, Chapter III, Humanitarian Provisions

Article 18

Residence permit for reasons of social protection

1. Where, in the course of police operations, investigations or criminal proceedings relevant to either of the offences under article 3 of Law No. 75 of 20 February 1958 or to the offences provided for under article 380 of the code of criminal procedure, or in the course of welfare care services provided by local bodies, cases of coercion or grave exploitation are found with respect to an alien and his/her safety is seriously endangered as a result of his/her attempts to escape the pressures exerted by an organisation involved in either of the said offences or as a result of the statements made during the pre-trial investigations or at trial, the Chief of the Police, also upon request by the Chief Prosecutor or upon the latter's favourable opinion, shall deliver a special permit of stay to allow the alien to escape the criminal organisation's coercion or pressures and to participate in a re-integration programme.

Belgian legislation

Amendment to the Instructions of 13 January 1997 to the Foreigners Department, the Prosecuting Authorities, the Police, the Social Law Inspection Service and the Welfare Inspectorates concerning assistance to victims of human trafficking

Published in the Belgian Official Gazette on 27 May 2003

These amendments to the Instructions of 13 January 1997 were deemed necessary in order to provide better protection for victims of human trafficking who, when lodging a statement or a complaint against their exploiter, wish to co-operate with the competent authorities in combating human trafficking.

They were established after an assessment of the current working procedure of the support centres, police authorities, inspectorates, Foreigners Department and prosecuting authorities, and of their collaboration.

The proposals of the specialised support centres and the Equal Opportunities and Anti-Racism Centre were also taken into account.

By way of administrative simplification, and to ensure adequate readability, the text of sections 8.2., 8.3. and 10 was completely rewritten.

1. Section 8.2 of the Instructions of 13 January 1997 is replaced by the following provision:

8.2. Second phase: issue of a “declaration of arrival” valid for three months.

Victims who lodge a statement or complaint within 45 days are issued with a provisional residence permit for three months in the form of a “declaration of arrival”.

Supervision of the victim by a specialised support centre is also obligatory throughout this period.

During this phase, the victim may have a temporary work permit.

The Foreigners Department shall immediately, and, in any case, not later than a month before the “declaration of arrival” is due to expire, enquire of the Crown Counsel or the Labour Prosecutor what action has been taken on the victim’s complaint or statement, giving the date by which the reply is expected.

The information given by the Prosecuting Authority or the Labour Prosecutor's Office must contain a reply to two questions:

1. Is the investigation still in progress?
2. At the present stage of the case, is the person in question deemed a victim of human trafficking?

The information is concurrently transmitted by the Crown Counsel or the Labour Prosecutor to the victim.

If no reply is received from the Prosecuting Authority or the Labour Prosecutor's Office, the question should be put to the Principal Crown Counsel.

2. Section 8.3 of the Instructions of 13 January 1997 is replaced by the following provision:

8.3. Third sentence: issue of a certificate of entry in the aliens register.

If the Crown Counsel's or Labour Prosecutor's information comprises an affirmative answer to the two foregoing questions, the victim receives a residence permit for more than three months (usually six months), which can be extended until the conclusion of the judicial proceedings.

If the Crown Counsel or Labour Prosecutor is not yet able to answer the two questions in the affirmative, the victim's "declaration of arrival" is renewed once only for another three months.

If, by the time the single renewal of the "declaration of arrival" expires, no clear reply can yet be made to the two questions, a certificate of entry in the aliens register (temporary residence – six month validity) is issued to the victim.

Throughout this period, supervision of the victim by a specialised support centre remains obligatory.

Victims may, from this stage onwards, obtain a B grade work permit.

In accordance with the report of the parliamentary commission of inquiry, and in order to ensure the victim's safety, a procedure may finally be opened with the Foreigners Department to obtain a residence permit of indefinite duration.

The application for a residence permit of indefinite duration can be made if the victim's statement or complaint have resulted in a summons to appear in court, or a referral by the investigating judge, or a prosecutor's application or a request for preventive detention before the investigating judge.

A residence permit of indefinite duration will be granted:

- immediately the statement or the complaint has resulted in a trial court conviction;
- if, even without a conviction for acts of human trafficking, the prosecution's submissions invoked the prevention of human trafficking and if the victim's statement or complaint is considered material to the proceedings.

Compensation and legal redress

The convention guarantees legal advice and compensation for victims of trafficking.

Cypriot legislation

Law No. 3(1) of 2000

Providing for the special protection of persons being victims of sexual exploitation and for related matters

8. Suing for damages/course of action for compensation

1. Notwithstanding and without prejudice to any other legal right which is provided under any legal or other provision, the victims of exploitation according to the meaning of this Law have an additional right for damages against any person who is responsible for their exploitation, and is liable for damages, special and general.

2. The above-mentioned general damages must be just and reasonable and in their assessment the Court may take into consideration the following:

- a. the extent of the exploitation and the benefit the liable person derived from such exploitation,
- b. the future prospects of the victim and the extent to which such prospects were affected by the exploitation,
- c. the culpability of the offender,
- d. the relationship or the dominating position or influence of the offender with regard to the victim.

3. The Court may award punitive damages when the degree of the exploitation or the degree of relationship or the dominating position of the offender with regard to the victim so require.

4. The Court, in the award of special damages, takes into consideration every item of expense which resulted from exploitation including costs for repatriation in the case of foreigners.

How can the compensation to the victims be guaranteed in the cases where the countries do not have funds allocated to this end?

Such a compensation could be financed, for instance, through the establishment of a fund for victim compensation, which could be funded by the assets confiscated from traffickers.

Repatriation and return of victims

A specific provision aims to cover those cases in which the victim returns to his/her country of origin. Some of the issues at stake are: the victim's safety, documentation, reintegration on the labour market and prevention of re-victimisation. The party where the person is a national or where he/she had the right to permanent residence has to accept the return of such a person with due regard to his/her rights, safety and dignity. Similarly, when a party returns a person to another state, the party carrying out such a return must do so with due regard to his/her rights, safety and

dignity. Particular attention is paid to the cases in which the victims are children, who shall not be returned unless it is in their best interest, and to the need to co-operate with NGOs, law enforcement structures and social welfare agencies.

Bulgarian legislation

Combating Trafficking in Human Beings Act

Chapter Five. Protection and support of victims of trafficking

Article 16

The diplomatic and consular missions of the Republic of Bulgaria abroad shall support and assist the Bulgarian nationals who have become victims of trafficking to return to Bulgaria.

Article 17

Consular offices with the Bulgarian Embassies abroad, in co-operation with Ministry of the Interior authorities, shall assist with the speedy and timely issuance of identity documents of Bulgarian nationals who have become victims of trafficking.

Gender equality

In applying assistance measures provided in the convention, parties aim to promote gender equality and use gender mainstreaming in the development, implementation and assessment of the measures. The aim of this provision is to draw attention to the fact that women, according to existing data, are the main target group of trafficking in human beings and to the fact that women, who are susceptible to being victims, are often marginalised even before becoming victims of trafficking and find themselves victims of poverty and unemployment more often than men.

Does the Council of Europe convention go further than any other international instrument in the field of victim protection?

Yes. First of all, the convention requires states to adopt specific procedures to ensure the identification of trafficked persons, while neither the Palermo Protocol nor the EU Directive

contains provisions aiming at ensuring the prompt and accurate identification of trafficked persons.

Second, while the Palermo Protocol requires its parties only to “consider implementation of measures to provide for physical, psychological and social recovery of trafficked persons”, the Council of Europe convention requires states to take a range of legislative and other measures necessary to assist trafficked persons in their physical, psychological and social recovery.

According to Article 12, such assistance shall include at least:

- ▶ standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;
- ▶ access to emergency medical treatment;
- ▶ translation and interpretation services, when appropriate;
- ▶ counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;
- ▶ assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
- ▶ access to education for children.

Another main point of difference is that the convention does not limit the delivery of a residence permit to the victims’ co-operation with law enforcement officials. This is the case, however, in the European Union, where the delivery of a renewable six-month residency permit for non-EU nationals is conditional on the victim’s co-operation with the authorities.

What measures can parliaments adopt in order to protect and promote the rights of victims?

Among others, parliamentarians can:

- ▶ help establish proper procedures for rapidly identifying trafficked persons;
- ▶ help ensure that social services, necessary for trafficked persons, are available and accessible, bearing in mind the special needs of the victims;
- ▶ adopt the legislative measures for the setting up of specialised centres to assist the victims and provide them with socio-psychological and medical assistance;
- ▶ allocate funds to both provide legal advice to the victims and compensate them;
- ▶ support organisations and agencies that provide reintegration assistance, in countries of both destination and origin;
- ▶ allocate funds for the repatriation process, whenever this repatriation is in the best interest of the victims;
- ▶ enact legislation that allows the victims access to justice and civil or criminal proceedings;
- ▶ establish measures to guarantee the security of the victims, when involved in criminal procedures against traffickers;
- ▶ create legislation that would allow the parties to confiscate the proceeds derived from the crime of trafficking in order to compensate the victims;
- ▶ adopt positive measures to achieve equality between women and men, by supporting specific policies for women, who are more likely to be exposed to trafficking;
- ▶ adopt special measures to protect and promote the rights of women victims of trafficking that should take into account the double marginalisation, as women and as victims.

Prosecution of traffickers

Material penal law

The convention makes certain acts criminal offences. This approximation facilitates action against crime at national and international level, for several reasons. First, approximation of countries' domestic law is a way of avoiding a criminal preference for committing offences in a party which previously had less strict rules. Second, it becomes possible to promote the exchange of useful common data and experience. Shared definitions can also assist research and promote comparability of data at national and regional level, thus making it easier to gain an overall picture of crime. Lastly, international co-operation (in particular extradition and mutual legal assistance) is facilitated, for example, regarding the rules on dual criminal liability.

The convention requires that parties criminalise trafficking in human beings, whether by means of a single criminal offence or by combining several offences covering, as a minimum, all conduct capable of falling within the definition. Aiding or abetting should also be established as criminal offences, under the terms of the convention which asks parties to consider making it a criminal offence to knowingly use the service of a victim of trafficking.

The convention asks that certain acts in relation to travel or identity documents be treated as criminal offences when committed to allow trafficking in human beings. These acts are: forging a travel or identity document; procuring or providing such a document and retaining, removing, concealing, damaging or destroying a travel or identity document of another person.

The offences stipulated in the convention represent a minimum consensus which does not preclude adding to them in domestic law.

The intention of the convention is to make commercial companies, associations and similar legal entities ("legal persons") liable for criminal actions performed on their behalf by anyone in a leading position within them.

The convention also defines the various offences that should be made punishable under criminal law. It requires parties to match their action to the seriousness of the offences and lay down criminal penalties which are “effective, proportionate and dissuasive”. In the case of an individual (“natural person”) committing the offence, parties must provide for prison sentences that can give rise to extradition.

Belgian legislation

Law of 10 August 2005 to modify several dispositions to step up the fight against the smuggling and trafficking in human beings and against practices of “traders in sleep”

Moniteur belge, 10 August 2005

Chapter II

Art. 10. There shall be inserted into Book II, Title VIII, Chapter IIIter of the [Penal] Code a new Article 433quinquies, worded as follows:

“Article 433quinquies. – § 1. The offence of trafficking in human beings shall be constituted by the act of recruiting, transporting, transferring, accommodating or receiving a person, and of transmitting or transferring the control exercised over that person in order:

1. to allow the offences defined in Articles 379, 380, § 1 and § 4, and 383bis, § 1 to be committed against that person;
2. to allow the offence defined in Article 433ter to be committed against that person;
3. to put that person to work, or allow him/her to be put to work, under conditions offending against human dignity;
4. to remove or allow to be removed from that person organs or tissues in breach of the law of 13 June 1986 on the removal and transplanted of organs;
5. or to cause that person unwillingly to commit a crime or an offence.

Except in the case contemplated in 5 above, it is immaterial whether the person referred to in § 1 consents to the intended or actual exploitation.

§ 2. The offence defined in § 1 shall be punishable by one to five years' imprisonment and a fine of between five hundred and fifty thousand euros.

§ 3. An attempt to commit the offence defined in § 1 shall be punishable by one to three years' imprisonment and a fine of between one hundred and ten thousand euros".

Art. 11. There shall be inserted into Book II, Title VIII, Chapter IIIter of the Code a new Article 433sexies, worded as follows:

"Article 433sexies. – The offence defined in Article 433quinquies, § 1 shall be punishable by five to ten years' imprisonment and a fine of between seven hundred and fifty and seventy-five thousand euros when the offence has been committed:

1. by a person with authority over the victim or by a person who has misused the authority or the facilities deriving from his functions;
2. in the course of their duties by a public official or civil servant, a law enforcement officer or person exercising public authority."

Art. 12. There shall be inserted into Book II, Title VIII, Chapter IIIter of the Code a new Article 433septies, worded as follows:

"Article 433septies. – The offence defined in Article 433quinquies, § 1 shall be punishable by ten to fifteen years' imprisonment and a fine of between one thousand and one hundred thousand euros in the following cases:

1. where the offence has been committed against a minor;
2. where it has been committed by taking wrongful advantage of the especially vulnerable position in which a person is placed because of

his/her illegal or uncertain administrative situation, precarious social circumstances, pregnancy, illness or physical or mental frailty or impairment, in such a way that the person actually has no real and acceptable choice but to submit to this wrongful treatment;

3. where it has been committed by making direct or indirect use of false pretences, violence, threats or any form of coercion whatsoever;

4. where the victim's life has been imperilled deliberately or by gross negligence;

5. where the offence has caused an apparently incurable disease, a permanent physical or mental disability, complete loss of an organ or of its functions, or severe mutilation;

6. where the activity in question constitutes a habitual activity;

7. where it constitutes an act of participation in the principal or subsidiary activity of an association, whether or not the culprit has the status of manager."

Art. 13. There shall be inserted into Book II, Title VIII, Chapter IIIter of the Code a new Article 433octies, worded as follows:

"Article 433octies. – The offence defined in Article 433quinquies, § 1 shall be punishable by fifteen to twenty years' imprisonment and a fine of between one thousand and one hundred and fifty thousand euros in the following cases:

1. where the offence has unintentionally caused the victim's death;

2. where it constitutes an act of participation in the principal or subsidiary activity of a criminal organisation, whether or not the culprit has the status of ringleader."

Under the terms of the convention, legal entities are also liable to sanctions that are "effective, proportionate and dissuasive", which may be criminal, administrative or civil in character. Parties are asked to provide for the possibility of imposing monetary sanctions on legal persons.

Irish legislation

Illegal immigrants (trafficking) bill, 1999

Section 10: Offences by Bodies Corporate

1. Where an offence under this Act has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

2. Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

Finally, the convention places a general obligation on parties to adopt appropriate legal instruments that enable the authorities to confiscate or otherwise deprive offenders of the instrumentalities and proceeds of criminal offences while providing for the closing up of any establishment used to carry out trafficking in human beings.

UNMIK Regulation

Regulation No. 2001/4 on the prohibition of trafficking in persons in Kosovo

12 January 2001

Section 6: Confiscation of Property and Closure of Establishments

6.1. Property used in or resulting from the commission of trafficking in persons or other criminal acts under the present regulation may be confiscated in accordance with the applicable law. The personal property of the victims of trafficking shall not be confiscated wherever it can be immediately identified by the law enforcement officer as such.

6.2. Where there are grounds for suspicion that an establishment, operating legally or illegally, is involved in, or is knowingly associated with trafficking in persons or other criminal acts under the present regulation, an investigating judge may, upon the recommendation of the public prosecutor, issue an order for the closing of such establishment.

6.3. A reparation fund for victims of trafficking shall be established by administrative direction and shall be authorised to receive funds from, *inter alia*, the confiscation of property pursuant to section 6.1.

Can the European Court of Human Rights can play a role in the protection of the victims of trafficking?

In the case of *Siliadin v. France* (application No. 73316/01), the Court held unanimously that there had been a violation of Article 4 (prohibition of servitude) of the European Convention on Human Rights.

The Court considered that Article 4 of the Convention enshrined one of the fundamental values of the democratic societies which make up the Council of Europe. It was one of those Convention provisions with regard to which the fact that a state had refrained from infringing the guaranteed rights did not suffice to conclude that it had complied with its obligations; it gave rise to positive obligations on states, consisting in the adoption and effective implementation of criminal law provisions making the practices set out in Article 4 a punishable offence.

The Court considered that states were under an obligation to penalise and punish any act aimed at maintaining a person in a situation incompatible with Article 4.

In order to classify the state in which the applicant was held, the Court considered that Ms Siliadin had, at the least, been

subjected to forced labour within the meaning of Article 4 of the Convention and had been held in servitude.

However, the French criminal law legislation in force at the material time had not afforded the applicant specific and effective protection against the actions of which she had been a victim and her “employers” were not convicted under criminal law.

Consequently, the Court concluded that France had not fulfilled its positive obligations under Article 4 of the Convention.

Investigation, prosecution and procedural law

The convention contains provisions for adapting parties’ criminal procedure for two purposes: protecting victims of trafficking and assisting prosecution of the traffickers.

Complaints

It enables the authorities to prosecute offences established in the convention without the necessity of a complaint from the victim. The aim is to avoid traffickers’ subjecting victims to pressure and threats in attempts to deter them from complaining to the authorities.

It also makes it easier for a victim to complain by allowing him or her to lodge the complaint with the competent authorities of his or her state of residence and requires that parties ensure to non-governmental organisations and other associations which aim at fighting trafficking in human beings or protection of human rights the possibility to assist and/or support the victim with his or her consent during criminal proceedings concerning the offence of trafficking in human beings.

Protection to victims

Parties must take the necessary measures to provide effective and appropriate protection to victims, collaborators with the judicial

authorities, witnesses and, when necessary, members of such persons' families. Protection measures should be granted only when the beneficiary persons have consented.

Training

Parties have to adopt the necessary measures to promote specialisation of persons or units in anti-human-trafficking action and victim protection. Each country must have anti-trafficking specialists. There must also be a sufficient number of them and they should be provided with appropriate resources.

To combat trafficking effectively and protect its victims, it is essential that public authorities have proper training. Such training must cover methods of preventing trafficking, prosecuting the traffickers and protecting the victims. To make agencies aware of the special features of the predicament of trafficking victims, it is provided that training must also deal with human rights and it should also emphasise victims' needs, victim reception and appropriate treatment of victims by the criminal justice system.

Belgian initiative:² Training programme

Specific modules exist in the police training schools for combating trafficking in human beings. The future police officers receive modules devoted to the approach to the prevalent phenomena. As it is presented, the approach to the phenomenon of trafficking in persons is actually more a matter of awareness raising. In addition, the police officers receive ongoing and systematic knowledge updates.

2. Criminal law reform to combat and prevent trafficking in human beings in south-eastern Europe. Training seminar in drafting legislation for the protection of victims and victim-witnesses of trafficking in human beings, Strasbourg, 8-10 September 2003. Report.

The directives and programmes for the continuing education of magistrates for the year 2002 indicate that topical training is organised by the magistrates on Criminal Law and criminology, particularly on the issue of trafficking in human beings. In fact, the proliferation of new and often complex legislation, the multiplication of the sources of juridical information, the growing specialization of lawyers, the internationalization of law and the emergence of new technologies necessitate the permanent updating of the knowledge and practices of the magistrates in order to improve the quality of the public service of justice, particularly through a strengthened legal security.

Procedural law

In criminal procedure there are values – defence rights on the one hand, victim and witness privacy and safety on the other – which converge and sometimes clash. This is the reason why the convention contains a provision on court proceedings which is compulsory as to the objectives (safeguarding victims' private life and, if necessary, identity and guaranteeing victim safety and protection from intimidation) but which leaves it to the parties to decide how to achieve the objectives.

In the case of child victims, the convention states that parties must take special care of their needs and ensure their rights to special protection measures since a child will usually be more vulnerable than an adult and likelier to be intimidated. The law in some countries provides for audio-visual recording of hearings of children and others allow children to appear before the court by videoconference.

Romanian legislation

Law on the Prevention and Combat of Trafficking in Human Beings Chapter IV. Special provisions regarding the criminal procedure

[...]

Article 24

1. Court sessions in cases involving crimes of trafficking in human beings within Article 13 and child pornography within Article 18 shall not be open to the public.

2. Court proceedings in the conditions of paragraph 1 can be attended by the parties, their representatives, legal counsels as well as other persons whose presence is deemed necessary by the court.

3. In cases involving crimes stipulated in this Law, the hearing of a person aged less than 14 shall take place in the presence of one of the parents or the legal guardian or the foster parent the under age person has been entrusted to for raising and education.

Article 25

Upon the request of the victim, the Court can order a closed-doors session for cases based on Articles 12 and 17.

Jurisdiction

Each party is required to punish the offences when they are committed in its territory. The convention also requires each party to establish jurisdiction over offences committed on ships flying its flag or aircraft registered under its laws. If one of its nationals commits an offence abroad, a party is obliged to be able to prosecute if the conduct involved is also an offence under the law of the country where it took place or the conduct took place outside any country's territorial jurisdiction.

Luxembourg

Law of 31 May 1999 reinforcing measures against trafficking in human beings and sexual exploitation of children, amending the Criminal Code and the Code of Criminal Procedure.

Section 10 – The following Article 5-1 is added to the Code of Criminal Procedure:

Art. 5-1 – Any Luxembourg national and any foreigner found in the Grand Duchy of Luxembourg who, in another country, committed one of the offences covered by Articles 198, 199, 199bis and 368 to 382 of the Criminal Code may be prosecuted and tried in the Grand Duchy even though the offence is not punished under the laws of the country where it was committed and the Luxembourg authorities have received no complaint from the offended party or the authorities of the country where the offence was committed.

Monitoring mechanism

One of the main added values of the convention is the monitoring system foreseen by it. This system has two pillars: on the one hand, the Group of Experts against trafficking in human beings (GRETA) and on the other hand, there is a more political body, the Committee of the Parties, composed of the representatives in the Committee of Ministers of the Parties to the convention and of representatives of parties non-members of the Council of Europe.

GRETA is a technical body, composed of independent and highly qualified experts in the area of human rights, assistance and protection to victims and the fight against trafficking in human beings. It shall have a minimum of 10 and a maximum of 15 members and the convention stresses the need to ensure geographical and gender balance, as well as a multidisciplinary expertise, when appointing GRETA's members, who shall be nationals of states parties to the convention.

To monitor the implementation of the convention, GRETA will regularly draw up reports evaluating the measures taken by the parties which have consented to be bound by the convention and for which the convention is in force. Those parties which do not fully respect the measures contained in the convention will be required to step up their action, with the task of adopting a report and conclusions on each party's implementation of the convention.

The Committee of the Parties, which ensures equal participation of all the parties alike in the decision-making process and in the monitoring procedure of the convention, may adopt recommendations, on the basis of the report and conclusions of GRETA, addressed to a party concerning the measures to be taken to follow up GRETA's conclusions.

Why a European mechanism of monitoring?

Like other existing European monitoring mechanism instruments (for example the Committee for the Prevention of Torture or the Social Charter monitoring mechanism), GRETA

will ensure the effective implementation of the convention by the parties.

The parties shall co-operate with a view to eradicating this phenomenon and GRETA, which is composed of independent and highly qualified experts, may help them to do so, and allow them to co-operate and also exchange good practices.

GRETA may organise country visits to get more information from the party concerned.

International co-operation and co-operation with civil society

International co-operation

The convention establishes an obligation for parties to provide extensive co-operation to one another and to minimise impediments to the smooth and rapid flow of information and evidence internationally for the purpose of:

- ▶ preventing and combating trafficking against human beings;
- ▶ protecting and providing assistance to victims;
- ▶ investigation or proceedings concerning criminal offences established in accordance with the convention.

This co-operation should be provided in accordance with relevant international and regional instruments, arrangements agreed on the basis of uniform or reciprocal legislation, and domestic law. The general agreement is that the provisions included in the convention against trafficking in human beings neither cancel nor replace the provisions of relevant international or regional instruments on mutual legal assistance and extradition, reciprocal arrangements between parties to such instruments and relevant provisions of domestic law concerning international co-operation.

Relevant international instruments include:

- ▶ the *European Convention on Extradition* (ETS No. 24) and its protocols (Council of Europe)
- ▶ the *European Convention on Mutual Assistance in Criminal Matters* (ETS No. 30) and its protocols (Council of Europe)
- ▶ the *Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between member states* (in the case of European Union member states)

- ▶ the *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime* (ETS No. 141, Council of Europe), as regards co-operation to seize the proceeds of trafficking, and in particular to identify, locate, freeze and confiscate assets associated with trafficking in human beings and its resultant exploitation.

Endangered or missing persons

The convention includes special measures relating to endangered or missing persons and requires a party to warn another party if it has information that suggests that a victim, a witness, a person co-operating with the judicial authorities or a relative of such a person is in immediate danger in the territory of the other party. The party receiving such information is required to take appropriate protection measures.

Co-operation with civil society

The participation of civil society in the implementation of the provisions of the convention is crucial for the success of any policy and legislation aimed at fighting trafficking. The convention encourages co-operation between national authorities and public officials and non-governmental organisations, other relevant organisations and members of civil society, in establishing strategic partnerships with the aim of achieving the purpose of the convention. Establishing strategic partnership means the setting up of co-operative frameworks through which state actors fulfil their obligations under the convention, by co-ordinating their efforts with civil society.

How can this co-operation be implemented practically?

For example,

- ▶ round-table discussions involving all actors should be organised to promote regular open dialogue, which is crucial

to identify and implement efficient and effective policies and programmes;

- ▶ conclusion of memoranda of understanding between national authorities and non-governmental organisations to provide protection and assistance to victims of trafficking;
- ▶ support NGOs working in this field, including financially.

Relationship with other international instruments

Relationship with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

The convention does not interfere with rights and obligations deriving from provisions of the Palermo Protocol and is intended to reinforce the protection afforded by the United Nations instrument and develops the standards it lays down.

Relationship with international instruments other than the Palermo Protocol

This convention intends to strengthen victims' protection and assistance. For this reason its provisions aim at ensuring that this convention does not prejudice the rights and obligations derived from other international instruments, to which parties to the present convention are also parties, or shall become parties, and which contain provisions on matters governed by this convention that ensure greater protection and assistance for victims of trafficking.

It is also made clear that parties are not allowed to conclude any agreement which derogates from the convention.

Does the Council of Europe convention interfere with the EU Directive of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who co-operate with the competent authorities?

The convention (Article 40) seeks to ensure that the convention harmoniously co-exists with other treaties – whether multilateral or bilateral – or instruments dealing with matters which the convention also covers.

The convention goes further than the EU Directive does. It provides rights for the victims who are being trafficked within the borders of a country as well as between countries and to victims who do not co-operate with the authorities but who need help.

Amendments to the convention

Amendments to the provisions of the convention may be proposed by the parties and then communicated to all Council of Europe member states, to any signatory, to any party, to the European Community and any state invited to sign or accede to the convention.

The GRETA will prepare an opinion on the proposed amendment which will be submitted to the Committee of Ministers. After considering the proposed amendment and the GRETA opinion, the Committee of Ministers can adopt the amendment. Such amendments adopted by the Committee of Ministers must be forwarded to the parties for acceptance. Before deciding on the amendment, the Committee of Ministers shall consult with and obtain the unanimous consent of all parties.

Final clauses

The convention is open for signature not only by Council of Europe member states but also the European Community and states not members of the Council of Europe (Canada, the Holy See, Japan, Mexico and the United States) which took part in drawing it up. Once the convention enters into force, other non-member states not covered by this provision may be invited to accede to the convention. The number of ratifications, acceptances or approvals required for the convention's entry into force is 10.

It would be incompatible with the object and purpose of the convention for states parties to exclude parts of their territory from application of the convention without a valid reason (such as the existence of different legal systems applying in matters dealt with in the convention).

Postface by the Deputy Secretary General of the Council of Europe

Trafficking in human beings is unanimously considered by the international community as a grave violation of human rights and human dignity. It directly undermines the values on which the Council of Europe is based: human rights, democracy and the rule of law.

Trafficking in human beings is a major problem in Europe. Every year, a growing number of people are forced to work, mostly in the sex industry, but also, for example, in the agricultural sector and in sweatshops, for a pittance or nothing at all.

No country alone can defeat trafficking: isolated action is bound to fail, while concerted actions will be effective. The Council of Europe Convention on Action against Trafficking in Human Beings therefore represents a major step forward in the fight against trafficking.

The convention applies to all cases of trafficking and is a comprehensive treaty focusing on the protection of victims of trafficking and the safeguarding of their rights. It also aims to prevent trafficking and to prosecute traffickers. In addition, the convention provides for the setting up of an effective and independent monitoring mechanism capable of controlling the implementation of the obligations it contains.

The Council of Europe Campaign to Combat Trafficking in Human Beings launched in 2006 is aimed at promoting the widest possible signature, ratification and implementation of the convention. **The commitment of the Parliamentary Assembly of the Council of Europe to this Campaign and its efforts to promote the signature and ratification of the convention have been and are of the utmost importance.**

I welcome this handbook, which I am sure will prove extremely useful for parliamentarians to promote the widest possible signature and ratification of this convention.

Maud de Boer-Buquicchio
Deputy Secretary General of the Council of Europe

Appendix I

Council of Europe Convention on Action against Trafficking in Human Beings

Preamble

The member States of the Council of Europe and the other Signatories hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that trafficking in human beings constitutes a violation of human rights and an offence to the dignity and the integrity of the human being;

Considering that trafficking in human beings may result in slavery for victims;

Considering that respect for victims' rights, protection of victims and action to combat trafficking in human beings must be the paramount objectives;

Considering that all actions or initiatives against trafficking in human beings must be non-discriminatory, take gender equality into account as well as a child-rights approach;

Recalling the declarations by the Ministers for Foreign Affairs of the Member States at the 112th (14-15 May 2003) and the 114th (12-13 May 2004) Sessions of the Committee of Ministers calling for reinforced action by the Council of Europe on trafficking in human beings;

Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and its protocols;

Bearing in mind the following recommendations of the Committee of Ministers to member states of the Council of Europe: Recommendation No. R (91) 11 on sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults; Recommendation

No. R (97) 13 concerning intimidation of witnesses and the rights of the defence; Recommendation No. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation and Recommendation Rec (2001) 16 on the protection of children against sexual exploitation; Recommendation Rec (2002) 5 on the protection of women against violence;

Bearing in mind the following recommendations of the Parliamentary Assembly of the Council of Europe: Recommendation 1325 (1997) on traffic in women and forced prostitution in Council of Europe member states; Recommendation 1450 (2000) on violence against women in Europe; Recommendation 1545 (2002) on a campaign against trafficking in women; Recommendation 1610 (2003) on migration connected with trafficking in women and prostitution; Recommendation 161 (2003) on trafficking in organs in Europe; Recommendation 1663 (2004) Domestic slavery: servitude, au pairs and mail-order brides;

Bearing in mind the European Union Council Framework Decision of 19 July 2002 on combating trafficking in human beings, the European Union Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings and the European Union Council Directive of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities;

Taking due account of the United Nations Convention against Transnational Organized Crime and the Protocol thereto to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children with a view to improving the protection which they afford and developing the standards established by them;

Taking due account of the other international legal instruments relevant in the field of action against trafficking in human beings;

Taking into account the need to prepare a comprehensive international legal instrument focusing on the human rights of victims of trafficking and setting up a specific monitoring mechanism,

Have agreed as follows:

Chapter I – Purposes, scope, non-discrimination principle and definitions

Article 1 – Purposes of the Convention

1. The purposes of this Convention are:
 - a. to prevent and combat trafficking in human beings, while guaranteeing gender equality;
 - b. to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution;
 - c. to promote international co-operation on action against trafficking in human beings.
2. In order to ensure effective implementation of its provisions by the Parties, this Convention sets up a specific monitoring mechanism.

Article 2 – Scope

This Convention shall apply to all forms of trafficking in human beings, whether national or transnational, whether or not connected with organised crime.

Article 3 – Non-discrimination principle

The implementation of the provisions of this Convention by Parties, in particular the enjoyment of measures to protect and promote the rights

of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 4 – Definitions

For the purposes of this Convention:

- a. “Trafficking in human beings” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- b. The consent of a victim of “trafficking in human beings” to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- c. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in human beings” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- d. “Child” shall mean any person under eighteen years of age;
- e. “Victim” shall mean any natural person who is subject to trafficking in human beings as defined in this article.

Chapter II – Prevention, co-operation and other measures

Article 5 – Prevention of trafficking in human beings

1. Each Party shall take measures to establish or strengthen national co-ordination between the various bodies responsible for preventing and combating trafficking in human beings.
2. Each Party shall establish and/or strengthen effective policies and programmes to prevent trafficking in human beings, by such means as: research, information, awareness raising and education campaigns, social and economic initiatives and training programmes, in particular for persons vulnerable to trafficking and for professionals concerned with trafficking in human beings.
3. Each Party shall promote a Human Rights-based approach and shall use gender mainstreaming and a child-sensitive approach in the development, implementation and assessment of all the policies and programmes referred to in paragraph 2.
4. Each Party shall take appropriate measures, as may be necessary, to enable migration to take place legally, in particular through dissemination of accurate information by relevant offices, on the conditions enabling the legal entry in and stay on its territory.
5. Each Party shall take specific measures to reduce children's vulnerability to trafficking, notably by creating a protective environment for them.
6. Measures established in accordance with this article shall involve, where appropriate, non-governmental organisations, other relevant organisations and other elements of civil society committed to the prevention of trafficking in human beings and victim protection or assistance.

Article 6 – Measures to discourage the demand

To discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking, each Party

shall adopt or strengthen legislative, administrative, educational, social, cultural or other measures including:

- a. research on best practices, methods and strategies;
- b. raising awareness of the responsibility and important role of media and civil society in identifying the demand as one of the root causes of trafficking in human beings;
- c. target information campaigns involving, as appropriate, inter alia, public authorities and policy makers;
- d. preventive measures, including educational programmes for boys and girls during their schooling, which stress the unacceptable nature of discrimination based on sex, and its disastrous consequences, the importance of gender equality and the dignity and integrity of every human being.

Article 7 – Border measures

1. Without prejudice to international commitments in relation to the free movement of persons, Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in human beings.
2. Each Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with this Convention.
3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.
4. Each Party shall take the necessary measures, in accordance with its internal law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each Party shall adopt such legislative or other measures as may be necessary to permit, in accordance with its internal law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Convention.
6. Parties shall strengthen co-operation among border control agencies by, *inter alia*, establishing and maintaining direct channels of communication.

Article 8 – Security and control of documents

Each Party shall adopt such measures as may be necessary:

- a. To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
- b. To ensure the integrity and security of travel or identity documents issued by or on behalf of the Party and to prevent their unlawful creation and issuance.

Article 9 – Legitimacy and validity of documents

At the request of another Party, a Party shall, in accordance with its internal law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in human beings.

Chapter III – Measures to protect and promote the rights of victims, guaranteeing gender equality

Article 10 – Identification of the victims

1. Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the

special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention.

2. Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2.
3. When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age.
4. As soon as an unaccompanied child is identified as a victim, each Party shall:
 - a. provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child;
 - b. take the necessary steps to establish his/her identity and nationality;
 - c. make every effort to locate his/her family when this is in the best interests of the child.

Article 11 – Protection of private life

1. Each Party shall protect the private life and identity of victims. Personal data regarding them shall be stored and used in conformity with the conditions provided for by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108).

2. Each Party shall adopt measures to ensure, in particular, that the identity, or details allowing the identification, of a child victim of trafficking are not made publicly known, through the media or by any other means, except, in exceptional circumstances, in order to facilitate the tracing of family members or otherwise secure the well-being and protection of the child.
3. Each Party shall consider adopting, in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court of Human Rights, measures aimed at encouraging the media to protect the private life and identity of victims through self-regulation or through regulatory or co-regulatory measures.

Article 12 – Assistance to victims

1. Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least:
 - a. standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;
 - b. access to emergency medical treatment;
 - c. translation and interpretation services, when appropriate;
 - d. counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;
 - e. assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
 - f. access to education for children.
2. Each Party shall take due account of the victim's safety and protection needs.

3. In addition, each Party shall provide necessary medical or other assistance to victims lawfully resident within its territory who do not have adequate resources and need such help.
4. Each Party shall adopt the rules under which victims lawfully resident within its territory shall be authorised to have access to the labour market, to vocational training and education.
5. Each Party shall take measures, where appropriate and under the conditions provided for by its internal law, to co-operate with non-governmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims.
6. Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness.
7. For the implementation of the provisions set out in this article, each Party shall ensure that services are provided on a consensual and informed basis, taking due account of the special needs of persons in a vulnerable position and the rights of children in terms of accommodation, education and appropriate health care.

Article 13 – Recovery and reflection period

1. Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on co-operating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned. During this period, the Parties shall authorise the persons concerned to stay in their territory.

2. During this period, the persons referred to in paragraph 1 of this Article shall be entitled to the measures contained in Article 12, paragraphs 1 and 2.
3. The Parties are not bound to observe this period if grounds of public order prevent it or if it is found that victim status is being claimed improperly.

Article 14 – Residence permit

1. Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:
 - a. the competent authority considers that their stay is necessary owing to their personal situation;
 - b. the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.
2. The residence permit for child victims, when legally necessary, shall be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions.
3. The non-renewal or withdrawal of a residence permit is subject to the conditions provided for by the internal law of the Party.
4. If a victim submits an application for another kind of residence permit, the Party concerned shall take into account that he or she holds, or has held, a residence permit in conformity with paragraph 1.
5. Having regard to the obligations of Parties to which Article 40 of this Convention refers, each Party shall ensure that granting of a permit according to this provision shall be without prejudice to the right to seek and enjoy asylum.

Article 15 – Compensation and legal redress

1. 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.

2. 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.
3. Each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators.
4. 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.

Article 16 – Repatriation and return of victims

1. The Party of which a victim is a national or in which that person had the right of permanent residence at the time of entry into the territory of the receiving Party shall, with due regard for his or her rights, safety and dignity, facilitate and accept, his or her return without undue or unreasonable delay.
2. When a Party returns a victim to another State, such return shall be with due regard for the rights, safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim, and shall preferably be voluntary.
3. At the request of a receiving Party, a requested Party shall verify whether a person is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving Party.
4. In order to facilitate the return of a victim who is without proper documentation, the Party of which that person is a national or in

which he or she had the right of permanent residence at the time of entry into the territory of the receiving Party shall agree to issue, at the request of the receiving Party, such travel documents or other authorisation as may be necessary to enable the person to travel to and re-enter its territory.

5. Each Party shall adopt such legislative or other measures as may be necessary to establish repatriation programmes, involving relevant national or international institutions and non-governmental organisations. These programmes aim at avoiding re-victimisation. Each Party should make its best effort to favour the reintegration of victims into the society of the State of return, including reintegration into the education system and the labour market, in particular through the acquisition and improvement of their professional skills. With regard to children, these programmes should include enjoyment of the right to education and measures to secure adequate care or receipt by the family or appropriate care structures.
6. Each Party shall adopt such legislative or other measures as may be necessary to make available to victims, where appropriate in cooperation with any other Party concerned, contact information of structures that can assist them in the country where they are returned or repatriated, such as law enforcement offices, non-governmental organisations, legal professions able to provide counselling and social welfare agencies.
7. Child victims shall not be returned to a State, if there is indication, following a risk and security assessment, that such return would not be in the best interests of the child.

Article 17 – Gender equality

Each Party shall, in applying measures referred to in this chapter, aim to promote gender equality and use gender mainstreaming in the development, implementation and assessment of the measures.

Chapter IV – Substantive criminal law

Article 18 – Criminalisation of trafficking in human beings

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct contained in article 4 of this Convention, when committed intentionally.

Article 19 – Criminalisation of the use of services of a victim

Each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation as referred to in Article 4 paragraph a of this Convention, with the knowledge that the person is a victim of trafficking in human beings.

Article 20 – Criminalisation of acts relating to travel or identity documents

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conducts, when committed intentionally and for the purpose of enabling the trafficking in human beings:

- a. forging a travel or identity document;
- b. procuring or providing such a document;
- c. retaining, removing, concealing, damaging or destroying a travel or identity document of another person.

Article 21 – Attempt and aiding or abetting

1. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences when committed intentionally, aiding or abetting the commission of any of the offences established in accordance with Articles 18 and 20 of the present Convention.
2. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences when committed intentionally, an attempt to commit the offences established in

accordance with Articles 18 and 20, paragraph a, of this Convention.

Article 22 – Corporate liability

1. Each Party shall adopt such legislative and other measures as may be necessary to ensure that a legal person can be held liable for a criminal offence established in accordance with this Convention, committed for its benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:
 - a. a power of representation of the legal person;
 - b. an authority to take decisions on behalf of the legal person;
 - c. an authority to exercise control within the legal person.
2. Apart from the cases already provided for in paragraph 1, each Party shall take the measures necessary to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of a criminal offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.
3. Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.
4. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.

Article 23 – Sanctions and measures

1. Each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offences established in accordance with Articles 18 to 21 are punishable by effective, proportionate and dissuasive sanctions. These sanctions shall include, for criminal offences established in accordance with Article 18 when committed by natural persons, penalties involving deprivation of liberty which can give rise to extradition.

2. Each Party shall ensure that legal persons held liable in accordance with Article 22 shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions or measures, including monetary sanctions.
3. Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences established in accordance with Articles 18 and 20, paragraph a, of this Convention, or property the value of which corresponds to such proceeds.
4. Each Party shall adopt such legislative or other measures as may be necessary to enable the temporary or permanent closure of any establishment which was used to carry out trafficking in human beings, without prejudice to the rights of *bona fide* third parties or to deny the perpetrator, temporary or permanently, the exercise of the activity in the course of which this offence was committed.

Article 24 – Aggravating circumstances

Each Party shall ensure that the following circumstances are regarded as aggravating circumstances in the determination of the penalty for offences established in accordance with Article 18 of this Convention:

- a. the offence deliberately or by gross negligence endangered the life of the victim;
- b. the offence was committed against a child;
- c. the offence was committed by a public official in the performance of her/his duties;
- d. the offence was committed within the framework of a criminal organisation.

Article 25 – Previous convictions

Each Party shall adopt such legislative and other measures providing for the possibility to take into account final sentences passed by another

Party in relation to offences established in accordance with this Convention when determining the penalty.

Article 26 – Non-punishment provision

Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.

Chapter V – Investigation, prosecution and procedural law

Article 27 – Ex parte and ex officio applications

1. Each Party shall ensure that investigations into or prosecution of offences established in accordance with this Convention shall not be dependent upon the report or accusation made by a victim, at least when the offence was committed in whole or in part on its territory.
2. Each Party shall ensure that victims of an offence in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their State of residence. The competent authority to which the complaint is made, insofar as it does not itself have competence in this respect, shall transmit it without delay to the competent authority of the Party in the territory in which the offence was committed. The complaint shall be dealt with in accordance with the internal law of the Party in which the offence was committed.
3. Each Party shall ensure, by means of legislative or other measures, in accordance with the conditions provided for by its internal law, to any group, foundation, association or non-governmental organisations which aims at fighting trafficking in human beings or protection of human rights, the possibility to assist and/or support the victim with his or her consent during criminal proceedings

concerning the offence established in accordance with Article 18 of this Convention.

Article 28 – Protection of victims, witnesses and collaborators with the judicial authorities

1. Each Party shall adopt such legislative or other measures as may be necessary to provide effective and appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators, for:
 - a. Victims;
 - b. As appropriate, those who report the criminal offences established in accordance with Article 18 of this Convention or otherwise co-operate with the investigating or prosecuting authorities;
 - c. witnesses who give testimony concerning criminal offences established in accordance with Article 18 of this Convention;
 - d. when necessary, members of the family of persons referred to in subparagraphs a and c.
2. Each Party shall adopt such legislative or other measures as may be necessary to ensure and to offer various kinds of protection. This may include physical protection, relocation, identity change and assistance in obtaining jobs.
3. A child victim shall be afforded special protection measures taking into account the best interests of the child.
4. Each Party shall adopt such legislative or other measures as may be necessary to provide, when necessary, appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators, for members of groups, foundations, associations or non-governmental organisations which carry out the activities set out in Article 27, paragraph 3.

5. Each Party shall consider entering into agreements or arrangements with other States for the implementation of this article.

Article 29 – Specialised authorities and co-ordinating bodies

1. Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against trafficking and the protection of victims. Such persons or entities shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure. Such persons or the staffs of such entities shall have adequate training and financial resources for their tasks.
2. Each Party shall adopt such measures as may be necessary to ensure co-ordination of the policies and actions of their governments' departments and other public agencies against trafficking in human beings, where appropriate, through setting up co-ordinating bodies.
3. Each Party shall provide or strengthen training for relevant officials in the prevention of and fight against trafficking in human beings, including Human Rights training. The training may be agency-specific and shall, as appropriate, focus on: methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers.
4. Each Party shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements.

Article 30 – Court proceedings

In accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Article 6, each Party shall

adopt such legislative or other measures as may be necessary to ensure in the course of judicial proceedings:

- a. the protection of victims' private life and, where appropriate, identity;
- b. victims' safety and protection from intimidation,

in accordance with the conditions under its internal law and, in the case of child victims, by taking special care of children's needs and ensuring their right to special protection measures.

Article 31 – Jurisdiction

1. Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:
 - a. in its territory; or
 - b. on board a ship flying the flag of that Party; or
 - c. on board an aircraft registered under the laws of that Party; or
 - d. by one of its nationals or by a stateless person who has his or her habitual residence in its territory, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State;
 - e. against one of its nationals.
2. Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1 (d) and (e) of this article or any part thereof.
3. Each Party shall adopt such measures as may be necessary to establish jurisdiction over the offences referred to in this Convention, in cases where an alleged offender is present in its territory and it does not extradite him/her to another Party, solely on the basis of his/her nationality, after a request for extradition.

4. When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.
5. Without prejudice to the general norms of international law, this Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with internal law.

Chapter VI – International co-operation and co-operation with civil society

Article 32 – General principles and measures for international co-operation

The Parties shall co-operate with each other, in accordance with the provisions of this Convention, and through application of relevant applicable international and regional instruments, arrangements agreed on the basis of uniform or reciprocal legislation and internal laws, to the widest extent possible, for the purpose of:

- preventing and combating trafficking in human beings;
- protecting and providing assistance to victims;
- investigations or proceedings concerning criminal offences established in accordance with this Convention.

Article 33 – Measures relating to endangered or missing persons

1. When a Party, on the basis of the information at its disposal, has reasonable grounds to believe that the life, the freedom or the physical integrity of a person referred to in Article 28, paragraph 1, is in immediate danger on the territory of another Party, the Party that has the information shall, in such a case of emergency, transmit it without delay to the latter so as to take the appropriate protection measures.
2. The Parties to this Convention may consider reinforcing their co-operation in the search for missing people, in particular for missing children, if the information available leads them to believe that she/

he is a victim of trafficking in human beings. To this end, the Parties may conclude bilateral or multilateral treaties with each other.

Article 34 – Information

1. The requested Party shall promptly inform the requesting Party of the final result of the action taken under this chapter. The requested Party shall also promptly inform the requesting Party of any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly.
2. A Party may, within the limits of its internal law, without prior request, forward to another Party information obtained within the framework of its own investigations when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings concerning criminal offences established in accordance with this Convention or might lead to a request for co-operation by that Party under this chapter.
3. Prior to providing such information, the providing Party may request that it be kept confidential or used subject to conditions. If the receiving Party cannot comply with such request, it shall notify the providing Party, which shall then determine whether the information should nevertheless be provided. If the receiving Party accepts the information subject to the conditions, it shall be bound by them.
4. All information requested concerning Articles 13, 14 and 16, necessary to provide the rights conferred by these Articles, shall be transmitted at the request of the Party concerned without delay with due respect to Article 11 of the present Convention.

Article 35 – Co-operation with civil society

Each Party shall encourage state authorities and public officials to cooperate with non-governmental organisations, other relevant organisations and members of civil society, in establishing strategic partnerships with the aim of achieving the purpose of this Convention.

Chapter VII – Monitoring mechanism

Article 36 – Group of experts on action against trafficking in human beings

1. The Group of experts on action against trafficking in human beings (hereinafter referred to as “GRETA”), shall monitor the implementation of this Convention by the Parties.
2. GRETA shall be composed of a minimum of 10 members and a maximum of 15 members, taking into account a gender and geographical balance, as well as a multidisciplinary expertise. They shall be elected by the Committee of the Parties for a term of office of 4 years, renewable once, chosen from amongst nationals of the States Parties to this Convention.
3. The election of the members of GRETA shall be based on the following principles:
 - a. they shall be chosen from among persons of high moral character, known for their recognised competence in the fields of Human Rights, assistance and protection of victims and of action against trafficking in human beings or having professional experience in the areas covered by this Convention;
 - b. they shall sit in their individual capacity and shall be independent and impartial in the exercise of their functions and shall be available to carry out their duties in an effective manner;
 - c. no two members of GRETA may be nationals of the same State;
 - d. they should represent the main legal systems.
4. The election procedure of the members of GRETA shall be determined by the Committee of Ministers, after consulting with and obtaining the unanimous consent of the Parties to the Convention, within a period of one year following the entry into force of this Convention. GRETA shall adopt its own rules of procedure.

Article 37 – Committee of the Parties

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.

Article 38 – Procedure

1. The evaluation procedure shall concern the Parties to the Convention and be divided in rounds, the length of which is determined by GRETA. At the beginning of each round GRETA shall select the specific provisions on which the evaluation procedure shall be based.
2. GRETA shall define the most appropriate means to carry out this evaluation. GRETA may in particular adopt a questionnaire for each evaluation round, which may serve as a basis for the evaluation of the implementation by the Parties of the present Convention. Such a questionnaire shall be addressed to all Parties. Parties shall respond to this questionnaire, as well as to any other request of information from GRETA.
3. GRETA may request information from civil society.
4. GRETA may subsidiarily organise, in co-operation with the national authorities and the “contact person” appointed by the latter, and, if necessary, with the assistance of independent national experts, country visits. During these visits, GRETA may be assisted by specialists in specific fields.
5. GRETA shall prepare a draft report containing its analysis concerning the implementation of the provisions on which the evaluation is

based, as well as its suggestions and proposals concerning the way in which the Party concerned may deal with the problems which have been identified. The draft report shall be transmitted for comments to the Party which undergoes the evaluation. Its comments are taken into account by GRETA when establishing its report.

6. On this basis, GRETA shall adopt its report and conclusions concerning the measures taken by the Party concerned to implement the provisions of the present Convention. This report and conclusions shall be sent to the Party concerned and to the Committee of the Parties. The report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned.
7. Without prejudice to the procedure of paragraphs 1 to 6 of this article, the Committee of the Parties may adopt, on the basis of the report and conclusions of GRETA, recommendations addressed to this Party (a) concerning the measures to be taken to implement the conclusions of GRETA, if necessary setting a date for submitting information on their implementation, and (b) aiming at promoting co-operation with that Party for the proper implementation of the present Convention.

Chapter VIII – Relationship with other international instruments

Article 39 – Relationship with the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime

This Convention shall not affect the rights and obligations derived from the provisions of the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime, and is intended to enhance the protection afforded by it and develop the standards contained therein.

Article 40 – Relationship with other international instruments

1. This Convention shall not affect the rights and obligations derived from other international instruments to which Parties to the present Convention are Parties or shall become Parties and which contain provisions on matters governed by this Convention and which ensure greater protection and assistance for victims of trafficking.
2. The Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.
3. Without prejudice to the object and purpose of the present Convention and without prejudice to its full application with other Parties, Parties which are members of the European Union shall, in their mutual relations, apply Community and European Union rules in so far as there are Community or European Union rules governing the particular subject concerned and applicable to the specific case.
4. Nothing in this Convention shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of *non-refoulement* as contained therein.

Chapter IX – Amendments to the Convention

Article 41 – Amendments

1. Any proposal for an amendment to this Convention presented by a Party shall be communicated to the Secretary General of the Council of Europe and forwarded by him or her to the member States of the Council of Europe, any signatory, any State Party, the European Community, to any State invited to sign this Convention in accordance with the provisions of Article 42 and to any State invited to

accede to this Convention in accordance with the provisions of Article 43.

2. Any amendment proposed by a Party shall be communicated to GRETA, which shall submit to the Committee of Ministers its opinion on that proposed amendment.
3. The Committee of Ministers shall consider the proposed amendment and the opinion submitted by GRETA and, following consultation of the Parties to this Convention and after obtaining their unanimous consent, may adopt the amendment.
4. The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.
5. Any amendment adopted in accordance with paragraph 3 of this article shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.

Chapter X – Final clauses

Article 42 – Signature and entry into force

1. This Convention shall be open for signature by the member States of the Council of Europe, the non member States which have participated in its elaboration and the European Community.
2. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
3. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which 10 Signatories, including at least 8 member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of the preceding paragraph.

4. In respect of any State mentioned in paragraph 1 or the European Community, which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 43 – Accession to the Convention

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties to this Convention and obtaining their unanimous consent, invite any non-member State of the Council of Europe, which has not participated in the elaboration of the Convention, to accede to this Convention by a decision taken by the majority provided for in Article 20 d. of the Statute of the Council of Europe, and by unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.
2. In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 44 – Territorial application

1. Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
2. Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the Convention shall enter into force on the first day of the

month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 45 – Reservations

No reservation may be made in respect of any provision of this Convention, with the exception of the reservation of Article 31, paragraph 2.

Article 46 – Denunciation

1. Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Article 47 – Notification

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, any State signatory, any State Party, the European Community, to any State invited to sign this Convention in accordance with the provisions of Article 42 and to any State invited to accede to this Convention in accordance with the provisions of Article 43 of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance, approval or accession;

- c. any date of entry into force of this Convention in accordance with Articles 42 and 43;
- d. any amendment adopted in accordance with Article 41 and the date on which such an amendment enters into force;
- e. any denunciation made in pursuance of the provisions of Article 46;
- f. any other act, notification or communication relating to this Convention;
- g. any reservation made under Article 45.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Warsaw, this 16th day of May 2005, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, to the European Community and to any State invited to accede to this Convention.

Appendix II

Chart of signatures and ratifications

For updated information see the website of the Council of Europe Treaty Office: www.conventions.coe.int

Council of Europe Convention on Action against Trafficking in Human Beings – CETS No. 197

Treaty open for signature by the member States, the non-member States which have participated in its elaboration and by the European Community, and for accession by other non-member States

Opening for signature

Place: Warsaw

Date: 16 May 2005

Entry into force

Conditions: 10 Ratifications

including 8 Member States

Status at 18 December 2006

Date: –

Member States of the Council of Europe

States	Signature	Ratification
Albania	22.12.05	
Andorra	17.11.05	
Armenia	16.05.05	
Austria	16.05.05	12.10.06
Azerbaijan		
Belgium	17.11.05	
Bosnia and Herzegovina	19.01.06	
Bulgaria	22.11.06	
Croatia	16.05.05	
Cyprus	16.05.05	
Czech Republic		
Denmark	05.09.06	
Estonia		
Finland	29.08.06	
France	22.05.06	
Georgia	19.10.05	
Germany	17.11.05	

States	Signature	Ratification
Greece	17.11.05	
Hungary		
Iceland	16.05.05	
Ireland		
Italy	08.06.05	
Latvia	19.05.06	
Liechtenstein		
Lithuania		
Luxembourg	16.05.05	
Malta	16.05.05	
Moldova ¹	16.05.05	19.05.06
Monaco		
Netherlands	17.11.05	
Norway	16.05.05	
Poland	16.05.05	
Portugal	16.05.05	
Romania	16.05.05	21.08.06
Russia		
San Marino	19.05.06	
Serbia ²	16.05.05	
Slovakia	19.05.06	
Slovenia	03.04.06	
Spain		
Sweden	16.05.05	
Switzerland		
«the former Yugoslav Republic of Macedonia»	17.11.05	
Turkey		
Ukraine	17.11.05	
United Kingdom		

Non-member States of the Council of Europe

States	Signature	Ratification
Canada		
Holy See		
Japan		
Mexico		
Montenegro ²	16.05.05	
United States		

International Organisations

Organisations	Signature	Ratification
European Community		

Total number of signatures not followed by ratifications	31
Total number of ratifications/accessions	3

1. Declaration.

2. Date of signature by Serbia and Montenegro.