

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



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The Council of Europe

- ✘ A regional intergovernmental organisation
- ✘ Founded in 1949
- ✘ 47 member States, 800 million Europeans
- ✘ Aims: to protect and promote human rights, pluralistic democracy and the rule of law



The extent of trafficking in human beings (THB)



- x According to ILO, the estimated minimum number of persons exploited as a result of trafficking is at a given time 2.45 million (May 2005)
- x Most people are trafficked for sexual exploitation (43%) but many are trafficked for economic exploitation (32%). Others are trafficked for sexual and economic exploitation or undetermined reasons (25%)
- x THB is the third most profitable criminal activity in the world after illegal drugs and arms trafficking
- x The illicit profits produced in one year are estimated to be about US\$33 billion



Action undertaken

Since the late 1980s, the Council of Europe has adopted a variety of initiatives:

- ✗ Studies and research
- ✗ Awareness-raising activities
- ✗ Co-operation activities at national and regional levels

The Council of Europe also has adopted texts concerning THB, in particular: *Recommendation n° R (2000) 11 of the Committee of Ministers to Member States on action against trafficking in human beings for the purpose of sexual exploitation*



Main international instruments



- x UN Protocol to the Convention against transnational organised crime to prevent, suppress and punish trafficking in persons, especially women and children (Palermo Protocol)
- x EU Directive of 29 April 2004 on the residence permit issued to third-country nationals victims of trafficking in human beings or to third-country nationals who have been the subject of an action to facilitate illegal migration who co-operate with the competent authorities
- x EU Council Framework Decision of 19 July 2002 on combating trafficking in human beings
- x OSCE Action Plan to combat trafficking in human beings



Why do we need a new treaty ?

- ✗ THB violates Human Rights and undermines the values on which the Council of Europe is based
- ✗ The geographical setting of the Council of Europe enables countries of origin, transit and destination to agree on a common binding policy against trafficking
- ✗ Existing international texts are either not sufficiently binding or take into account just "one aspect" of the problem



Aims of the Council of Europe Convention



The Council of Europe Convention is a comprehensive treaty aiming to (3 Ps):

- ✘ **P**revent trafficking
- ✘ **P**rotect the Human Rights of victims of trafficking
- ✘ **P**rosecute the traffickers



Scope of the Convention

The Convention applies to:

- ✗ all forms of trafficking: whether national or transnational, whether or not related to organised crime
- ✗ whoever the victim: women, men or children
- ✗ whatever the form of exploitation: sexual exploitation, forced labour or services, etc



Definition of THB (3 elements)



- ✗ 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: “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”.



Trafficking vs. Illegal migration (smuggling of migrants)



- ✘ While the aim of smuggling of migrants is the unlawful cross-border transport in order to obtain, directly or indirectly, a financial or other material benefit, 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.



Forms of exploitation

The forms of exploitation covered by the Convention are not limited to sexual exploitation. It also covers:

- ✗ forced labour or services
- ✗ slavery or practices similar to slavery
- ✗ servitude
- ✗ removal of organs.



Victims of trafficking

- ✘ No other international text defines victims, leaving it to each State to define who is a victim and therefore deserves the measures of protection and assistance
- ✘ A victim is any person who is subject to trafficking as defined in the Convention
- ✘ The consent of a victim to the exploitation is irrelevant where any of the means set forth by the definition (coercion, fraud, deception) have been used



Measures provided by the Council of Europe Convention



- I. Prevention
- II. Measures to protect and promote the rights of victims
- III. Criminal law and procedure
- IV. Co-operation
- V. Monitoring mechanism



I. Prevention

- ✗ Prevention of THB by measures such as information, awareness-raising and education campaigns for persons vulnerable to trafficking
- ✗ Preventive measures to discourage demand
- ✗ Border control to detect THB and measures to ensure the validity of travel or identity documents



II. Measures to protect and promote the rights of victims

- a. Identification process
- b. What type of assistance victim must have
- c. Recovery and reflection period
- d. Residence permit
- e. Compensation and legal redress
- f. Repatriation
- g. Gender equality



II.a. Identification process

- ✘ Trained and qualified staff to identify victims and issue a residence permit
- ✘ During the process, the person is not removed from the territory and receives certain assistance measures
- ✘ Special provisions for a child victim (eg. representation, establishment of age and nationality and locate family if in the best interest of the child)



II.b. Type of assistance

- ✘ Victims **must** be assisted to recover physically, psychologically and socially, such assistance includes:
- Standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance
 - Emergency medical treatment
 - Translation and interpretation
 - Counselling and information
 - Access to education for children
 - Assistance throughout the criminal procedure



II.c. Recovery and reflection period



- ✘ At least 30 days
- ✘ During this period, the person is not removed from the territory and receives certain assistance measures



II.d. Residence permit

- ✘ The main issue is: should it be linked to the victims' co-operation with the law enforcement authorities?
- ✘ The Council of Europe Convention has retained both possibilities for States: they can either grant such permit if the victims co-operate with the law enforcement authorities or where this is necessary in the light of the situation of the victim



II.e. Compensation and legal redress



- ✘ Right to legal assistance and to free legal aid for victims
- ✘ Right to compensation for victims, which has to be guaranteed, for instance, through a fund



II.f. Repatriation

- ✗ The Party from 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 right, safety and dignity
- ✗ When a Party returns a person to another State, the Party carries out such return with due regard for the rights, safety and dignity of the person
- ✗ Need to set up repatriation programmes in co-operation with NGOs
- ✗ Children shall not be returned unless it is in their best interest



II.g. Gender equality

In applying assistance measures provided by the Convention, Parties aim to promote gender equality and use gender mainstreaming in the development, implementation and assessment of the measures.



III. Criminal law and procedure



- ✗ Criminalisation of trafficking
- ✗ Possibility to criminalise those who use the services of victims
- ✗ Criminalisation of producing a fraudulent travel or ID document, procuring or providing such a document, retaining, removing, concealing, damaging or destroying such a document of another person
- ✗ Attempt and aiding or abetting
- ✗ Liability of legal persons
- ✗ Sanctions and measures
- ✗ Aggravating circumstances (eg danger to the life of the victim, the victim was a child, offence committed by a public official, criminal organisation)
- ✗ Non-punishment provision



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- ✗ *Ex parte & ex officio* application
- ✗ Protection of victims, witnesses and collaborators of justice
- ✗ Need for specialised authorities
- ✗ Adaptation of court proceedings in order to protect victims' private life and safety



IV. Co-operation

✘ International co-operation: obligation for Parties to co-operate to the widest extent possible for the purpose of:

- Preventing and combating THB
- Protecting and providing assistance to victims
- Investigation or proceedings concerning criminal offences

✘ NGOs work with victims, know their needs and the problems they face. The Convention encourages co-operation with civil society.



V. Monitoring mechanism

- ✗ The effectiveness of all treaties is measured by the effectiveness of its monitoring mechanism
- ✗ GRETA [Independent experts acting in their individual capacity, evaluation rounds, Report and conclusions for each Party]
- ✗ Committee of the Parties [political body]
- ✗ ALL Parties will be subject to the same monitoring mechanism on an equal footing



Relationship with other instruments



- ✗ The Council of Europe Convention does not prejudice the rights and obligations derived from the UN Palermo Protocol and is intended to enhance the protection afforded by it and develop the standards contained therein
- ✗ The fact of being a victim of trafficking in human beings cannot preclude the right to seek and enjoy asylum



THANK YOU!

✘ Any questions?

www.coe.int/trafficking

