
LEGAL - ANTICRIME PROTECTION OF THE PERSON IN INTERNATIONAL LAW

Lecturer Stancu Adriana Dunărea de Jos University, Galați

Abstract: The life of the person was subject of careful protection regardless of the existing social order at a particular time in a particular geographical area, representing both an object of protection for life as a biological phenomenon as a social phenomenon. Double vision is essentially necessary given that the human factor is indispensable for society existence itself.

Keywords:*human rights protection, legal protection of the individual, transnational organized crime, human trafficking, and slavery.*

1. The emergence regulations with universal nature on field of person's legal protection

The desire for recognition, regulation and protection of human rights eventually became reality; the road map for achieving this goal is one long, arduous and particularly difficult made by people and concepts who margin inequality either to succeed protection of interests and / or class privileges or to feed a false cult of superiority.

The birth of humanitarian preoccupations was the impetus to look at the human being as a value and the enthusiasm with which they were reactive documents mentioned above have created a solid foundation for political and legal content of the human rights institution¹. Thus was managed to substantiate the idea of person's equality in the field of civil and political rights, managing the foundation of an elaborate vision on the relations established between man and authority between the individual and the state which begins to define its protective nature.

Human trafficking is a violation of human rights, dignity and freedom, a phenomenon that exists and manifests nearly in all countries, regardless of their level of development. Every year, women, men and children become victims of sexual exploitation, forced labor exploitation or the removal of organs. Caused by a variety of psychosocial factors such as poverty, lack of education, dysfunctional family relationships, etc., trafficking take the scale and magnitude of the phenomenon especially in underdeveloped or developing countries².

In response to the international community to scale human trafficking for exploitation were concluded two agreements³ which were intended to reinforce necessary measures in order to discover and punish the persons guilty of trafficking in children, regardless of gender,

¹ Please see Pașca F., Crime of human trafficking, Publisher Pro Universitaria, Bucharest, 2010, pg. 12; Shelley L., Human Trafficking: A Global Perspective, Cambridge University Press, 2010

² Bales K., The Slave Next Door: Human Trafficking and Slavery in America Today, University of California Press, 2010, pg. 34

³ Geneva International Convention for the Suppression of trafficking in women and children on 30 September 1921 and International Convention on trafficking in major women from 11 October 1933. Romania joined the convention on 28 May 1935, together with other 10 states..

and those who recruited or tried to recruit women and girls, even with their consent in prostitution⁴.

With the creation in 1922 of the League of Nations of the Ad Hoc Committee for the study of slavery in the world has been addressed the ban of slavery in committee being made a series of viewpoints that have been incorporated in a convention on slavery that address issues relating to anti-human practice, and not the various forms in which this practice was disguised.

In its recital principles that guide the work and as successor to the League of Nations, the United Nations Organization has shown a constant interest to the problem of human trafficking, considered a serious offense to human dignity. Starting from this premise, and the necessity of a new instrument adapted for the time reality, was developed "Convention for the Suppression of human trafficking and fellows prostitute's exploitation".⁵

Wishing to extend regulation and issues pertaining to the modalities of disguise slavery, Economic and Social Council has created a special Committee had the mandate to draw up a draft of Supplementary Convention relative to the abolition of slavery, the slave trade and institutions and similar slavery practices, the Convention adopted on September 7, 1956 and which entered into force on April 3, 1957. The latest convention was intended to replace International Convention on slavery from 1926, which remained in force. Its purpose, as results from the title, was to add new regulations to be consistent with the evolution and development of international common law and specifically to meet the needs determined by the imperative compliance and guarantee of human rights.

The concerns of the international community in recognizing, protecting and guaranteeing human rights especially took on substance and marked during subsequent steps in promoting human like value through the adoption on December 10, 1949 under the aegis of the UN General Assembly, the *Universal Declaration of Human Rights*⁶ which mark the birth of a common "ideal" toward should strive jointly all peoples and nations, society as a whole and all individuals. The wording of this ideal marked the development of respect for human and fundamental rights through education and applying international measures and especially national awareness and promote the implementation and universal recognition of these rights for all human beings without distinction.

The concept of the United Nations⁷, essential for the international relations of XXI century are the following core values:

⁴ Please see Anghel A., Violence and modern slavery – Trafficking in women. Sociological perspective, Publisher University, Bucharest, 2012, pg. 5; Druță N., Timofticiuc E., Deac L., Tacea, A. F., Vintileanu I., Argeșeanu M., Stepănescu C., Guide to prevention of human trafficking, UNICEF – Representation in Romania – Bucharest, Publisher MarLink, Bucharest, 2004

⁵ The Convention was approved by the UN General Assembly on December 2, 1949, opened for signature and accession on March 21, 1950. Romania has ratified by Decree no.482 of December 10, 1954.

⁶ The declaration was adopted by the UN General Assembly by resolution no.217 A (III) from December 10, 1949.

⁷ As expressed in the Declaration adopted on September 8, 2000 by the UN General Assembly, called "United Nations Millennium Declaration".

- Freedom involving recognized right of all human beings to live in dignity, without living in a climate marked by violence, oppression or injustice;
- Solidarity between states as guarantors of fundamental rights and both between individuals, aspects that are intended to correct the distribution of costs and difficulties globally, in accordance with the principles of justice and especially social equity;
- Equality of rights and opportunities for men and women;
- Tolerance, which implies the existence of mutual respect between all human beings, in the fullness of religious beliefs and cultural and linguistic diversity;
- Responsibility, referring to his "management by the state of economic and social development of the world and the threats to international peace and security";

In its determination to promote and strength the rule of law and respect for all human rights and fundamental freedoms, the Heads of State and Government considered imperative to respect the whole of the Universal Declaration of Human Rights, the overall protection of civil, political, social, cultural and economic rights and increased attention to principles cultivation and democratic practices and respect for human rights, including those specific to minorities, combating forms of intolerance and violence against migrant workers and their families. States undertook this opportunity to eliminate all forms of racism and xenophobia, promote harmony and tolerance and to ensure freedom of the press and the public's right of access to information.

In conclusion, Millennium Declaration text try to capture as faithfully, the equality dimension, including gender, need to eradicate poverty, protection of children and the civilian population suffering from natural disasters and especially from armed conflict. There have not been forgotten aspects of full and comprehensive implementation of the Convention text on the Rights of the Child, prohibiting their sale, pornography and prostitution, issues which marked the international community in various forms and have created imbalances with incalculable or ineradicable consequences even if we refer to the trauma suffered by victims of "flesh" which practically almost generate an impossible social reintegration, therefore contributing to the stigma suffered by these people⁸.

2. Criminal law protection of the individual retrieved on UN documents

With the adoption of UNO Charter opened the possibility of cooperation to affirm and adoption of numerous international legal instruments that establish the benchmarks to manage different categories of fundamental rights and freedoms as well as outlining the actions necessary to ensure minimum protection standards of basic attributes of human personality.

In this regard we mention the following documentation from the United Nations Organization:

1. In the field of human trafficking:

⁸ Shelley L., *Human Trafficking: A Global Perspective*, Cambridge University Press, 2010

- a. The Convention for the Suppression of Human Trafficking and exploitation of prostitution.
 - b. Convention relating to the Status of Refugees;
 - c. Convention on the Rights of the Child;
 - d. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornographic;
 - e. UNO Convention against transnational organized crime;
 - f. Additional Protocol to prevent, suppress and punish Trafficking in Persons, especially Women and Children, which supplements the UN Convention on Transnational Organised Crime;
 - g. Additional Protocol on smuggling which completes the UN Convention on Transnational Organised Crime;
2. *In the field of slavery and forced labor:*
- a. Convention on slavery⁹;
 - b. I.L.O Convention regarding forced or compulsory labor;
 - c. Supplementary Convention on the Abolition of slavery, the slave trade and slavery-like practices and institutions since 1956;
 - d. I.L.O Convention respect the prohibition and immediate elimination of the worst forms of child labor;
3. *In the fight against discrimination:*
- a. Convention on the Elimination of All Forms of Discrimination against Women;
 - b. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women in 1999;
 - c. General Recommendations C.E.D.A.W .;

2.1. Convention for the Suppression of Human Trafficking and exploitation of peers prostitution.

Under the auspices of UNO was founded Convention for the Suppression of human trafficking and exploitation of peers prostitution, approved by the General Assembly on December 12, 1949 that opened for signature on March 21, 1950. This Convention, which specifically targets women, unifies a number of international instruments adopted in the first half of the century XX century to protect women and children. Considering that prostitution and the accompanying evil, and human trafficking to prostitution are incompatible with their dignity and worth of the human person and endanger the welfare of the individual, family and community¹⁰, States Parties to the Convention "decide sanctioning any person who, to satisfy the passions of another" :

1. lure, entice or urges to prostitution, another person, even with her consent;
2. exploiting the prostitution of another person even with his consent "

⁹ It was signed on September 25, 1926 in Geneva and entered into the vogaore on March 9, 1927, in accordance with Article. 12. Romania has ratified the Convention by Decree no. 988 from 1931, published in the Official Gazette, Part I, no. 76 on April 1, 1931.

¹⁰ Preamble, part I, *Convention for the Suppression of Human Trafficking and exploitation of peers prostitution.*

2.2. Convention on the Rights of the Child¹¹

The idea of developing a particular document to include child rights belongs to Englatyne Jebb, who founded the first organization Save the Children in 1919 in London. Outraged by the consequences of World War I and the Russian Revolution (thousands of children die every day from disease and hunger in all countries of Europe), E. Jebb decided to dedicate saving and improving the lives of children around the world. Therefore, the aim was to create a strong international organization able to intervene and less known areas where child protection was not applied and child rights were not observed. The programs developed at the time were especially watching hunger and providing healthcare to children

Under the Convention, children must be treated with respect, and the State is obliged to ensure the best conditions for development, to respect children's rights and norms of child protection. Children's rights contained in the Convention should be applied to all children without discrimination.

2.3. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography¹²

This Protocol has emerged as a result of proportions taken by the international trafficking in children for the purpose of selling and exploiting their infant children and child prostitution.

By signing this document, the signatory States have committed by Article 3 to prohibit the sale exploitation of children, child prostitution and child pornography, and also in national legislation to criminalize all acts which fall within these activities, no matter how committed, national, international, individually or organized.

2.4. UNO Convention against Transnational Organized Crime¹³

By far, the most important document for the international community regarding the initiatives and efforts of international organizations to improve interstate cooperation in combating organized crime and corruption is the United Nations Convention against Transnational Organized Crime.

This is the main international instrument in the fight against transnational organized crime. It is supplemented by three protocols, aimed at specific areas and organized crime events.

¹¹ Adopted by the UN General Assembly on November 20, 1989. Romania has ratified the Convention by Law no. 18/1990, published in the "Official Gazette", Part I, no. 109 of September 28, 1990 and republished in the "Official Gazette", Part I, no. 314 of June 13 2001. To date, the Convention was adopted by 193 countries, members of the United Nations (except the US and Somalia). Any State which signs the Convention recognizes the content, undertakes to respect and to apply it properly.

¹² Opened for signature at New York on September 6, 2000. Romania has ratified by Law no. 470 of September 20, 2001, published in the "Official Gazette", Part I, no. 601 of September 25, 2001.

¹³ Adopted by Resolution 55/25 of November 15 the United Nations. The Convention was opened for signature by the member States at a high level political conference convened for that purpose, in Palermo, Italy, from 12 to 15 December 2000 and entered into force on September 29, 2003. In order to take part any of the three Protocols, the countries must be signatory or acceding to the Convention.

These are the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the Protocol against the Smuggling of migrants by land, air and sea, and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, the parts and components and ammunition.*

This Convention is the result of UN member states need to strengthen and promote close international cooperation and find new tools to combat the serious problems stemming from transnational organized crime. States that have ratified this instrument undertake to adopt a series of measures against transnational organized crime.

With the adoption on 15.11.2000, at Palermo, Italy, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, has been given a modern definition under legal aspect of the concept of human trafficking, according to which: *trafficking in persons shall mean the recruitment, transportation, transfer, harboring or receipt of persons by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, 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 labor or services, slavery or practices similar to slavery, servitude or the removal of organs (art. 3, lett. a).

It should be noted that the Protocol *on the smuggling of migrants by land, air and sea, supplementing the United Nations Convention against Transnational Organized Crime* expression used *illegal trafficking of migrants*. According to art. 3 lit. a) of this international legal document that designates the *smuggling of migrants to ensure, in order to obtain, directly or indirectly, a financial or other material benefit, illegal entry into a state of a person who is neither a citizen nor permanent resident of that State*¹⁴.

Thus, the term legal trafficking of migrants has a completely different sense compared to what human trafficking means

2.5. Convention on slavery¹⁵

This document contains the first reference to forced labor in Convention's preamble stating that "it is necessary to prevent forced labor lead to conditions analogous to slavery." Moreover, through art. 5 of the Convention commits signatory states to "take appropriate measures to prevent forced or obliged labor to live in conditions analogous to slavery".

Among the objectives of and accepted by States Parties to this Convention are mentioned the following:

¹⁴ Protocol on the smuggling of migrants by land, air and sea, supplementing the United Nations Convention against Transnational Organized Crime.

¹⁵ Signed at Geneva on September 25, 1926. Entered into force on March 9, 1927 in accordance with art. 12. The Convention was amended by the Protocol developed at United Nations Headquarters, New York on December 7, 1953; Amended Convention entered into force on 7 July 1955, the date on which the amendments set out in the Annex to the Protocol of 7 December 1953 entered into force in accordance with art. III of the Protocol. Romania has ratified by Decree no. 988, published in the "Official Gazette of Romania", Part I, no. 76 of April 1, 1931.

- a. the total abolition of slavery in all its forms;
- b. the prevention and suppression of the slave trade;
- c. mutual assistance to ensure the abolition of slavery and the slave trade;
- d. adopt appropriate measures to prevent the embarkation, disembarkation and transport of slaves in their territorial waters and all ships flying their flag.

2.6. I.L.O Convention. on Abolition of Forced Labour¹⁶

The fundamental ideas are expressed outlining the objectives of the Convention in its preamble emphasizing even motivation behind the adoption of this document as follows:

- a. Freedom is a right that every human being has acquired by birth;

- b. Adoption of Convention is aimed at "intensifying efforts, both national and international aiming at the abolition of slavery, the slave trade and institutions and practices similar to slavery";

- c. After the end of the 1926 year Convention¹⁷ important advances have been made towards the abolition of slavery, the slave trade and institutions and practices similar to slavery;

By adhering to the Convention States parties were obliged to eliminate all forms of forced or compulsory labor, pledging also to refrain from forced labor or any similar practices in any form:

- a) as a method of mobilizing and using labor for purposes of Local Economic Development or under the guise that purpose;
- b) both as a means of political coercion or education or as a punishment to persons who expressed or express certain political opinions or expressed opinions of ideological nature to the social order, political or economic set;
- c) as a measure of social discrimination, racial, national or religious;
- d) as a measure considered to be appropriate for the objectives of labor discipline,
- e) the penalty on those who participated in strikes or protests against employers;

2.7. I.L.O Convention no. 182/1999 concerning the prohibition and immediate elimination of the worst forms of child labor¹⁸

Minors today are trafficked for a variety of reasons, including domestic servitude, sexual exploitation and a variety of ritualistic practices that can, in extreme cases, including human sacrifices. Specific examples of vulnerable minors are orphans, people with HIV /

¹⁶ The Convention was adopted by the General Conference of the O.I.M. on June 25 1957 and entered into force on January 17, 1959 in accordance with art. 4. The Convention was ratified re Romania by Law no. 143/1998, published in Official Gazette Part I, no. 249 of July 6, 1968.

¹⁷ Convention on Slavery signed at Geneva in 1926 and entered into force on March 9 1927 in accordance with art. 12. The Convention was amended by the Protocol drawn up at the United Nations on September 7, 1953. Following the amendment, the Convention entered into force on July 7, 1955, the date on which the amendments set out in the Annex to the Protocol of September 7, 1953 entered into force in accordance with art. 3 of the Protocol.

¹⁸ Adopted by Romania by Law no. 203/2000 of November 15 2000 ratifying I.L.O. Convention no. 182/1999 on the prohibition of Worst Forms of Child Labour and Immediate Action for the Elimination adopted at the 87th session of the General Conference of the International Labour Organisation in Geneva on June 17. 1999.

AIDS, "street children", those affected by war and conflict, those from poor families, minors separated from their families and children and young people in rural areas.

As shown in regulation art. 3 of conventions and agreements by the term *the worst forms of child labor means*:

- a. all forms of slavery or practices similar to reprenezantate: sale and trafficking of children, debt bondage and serfdom, forced or compulsory labor, forced or compulsory recruitment of children for use in armed conflict;
- b. The use, procuring or offering of a child for illicit activities such as the production and trafficking of drugs or the use, procuring or offering of a child for prostitution or pornography achieving or for pornographic performances;
- c. Work which by its nature or the circumstances in which exerciate are likely to damage health, safety or morals of children.

The States Parties to this Convention have also made a commitment to identifying children at special risk of forced labor practices by identifying the need for measures to combat domestic violence, generators and favoring of child trafficking.

2.8. Convention on the Elimination of All Forms of Discrimination against Women¹⁹

Convention on the Elimination of All Forms of Discrimination against Women is one of the documents relevant United Nations in fundamental human rights and prohibition of discrimination on grounds of sex, which Romania has signed and ratified.

In accordance with art. 1 "under this Convention, the term discrimination against women shall mean any distinction, exclusion or restriction based on sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on basis of equality of men and women, of fundamental human rights and freedoms, in the political, economic, social, cultural, civil or any other field."

States Parties are committed to strongly condemn discrimination against women in all its forms and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, have committed:²⁰:

- a) score their national constitution or other appropriate legislation the principle of equality of men and women, to the extent that this has not already been done, and to ensure, through law and other appropriate means, implementation of this principle;
- b) to adopt appropriate legislative and other measures, including sanctions if necessary, prohibiting all discrimination against women;
- c) establish legal protection of the rights of women on an equal basis with men and to ensure through national courts authorities and other public institutions the effective protection of women against any act of discrimination;

¹⁹ Adopted and opened for signature by the United Nations General Assembly Resolution 34/180 of December 18, 1979. Entered into force on September 3, 1981 in accordance with art. 27 (1.) provisions., Romania ratified the Convention on November 26 1981 by Decree no. 342, published in the "Official Gazette of Romania", Part I, no. 94 of November 28, 1981; in 1990 was withdrawn reservations on Article 29, paragraph 1 of the International Court of Justice skills in the Convention's application.

²⁰ Art. 2 of the Convention on the Elimination of All Forms of Discrimination against Women.

- d) refrain from any act or practice of discrimination against women and to ensure that public authorities and institutions comply with this obligation;
- e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise as this;
- f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- g) To repeal all national penal provisions which constitute discrimination against women.

2.9. General Recommendations C.E.D.A.W.²¹

One of the most important legal instruments in the field of women's rights, the UN Convention on the Elimination of All Forms of Discrimination against Women (known as CEDAW²²) adopted in 1979 and ratified by Romania in 1981, explains the art. 4 para. 1, the following: "Adoption by States Parties of temporary special measures aimed at accelerating de facto establishment of equality between men and women is not considered an act of discrimination as defined in this Convention, but this can not be as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives have been achieved equality of opportunity and treatment. "

Recommendation 19 is of particular importance in the context of analyzing the background of the criminal violence against women and consider violence as a form of discrimination that affect in a particular manner the rights and freedoms of women.

With regard to art. 6 of the Convention on the issue of trafficking in women, CEDAW tells us similar forms of exploitation trafficking and sex tourism, recruiting labor in underdeveloped countries, or matrimonial arrangements. All are treated as incompatible with respect for women's rights and especially their dignity, subjecting them risk of violence and abuses.

In paragraph 15 of the Recommendation are listed among the causes of prostitution in girls as poverty and unemployment, closely linked and interdependent aspects that make women vulnerable to violence to come on account of their status. Another reason stated prostitution is the triggering armed conflicts that generate a violent assault on women and vulnerabilities.

It was also reported that women increased vulnerability is developed by rural women due to traditional attitudes and mentalities especially subordination to man, the risk of liability to the growing danger of sexual exploitation on leaving rural communities to find a job in urban areas. The comments made by the Committee on the Elimination of All Forms of Discrimination against Women²³ State Parties were recommended the following:

²¹ They are meant to emphasize or supplement the provisions of the Convention Against the Elimination of All Forms of Discrimination against Women..

²² Convention on the Elimination of All Forms of Discrimination Against Women.

²³ Authority created with the aim of examining the progress made in implementing the Convention on the Elimination of All Forms of Discrimination against Women.

- 1) take all necessary measures to incounter manifestations of violence;
- 2) ensure legislation that combating domestic violence, abuse, sexual assault, or any other form of violence and provides adequate protection to all women;
- 3) to set up services to help the victims;
- 4) to encourage research impact, causes violence;
- 5) to ensure that media respect and promote respect for women;
- 6) to introduce education and public information in order to eliminate prejudices;
- 7) to take preventive measures and punishing trafficking and sexual exploitation;
- 8) to include in their reports on sexual harassment measures and protection's measures against this phenomenon and other forms of violence or coercion in the workplace;
- 9) to take legal measures regarding penalties applied to those who are guilty of trafficking and exploitation, thus creating the possibility of granting civil damages and compensation in order to protect women against all forms of violence;
- 10) to take preventive measures including public information and education programs and to start changing role and status of men and women.

3. Regional instruments relevant legal and penal status of the person

3.1. In Europe

3.1.1. *Universal Declaration of Human Rights and the European Convention of Human Rights (E.C.H.R.)* Referring to the value of the Universal Declaration of Human Rights, two well known American professors, Thomas Buergenthal and Judith V.Torney were writing the following: "The assertion repeated by governments either from propaganda purposes or a genuine belief that the rights proclaimed in Universal Declaration are fundamental and inalienable rights have vested this document with a huge symbolic significance. One consequence of this development is that the peoples of the world began to believe more than ever that governments must respect human rights proclaimed in the Declaration and they have international obligations to do so.

Public pressure and public opinion, domestic and global, became the only remedy available to prevent a widespread violation of human rights, the legal nature of the Universal Declaration of Human Rights is less important than the strong conviction of millions of people from all over the world that the Declaration proclaims that their rights and that governments have an obligation to respect these rights. "

3.1.2. *2005 Council of Europe Convention on Action against Trafficking in Human Beings.*

It introduces a comprehensive human rights approach to combat trafficking crime. Based on the definition given on Palermo Protocol, the Convention introduces a number of new elements in terms of protection and assistance to victims.

The main points inserted are:

- Consider all forms of trafficking, national and cross-border, both related and unrelated to the organized crime;
- Introduce a new chapter on investigation, prosecution and procedural documents that require:
 - Ensure effective and adequate protection of victims and those who cooperate with the judicial authorities, witnesses and family members of those people;

- To promote the specialization of persons or units in the fight against trafficking in human beings and protecting victims;
- Adaptation of legal proceedings in the protection of privacy and safety of victims;
- Adopt the same definition of trafficking in the Palermo Protocol and introduce a legal definition of the concept of "victim" of trafficking;
- Introduces the principle of compulsory incrimination and discrimination of trafficking victims, the so-called non-punishment clause;
- Include provisions on recovery period and reflection of at least 30 days for trafficked persons;
- Open the possibility of granting individual's residence permits not only through cooperation with law enforcement authorities, but based on their personal situation.

3.1.3. Directive 2011/36 / EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking and protecting its victims, and replacing Council Framework Decision 2002/629 / JHA²⁴. To respond to recent developments in the phenomenon of human trafficking, this Directive deals with what should be considered trafficking in a broader sense than does the Framework Decision 2002/629 / JHA and therefore includes in this definition also other forms of exploitation. In the context of this Directive, forced begging should be understood as a form of forced labor or service as defined in I.L.O. Convention no.29 of 1930 concerning forced or compulsory labor. Therefore, exploitation of begging, including the use of a trafficked dependent person for begging, falls within the definition of trafficking in human beings only when all the elements that characterize forced labor or services are fulfilled. In light of the relevant case-law, the validity of any possible consent to perform such work or such a service should be evaluated case by case. However, when it comes to a child, any possible consent should ever be considered valid. The term "exploitation of criminal activities" should be understood as exploitation of a person to commit, inter alia, pick-pocketing on shops, drug trafficking and other similar activities which are subject to penalties and imply financial gain. The definition also includes trafficking in human beings for the purpose of removal of organs which constitutes a serious violation of human dignity and physical integrity, as well as other activities such as illegal adoption or forced marriage insofar as they present the constituent elements of trafficking.

3.1.4. In the member Organization of American States

With ample protection of human rights concerns, the Organization adopted several relevant documents²⁵ among which:

- a. Inter-American Convention on the Prevention, Punishment and Elimination of Violence against Women, Convention of Belém do Pará, adopted on June 9, 1994 by the General Assembly of the Organization of American States. It proclaimed in particular as women's rights the following:

²⁴ Document available online at www.europa.eu

²⁵ According to the paper Human Rights of Women, A Collection of International and Regional Normative Instruments, coordinated by Januz Symonides and Vladimir Volodin, edited by UNESCO, 1999, pg.183-198.

- The right of women to not be subjected to any form of violence, both on public sphere and in private;
- Every woman is guaranteed protection against violence;
- The right of women to protection from all forms of discrimination;
- The right to recognition, enjoyment, exercise and protection of all rights and freedoms contained in regional and international instruments governing human rights.

4. Aspects of comparative law

4.1 The Austrian legislation

Austrian Criminal Code criminalises trafficking for sexual exploitation in the art. 217 CC. First paragraph refers to the recruitment and sequestration of persons in order to commit acts contrary to morality in a State other than their ..., if the person committed the same acts in his home country faces a sentence of 6 months to 5 years. Anyone who commits such acts for profit, to obtain benefits is punishable up to 10 years maximum.

Paragraph 2 "Whoever incites / causes a person to commit indecent acts in another state other than the home under false pretenses, under threats or taking advantage of an error of assessment on the person (error of fact), on the activity follow to exercise, shall be punished with imprisonment up to 10 years.

The use of deception, threats or force to obtain economic benefits constitutes aggravating circumstances and shall be punished with imprisonment of up to 10 years.

4.2 French legislation

In **France**, slavery and human trafficking is not a crime. However, certain provision of the Criminal Code criminalises offenses related to slavery and trafficking in a similar way concerning breaches of fundamental human rights, human dignity and integrity.

Fight against trafficking has become lately a priority for the authorities and in December 2001 «La Mission d'information commune sur les diverses formes d'esclavage moderne » published an "Information Report on Slavery". This report acknowledges some situations of slavery and human trafficking, denouncing some legal loopholes and deficiencies in assisting victims and asks, among other things, a specific incrimination and a special status for victims. Also recognize the association's merits dealing with victim assistance, focusing on aid to be granted to them.

Following this report, on January 24, 2002, Parliament passed a legislative proposal on the fight against various forms of modern slavery. The law provides for the introduction of the new traffic criminality on French Criminal Code, on sexual and economic exploitation purposes.

4.3 German Legislation

Germany has a particular system of criminalization of human trafficking. However, the current definition is limited in terms of prostitution's exploitation, without regard to economic exploitation. Economic slavery is low and confined to certain provisions of the Labour Code which penalizes foreigners labor exploitation.

The term human trafficking for sexual exploitation is defined in Article 180 of the German Criminal Code lett. b, which penalizes the act to compel or urge a person to prostitution, abusing a position of vulnerability and strait connected to journey or presence in a foreign country.

Article 181 defines aggravated human trafficking as the act of compelling urge or forcing a person into prostitution, and to recruit a person in prostitution, using force, violence or fraud or abuse of her vulnerable position.

Criminal Code includes provisions which criminalize various situations related to human trafficking to sexual exploitation as prostitution operation (art.180 lett. a) in pimping (181 lett.a), kidnapping (art.177), sexual corruption (178), sexual abuse of persons unable to defend themselves (article 179), sexual exploitation of minors (art.180).

The German government considers human trafficking as a part of the fight against organized crime and illegal migration.

4.4 Italian Legislation

Italy is a country of destination and transit to other European countries for trafficking in persons for sexual exploitation. Italian Authorities have identified numerous victims, originating from Nigeria, Albania, Moldova, Ukraine, Russia, Romania, Bulgaria, China and South America (Ecuador, Peru and Colombia). Networks Albanian pimps are supreme in street prostitution in cooperation with the Italian mafia.

Italian government fully complies with the minimum standards for the elimination of human trafficking. The government has a strong legal framework that criminalises trafficking, giving priority to human rights. Italian anti-trafficking law operates effectively, both domestically and internationally. Lawyers are involved and concerned that the laws to be adopted on immigration could conflict with existing powerful system for the protection of victims.

The government focuses its efforts on prevention bilateral activities in source countries as: Nigeria, Albania, Ukraine and Romania to minimize trafficking. Especially in Nigeria, Italy has provided financial resources, equipment and trained police and NGOs to prevent trafficking. The government also led negotiations and concluded a regional agreement with neighboring states to strengthen border crossings and visa requirements. Also sponsors information campaigns and a phone line for potential victims, both in Italian and in English.

4.5 Bulgarian Legislation

Even though it is considered to be one of the main countries of origin of victims of human trafficking, Bulgaria has one of the most well suited Balkan anti-trafficking laws.

Trafficking is defined in paragraph 1 of Art. 159 of the Bulgarian Criminal Code which provides that "persons whom select, transport, hide or receive individuals or groups of people in order to use them to debauchery (prostitution), forced labor, organ transplant, or hold them in slavery must be punished with imprisonment from 1 to 8 years and a criminal fine of 8000 leva".

The facts set out and punished in par. 1 committed against persons under the age of 18 which cover the following aspects:

- Use of force were deceiving person;
- Kidnapping or unlawful deprivation of liberty;
- People who take advantage of the privileged position or position's dependence;
- Abuse of power;
- Promise, offering or receiving benefits;

Shall be punished with imprisonment from 2 to 10 years and a fine of not more than 10 thousand leva.

In accordance with Art. 159 b of the Bulgarian Criminal Code shall be punished with imprisonment from 3 to 8 years, people that select, transporting, hide or receiving a person or a group of people and transport them across the state border for the purpose stated in art. 159a.

It should be noted that Bulgarian legislation, unlike Romanian, is criminalizing human trafficking activities performed by selecting, transportation, hiding or receiving a person or group of people, even if violence is used or not.

4.6. Bosnia and Herzegovina

Bosnia and Herzegovina is a traffic source and destination country for trafficking in women and children. There are cases of internal trafficking, the number of local victims were increasingly larger. Government meets the standards for combating human trafficking, especially the prevention and protection of witnesses and victims.

One of the targets is government action plan on public awareness of human trafficking phenomenon through public campaigns and the media. Also in the curriculum are set hours that young people are aware of human trafficking, giving them the recruitment methods of criminal networks and consequences of sexually transmitted diseases and drug addiction. Many NGOs help fight trafficking through poster campaigns, publishing promotional brochures, advertisements and television documentaries.

Bosnia and Herzegovina has established a legal framework that helps effectively impeachment of traffickers, but it is necessary to develop technical and specialized resources and intensify cooperation between authorities applying the law.

4.7. North Korea

North Korea is a country of origin for persons trafficked for sexual exploitation and forced labor. Economic and political conditions in North Korea produce a large number of Koreans to leave the country, obeying the risk of becoming victims of traffickers. Women who arrive in northern China can be sold as brides and exploited as prostitutes. North Korea's government is largely concerned of forced labor abuses in the country, but many

Koreans are sent to work in Russia in conditions of forced labor and exploitation, in order to be paid North Korea's government debt to Moscow. North Korean government does not comply with the minimum standards for the elimination of trafficking and is not making significant efforts not to do so. North Korea does not recognize that trafficking is a problem. In reality, the government profits from trafficked victims of forced labor.

There is no anti-trafficking laws and any reports showing government attempts to prosecute traffickers and the Korean government does not take any measures to prevent trafficking.

4.8. India

India is a country of origin, transit and destination for trafficked thousands of persons. International traffic in women, men and children for sexual exploitation, domestic servitude, illegal work and under contract apprenticeship is very widespread. Indian men, like women, are put in situations of forced labor and sometimes in slavery conditions in the Middle East and West. India is a destination for tourists seeking sex from Europe and United States. Women and children from Bangladesh are trafficked in India or transit through India en route to Pakistan and the Middle East. Nepalese women and girls are trafficked for commercial sexual exploitation in India.

Government of India does not fully meet the minimum standards for elimination of trafficking, while making significant efforts to this end, despite limited resources. Government is more effective in prevention and protection. Government should speed up the investigation of trafficking cases, intensify training of police officers of lower rank against trafficking across the country and increase the number of cases of conviction for corrupt officials. Very worrying is the high number of child victims forced to commercial sexual exploitation in India's megacities.

Both the central government and the state supports prevention campaigns. They enter into partnerships with international organizations, foreign governments and non-governmental associations who trust programs aimed to prevent trafficking and poverty eradication.

4.9. Israel

Israel is a destination country for human trafficking. Women from Moldova, Russia, Ukraine and other countries, former Soviet states are trafficked into commercial sexual exploitation. People in search of employment are trafficking and subject to forced labor and in extreme conditions and physical abuse. To many foreign laborers in Israel, passports are been retained, contracts were canceled and are not paid salaries for various periods of time. Companies, especially construction from China and Bulgaria bring to Israel workers to work in conditions equivalent to forced labor.

The Israeli government does not fully comply with minimum standards to combat trafficking but is making significant efforts in this regard by pursuing numerous cases of trafficking for sexual exploitation and, to a lesser extent, trafficking for forced labor. Trafficking for employment is a relatively a new phenomenon in Israel. Government, together with NGOs, trying to increase awareness of the population, including designing and distribution campaigns in Israel, flyers and other information in Russian, about human trafficking for commercial sexual exploitation. However, use of source countries consulates and embassies to provide information to potential victims of trafficking.

Israeli law provides that trafficking for exploitation of any kind is illegal. There are also illegal, other facts such as rape, duress, detention passport, forced labor, forced prostitution or fraud and kidnapping for prostitution. The maximum penalty for aggravating trafficking or trafficking in minor is 20 years in prison, as well as for rape or injury. However, most cases are resolved through agreements and mediation in court, leading to punishing of two years.

4.10. Moldova

Moldova is the primary source of trafficked women and children in Bosnia-Herzegovina, France, Portugal, Germany, Romania, Bulgaria, Hungary, Slovakia, Czech Republic, Poland, Greece, Cyprus, Turkey and the Middle East (Israel, United Arab Emirates, Pakistan and Afghanistan). It was found also a phenomenon of trafficking to Israel through Moscow and Egypt, and recently there have been cases of Moldovean women trafficked to Japan. Moldovean men are trafficked to Russia and neighboring countries in forced labor and begging.

Moldova is also a transit country for victims trafficked from Ukraine to Romania. Also the border region of Transnistria, which is not under government control, serves as a source and transit point for trafficking victims.

The Government of Moldova does not fully comply with the minimum standards for the elimination of trafficking, but make significant efforts in this sense. Guvernul established the National Labour Group to develop a strategic plan over several years to combat trafficking. However, improvements are limited because of corruption, lack visible through financial resources and inadequate protection prevents the expected results.

4.11. Poland

Poland is a country of origin, transit and destination for human trafficking, primarily women for sexual exploitation. There is also some internal traffic. Trafficking in persons is made through and to Poland and especially from Ukraine, Bulgaria, Romania, Belarus and Russia. Polish citizens are transported to Western Europe, especially Germany, Italy, Belgium and the Netherlands.

Polish government comply with minimum standards for elimination of trafficking applying the law and supporting projects of NGOs on the establishment of shelters. It provides protection to victims who are willing to testify in trials. Efforts to combat trafficking are remarkable given that the country faces economic difficulties.

The Government cooperates with governmental agencies to publish educational materials on human trafficking and to organize training sessions dealing with this problem. Foreign Ministry organized for women in terms of how to identify possible traffickers and the Ministry of Education offers programs whose goal is to reduce the dropout rate among adolescents.

Polish law prohibits forcing individuals into prostitution, human trafficking or pimping. Crimes against sexual freedom and decency are punishable by articlelele 197, 198, 199, 203 and 04 of the Polish Criminal Code.

4.12. Portugal

Portugal is primarily a destination country for trafficked persons from Ukraine, Moldova, Russia, Romania, Lithuania and Belarus and also Brazil, Angola and Cape Verde, forced labor of men and, to a much lesser extent, the sexual exploitation of women. There are cases of internal trafficking of children in boarding schools and orphanages organized by a pedophile ring. Victims are trafficked into Portugal to the UK and other European countries.

Government of Portugal meet the standards for combating trafficking, making particular efforts in preventing, prosecuting and protection.

Government efforts are concentrated in the absence of central police forces, to the traffic without constant and clear differentiation between migrant smuggling and trafficking. Portuguese Ministry of Labour has spread a welcome guide to let them know the basics of immigrants living and working in Portugal and prevent exploitation by traffickers. The Government supports the NGOs and international organizations by opening telephone hotline and public awareness activities.

The new immigration law put under criminal law new ways of traffic and increases penalties for traffickers, being applied against them and the provisions of the Criminal Code regarding false documents, fraud, extortion and other criminal activities.

4.13. Hungary

Hungary is primarily a transit country and then a source and destination country for women and children trafficked for sexual exploitation. The victims of other nationalities in Russia, Ukraine, Romania, Moldova and Bulgaria may be subject to exploitation in Hungary, before being transited in Austria, Germany, Spain, Netherlands, Italy, France, Switzerland and the United States. Men from Iraq, Bangladesh and Afghanistan are trafficked through Hungary to the European Union countries and the United States for forced labor.

Hungary's government do not fully complies with minimum standards for the elimination of trafficking; however it is currently making significant efforts to this end.

The government is increasingly involved in traffic problems at its highest levels, although insufficient cooperation between NGOs and government officials remained poor.

Conclusions

Given the seriousness of the phenomenon of trafficking in persons and the fact that more and more young females become victims of it, leaving abroad with dreams characteristic of age and find themselves alone among strangers, seized, threatened, abused, real slave-traffickers, is welcome the presentation of some aspects of this phenomenon.

Associated with the name of modern slavery, human trafficking is a threat for freedom, physical and mental integrity and life of those who are victimized in this form of crime which occurs million of human drama in the world. As the third millennium seems paradoxical juxtaposition of the two terms "trafficking" and "human beings", it is real, so human beings around the world are reduced to the condition of goods sold and resold as mere objects and exploited in forms that remind slave trade.

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