

# SENATO DELLA REPUBBLICA

— — — XVI LEGISLATURA — — —

## **DISEGNO DI LEGGE** **d’iniziativa dei senatori AMATI**

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Ratifica ed esecuzione della Convenzione n. 197 del Consiglio d’Europa sulla  
lotta contro la tratta di esseri umani, adottata a Varsavia il 16 maggio 2005  
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## Relazione

Onorevoli Senatori!! – La tratta di persone rappresenta oggi un fenomeno purtroppo in continua crescita, sempre più frequente e diffuso a livello mondiale. La profonda disuguaglianza socio-economica che caratterizza le varie aree del pianeta determina infatti continui flussi migratori dalle zone più povere a quelle più ricche del mondo, troppo spesso gestiti dalla criminalità organizzata. Le organizzazioni criminali, sfruttando l'esigenza di spostamento dei migranti – in cerca di Paesi che possano loro garantire la sopravvivenza a condizioni migliori di quelle che caratterizzano la vita nei Paesi di origine – costringono queste persone al lavoro forzato, alla prostituzione, all'accattonaggio, al prelievo di organi da rivendere sul mercato nero, od anche alla commissione di reati contro il patrimonio, dei cui proventi si appropriano peraltro integralmente. Dire che le vittime della tratta sono rese schiave della propria vulnerabilità e del proprio legittimo ed umano bisogno di sopravvivenza non è quindi soltanto una metafora. Le persone trafficate, di cui si sfrutta la vulnerabilità, il disagio economico e sociale, e spesso la vera e propria disperazione, sono infatti indotte, con condotte decettive o fraudolente, a spostarsi lontano dalla propria terra di origine, nell'illusione di poter condurre una vita migliore di quella che vivono in patria. Tuttavia, una volta giunte a destinazione, sono private, da parte delle associazioni criminali che ne hanno favorito lo spostamento, di ogni risorsa economica, dei documenti, di ogni effetto personale, e vengono così assoggettate all'altrui dominio, abusate, costrette a prestazioni sessuali o lavorative di afflittività tale da determinarne non semplicemente lo sfruttamento, ma una vera e propria reificazione, pari a quella che caratterizza la condizione della vittima dei delitti di schiavitù. Ed è significativo che nella normativa nazionale ed internazionale in materia si sottolinei il nesso funzionale tra tratta di persone e schiavitù, ove la prima rappresenta alternativamente il presupposto od il referente teleologico della seconda. Più precisamente, la tratta di persone costituisce oggi una delle più diffuse ed insidiose forme di neoschiavismo, oggetto di denuncia, contrasto e repressione a livello internazionale, in quanto crimine contro l'umanità e segnatamente lesivo della dignità e dello *status libertatis* della persona. Il legame – emergente peraltro dal referente criminologico – tra la tratta di persone ed il fenomeno schiavistico (del quale la tratta costituisce una figura peculiare), rappresenta il portato di una normativa di fonte internazionale cui da ultimo si aggiunge la convenzione di cui si propone la ratifica, storicamente caratterizzata dalla stretta connessione tra questi due aspetti del dominio dell'uomo sull'uomo.

Nell'ambito delle convenzioni internazionali rilevanti in materia si annoverano il Trattato per l'abolizione della tratta, del 22 gennaio 1815, stipulato nell'ambito del Congresso di Vienna e limitato alla tratta degli schiavi dell'Africa nera (cui seguì, in ambito nazionale, il regio decreto 23 gennaio 1818, con cui Vittorio Emanuele I sancì per i sudditi del Regno di Sardegna il divieto di partecipazione a qualsiasi traffico di schiavi); le convenzioni di Ginevra del 1921 per la repressione della tratta delle donne e dei fanciulli e del 1933 per la repressione della tratta delle donne adulte, sulla tratta delle bianche verso i paesi del Nord Africa, del Medio Oriente e dell'Asia; la Convenzione di Ginevra del 25 settembre 1926 sulla schiavitù, ratificata dall'Italia con regio decreto 26 aprile 1928, n. 1723, e quella del 7 settembre 1956, sulla tratta degli schiavi e le pratiche analoghe alla schiavitù, ratificata ai sensi della legge 20 dicembre 1957, n. 1304, con le quali le parti contraenti si impegnavano ad introdurre, nei rispettivi ordinamenti, norme incriminatrici della tratta e della schiavitù; la Dichiarazione universale dei diritti dell'uomo, del 10 dicembre 1948, il Patto internazionale sui diritti civili e politici (articolo 8), adottato dall'Assemblea generale delle Nazioni unite il 16 dicembre 1966 e ratificato ai sensi della legge 25 ottobre 1977, n. 881; la Convenzione delle Nazioni unite per la soppressione del traffico di

persone e dello sfruttamento della prostituzione altrui, approvato dall'Assemblea generale il 2 dicembre 1949, le Conferenze sul diritto del mare tenutesi a Ginevra nel 1958 e nel 1960, e la Convenzione delle Nazioni unite sul diritto del mare, fatta a Montego Bay il 10 dicembre 1982, ratificata in Italia ai sensi della legge 2 dicembre 1994, n. 689.

È dalla seconda metà degli anni Ottanta che la normativa internazionale sulla tratta ha acquisito una sostanziale autonomia rispetto a quella volta alla repressione della schiavitù: in tal senso significative la Convenzione per i diritti del fanciullo, fatta a New York il 20 novembre 1989 e ratificata ai sensi della legge 27 maggio 1991, n. 176, la Convenzione dell'Aja per la tutela dei minori e la cooperazione in materia di adozione internazionale, del 29 maggio 1993, ratificata ai sensi della legge 31 dicembre 1998, n. 476, la Convenzione internazionale per la protezione dei diritti di tutti i lavoratori migranti e delle loro famiglie, approvata il 18 dicembre 1990 dall'Assemblea Generale delle Nazioni Unite, la Risoluzione n. 49/166 adottata dalla stessa Assemblea generale il 24 febbraio 1995, sul traffico di donne e di ragazze, che definisce la tratta di persone come un crimine non necessariamente qualificato dalla finalità di sfruttamento sessuale della vittima; lo Statuto di Roma istitutivo della Corte penale internazionale, adottato il 17 luglio 1998.

In ambito europeo devono altresì ricordarsi la Convenzione europea per la salvaguardia dei diritti dell'uomo e delle libertà fondamentali, firmata a Roma il 4 novembre 1950, ratificata ai sensi della legge 4 agosto 1955, n. 848, l'Accordo di Schengen del 14 giugno 1985, cui l'Italia ha aderito nel 1990, con atto ratificato ai sensi della legge 30 settembre 1993, n. 388; la Convenzione istitutiva dell'Europol fatta a Bruxelles il 24 luglio 1996 e ratificata ai sensi della legge 23 marzo 1998, n. 93 (quest'ultima definisce la tratta di esseri umani come «il fatto di sottoporre una persona al potere reale e illegale di altre persone ricorrendo a violenze o a minacce o abusando di un rapporto di autorità o mediante manovre, in particolare per dedicarsi allo sfruttamento della prostituzione altrui, a forme di sfruttamento e di violenza sessuale nei confronti di minorenni o al commercio connesso con l'abbandono dei figli», laddove la decisione del Consiglio dell'Unione europea del 3 dicembre 1998, che integra la convenzione, precisa che nelle suddette «forme di sfruttamento sono comprese le attività di produzione, vendita o distribuzione di materiale pedopornografico»); l'Azione comune del Consiglio dell'Unione europea 97/154/GAI, del 24 febbraio 1997, sulla lotta contro la tratta degli esseri umani e lo sfruttamento sessuale dei bambini; il Trattato di Amsterdam ratificato ai sensi della legge 16 giugno 1998, n. 209, (art. 29); la Carta dei diritti fondamentali dell'Unione europea del 2000.

Di più specifica rilevanza la Convenzione Onu del 2000 sulla criminalità organizzata transnazionale e la Decisione quadro del Consiglio dell'Unione europea 2002/629/GAI, del 19 luglio 2002. Il delitto di tratta di persone (*trafficking in human beings*, che si differenzia peraltro dal favoreggiamento dell'immigrazione illegale – *smuggling of migrants*, – essenzialmente per la finalità di sfruttamento che qualifica la condotta del reo) è definito dall'art. 3 del *Protocol on Trafficking*, integrativo della Convenzione Onu del 2000, come «reclutamento, trasporto, trasferimento, l'ospitare o accogliere persone, tramite l'impiego o la minaccia di impiego della forza o di altre forme di coercizione, di rapimento, frode, inganno, abuso di potere o di una posizione di vulnerabilità o tramite il dare o ricevere somme di denaro o vantaggi per ottenere il consenso di una persona che ha autorità su un'altra a scopo di sfruttamento. Lo sfruttamento comprende, come minimo, lo sfruttamento della prostituzione altrui o altre forme di sfruttamento sessuale, il lavoro forzato o prestazioni forzate, schiavitù o pratiche analoghe, l'asservimento o il prelievo di organi», prevedendo altresì che le condotte di tratta realizzate in danno di minori costituiscono sempre reato, anche in assenza del ricorso ad alcuna delle modalità violente, decettive, coercitive, descritte dalla prima parte della norma. La citata decisione quadro 2002/629/GAI definisce la

tratta di persone come «grave violazione dei diritti e della dignità dell'uomo», consistente nel «reclutamento, il trasporto, il trasferimento di una persona, il darle ricovero e la successiva accoglienza, compreso il passaggio o il trasferimento del potere di disporre di questa persona, qualora: a) sia fatto uso di coercizione, violenza o minacce, compreso il rapimento; b) sia fatto uso di inganno o frode; c) vi sia abuso di potere o di una posizione di vulnerabilità tale che la persona non abbia altra scelta effettiva o accettabile se non cedere all'abuso di cui è vittima; d) siano offerti o ricevuti pagamenti o benefici per ottenere il consenso di una persona che abbia il potere di disporre di un'altra persona a fini di sfruttamento del lavoro o dei servizi prestati da tale persona, compresi quanto meno il lavoro o i servizi forzati o obbligatori, la schiavitù o pratiche analoghe alla schiavitù o alla servitù oppure a fini di sfruttamento della prostituzione altrui o altre forme di sfruttamento sessuale, anche nell'ambito della pornografia», prevedendo anche in tal caso che le condotte di tratta realizzate in danno di minori costituiscono sempre reato, anche in assenza del ricorso ad alcuna delle modalità violente, decettive, coercitive, descritte dalla prima parte della norma. Diversamente dalle tipiche disposizioni comunitarie inserite all'interno delle decisioni quadro-strumenti normativi per loro stessa natura non *self executing*, votati all'unanimità e pertanto basati su di un testo frutto di necessari compromessi tra le posizioni espresse dai vari Paesi; la Decisione quadro 2002/629/GAI sancisce non soltanto un obbligo "comunitario" di incriminazione delle condotte di *trafficking*, cui peraltro l'Italia ha adempiuto riformulando la fattispecie di tratta di cui all'articolo 601 del codice penale, ma prevede addirittura i limiti edittali di pena che il legislatore nazionale deve inserire nella disciplina della materia. La singolarità della previsione addirittura della cornice edittale minima, da parte di una fonte normativa comunitaria di natura non regolamentare, ai sensi dell'articolo 34 del Trattato sull'Unione europea non dotata di efficacia diretta e «vincolante quanto al risultato da ottenere, salva la competenza delle autorità nazionali» in merito alla forma e ai mezzi» e generalmente utilizzata, nell'ambito del terzo pilastro, per l'armonizzazione delle legislazioni dell'Unione, esprime la rilevanza assiologica e politica della materia disciplinata. In termini assoluti, ma anche e soprattutto ai fini della costruzione della soggettività dell'Unione europea sempre più nel senso di ordinamento sopranazionale, finalizzato alla garanzia di uno *standard* minimo di tutela delle libertà e dei diritti umani fondamentali, e non soltanto all'armonizzazione di una *lex* meramente mercatoria.

La rilevanza politico-criminale del contrasto al fenomeno della tratta di persone, quale espressione di una politica internazionale volta alla salvaguardia dei diritti e delle libertà fondamentali, emerge in maniera emblematica nella trama normativa della Convenzione n. 197 del Consiglio d'Europa sulla lotta contro la tratta di esseri umani, approvata a Varsavia il 16 maggio 2005, firmata dall'Italia in data 8 giugno 2005, e di cui il presente disegno di legge propone la ratifica, in ottemperanza all'obbligo politico di natura internazionale, assunto dal nostro Paese all'atto della firma della Convenzione medesima. Tale strumento normativo internazionale identifica e denuncia infatti espressamente, al secondo considerando, il disvalore proprio del delitto di tratta, consistente nella grave violazione che esso determina dei diritti fondamentali, ed in particolare della dignità, libertà, incolumità psico-fisica della vittima. L'importanza della convenzione di cui si auspica la ratifica risiede del resto nel complessivo sistema normativo da essa prefigurato, sia relativamente alle statuizioni di principio, sia in relazione alle disposizioni di implementazione. Esse, in particolare, sono volte a realizzare un efficace contrasto del *trafficking*, tutelando i diritti delle vittime secondo un approccio non discriminatorio, che tenga in adeguata considerazione tanto la prospettiva di genere (particolarmente rilevante in relazione a delitti le cui vittime sono prevalentemente donne) quanto la protezione dei diritti dei minori, in ragione della loro vulnerabilità rispetto al fenomeno della tratta. A tal fine, la convenzione in esame prevede un efficace sistema di assistenza alle vittime del

*trafficking*, comprensivo di misure per la tutela dei dati personali, di ipotesi di concessione *de jure* di permessi di soggiorno (già previsto dall'ordinamento italiano ai sensi dell'articolo 18 del testo unico sull'immigrazione di cui al decreto legislativo 25 luglio 1998, n. 286), di ammissione al gratuito patrocinio, nonché al fondo per le vittime della tratta, già istituito peraltro dall'Italia con la legge 11 agosto 2003, n. 228. La Convenzione sancisce inoltre, in capo agli Stati firmatari, un obbligo di incriminazione di alcune specifiche fattispecie rilevanti in materia. Il delitto di tratta è descritto secondo una formulazione del tutto coincidente con quella prevista dall'articolo 601 del codice penale, a sua volta conforme alla fattispecie delineata dalla Convenzione delle Nazioni Unite contro il crimine organizzato transnazionale resa esecutiva in Italia ai sensi della legge 16 marzo 2006, n. 146, e dalla Decisione quadro del Consiglio dell'Unione europea 2002/629/GAI. La Convenzione in analisi prevede altresì l'obbligo di incriminazione delle condotte di falsificazione, occultamento, soppressione, detenzione, procacciamento di documenti d'identità o di viaggio, commesse al fine di realizzare od agevolare il delitto di tratta, introducendo inoltre la previsione di talune circostanze aggravanti, solo in parti coincidenti con quelle delineate dal capoverso dell'articolo 600 del codice penale. In adempimento a tali obblighi di incriminazione, l'articolo 3 del presente disegno di legge introduce le opportune modifiche alla fattispecie di tratta, di cui all'articolo 601 del codice penale. In particolare, il nuovo comma che viene inserito nel medesimo articolo configura il delitto ostativo di danneggiamento, soppressione, occultamento, detenzione, falsificazione, procacciamento di documenti d'identità o di viaggio, al fine di realizzare od agevolare i delitti di tratta di persone. Si tratta di una norma a più fattispecie (insuscettibili quindi di determinare ipotesi di concorso di reati, ed integrate secondo modalità alternative di realizzazione della condotta), di pericolo indiretto, potenzialmente prodromico a delitto di tratta e di natura sussidiaria (come chiarito dalla clausola di residualità che apre il capoverso). L'articolo 3, capoverso, del presente disegno di legge, inserendo il secondo comma dell'articolo 601 del codice penale, introduce, conformemente a quanto previsto dall'articolo 24 della convenzione del Consiglio d'Europa n. 197 sulla lotta contro la tratta di esseri umani, l'ulteriore circostanza aggravante, relativa all'ipotesi in cui la condotta di tratta determini (almeno per colpa, secondo la concezione normativa della colpevolezza sancita dalla Consulta con le sentenze 364 e 1085 del 1988) un grave pericolo per la vita o l'incolumità psico-fisica della vittima. Le altre fattispecie incriminatrici previste agli articoli da 18 a 22 della citata Convenzione n. 197 risultano invece già presenti nel nostro ordinamento, in quanto a loro volta riferite alle ipotesi criminose di cui alla citata Convenzione Onu del 2000 sulla criminalità organizzata transnazionale ed alla Decisione quadro del Consiglio dell'Unione europea 2002/629/GAI, in ottemperanza alle cui statuizioni la legge 11 agosto 2003, n. 228 aveva già riformato i delitti di cui agli articoli da 600 a 602 del codice penale, introducendo altresì ulteriori ipotesi criminose nel decreto legislativo 8 giugno 2001, n. 231, in tema di responsabilità da reato degli enti. In particolare, la previsione, di cui all'articolo 19 della convenzione, della incriminazione delle condotte di utilizzazione delle prestazioni lavorative, sessuali o paraservili, della persona trafficata, è riconducibile alle fattispecie di cui all'articolo 600 del codice penale, qualora ne sussistano i presupposti. Dalle considerazioni sinora svolte, emerge l'assoluta rilevanza della convenzione in esame, nonché la sua funzionalità al fine di consentire un'efficace repressione e prevenzione del fenomeno della tratta di persone, a livello internazionale. Inoltre, la rilevanza della convenzione in analisi risiede nella specificazione del nesso, strutturale e teleologico, tra tratta di persone e riduzione in schiavitù della persona trafficata. Il terzo considerando della convenzione sottolinea infatti il rischio – che la realtà dimostra essere frequente ed elevato di una progressione criminosa tra tratta di esseri umani e riduzione in schiavitù o servitù della persona trafficata, informando l'intero sistema normativo

previsto alla prevenzione ed alla repressione di entrambi i reati, quali figure criminose profondamente lesive della dignità e dello *status libertatis* della persona.

La ratifica della Convenzione n. 197 del Consiglio d'Europa, che il presente disegno di legge auspica, rappresenta pertanto non soltanto un obbligo politico di ordine internazionale che l'Italia deve adempiere al più presto, ma anche e soprattutto uno strumento efficace ed ineliminabile per tutelare adeguatamente i diritti e le libertà fondamentali delle persone.

## **DISEGNO DI LEGGE**

### **Art. 1.**

*(Autorizzazione alla ratifica)*

1. Il Presidente della Repubblica è autorizzato a ratificare la Convenzione n. 197 del Consiglio d'Europa sulla lotta contro la tratta di esseri umani, adottata a Varsavia il 16 maggio 2005.

### **Art. 2.**

*(Ordine di esecuzione)*

1. Piena ed intera esecuzione è data alla Convenzione di cui all'articolo 1, a decorrere dalla data della sua entrata in vigore, conformemente a quanto previsto dall'articolo 42 della Convenzione stessa.

### **Art. 3.**

*(Modifica all'articolo 601 del codice penale)*

1. All'articolo 601 del codice penale sono apportate le seguenti modificazioni:

a) dopo il primo comma è inserito il seguente:

«Salvo che il fatto costituisca più grave reato, chiunque, al fine di realizzare od agevolare i delitti di cui al comma 1, falsifica un documento d'identità o di viaggio o lo procura ad altri; ovvero, al medesimo fine, sottrae, altera, distrugge, danneggia o detiene un documento d'identità o di viaggio appartenente ad un'altra persona, è punito con la reclusione da uno a cinque anni»;

b) il secondo comma è sostituito dal seguente:

«La pena è aumentata da un terzo alla metà se i delitti di cui al presente articolo sono commessi in danno di minore degli anni diciotto, sono diretti allo sfruttamento della prostituzione o al fine di sottoporre la persona offesa al prelievo di organi, ovvero se dal fatto deriva un grave rischio per la salute o l'integrità fisica o psichica della persona offesa».

### **Art. 4.**

*(Entrata in vigore)*

1. La presente legge entra in vigore il giorno successivo a quello della sua pubblicazione nella *Gazzetta Ufficiale*.

ALLEGATO

Council of Europe Convention  
on Action against Trafficking  
in Human Beings

Warsaw, 16.V.2005

## **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 1611 (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 cooperation 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 cooperating 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 co-operation 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 co-operate 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 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, without prejudice to the object and purpose of the present Convention and without prejudice to its full application with other Parties.
- 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 16<sup>th</sup> 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.