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“The European Union before the problem of trafficking in human beings”

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1. The offence of trafficking in human beings and its categories

Trafficking in human beings is treated as one of the most dangerous phenomenon, which is arising before today's Europe. The fight against it should be taken very seriously because the victims are just people. The international community must take its great afford to protect the highest values of humanity as life, health, dignity or freedom. The United Nations, the Council of Europe and the European Union are taking many initiatives in preventing and combating trafficking in human beings.

One may distinguish trafficking in people, trafficking in women and children, and separate category of crime is traffic in body parts.¹

Trafficking in people mostly concerns illegal immigration. The criminal organizations take attempts to smuggle about one million people a year from poor to wealth countries. It sometimes happens that these people end up in the poorer countries of Eastern Europe, Latin America or Asia, rather than their desire place of destination in Western European countries or the United States. They often become victims of well-organized criminal groups. Women in particular are forced into sexual slavery. Even those who arrive at their destination are forced to engage in criminal activities to pay off the debts.

A crime of specific dangerous is trafficking in women and children. The criminal groups are used to treat women as slaves in so-called “tourist sex industry”. They are also involved in illegal adoption of children that gives them a million dollar business.

¹ HEUNI Papers – The European Institute for Crime Prevention and Control, affiliated with the United Nations, No.6/1995, p.7, Helsinki..

As to traffic in body parts its black market is developed especially in Argentina and Russia. There have been reported cases of the export of organs using false documents and of conformed trafficking in body parts in Peru, Argentina, Honduras and Mexico, largely with Swiss, German and Italian buyers. It is stated that this is an area where may exist a danger for highly developed corruption in medical communities.²

The European community undertakes many actions in the fight against trafficking in human beings, including those three mentioned above categories of crimes. It is observed that well-organized international crime is involved in this activity and threaten people's lives and health. Thus, an important factor in combating trafficking in human beings should be closer police and judicial cooperation among the states both at the international and the European level.³

To improve international police cooperation, the European Union member states agreed in 1994 that trade in human beings will be covered in the Europol Convention. Trafficking in human beings, including child pornography became in competence of Europol. Through the Europol Convention, the member states declared to establish and maintain relations with third states and third bodies. Such relations with Interpol and some third states, including applicant countries have recently been established.⁴

Apart from the work of Europol in this area there should be noticed that combating trafficking in human beings will be one of the targets taken by a new unit – Eurojust.

The definition of “traffic in human beings” as a form of crime which should be prosecuted may be found in the Annex to the Europol Convention. It shall be read as “subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue, especially with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children. These forms of exploitation also include the production, sale or distribution of child – pornography material.”⁵

One may conclude that an important factor in the fight against trafficking in human beings is “interstate cooperation” and “harmonization” of legislative provisions in the member states and in the applicant countries. The offender should not feel himself protected by the law of foreign country. The establishment of common measures and their implementation into national legal order can make the fight against trafficking in human beings more effective. A closer police and judicial cooperation may lead to more uniformed and consequent line in the European criminal policy.

² Ibidem.

³ See: Treaty on European Union, – Title VI, Article 29.

⁴ OJ C 316, 27.11.1995; OJ L 342, 31.12.1996; OJ L 62, 20.03.1995; OJ C 26, 30.01.1999.

⁵ OJ C 26, 30.01.1999.

2. Trafficking in women

Thousands of women are trafficking from developing countries and Central and Eastern Europe to Western Europe. They become victims of international organized crime and are brought into conditions in which their basic human rights are violated. It is said that only in a minority of cases are reported and convictions of traffickers are rare.

The fight against trafficking in women is done through the work of non-governmental organizations (NG's), the United Nations, the Council of Europe and the European Union.

A Trafficking in women is defined by the European Commission in its communication of 1996 as the transport of women from third countries into the European Union for the purpose of sexual exploitation. Some women enter legally because they are not required to hold a visa for a short period stay in the European Union member states, or they are in possession a short stay or a longer term work permit for example as a "dancer". Trafficking for the purpose of sexual exploitation covers women who have suffered intimidation or/and violence through the trafficking. This concern women who are then deprived of their basic human rights and made to work in slavery conditions.⁶

The communication discusses such important issues as : how may victims of trafficking are there; what are the causes; which countries are involved; how does trafficking occur; who are the women which become victims.

As to the number of registered victims of trafficking the accurate figures are not available. First, because of the illegal activities and secondly because of the lack of full national studies in many countries. There are however observed clear trends involving large number of women and girls from Central and Eastern Europe, mainly from Russia, Ukraine and Belarus which are transported to western European countries. The causes of trafficking in women can be found *inter alia* in extreme poverty, poor or non-existing education, and high unemployment of women. The trafficked women come from almost all over the world. A great role in trafficking play large enterprises and international networks creating well – organized "industry" . Corruption of officials has also been reported. Women from Central and Eastern Europe enter the European Union countries by train or car, while women from further distances enter by plane. The trafficked women are normally very young. The women from developing countries are usually older, married and having children. Women coming from Central and Eastern Europe appear to be younger and better educated.

The European Commission Conference of 1996, held in Vienna has already clearly showed that to combat trafficking effectively there is a need of a multidisciplinary and coordinated approach which involves all concerned players – NGO's and social authorities, judicial, law, en enforcement and migration authorities, and international cooperation.⁷

Interdisciplinary proposals for preventing and combating trafficking of in women, may include:

⁶ COM(96)567 final

⁷ *Ibidem*

1. the 'STOP' Program⁸;
2. improved data and research on trafficking;
3. co-operation and co-ordination of assisting agencies, governmental authorities and NGOs to exchange data, the best practice and common projects;
4. information campaigns recognized as an important measure of prevention which could protect the rights of women who are forced into prostitution;
5. specific training for professional groups involved in the work on trafficking in women.

An important factor in preventing and combating trafficking in women is closer police and judicial cooperation among the European Union member states and the third countries. It is sure that traffickers will continue to take advantage of gaps and limits of the national judicial systems unless judicial inter-state co-operation is improved. A specific issue is the position of victims which should have a right to speak out against traffickers. For this reason, there is a need of their protection (witness protection programme), so that the victims could rely on the national judicial systems.⁹

In the police co-operation there are mentioned three levels, namely co-operation and communication, law enforcement training, co-operation with third countries. Co-operation and communication in that meaning relates to analysis and information exchange, and improved communication and co-operation between enforcement agencies, including appointment of national contact points and directory.¹⁰

The aim of law enforcement training is to develop operational training on the one hand and sensitization training on the other. There is a great need for highly trained law enforcement officers to combat trafficking in human beings and to give assistance for the victims of the crime. Another important aspect in police co-operation to make it more successful are well established contacts with third countries- trainings, exchange of best practice, seminars, establishment of contact points, liaison officers.

Apart from police and judicial interstate co-operation a crucial role in preventing and combating trafficking in women – should be placed on social and employment policy. This a task for particular states, their local authorities and civil society. Such a need is extremely seen in the post-communist countries where many unemployed or unpaid for their work women - take a risk to find a work in the Western Europe. In this way, they become easily victims of well organized criminal groups. There should be established a supporting programme in the field of employment, social affairs and gender equality.

3. The question of “sexual exploitation” of children

A relatively new and worrying problem for the international community is - traffic in children, combined with “child sex tourism”.¹¹ It was a topic considerably discussed during

⁸ OJ L 322,12.12.1996.

⁹ Ibidem.

¹⁰ Ibidem. See also: OJ L 62, 20.03.1995; O J C 316,27.11.1995; OJ 342, 31.12.1996.

¹¹ COM(96) 547 final,27.11.1996; OJ C, 3.01.1997; COM (99) 262 final ; OJ 379, 31.12.1999.

the Stockholm World Congress against Commercial Sexual Exploitation of Children, in August 1996 and the World Congress held in Strasbourg in April 1998. Those events clearly shown that sexual exploitation of children became a world spreading business. It gives criminal groups extremely high profits and carries low risks of prosecution and punishment in some countries.

Worth noticing is question of deterrence and punishing child abusers. It is suggested to take into account a possibility of giving national courts extra-territorial jurisdiction for offences and crimes committed against children abroad, even where the presumed offence or crime is not provided under the laws of country in which it was committed. Thus, such a regulation would be an exception of the principle of “double criminality”.¹²

In respond to traffic in children, the European Parliament, the European Commission and the Justice and Home Affairs Council have taken an approach in fighting child pornography on Internet and produced some documents on the protection of minors and human dignity.¹³ The exploitation of children and their sex tourism were seriously taken by the Economic and Social Committee (ESC).¹⁴ It clear that children’s mistreatment, exploitation and abuse became alarming problem for civil society. Therefore, it requires a comprehensive, preventive and pro-active approach, putting children first in our every – day policy making, social activity and cultural development. The main policy proposals concern such important matters as :

1. combating poverty and incorporating children’s rights;
2. supporting the family and children, e.g., a new child friendly policies on town planning and regeneration;
3. regenerating ”the city” as a civic, social and participatory cultural entity;
4. promoting the idea of the “school of future: (the school of 21 st century);
5. encouraging young people and citizens to become involved in civic, social and cultural activities;
6. combating sexual mistreatment of children and child tourism. It is argued that scale of child abuse recorded today in Europe is sign of social crisis, a materialistic ethics and moral decay;
7. the problem of child labour market that relates to so-called “street children”;
8. a “new deal” for children based on human and social heritage of Europe.

The wide spreading violence against children, their exploitation and abuse are mostly reasoned in general crisis in family life and school, the cultural crisis, the decay of basic values and moral standards, in the modern society.¹⁵ It is argued that all forms of violence against children, young persons and women make very complex problems. The causes and solutions need to be discussed at several levels. Men who ill-treat or sexually abuse their victims may come from all age groups and different spheres of civil society. The violence quite often takes place within home and family that is commonly named “hidden violence”, mainly because of depended relations like children and adults or wife and man. Among the reasons, which may cause acts of violence against women, is an idea that men should dominate over women. It reflects clearly an imbalance between “stronger and weaker party”.

¹² Ibidem.

¹³ See for example : COM(96) 483 final; OJ 320, 28.10.1996; OJ C 20, 20.01.1997; OJ C 150, 19.05.1997; OJ C 358, 24.11.1997; OJ L 63, 4.03.1997; OJ L 270, 7.10.1998;)J 270, 7.10.1998; OJ 33,6.02.1999; OJ L 138, 9.06.2000; COM(2000) 854 final, OJ C 283, 9.10.2001.

¹⁴ OJ C 284,14.09.1998; OJ C 407,28.12.1998.

¹⁵ OJ C 284,14.09.1998.

Although under the international law rights of children and women shall be protected they are still violated in many cases. Children and women should enjoy the rights which were guaranteed them under the international and the European norms. For this reason, there is a need of closer co-operation, especially the European Union states with applicant countries. There should be also adopted a proposal for analyzing the statistics on sexual exploitation and abuse of children in those countries.¹⁶ An important issue in combating violence against children and women shall be the measures undertaken within the Daphne Programme.¹⁷

4. The legal concept of “trafficking in human beings” and “sexual exploitation”

It is well known that trafficking in human beings and sexual exploitation of children constitutes serious infringements of fundamental human rights, and in particular human dignity.¹⁸ It is said that respect for human rights begins with the way society treats children. A caring society will give freedom and dignity to young people, creating the conditions in which they can develop their full potential and so look forward to full and satisfying adult life.

The United Nations Convention on the Rights of Child, of 20 November 1989 in the article 34 states, as follows:

“ States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, State Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials”

In accordance to the article 35 of this Convention State Parties are also obliged to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Within the European Union - the Justice and Home Affairs Council adopted concept of definitions as to legal meaning of “trafficking in human beings” and “sexual exploitation”. According to the provisions of the Joint Action of 24 February 1997 - “trafficking” in this sense may be understood, as any behaviour which facilitates the entry into, transit through, residence in or exit from the territory of a member state for:

- (a) trafficking in persons other than children for gainful purposes with a view to their sexual exploitation;
- (b) trafficking in children with a view to their sexual exploitation or abuse.

The term “sexual exploitation” may refer to child or to an adult. By the former one shall be understood such a behaviour as:

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) the exploitative use of a child in prostitution or other unlawful sexual practices;

¹⁶ OJ C 407,28.12.1998.

¹⁷ OJ L 34, 9.02.2000.

¹⁸ Trafficking in women for the purpose of sexual exploitation was *inter alia* discussed during the special debate in the European Parliament in December 1997 – PE DC A4-372/97; Documents of great importance are also Recommendation of the Council of Europe on sexual exploitation pornography and prostitution of, and trafficking in, children and young adults – Rec. R (91)11 which was taken under discussion by CDPC in September 1998 and Council Framework Decision of 19 July 2002 on combating trafficking in human beings – (2002/ 629/JHA) – OJ L 203, 1.08.2002.

(c) the exploitative use of children in pornographic performances and materials, including the production, sale and distribution or other forms of trafficking in such materials.

The later one means, at least the exploitative use of the adult in prostitution.

It may involve ruthless practices as the abuse and deception of vulnerable persons, as well as the use of violence, threats, debt bondage and coercion.¹⁹

As it was earlier mentioned an important factor in the fight against trafficking in human beings and sexual exploitation, is closer inter-state judicial co-operation. Thus, the European Union member states and the applicant countries shall have a task to review their relevant national law and practice.

Council Framework Decision of 19 July 2002 on combating trafficking in human beings (20002/629/JHA) requires from each member state to penalize acts concerning trafficking in human beings for the labour exploitation or sexual exploitation.

The Justice and Home Affairs Council (JHA) proposes that certain types of behaviour should be classified as criminal offences (Article 1), these are being : the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where :

- (a) use is made of coercion, force or threat, including abduction, or
- (b) use is made of deceit or fraud, or
- (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
- (d) payments or benefits are given to achieve the consent of a person having control over another person

for the purpose of the exploitation of that person's labour or services, including at least forced or compulsory labour or services, slavery or servitude, or

for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

When the conduct referred to in the above paragraph involves a child, it shall be a punishable trafficking offence even if none of the means set forth in that paragraph have been used. For the purpose of this Framework Decision , "child" shall mean any person below 18 years of age.

The above offences, as well as the instigation, aiding, abetting and attempt to commit them shall be punishable under the national law by effective, proportionate and dissuasive criminal penalties. The prescribed penalties are varied, and may entail extradition. Also, legal persons may be held administratively liable or criminally responsible. Sanctions are applied both to individuals and to the legal persons. In serious cases at least, custodial penalties which may involve extradition, confiscation, of the instruments and proceeds of those offences. In reference to legal persons, the penalties may involve a temporary or permanent closure of establishments which have been used or intended for committing such offences – under administration or criminal law .²⁰

¹⁹ OJ L 63, 4.03.1997 (97/154/JHA).

²⁰ Ibidem.

5. Conclusions

Within the European Union, it may be noticed both preventive and punitive approach towards combating trafficking in human beings.

The preventive approach includes mostly the measures recommended as a wide social policy, through establishment of social programmes. These are campaigns for raising public awareness of violence against women and children, programmes to assist the victims and their families, rehabilitation centers and employment conditions, training officials in social field. Another issue is providing protection for witnesses and improvement of police and judicial co-operation.

The punitive approach relates to penalization of trafficking in human beings and “sexual exploitation” under national law and to introduction serious penalties for traffickers.

A distinction, thus, may be made between measures, which shall be undertaken at the national level and those ones which refer to the European level. At the European level member states and the applicant countries shall, in particular establish the widest possible police and judicial co-operation, stable contacts between the competent local authorities, assistance in exchanging information and common training for law enforcement agencies (judges, prosecutors, police officers, social personnel).

The measures proposed by the European Union should be taken very seriously, especially by the applicant countries. An important matter is social and employment policy in those countries to protect young women and children from being victims of traffickers. There is also a great need of undertaking protective measures and assistance for victims by local authorities.