

# LEGAL FRAMEWORKS ON TRAFFICKING IN PERSONS

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## Abstract

*Always in order to realize the best prevention and contrast of the trafficking of minors, the research underlines the necessity of armonization all the national legislations (up to now well 27 differet approaches pertaining to each EU member states) according the numerous directives formulated and repropesed by the European authorities.*

**Keywords:** *trafficking of minors, necessity of armonization, EU member states*

## Introduction

Human trafficking is, in its very nature, a large-scale and complex phenomenon that is very hard to detect. Moreover traffickers are able to profit of any technical innovation (i.e. sexual exploitation over internet) and of every change in the social and political situation, as demonstrated in Europe, first with the collapse of the communist bloc that opened new routes for trafficking, and after with the present-day problems related to the diminished border control within European Union.

Recent and well known data report that the number of countries involved in human trafficking (with a different role: as origin, transit end/or destination) is around 130<sup>1</sup> and that this criminal activity is able to generate a yearly profit of \$ 32 billion, \$ 10 billion representing the amount derived from the initial sale of the individuals<sup>2</sup>.

These are only rough estimates as there aren't accurate data on the extension of this crime.

Numbers not only are unavailable and unreliable<sup>3</sup>, but they also vary from organization to organization and there is a lack of standardized methods to collect data both at local and global level.

Among the authoritative sources, the *Trafficking in Persons Report 2008* published by the US Department of State, mentions a government financed study from 2006 according to which 800.000 people crossed the national border worldwide as victims of trafficking.

The same research states that around 80% are women and girls, and that minors could be up to 50% of the total number: the majority of the victims of this trans-national crime is constituted of women trafficked for sexual purposes, and is also pointed out that these data don't take into account millions of female and male who are trafficked within their national borders, mainly with the purpose of forced labor<sup>4</sup>.

The same American source in 2009, recalling an ILO document, reports that the number of trafficked adults and minors reached 12.3, and the percentage of women and children increased up to

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<sup>1</sup> United Nations Office on Drugs and Crime, *Trafficking in Persons Global Patterns*, 2006, p. 17; more in detail in the report is written 127 countries of origin, 98 transit countries and 137 destination countries, but some countries can appear under more than one category.

<sup>2</sup> ILO, *A Global alliance against forced labour*, 2005, p. 55.

<sup>3</sup> Terre des Hommes, *Lost Kids, lost futures. The European Union's response to child trafficking*, 2004 p. 11.

<sup>4</sup> U.S. Department of State, *Trafficking in persons report*, June 2008, p. 7.

56.5% of the total<sup>5</sup>. It is however important to consider that there is no indication of the fact that this number refers to internal- or external-border trafficking.

An identical number is present in the report of 2010<sup>6</sup>.

A key document in the fight against this crime is the *United Nations Convention against Transnational Organized Crime (2000)*, and specifically the *Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)*, whose art. 5 sets out an obligation for the states in order to criminalize human trafficking as defined in art. 3 of the same Protocol.

In this regard it is interesting to notice that in Europe the number of countries with a specific legislation against trafficking in human beings moved from 8 in 2000 to 37 in 2007, with a significant boost in 2004 (33 countries from the 19 of 2002), immediately after the entry into force of the Protocol itself, in December 2003<sup>7</sup>.

### 1.1 Definition of Trafficking in Human Beings

The internationally approved definition of trafficking in human beings is the one of the art. 3 of the *UN Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (2000)*:

(a) “Trafficking in persons” 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 persons 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;

In the same article, in paragraph (c) and (d), there is also a specific reference to minors:

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” 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.

An identical definition<sup>8</sup> is also written in the article 4 of the Council of Europe *Convention on Action against Trafficking in Human Beings (2005)* but it is important to point out that this second definition, by virtue of the article 2, has a wider range of application and goes beyond the Protocol of the Palermo Convention, as the text explicitly refers to all forms of trafficking, “whether national or transnational, whether or not connected with organized crime”.

<sup>5</sup> U.S. Department of State, *Trafficking in persons report*, June 2009, p. 8.

<sup>6</sup> U.S. Department of State, *Trafficking in persons report*, June 2010, p. 7.

<sup>7</sup> United Nations Office on Drugs and Crime, *Trafficking in persons; Analysis on Europe*, 2009, p. 5.

<sup>8</sup> The only difference is that in the Council of Europe Convention is used the expression “trafficking in human beings” instead of “trafficking in persons”.

From the close examination of the art. 3 of the Palermo Protocol, it is evident that three elements are involved: acts (recruitment, transportation, transfer, harbouring or receipt), means (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 giving or receiving of payments or benefits to achieve the consent of a person having control over another person) and the purpose of exploitation.

All elements have to be present in order to realize the offence.

There is an exception for children in the way that to realize the trafficking is necessary to have only the act and the purpose of exploitation, regardless of the means<sup>9</sup>.

According to art. 3 (b), the consent to the exploitation of a victim of trafficking, has to be considered irrelevant if one of the means mentioned in the paragraph (a) has been used, and if the victim is a child the consent is always irrelevant.

## 1.2 Trafficking and Smuggling

An important distinction has to be done between trafficking and smuggling, examined in the *Protocol against the Smuggling of Migrants by Land, Sea and Air Supplementing the United Nations Convention against Transnational Organized Crime (2000)*.

Article art 3 (a) of the Smuggling Protocol states the following:

the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident

Jacqueline Bhabha wrote that the crucial factor of two protocols is the role of consent: “*The Palermo Protocols are framed around a central dichotomy between coerced and consensual irregular migrants*”<sup>10</sup>.

What is supposed is that smuggling involves migrants who have consented to the smuggling, on the other hand for the victims of trafficking the consent can be totally absent or extorted by the use of the means set forth in the article 3 (a).

Other two differences are in the structure of the crime itself: smuggling only requires the arrival of the victim at destination, while trafficking needs exploitation in order to realize profit, and by its very nature smuggling is always transnational, not trafficking that can be realized with national borders.

An important consequence of this is that smuggling is characterized by the illegal entrance in another country, this means that the critical point is the violation of the norms related to the migration, so smuggling is a crime against State, whereas trafficking is a crime against the fundamental rights of the person.

Finally, under a practical point of view, has been noticed that the two offences also target different kind of victims, the majority being men for smuggling and women and children for trafficking<sup>11</sup>.

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<sup>9</sup> Similar considerations, of course, can be applied to art. 4 (c) of the Council of Europe *Convention on Action against Trafficking in Human Beings (2005)*.

<sup>10</sup> Jacqueline Bhabham *Trafficking, Smuggling and Human Rights*, 2005, <http://www.migrationinformation.org/feature/display.cfm?ID=294>.

<sup>11</sup> Jacqueline Bhabha, see note n. 10.

The following table summarizes the distinctive aspects of the two phenomena<sup>12</sup>:

Element	Smuggling	Trafficking
Type of crime	Crime against State – no victim by the crime of smuggling as such (violation of immigration laws/public order; the crime of smuggling by definition does not require violations of the rights of the smuggled migrants)	Crime against person – victim; violation of the rights of the victim of trafficking by definition (violation of person's human rights; victim of coercion and exploitation that give rise to duties by the State to treat the individual as a victim of a crime and human rights violation)
Why do we fight it?	To protect sovereignty of the state	To protect a person against human rights violations; obligation of the State to provide adequate protection to its citizens
Nature of crime and duration of customer relationship	Commercial; relationship between smuggler and migrant ends after illegal border crossing achieved and fee paid	Exploitative; relationship between trafficker and victim continues in order to maximise economic and/or other gains from exploitation
Rationale	Organised movement of persons for profit	Organised recruitment/movement and (continuous) exploitation of the victim for profit
Border crossing	Illegal border crossing is a defining element	Purpose of exploitation is the defining element, border crossing is not an element of the crime
Consent	Migrant's consent to illegal border crossing	Either no consent, or initial consent made irrelevant because of use of force, coercion, at any stage of the process

## 2 International Legal framework

### 2.1 United Nations Conventions

Over the years United Nations worked on a series of legal texts dealing with the different aspects related to trafficking of children and/or sexual exploitation<sup>13</sup>.

<sup>12</sup> The table is taken from: <http://www.anti-trafficking.net/differencebetweensmugglingand.html>.

<sup>13</sup> In the UNICEF website it is possible to have a list of the relevant documents: 1. concerning trafficking of minors ([http://www.unicef.org/protection/index\\_22130.html](http://www.unicef.org/protection/index_22130.html)): - *Convention on the Rights of the Child (1989) Articles 11 and 35*; - *Convention on the Elimination of all Forms of Discrimination against Women (1979) Article 6*; - *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)*; - *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (2001)*; - *ILO Convention on Worst Forms of Child Labour (1999)*; - *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956)*; - *Convention on the Civil Aspects of International Child Abduction (1980)*; - *Traffic in Women and Girls. General Assembly Resolution A/RES/55/67 (2001)*; 2. concerning sexual exploitation ([http://www.unicef.org/protection/index\\_22417.html](http://www.unicef.org/protection/index_22417.html)): - *Convention on the Rights of the Child (1989) Article 34*; - *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)*; - *ILO Convention 182 on Worst Forms of Child Labour (1999)*; - *Stockholm Declaration and Agenda for Action (1996)*; - *Yokohama Global Commitment (2001)*; - *Traffic in Women and Girls. UN General Assembly Resolution (2001)*.

Concerning these topics, the first relevant documents are the *Slavery Convention (1926)* and the *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery (1956)*, and specifically, the article 1(d) of the second convention, while giving a definition of slavery practices of the institutions to be abolish, explicitly refers to minors:

Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

It is already evident the reference to the purpose of exploitation in the provision.

By proceeding in chronological order, the next convention is the *United Nations Convention on the Rights of the Child (1989)*<sup>14</sup>, that represent an important moment in the recognition of the humans rights to the minors, defined in art. 1 as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.

The central role of the Convention in addressing the children victim of trafficking has been recalled again in 2004 by the Special Rapporteur on Trafficking in Persons, especially Women and Children<sup>15</sup>.

The document contains a series of provisions dealing with the transfer abroad, the exploitation and the trafficking of minors, and has been followed by two protocols: the *Optional Protocol on the involvement of children in armed conflict (2000)* e l'*Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)*.

The art. 3 of CRC sets out one of the principles of the text, the “best interest of the child”, and the novelty is that this principle is also the scope of the convention itself<sup>16</sup>:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

A direct implication is that any decision has to be taken considering the child, not only the ones regarding parental responsibility, deprivation of liberty and juvenile justice, but even if the subject is only marginally affected by the consequences<sup>17</sup>.

Later the principle has been recalled in some national legislations as well as in the *Council of Europe Convention on Action against Trafficking in Human Beings*.

Other general principles are in the art. 2, that sets an obligation to the states to guarantee the rights established by the convention to the minors victims of crime within their jurisdiction; in the art. 6 that recognize the right to the life and to a proper development for the child, and in the art. 12, that provides in order to assure to child the right to express his opinion and his views in all the relevant matters.

<sup>14</sup> The Convention has been signed by all the countries in the world with the exception of USA and Somalia.

<sup>15</sup> ECOSOC, E/CN.4/2005/71, *Integration of the Human Rights of Women and the Gender Perspective – Report of the Special Rapporteur on trafficking in persons, especially women and children, 2004, par. 20*: “The Convention on the Rights of the Child, ratified almost universally, will provide the main reference concerning the situation of trafficked children. The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography will also be particularly relevant, as well as the work done by the present and previous Special Rapporteurs on the sale of children, child prostitution and child pornography”.

<sup>16</sup> This principle, in a less important position, is also present in the *Declaration of the Rights of the Child (1959)* and in the *UN Convention on the Elimination of All Forms of Discrimination against Women (1979)*.

<sup>17</sup> For more information *General measures of implementation of the Convention on the Rights of the Child, CRC/GC/2003/5*.

Articles 34 and 35 explicitly prohibit the involvement of the children in any sexual activity or practices like prostitution as well as any pornographic exploitation, and stress the states in order to take all the necessary measures at national and international level to contrast such conducts.

About the two protocols of the convention, not analyzing the first one on the involvement of children in armed conflict, clearly limited application, the scope of the second *Optional Protocol on the sale of children, child prostitution and child pornography (2000)* is to fight against child trafficking, and it is important to notice that the text is focused on the purposes for which this crime is realized<sup>18</sup>, asking the states criminalize all the conducts listed in art. 3.

The protocol also establish that such conducts have to be pursued if they are realized within national borders as well as abroad whether or not they are committed by individuals or connected with organized crime (art. 3 and art. 4)

Art. 8 provides for the protection of the children victims of trafficking taking into account their specific needs.

Another relevant convention, ten years later, is the *ILO Convention 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour (1999)*<sup>19</sup>.

The document considers children in relation with the trafficking and exploitation with a specific attention to the working condition.

The topic is crucial, considering that the ILO global report said that the number of children labourers is 215 million, even if in the period 2004-2008 there has been a reduction from the previous 222 million<sup>20</sup>.

The Convention specifically address the trafficking of children among the definition of the "worst form of labour".

In this regard, art. 3 states that:

For the purposes of this Convention, the term "the worst forms of child labour" comprises:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

It has been written<sup>21</sup> that the definition given in the ILO Convention "contains in itself both the "sale of children" as defined by the Optional Protocol on the Sale of Children and "trafficking in children" as defined by the UN Trafficking Protocol. Therefore, the ILO 182 Convention is the broadest international instrument dealing specifically with child labour exploitation, including - but not limited to - child trafficking and the sale of children for sexual or other forms of exploitation."

This convention, together with CRC and contrary to the Palermo Protocol, more focused on the criminal aspects of the human trafficking than on the social ones, has the purpose to bind State

<sup>18</sup> The word "trafficking" is not explicitly mentioned, only in the preamble of the document.

<sup>19</sup> Also interesting is the *ILO Conventions 138 on the Minimum Age for Admission to Employment (1973)*.

<sup>20</sup> Data taken from ILO website:

[http://www.ilo.org/global/About\\_the\\_ILO/Media\\_and\\_public\\_information/Press\\_releases/lang--en/WCMS\\_126840/index.htm](http://www.ilo.org/global/About_the_ILO/Media_and_public_information/Press_releases/lang--en/WCMS_126840/index.htm)

<sup>21</sup> Scarpa Silvia, *Child trafficking: the worst face of the world*, 2005, p. 20

Parties to give assistance to the victims and to ensure that they will receive proper rehabilitation, even by providing a free basic level of education (art 7c).

At the end, connected with the *United Nations Convention against Transnational Organized Crime (2000)*, the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (2000)* according with art. 2, calls for the adoption of all the measures that can be necessary to

(a) to prevent and combat trafficking in persons, paying particular attention to women and children;

(b) to protect and assist the victims and;

(c) to promote cooperation among States Parties.

Before the introduction of this document, the main legal source to deal with trafficking in human beings was the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)*, although in this convention there isn't an explicit definition of this phenomenon.

Together with the definition of the human trafficking, another merit of the Palermo Protocol it came into force together with the *Protocol against the Smuggling of Migrants by Land, Sea and Air*, practically offering to the international community also a distinction between trafficking and smuggling.

An important characteristic of the Palermo Protocol that also constitutes a weakness, is that the text, coming together with the Convention against Transnational Organized Crime, can be applied only if the crime has been committed by an organized group and is transnational.

It has been possible to overcome this limitation by considering that States Parties are invited to fight trafficking in human beings even in the domestic legislation and even if is realized by an individual, and the United Nations Special Rapporteur on Trafficking in Persons, especially Women and Children declared his competence not only in cases of transnational trafficking but even for internal trafficking<sup>22</sup>.

Close to the provisions for the criminalization of certain conducts, art. 9 of the Protocol ask State Parties to adopt into their legislation effective laws to protect victims from revictimization and in general to prevent trafficking and also measures to reduce the demand of the services that can foster human trafficking.

This is an absolute novelty, because is the first time that the demand side has been taken into account in an UN convention<sup>23</sup>.

It is anyway true, as written before, that this document is more focused on the criminal policy, and for this reason the provisions addressing the protection of victims are relatively weak and vague<sup>24</sup>.

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<sup>22</sup> ECOSOC, E/CN.4/2005/71, *Integration of the Human Rights of Women and the Gender Perspective – Report of the Special Rapporteur on trafficking in persons, especially women and children*, 2004, par. 2:

“The Special Rapporteur shall also take action on cases of trafficking within the boundaries of a country (internal trafficking)”.

<sup>23</sup> Marcovich Malka, *Guide to the UN Convention of 2 December 1949 for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of the Others*, 2002, p.13.

<sup>24</sup> Contrary to the *United Nations Convention on the Rights of the Child*, more oriented to the protection of the human rights, the only provision contained in the Palermo Protocol dealing specifically with the rights of children is art. 6.4: “Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care”.

## 2.2 European Union Conventions

European Union and the Council of European Union addressed the matter of the human trafficking and of the exploitation of children in different occasions.

The *Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts (1999)*, states under the Title *Provisions on Police and Judicial Cooperation in Criminal Matters*, in art. 29 (former K.1), that it is the Union's objective to provide citizens with high level of safety within an area of freedom, security and justice, to "preventing and combating crime, organised or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud".

The more recent Lisbon Treaty (2008) offers a series of measures to contrast human trafficking (art. 79) with a specific attention to women and children (art. 79d).

In this regard it is of a certain interest also art. 83, whose purpose is to promote the cooperation among member states

The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime

Leaving out a consistent number of Council Directives, Council Framework Decisions<sup>25</sup> e Council Resolutions, the first convention is the *European Convention on Human Rights (1950)* and its five protocols.

It is a generic text that came out in a period when there was a different perception and a different approach to the human trafficking and the sexual exploitation of children, but it can be considered as a good starting point to move inside the EU legislation.

Articles 3, 4 and 5 states the prohibition of torture and forced labour as well as of inhuman or degrading treatment or punishment, of slavery, and they reaffirm the value of the right to freedom and to safety.

It is also true that in the convention there isn't any explicit provision dealing with trafficking or sexual exploitation.

For this reason the first convention that can be considered as a key document in the field is the *Council of Europe Convention on Action against Trafficking in Human Beings (2005)*.

Ratified by 29 states, even with some relevant absences<sup>26</sup>, the text binds states to criminalize the voluntary conducts that can be deemed as human trafficking according to art. 4.

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<sup>25</sup> Among the documents that dealt with trafficking in human beings and/or sexual exploitation, it is important to recall: *Council Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (2004)*, *Council Framework Decision on combating trafficking in human beings (2002)*, *Council Framework Decision on combating the sexual exploitation of children and child pornography (2003)*.

<sup>26</sup> Status of ratifications can be checked at:

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=8&DF=30/06/2010&CL=ENG>.



At the same time it is also considered criminally relevant the use of the services that are object of exploitation knowing that the involved person is a victim of trafficking.

Art. 20 explicitly punishes certain actions related to travel and to the identity documents if committed intentionally or for the purpose of enabling human trafficking.

It is criminalized:

- (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.

According to art. 24 (b) the fact that these actions are committed against a child constitutes an aggravating circumstance at the moment to inflict the punishment.

About the punishment itself, art. 23 doesn't provide for any specific sanction, but clarifies that in any case must be involved the deprivation of liberty and, if it is necessary, even the obligation to rise the extradition.

The following *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote, 2007)* is the first International convention to deal specifically with this problem, and from the moment of the opening for signatures (25 October 2007) has been signed by a considerable number of European states, but only few of them ratified<sup>27</sup>.

The Convention entered into force on 01 July 2010.

In the words of Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe, the Lanzarote Convention covers all forms of sexual violence<sup>28</sup>, included, for the first time in an international treaty, the solicitation of children for sexual purposes (grooming).

In this regard in accordance with art. 23

each Party shall take the necessary legislative or other measures to criminalise the intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age set in application of Article 18, paragraph 2, for the purpose of committing any of the offences established in accordance with Article 18, paragraph 1.a, or Article 20, paragraph 1.a<sup>29</sup>, against him or her, where this proposal has been followed by material acts leading to such a meeting

This is not the only reference to internet in the Convention ("*information and communication technologies*" in the text).

In the area of the preventive measures (Chapter II) Art.6, about the education of children, explicitly asks for an active support and guidance role of the family in all the situations of risk, also included the use of internet and of all the media able to transmit information like mobile phones, and

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<sup>27</sup> Status of ratifications can be checked at: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=201&CM=&DF=&CL=ENG>; at present (02/11/2010) the following countries ratified the Convention: Albania, Denmark, France, Greece, Malta, Netherlands, San Marino, Serbia, Spain.

<sup>28</sup> *The Development of Child-sensitive counseling, complaint and reporting mechanism – Notes for the speech delivered by Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe*, document available online at [www.coe.int/t/transversalprojects/children/speeches/Discours%20SGA.pdf](http://www.coe.int/t/transversalprojects/children/speeches/Discours%20SGA.pdf)

<sup>29</sup> Under art. 18 1a the offence is engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities, while art. 20 deals with the production of child pornography

art. 9 encourages the private sector<sup>30</sup> to elaborate policies in order to curb sexual exploitation and sexual abuse of children.

Moving to the substantive criminal law (Chapter IV), art. 20 paragraph 1f criminalises the mere intentional access to child pornography<sup>31</sup> even without downloading, and not only child pornography committed by the use of a computer<sup>32</sup>.

This attention to the web makes the convention an actual and powerful instrument, especially if we consider that the use of internet for the commission of sexual offences against children is well known and has been addressed by a considerable number of studies conducted by international and national institutions worldwide.

In this field it is also important to read the *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* together with the *Council of Europe Convention on Cybercrime (Budapets 2001)*, whose art. 9 considers the offences related to child pornography.

“Broadly speaking, these two Conventions are designed to prevent and combat respectively pedopornographic material circulating on the Internet and the use of the Internet or other modern technologies to get in touch with children for sexual purposes in the real life”<sup>33</sup>.

In general, according to the Lanzarote Convention (art. 19) each state must criminalize:

- (a) recruiting a child into prostitution or causing a child to participate in prostitution;
- (b) coercing a child into prostitution or profiting from or otherwise exploiting a child for such purposes;
- (c) having recourse to child prostitution.

It is also interesting to point out that in the art. 28 the Convention considers aggravating circumstances some specific events, like the fact that the offender is a member of the family or a criminal organization.

In the art. 25 there is the obligation for the states to criminalize the conducts set forth in articles 18, 19, 20 and 21 and to prosecute their citizens even if such conducts are not a crime in the state where they have been realized.

The art. 37 (1) provides for collecting and store personal data and DNA of the persons convicted for the crimes set out in the Convention.

Also this convention does not specify any standard for the sanctions, but they have to be effective, proportionate and dissuasive, taking into account the seriousness of the offence.

### 3 Some data on Moldova

Traditionally Moldova is a country of origin for trafficking of women and girls for the purpose of sexual exploitation. For the period January 200 – April 2003, IOM reported that the

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<sup>30</sup> The article also mentions the tourism and travel industry and the bank and finance sector.

<sup>31</sup> It is the case to note that according to the art. 20 paragraph 4 “each Party may reserve the right not to apply, in whole or in part, paragraph 1f”

<sup>32</sup> See *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse Explanatory Report*.

<sup>33</sup> Speech by Maud de Boer-Buquicchio, the Deputy Secretary General of the Council of Europe International Conference on combating sexual exploitation of children in the Internet “*The protection of girls and boys against sexual violence in the new media*”, Berlin, 30 June 2009; document available online at: [http://www.coe.int/t/dc/press/news/20090630\\_DSG\\_Berlin\\_en.asp](http://www.coe.int/t/dc/press/news/20090630_DSG_Berlin_en.asp)

number of Moldovan victims identified and assisted during their movements mainly in the Balkan area is 1131<sup>34</sup>.

Within this group, trafficked for sexual exploitation, the majority of victims, 58%, is between 18 and 24 years old, 10% are minors at the time of the return, and is assessed that the percentage of the children at the beginning of trafficking was 30%, considering that the average time for trafficking is just below 2 years.

Looking to the countries of destination for the victims it is evident that there are some changes in the examined period of time: there is a strong reduction for Albania (from 68 victims in 2000 to 9 in 2002), Kosovo and Macedonia, and a significant increase in the direction of Russia and Turkey.

This trend is still continuing at present day, as it is possible to see in the *Trafficking in persons* (2009) report from UNODC, that refers the impressive number of 278 victims from Moldova assisted in Turkey.

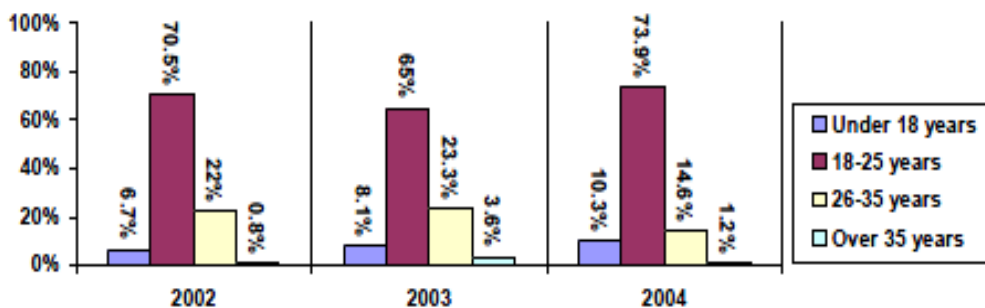
Another interesting information is that the number of children calculated on the total of victims moved from 5% in 2000 to 10% in 2001.

As a confirmation of this, in the next IOM report of 2005 is written that the majority of Moldovan victims, whose number tend to be constant even for the period until 2004<sup>35</sup>, has been trafficked in Turkey (44.9%) and Middle East (14.6%), and only the 8.3% in some European country<sup>36</sup>.

Therefore it is possible to say that more young girls are becoming victims over the years: while in 2003 65% of trafficked women was aged between 18 and 25 years, in 2004 the values is 73.9%.

The table is taken from the IOM report<sup>37</sup>:

GRAPH 1  
AGE OF ASSISTED MOLDOVANS TRAFFICKED FOR SEXUAL EXPLOITATION, 2002 TO 2004<sup>343</sup>



<sup>34</sup> IOM, *First Annual Report on Victims of Trafficking in South Eastern Europe*, 2003, p. 75 ss.

<sup>35</sup> In detail the number of Moldovan victims identified and assisted in SEE area is 319 (2000), 382 (2001), 329 (2002), 314 (2003), 302 (2004); IOM, *Second Annual Report on Victims of Trafficking in South Eastern Europe*, 2005, p. 44

<sup>36</sup> The abolishment of the Schengen visa for the Rumanian citizens could have fostered the entry of Moldovan nationals with forged or stolen Rumanian identity documents.

<sup>37</sup> IOM, *Second Annual Report on Victims of Trafficking in South Eastern Europe*, 2005, p. 342.

For the following period 2003-2008, UNODC<sup>38</sup> reports that the total number Moldovan victims is decreasing at least in two important destination countries like Kosovo and Turkey<sup>39</sup>.

At the same time the number of cases investigated by the local authorities increased from 42 in 2000 to 251 in 2007<sup>40</sup>.

With a specific attention to children it is also possible to say the number of investigated cases is decreasing and is of 47 for 2007, after moving from 15 in 2003 to 61 in 2006.

Therefore it is evident that while the total number of victims is decreasing, the percentage of children is slowly but constantly increasing each year.

## Conclusions

The investigation, realized in order to know and propose the better systems finalized to the prevention and the contrast of the trafficking of minors and of all human beings for sexual exploitation in Europe, has put in great evidence how 2 big problems may hinder these tasks:

the first concerns the lack of armonization among of the well 27 different approaches pertaining to each EU member states about the social assistance and the protection of trafficked persons; the second focuses, also in this case, the lack of implementation of the single European legislations to the numerous directives formulated and repropoused by the European authorities from the first formulation "Council Framework Decision on Combating Trafficking in Human Beings" of 19 February 2002, the following "Council Directive on the Residence Permit issued to Third-Country Nationals Who are Victims of Trafficking in Human Beings or Who Have Been Subject of an Action to Facilitate Illegal Immigration, Who Cooperate with the Competent Authorities" of 29 April 2004 and the "Proposal for a Directive of the European Parliament and of the Council on Prevention and Combating Trafficking in Human Beings and Protecting Victims" of 29 March 2010, approved by the European Paliament on 14 December 2010, in the frame of the Lisbon Treaty entered into force on 1 December 2009.

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<sup>38</sup> United Nations Office on Drugs and Crime, *Trafficking in persons; Analysis on Europe, 2009*, pp. 14-15.

<sup>39</sup> IOM reports the is the Southern Europe (Cyprus, Greece, Italy, Malta, Portugal, Spain and Turkey) the area from which the biggest number of Moldovan victims returns.

<sup>40</sup> United Nations Office on Drugs and Crime, *Global Report on Trafficking in persons, 2009*, pp. 221-223

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