



**THE COMMISSIONER
FOR HUMAN RIGHTS**

**LE COMMISSAIRE AUX
DROITS DE L'HOMME**



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

 **STABILITY PACT**
FOR SOUTH EASTERN EUROPE

TASK FORCE ON TRAFFICKING IN HUMAN BEINGS

CommDH(2004)1
Original version

“COMBATING TRAFFICKING OF CHILDREN IN EUROPE”

**Platform co-organised by
the Commissioner for Human Rights,
Mr Alvaro GIL-ROBLES**

**and the Chair of the Stability Pact Task Force on
Trafficking in Human Beings,
Dr. Helga KONRAD**

**with the cooperation of the Minister of Labour
and Social Affairs of the Republic of Albania,
Mr. Engjell BEJTAJ**



**Tirana, Albania
19-20 January 2004**

CONCLUSIONS

Over the last decade trafficking in human beings has developed into one of the most serious and pervasive violations of human rights and dignity on our continent. None of the 45 member States of the Council of Europe can claim to be excluded from its reach, be they countries of origin, transit or destination. National authorities and regional and global organisations have, indeed, reacted with increasing attention to this phenomenon. At the national level, legislative reforms and action plans have been introduced. At the international level, several analyses, recommendations and guidelines, as well as a number of binding instruments have been produced; specialised bodies have been established. So far, however, these efforts have conspicuously failed to curb trafficking in human beings and to protect the vast majority of its victims. Indeed, trafficking in human beings has only increased in scale and intensity over this period. A redoubling of efforts, at all levels and by all actors, is clearly required if this contemporary scourge is to be effectively combated. These efforts must concentrate not only on the prosecution of the agents of the trafficking but also, and vitally, on the recognition of the rights of the trafficked, who ought not to be treated as auxiliaries to a crime but as victims requiring assistance.

Within this fight, the trafficking of children, whether for sexual exploitation, forced labour, criminal activity, adoption or organ replacement, raises special concerns and presents particular challenges. In order to stimulate greater reflection and action in this area, the Commissioner for Human Rights of the Council of Europe and the Task Force on Trafficking in Human Beings of the Stability Pact for South Eastern Europe co-organised the current platform on “Combating Trafficking of Children in Europe” with the cooperation of the Ministry of Labour and Social Affairs of the Republic of Albania.

The Commissioner for Human Rights of the Council of Europe presented the following conclusions on the basis of the contributions from the participating government officials, civil servants and representatives from international organisations and NGOs:

* * *

I. Legislative short-comings and implementation problems

It is evident that children are particularly vulnerable to trafficking networks. Moreover, consideration for the rights and best interest of the child requires that special measures be taken with respect to the protection from, and the prevention and prosecution of, trafficking in children. Whilst many of these measures have recently been introduced, or exist already in the form of recommendations and guidelines, significant legislative and structural gaps remain to be filled, whilst existing legislation frequently requires more rigorous application. Practical measures and mechanisms are not as effective as they need to be and are, moreover, all too rarely tailored to the special needs of children.

The following areas were identified as requiring greater efforts:

i. The protection of child victims of trafficking

Children are particularly vulnerable to trafficking and its consequences at all stages. They are often defenceless in their delivery into trafficking networks and, once bound by them, have the greatest difficulty in escaping. Their recovery and reintegration require greater priority and specific measures differing from those accorded to adult victims of trafficking.

A number of essential requirements arise in respect of legal proceedings involving child victims of trafficking, which are not always observed. Children must be able to communicate in a language they understand. Free legal assistance and procedures for the appointment of legal guardians capable of representing, if necessary, the child's best interest must be foreseen, as should the possibility of compensation. It is essential that decisions concerning the child's future must take his or her opinion into account. Criminal proceedings relying on the testimony of trafficked children should accommodate the special vulnerability of children and witness protection programs need to be tailored accordingly. The exposure of the identities of child victims in the media should be monitored and censured.

Procedures for establishing the age and identity of possible child victims need to be established and used in all cases in which doubts arise.

There is a need, in all countries, for more, and improved, shelters tailored to the needs of children to which victims can be referred immediately on detection. The provision of a safe environment and medical and psychological assistance must be a first priority in the event of its being impossible, or ill-advisable, to reunite the child immediately with their family. Special attention must be given to victims recovered in transit or destination countries. Immediate repatriation cannot be considered as an appropriate automatic response upon detection of a foreign victim. Rather, the best interests and rights of the child must be taken into account. This may require that the child remain in the country and enjoy appropriate support, for which the possibility of providing permanent or temporary residence permits should be foreseen. Factors determining the return of unaccompanied children to their countries of origin should include the quality of reception, the identification and security of their family and the level of support likely to be enjoyed. Whilst it is the primary responsibility of countries of origin, greater international assistance may well be required in certain countries to establish the necessary mechanisms and infrastructure for receiving returning victims. Close contacts and cooperation between the responsible national structures are essential in the event of repatriation. All too often, indeed, child victims of trafficking are returned to their countries of origin only to fall once more, for lack of appropriate protection, into hands of those they so briefly evaded. This danger frequently arises also in respect of child victims accommodated in shelters in countries of destination or transit. Much greater levels of care and support are consequently required. Such support must be adapted to the provision of durable solutions, whether in institutions, with foster parents or their families, or through a number of transitional steps including some or all of these possibilities. Education and future employment opportunities play an important part in the social rehabilitation of child victims and far greater efforts are required to secure their enjoyment of these fundamental rights.

ii. The prosecution of the agents of trafficking in human beings

Whilst significant reforms have been made to the legislation of most countries in order to criminalise the numerous offences related to trafficking in human beings, gaps still exist in many countries. An additional difficulty arises in respect of the frequent disparity between national norms, regarding both criminal characterisation and procedures, which greatly complicates the international judicial and police cooperation so vital to the success of the fight against trafficking. Greater efforts towards harmonisation in these areas are consequently imperative.

Additional and pressing legislative developments are required in certain areas. The ex officio prosecution of the agents of trafficking is clearly essential in cases of trafficking of children. The criminalisation of attempted trafficking and of aiding and abetting trafficking is under-developed in several countries and few so far admit the prosecution of the knowing use of the services of trafficked persons, though its criminalisation, which need not be confused with the use of the services of prostitutes, would certainly contribute to combating trafficking. The possibility of prosecuting legal persons and corporations implicated in the trafficking of persons is also a development that should be extended more widely.

The wide diffusion of child pornography via the internet presents one of the greatest challenges in the fight against trafficking. The provision of greater resources for the effective investigation and prosecution of this activity must be a priority.

The corruption of state officials is frequently an essential element in trafficking networks. It is evident that the fight against trafficking can only succeed if concerted efforts are made to tackle this problem.

iii. The effective prevention of trafficking in human beings

The most effective prevention of trafficking in human beings is the elimination of the root causes of trafficking. The market for people smuggling and the ready supply of victims for trafficking for sexual or other purposes, is determined, at the most basic level, by fundamental economic disparities. The success in eliminating poverty and creating real opportunities in countries of origin will inevitably determine the success of the fight against trafficking in human beings. The disintegration of societal structures, even down to its most basic unit, the family, in post-conflict and depressed transitional countries has also facilitated the work of traffickers and their agents. Economic development must, therefore, be accompanied by the restoration of social cohesion and effective social policies for the most vulnerable. The wider ratification of the Social Charter would contribute to this development. Gender and racial inequalities and the unequal access to employment opportunities are also influential in encouraging the ill-fated flight of many young people from their countries of origin.

More directly, education and awareness-raising campaigns have an important role to play in the prevention of trafficking in human beings and greater efforts are required in all countries, whether of origin or destination, in this area. In the former, greater efforts are required to alert potential victims to the dangers of trafficking and the likely methods of those that might lure them, or their children, into such traps. In the latter, more general campaigns are necessary to make society in general, and potential

users in particular, more sensitive to the extent and damage of trafficking in human beings. The prevention of child trafficking also requires greater efforts in many countries to ensure the proper registration of all newborn babies, as well as the closer follow up by social services of children abandoning schools.

The better preparation of all agents involved in the fight against trafficking, or in the protection of its victims, whether in government, public or local administration, the police, the judiciary or the social services is also urgently required in all countries.

II. Coordination and cooperation in the fight against trafficking in children: the roles of national and international actors.

Much effort has lately been placed in improving the effectiveness of public institutions in combating trafficking. The creation of specialised agencies within key sectors has been a key element in this development, as has the establishment in most countries of a centralised coordinating body. Certainly the fight against trafficking in general, and children in particular, requires the active contribution of many different sectors. And yet the degree, and the mechanisms, of cooperation between different actors at the national level frequently remain inadequate. Clear responsibilities must be allied to a flexible and mutually informed approach; progress can and should be made here, as recently established mechanisms evolve. Indeed, the creation, within the framework of the Stability Pact Task Force on Trafficking of Human Beings of national working groups on child trafficking uniting government, administration and NGO representatives, is a welcome development testifying to this ongoing process.

The role of NGOs is of particular importance. Providing both research, and a wide variety of services, particularly regarding the protection of victims, NGOs are vital partners of state institutions. It is important, however, that NGOs do not come to be seen as alleviating the state of its own, primary, responsibilities. Well-defined relations, effective cooperation mechanisms and regular consultation are essential if their respective areas of expertise and competence are to reinforce each other. Consideration must also be given to the effective protection of NGOs active in the fight against trafficking from the threats of the agents of trafficking.

National Ombudsmen can also make a significant contribution to combating trafficking, both in virtue of the individual complaints they may receive and the legislation and practices they can review. In respect of the trafficking in children, Child Ombudsmen evidently have an important role to play as watchdogs and awareness raisers. Their active engagement in these areas is vital.

Local authorities, whilst often ignored, are invariably amongst the first to be confronted with the consequences of trafficking. The increased sensitivity of local administrations to the particular needs of victims is vital, in terms of the resources made available for their support and the provision of the support they require, whether in terms of housing, education or other welfare benefits.

Clear national action plans outlining the roles of, and the relations between, all these actors are required. The ability to prepare such plans effectively depends, however, on the accurate assessment of the scale and nature of the problem in each country. At present very few countries possess such a picture of the problem. Reliable statistics

are scarce. Whilst this is largely due to the clandestine nature of trafficking in human beings, states have an interest and a responsibility to provide accurate, public data on this issue. Moreover, state actors have the most access to relevant information.

Greater cooperation is not only required between different actors at the national level. Trafficking is an international activity requiring an international response. Trafficking networks operate transnationally and their effective prosecution requires greater levels of investigative and judicial cooperation, on the basis of commonly accepted principles and methods, than has been achieved to date. The need for the effective harmonisation of offences and procedures is evident. Protection programmes also require greater transnational cooperation; repatriation, in particular, is dependent on effective coordination if the rights of victims are to be assured. Other forms of international cooperation to be encouraged might include the establishment of twinning projects between Stability Pact Task Force donors and recipient countries coordinators for the pooling of experience and the provision of needed funding.

Some NGOs expressed concern over the possible influx of child trafficking in connection with the forthcoming Olympic Games. Whilst significant anticipatory efforts have already been made by the host country, additional state and NGO structures for the detection and support of possible victims should be encouraged. In view of the complex transnational nature of trafficking networks, states in the region might be encouraged to consider increasing existing cooperation in their response to this phenomenon.

International organisations have a key role to play both in assisting the elaboration of effective national responses to the challenges of trafficking and in facilitating international cooperation. Though a wide variety of instruments, recommendations and structures relevant to Europe already exist at the global and regional levels, there is a need for reinforced regional action.

The Council of Europe counts origin, transit and destination countries amongst its members and is therefore extremely well placed to contribute to the fight against trafficking. Its combined experience in human rights protection and legal cooperation make it all the more suited to the dual tasks of victim protection and criminal prosecution. The Council of Europe has, indeed, already employed this expertise in the adoption of numerous recommendations on issues relating to trafficking in human beings.

However, whilst the way ahead has been lit, too few steps have yet been taken. The time has come to translate commitment into action and recommendations into obligations. The discussions of the last two days all point to the need, and the readiness, for a binding regional instrument covering the prevention of trafficking, the prosecution of its agents and the protection of its victims. Increased international cooperation needs to be facilitated. The proposed Council of Europe Comprehensive Convention on Action Against Trafficking in Human Beings is intended to cover these areas. It is imperative that the Governments of its member States display the necessary political will to proceed rapidly with the elaboration and adoption of this instrument.