

# **Z A K O N**

## **O POTVRĐIVANJU KONVENCIJE SAVETA EVROPE O BORBI PROTIV TRGOVINE LJUDIMA**

### **Član 1.**

Potvrđuje se Konvencija Saveta Evrope o borbi protiv trgovine ljudima, sačinjena 16. maja 2005. godine u Varšavi, u originalu na engleskom i francuskom jeziku.

### **Član 2.**

Tekst Konvencije u originalu na engleskom jeziku i u prevodu na srpski jezik glasi:

## **“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.

## **KONVENCIJA SAVETA EVROPE O BORBI PROTIV TRGOVINE LJUDIMA**

**Varšava, 16. maja 2005. godine**

### **Preambula**

Države članice Saveta Evrope i druge države potpisnice,  
uzimajući u obzir da je cilj Saveta Evrope da postigne veće jedinstvo među svojim članicama;

smatrajući da trgovina ljudima predstavlja kršenje ljudskih prava i povredu dostojanstva i integriteta čoveka;

smatrajući da trgovina ljudima može da dovede do stavljanja žrtava u ropски odnos;

smatrajući da poštovanje prava žrtava, zaštita žrtava i suzbijanje trgovine ljudima moraju da budu najviši ciljevi;

smatrajući da svako delovanje i inicijative protiv trgovine ljudima moraju da budu nediskriminatorne, vodeći računa o ravnopravnosti polova, kao i pristupu zasnovanom na pravima deteta;

podsećajući na izjave ministara spoljnih poslova država članica na 112. (14-15. maj 2003) i 114. (12-13. maj 2004) zasedanju Komiteta ministara, kojima se poziva na veće angažovanje Saveta Evrope u suzbijanju trgovine ljudima;

imajući u vidu Konvenciju o zaštiti ljudskih prava i osnovnih sloboda (iz 1950) i njene protokole;

imajući u vidu sledeće preporuke Komiteta ministara državama članicama Saveta Evrope: Preporuku br. R (91) 11 o seksualnom iskorišćavanju, pornografiji i prostituciji i trgovini decom i adolescentima; Preporuku br. R (97) 13 koja se odnosi na zastrašivanje svedoka i prava odbrane; Preporuku br. R (2000) 11 o suzbijanju trgovine ljudima radi seksualnog iskorišćavanja i Preporuku Rec (2001) 16 o zaštiti dece od seksualnog iskorišćavanja; Preporuku Rec (2002) 5 o zaštiti žena od nasilja;

imajući u vidu sledeće preporuke Parlamentarne skupštine Saveta Evrope: Preporuku 1325 (1997) o trgovini ženama i prisilnoj prostituciji u državama članicama Saveta Evrope; Preporuku 1450 (2000) o nasilju nad ženama u Evropi; Preporuku 1545 (2002) o kampanji protiv trgovine ženama; Preporuku 1610 (2003) o migraciji povezanoj s trgovinom ženama i prostitucijom; Preporuku 1611 (2003) o trgovini ljudskim organima u Evropi; Preporuku 1663 (2004) Kućno ropstvo: služenje, devojke za pomoć u kući i "neveste naručene poštom";

imajući u vidu Okvirnu odluku Saveta Evropske unije od 19. jula 2002. o suzbijanju trgovine ljudima, Okvirnu odluku Saveta Evropske unije od 15. marta 2001. o položaju žrtava u krivičnom postupku i Direktivu Saveta Evropske unije od 29. aprila 2004. o boravišnim dozvolama koje se izdaju državljanima trećih zemalja koji su žrtve trgovine ljudima ili su učestvovali u omogućavanju ilegalne imigracije, a koji sarađuju sa nadležnim organima;

uzimajući u obzir Konvenciju Ujedinjenih nacija protiv transnacionalnog organizovanog kriminala i njen Protokol za sprečavanje, suzbijanje i kažnjavanje trgovine ljudima, posebno ženama i decom, a u cilju pružanja bolje zaštite predviđene ovim aktima i unapređivanju njima uspostavljenih standarda;

uzimajući u obzir druge međunarodne pravne instrumente koji se odnose na oblast suzbijanja trgovine ljudima;

uzimajući u obzir potrebu da se izradi sveobuhvatni međunarodni pravni instrument koji bi se usredsredio na ljudska prava žrtava trgovine ljudima i koji bi uspostavio poseban mehanizam nadzora,

sporazumele su se o sledećem:

## **Glava I – Ciljevi, oblast primene, načelo nediskriminacije i definicije**

### **Član 1.**

#### **Ciljevi Konvencije**

1. Ciljevi ove konvencije su:

a) da spreči i suzbije trgovinu ljudima, uz garantovanje ravnopravnosti polova;

b) da zaštiti ljudska prava žrtava trgovine ljudima, da osmisli sveobuhvatni okvir za pružanje zaštite i pomoći žrtvama i svedocima, uz garantovanje ravnopravnosti polova, kao i obezbeđivanje efikasne istrage i krivičnog gonjenja;

v) da unapredi međunarodnu saradnju u suzbijanju trgovine ljudima.

2. Da bi se osiguralo da strane ugovornice Konvencije delotvorno primenjuju njene odredbe, ova konvencija uspostavlja poseban mehanizam nadzora.

### **Član 2.**

#### **Oblast primene**

Ova konvencija treba da se primenjuje na sve oblike trgovine ljudima, kako nacionalne tako i međunarodne, bez obzira da li je ili nije povezana sa organizovanim kriminalom.

### **Član 3.**

#### **Princip nediskriminacije**

Primena odredbi ove konvencije od strane strana ugovornica, a posebno korišćenje mera za zaštitu i unapređenje prava žrtava, treba da se obezbedi bez diskriminacije po bilo kom osnovu kao što su pol, rasa, boja, jezik, veroispovest, političko ili neko drugo uverenje, nacionalno ili socijalno poreklo, pripadnost nekoj nacionalnoj manjini, imovina, rođenje ili neki drugi status.

### **Član 4.**

#### **Definicije**

U svrhu ove konvencije:

a) "trgovina ljudima" znači vrbovanje, prevoz, premeštanje, skrivanje ili prihvatanje lica, uz primenu pretnje ili sile ili drugih oblika prinude, otmice, prevare, obmane, zloupotrebe ovlašćenja ili stanja ugroženosti, ili davanje ili primanje novčanih sredstava ili druge koristi radi dobijanja pristanka lica koje ima kontrolu nad drugim licem u cilju iskorišćavanja. Iskorišćavanje, u najmanju ruku, treba da uključi iskorišćavanje prostitucije drugih lica ili druge oblike seksualnog iskorišćavanja,

prisilan rad ili pružanje usluga, služenje, ropstvo ili praksu sličnu ropstvu ili vađenje ljudskih organa;

b) pristanak žrtve "trgovine ljudima" na planirano iskorišćavanje, kako se navodi u tački a) ovog člana, nema značaja ni u jednom slučaju kada se koriste sredstava pomenuta u tački a);

v) vrbovanje, prevoz, premeštanje, skrivanje ili prihvatanje deteta radi iskorišćavanja smatra se "trgovinom ljudima" čak i ako ne uključuje sredstva navedena u tački a) ovog člana;

g) "dete" znači svako lice mlađe od 18 godina;

d) "žrtva" je svako fizičko lice koje je postalo predmet trgovine ljudima u smislu definicije iz ovog člana.

## **Glava II – Sprečavanje, saradnja i druge mere**

### **Član 5.**

#### **Sprečavanje trgovine ljudima**

1. Svaka strana ugovornica treba da preduzme mere da uspostavi ili učvrsti nacionalnu koordinaciju različitih tela nadležnih za sprečavanje i suzbijanje trgovine ljudima.

2. Svaka strana ugovornica treba da uspostavi i/ili učvrsti delotvorne mere i programe za sprečavanje trgovine ljudima sredstvima kao što su: istraživanje, informisanje, kampanje namenjene podizanju svesti i edukaciji, socijalne i ekonomske inicijative i programi obuke, posebno za lica koja su izložena trgovini ljudima i za stručnjake koji se bave problematikom trgovine ljudima.

3. Svaka strana ugovornica treba da promoviše pristup baziran na ljudskim pravima i da u definisanju, realizaciji i proceni svih politika i programa, pomenutih u stavu 2, primenjuje pristup uključivanja polova i brige za decu.

4. Svaka strana ugovornica treba da preduzme odgovarajuće mere, koje mogu da budu neophodne, kako bi omogućila zakonite migracije, a posebno putem širenja tačnih informacija od strane nadležnih službi o uslovima zakonitog ulaska i boravka na njenoj teritoriji.

5. Svaka strana ugovornica treba da preduzme posebne mere u cilju smanjenja izloženosti dece trgovini ljudima, pre svega stvaranjem klime koja pogoduje zaštiti dece.

6. Mere utvrđene u skladu s ovim članom treba da obuhvate, po potrebi, nevladine organizacije, druge nadležne organizacije i druge delove civilnog društva posvećene sprečavanju trgovine ljudima i zaštiti odnosno pomoći žrtvama.

### **Član 6.**

#### **Mere kojima se obeshrabruje potražnja**

Da bi se obeshrabrila potražnja koja podstiče sve oblike iskorišćavanja ljudi, a posebno žena i dece, koja dovodi do trgovine ljudima, svaka strana ugovornica treba da usvoji ili da unapredi zakonodavne, upravne, obrazovne, socijalne, kulturne ili druge mere, uključujući i:

a) istraživanja najbolje prakse, metoda i strategija;

b) podizanje svesti o odgovornosti i značaju uloge medija i civilnog društva u prepoznavanju tražnje kao jednog od osnovnih uzroka trgovine ljudima;

v) ciljane informativne kampanje koje će, po potrebi, uključivati, između ostalog, i državne organe i kreatore politike;

g) preventivne mere, uključujući obrazovne programe za dečake i devojčice tokom njihovog školovanja, koji naglašavaju neprihvatljivost diskriminacije polova i njene katastrofalne posledice, važnost ravnopravnosti polova i dostojanstva i integriteta svakoga čoveka.

## **Član 7.**

### **Mere na granici**

1. Bez povrede međunarodnih obaveza koje se odnose na slobodu kretanja ljudi, strane ugovornice treba da, u meri u kojoj je to moguće, jačaju kontrolu na granicama koja je neophodna za sprečavanje i otkrivanje trgovine ljudima.

2. Svaka strana ugovornica treba da usvoji zakonodavne ili druge odgovarajuće mere za sprečavanje, u najvećoj mogućoj meri, korišćenja putničkih sredstava od strane komercijalnih prevoznika za izvršenje krivičnih dela shodno odredbama ove konvencije.

3. Zavisno od potrebe i bez povrede važećih međunarodnih konvencija, takve mere treba da uključe uvođenje obaveze komercijalnih prevoznika, uključujući sva preduzeća koja se bave prevozom, odnosno vlasnike ili vozača bilo kojeg prevoznog sredstva, da utvrde da li svi putnici poseduju putne isprave neophodne za ulazak u državu prijema.

4. Svaka strana ugovornica treba da, u skladu sa svojim unutrašnjim pravom, preduzme potrebne mere za sankcionisanje u slučaju kršenja obaveze iz stava 3. ovoga člana.

5. Svaka strana ugovornica treba da usvoji zakonodavne ili druge mere koje će joj omogućiti da, u skladu sa svojim unutrašnjim pravom, uskrati ulazak odnosno ukine vize licima koja su umešana u izvršenje krivičnih dela utvrđenih ovom konvencijom.

6. Strane ugovornice treba da ojačaju saradnju između graničnih službi, između ostalog, uspostavljanjem i održavanjem direktnih kanala za komunikaciju.

## **Član 8.**

### **Zaštita i provera isprava**

Svaka strana ugovornica treba da usvoji mere neophodne:

a) da osigura da putne ili lične isprave koje izdaje budu takve da se ne mogu lako zloupotrebiti i falsifikovati ili na nezakonit način izmeniti, kopirati ili izdati, i

b) da osigura celovitost i bezbednost putnih ili ličnih isprava koje strana ugovornica izdaje ili koje se u njeno ime izdaju, kao i da bi se sprečila njihova nezakonita izrada i izdavanje.

## **Član 9.**

### **Ispravnost i valjanost isprava**

Na zahtev druge strane ugovornice, strana ugovornica treba da, u skladu sa svojim unutrašnjim pravom, u razumnom roku, proveri ispravnost i valjanost putnih ili ličnih isprava izdatih ili navodno izdatih u njeno ime, a za koje postoji sumnja da su upotrebljeni za trgovinu ljudima.

### **Glava III – Mere za zaštitu i unapređenje prava žrtava, kojima se garantuje ravnopravnost polova**

#### **Član 10.**

##### **Identifikovanje žrtava**

1. Svaka strana ugovornica treba da obezbedi svojim nadležnim organima kadrove koji su obučeni i kvalifikovani za sprečavanje i suzbijanje trgovine ljudima, za identifikovanje i pružanje pomoći žrtvama, uključujući decu, i treba da osigura da različiti organi međusobno sarađuju, kao i sa nadležnim organizacijama za podršku, kako bi žrtve bile identifikovane u postupku koji na odgovarajući način uzima u obzir poseban položaj žena i dece žrtava i kako bi im se, po potrebi, izdale boravišne dozvole pod uslovima predviđenim u članu 14. ove konvencije.

2. Svaka strana ugovornica treba da usvoji zakonodavne ili druge mere koje su potrebne kako bi se na odgovarajući način identifikovale žrtve u saradnji s drugim stranama ugovornicama i relevantnim organizacijama za podršku. Svaka strana ugovornica treba da osigura, u slučaju da nadležni organi imaju opravdane razloge da veruju da je neko lice bilo žrtva trgovine ljudima, da se to lice ne udalji sa njene teritorije sve dok nadležni organi ne okončaju postupak identifikacije žrtava krivičnog dela opisanog u članu 18. ove konvencije i na sličan način treba da osigura da to lice dobije pomoć koja je predviđena u članu 12. stav 1. i 2.

3. Kada starosna dob žrtve nije izvesna, a postoji opravdana sumnja da je žrtva dete, to lice treba da se smatra detetom i treba da mu se pruže posebne zaštitne mere sve do potvrđivanja njegove starosne dobi.

4. Čim se utvrdi da je dete bez pratnje žrtva, svaka strana ugovornica treba da:

- a) obezbedi predstavljanje tog deteta od strane zakonitog staratelja, organizacije ili organa koji postupaju u najboljem interesu deteta;
- b) preduzme potrebne mere za utvrđivanje identiteta i državljanstva deteta;
- v) preduzme sve što je neophodno kako bi se pronašla porodica deteta, ako je to u najboljem interesu deteta.

#### **Član 11.**

##### **Zaštita privatnosti**

1. Svaka strana ugovornica treba da zaštiti privatan život i identitet žrtava. Lični podaci o njima treba da se čuvaju i koriste u skladu sa uslovima predviđenim Konvencijom o zaštiti pojedinaca u pogledu automatske obrade ličnih podataka (ETS br. 108).

2. Svaka strana ugovornica treba da usvoji mere kojima će posebno da osigura da identitet ili podaci koji omogućavaju identifikaciju deteta koje je žrtva trgovine ljudima, ne budu javno objavljeni putem medija, ili na bilo koji drugi način, osim u izuzetnim slučajevima, u cilju lakšeg pronalaženja članova porodice ili da se na drugi način obezbedi dobrobit i zaštita deteta.

3. Svaka strana ugovornica treba da razmotri donošenje mera, u skladu sa članom 10. Konvencije za zaštitu ljudskih prava i osnovnih sloboda prema tumačenju Evropskog suda za ljudska prava, čiji je cilj podsticanje medija na zaštitu privatnog života i identiteta žrtava putem medijske samoregulacije ili regulatornih ili koregulatornih mera.

## **Član 12.**

### **Pomoć žrtvama**

1. Svaka strana ugovornica treba da usvoji zakonodavne ili druge mere koje su potrebne za pružanje pomoći žrtvama u njihovom fizičkom, psihološkom i socijalnom oporavku. Takva pomoć treba da obuhvati bar:

a) životni standard koji može da im obezbedi egzistenciju putem takvih mera kao što su: prikladan i siguran smeštaj, psihološka i materijalna pomoć;

b) pristup hitnoj medicinskoj zaštiti;

v) usluge prevođenja i tumačenja, u slučaju potrebe;

g) savetovanje i informisanje, posebno o njihovim zakonskim pravima i uslugama koje su im dostupne, na jeziku koji razumeju;

d) pomoć koja će da im omogući da se njihova prava i interesi iznesu i razmotre u odgovarajućim fazama krivičnog postupka koji se vodi protiv izvršilaca;

đ) pristup obrazovanju za decu.

2. Svaka strana ugovornica treba da pokloni odgovarajuću pažnju potrebi da se obezbedi sigurnost i zaštita žrtve.

3. Uz to, svaka strana ugovornica treba da obezbedi potrebnu medicinsku i drugu pomoć žrtvama koje zakonito borave na njenoj teritoriji, a koje nemaju odgovarajuća sredstva i kojima je takva pomoć potrebna.

4. Svaka strana ugovornica treba da usvoji pravila prema kojima će žrtve koje zakonito borave na njenoj teritoriji imati pravo na pristup tržištu rada, stručnom usavršavanju i obrazovanju.

5. Svaka strana ugovornica treba da preduzme mere, gde je to potrebno i pod uslovima koje propisuje njeno domaće zakonodavstvo, u cilju saradnje sa nevladinim organizacijama, drugim nadležnim organizacijama ili drugim delovima civilnog društva koji se bave pružanjem pomoći žrtvama.

6. Svaka strana ugovornica treba da usvoji zakonodavne ili druge mere koje su potrebne da se osigura da se pružanje pomoći žrtvi ne uslovljava njenim pristankom na svedočenje.

7. U cilju sprovođenja odredbi iz ovoga člana, svaka strana ugovornica treba da obezbedi da se usluge pružaju na osnovu dogovora i dobijenih informacija, vodeći računa o posebnim potrebama ugroženih lica i pravima dece na smeštaj, obrazovanje i adekvatnu zdravstvenu zaštitu.

## **Član 13.**

### **Vreme za oporavak i razmišljanje**

1. Svaka strana ugovornica treba da u svom domaćem zakonodavstvu predvidi period za oporavak i razmišljanje u trajanju od najmanje 30 dana, kad postoje opravdani razlozi da se veruje da se radi o žrtvi. Taj period će biti dovoljan da se lice oporavi i oslobodi uticaja trgovaca ljudima i/ili da donese merodavnu odluku da sarađuje sa nadležnim organima. Tokom ovog perioda ne treba da se omogući izvršenje nijednog naloga za proterivanje tog lica. Ova odredba ne dovodi u pitanje radnje koje sprovode nadležni organi u svim fazama odgovarajućeg nacionalnog postupka, a posebno kod istrage i krivičnog gonjenja izvršilaca odnosnih krivičnih dela. U tom periodu, strane ugovornice treba da dozvole licima na koja se ova odredba odnosi da ostanu na njihovoj teritoriji.



2. U tom periodu, lica iz stava 1. ovoga člana imaju pravo na mere navedene u članu 12. stav 1. i 2.

3. Strane ugovornice nisu u obavezi da poštuju taj period ako razlozi javnog poretka to onemogućavaju ili ako se utvrdi da je zahtev za status žrtve neodgovarajući.

## **Član 14.**

### **Dozvola boravka**

1. Svaka strana ugovornica treba da izda žrtvama boravišnu dozvolu čija se važnost može produžiti u jednom ili drugom opisanom slučaju, ili u oba:

a) ako nadležne vlasti smatraju da je njihov boravak nužan zbog njihove lične situacije;

b) ako nadležne vlasti smatraju da je njihov boravak nužan zbog njihove saradnje sa nadležnim organima u istrazi ili krivičnim postupcima.

2. Boravišna dozvola za decu koja su žrtve trgovine ljudima, ako to zakon predviđa, izdaje se u skladu sa najboljim interesima deteta i, kad je to potrebno, produžava se pod istim uslovima.

3. Neprodužavanje ili povlačenje boravišne dozvole regulisano je odredbama unutrašnjeg prava strane ugovornice.

4. Ako žrtva podnese molbu za izdavanje neke druge vrste boravišne dozvole, strana ugovornica treba da uzme u obzir da žrtva ima, ili je imala, boravišnu dozvolu izdatu u skladu sa stavom 1.

5. Uzimajući u obzir obaveze strana ugovornica na koje se odnosi član 40. ove konvencije, svaka strana ugovornica treba da obezbedi da se izdavanjem dozvole, u skladu sa ovom odredbom, ne ugrožava pravo na traženje i dobijanje azila.

## **Član 15.**

### **Nadoknada štete i pravna zaštita**

1. Svaka strana ugovornica treba da osigura da žrtve imaju pristup, i to od prvog kontakta sa nadležnim organima, informacijama o odgovarajućim sudskim i upravnim postupcima na jeziku koji razumeju.

2. Svaka strana ugovornica treba svojim unutrašnjim pravom da obezbedi pravo na pravni savet i besplatnu pravnu pomoć žrtvama pod uslovima koje propisuje njeno unutrašnje pravo.

3. Svaka strana ugovornica treba svojim unutrašnjim pravom da obezbedi pravo žrtava na odštetu od izvršilaca.

4. Svaka strana ugovornica treba da usvoji zakonodavne ili druge mere kako bi se garantovala odšteta žrtvama, u skladu sa uslovima koje propisuje njeno unutrašnje pravo, na primer, osnivanjem fonda za obeštećenje žrtava ili merama ili programima za socijalnu pomoć i socijalnu integraciju žrtava, koji bi mogli da se finansiraju iz sredstava prikupljenih primenom mera iz člana 23.

## **Član 16.**

### **Repatrijacija i povratak žrtava**

1. Strana ugovornica čiji je državljanin žrtva ili u kojoj je žrtva imala pravo stalnog boravka u vreme ulaska na teritoriju strane ugovornice koja je država prijema, vodeći računa o pravima, bezbednosti i dostojanstvu žrtve, treba da omogući i da prihvati njen povratak bez nepotrebnog ili neopravdanog odlaganja.

2. Kad strana ugovornica vraća žrtvu u drugu državu, takav povratak treba da se obavi uz dužno poštovanje prava, bezbednosti i dostojanstva tog lica, kao i statusa eventualnih pravnih postupaka koji se odnose na činjenicu da je to lice žrtva, i po mogućnosti, taj povratak treba da bude dobrovoljan.

3. Na zahtev strane ugovornice koja prihvata žrtvu, zamoljena strana ugovornica treba da proveri da li je to lice njen državljanin ili da li je imalo pravo stalnog boravka na njenoj teritoriji u vreme ulaska na teritoriju strane ugovornice koja je država prijema.

4. Da bi se olakšao povratak žrtve koja nema potrebne isprave, strana ugovornica čije je to lice državljanin ili u kojoj je imalo pravo stalnog boravka u vreme ulaska na teritoriju strane ugovornice koja je država prijema, treba da prihvati da izda, na zahtev strane ugovornice koja žrtvu prima, putnu ispravu ili neku drugu potvrdu koja je tom licu potrebna za putovanje i ponovni ulazak na njenu teritoriju.

5. Svaka strana ugovornica treba da usvoji zakonodavne ili druge mere potrebne da se ustanove programi repatrijacije, koji uključuju nadležne državne i međunarodne institucije i nevladine organizacije. Cilj ovih programa je izbegavanje ponovne viktimizacije. Svaka strana ugovornica treba da se maksimalno založi za reintegraciju žrtava u društvo države povratka, uključujući reintegraciju u obrazovni sistem i tržište rada, posebno putem sticanja i unapređivanja njihovih stručnih kvalifikacija. Kada se radi o deci, ovi programi bi trebalo da obuhvate ostvarivanje prava na obrazovanje i mere kojima će se obezbediti odgovarajuća zaštita ili njihov prihvrat od strane porodice ili odgovarajućih institucija za brigu.

6. Svaka strana ugovornica treba da usvoji zakonodavne ili druge mere potrebne da se žrtvama učine dostupni podaci, a po potrebi u saradnji sa bilo kojom drugom zainteresovanom stranom ugovornicom, potrebni za stupanje u kontakt sa organizacijama koje im mogu pomoći u zemlji u koju su vraćene ili repatrirane, kao što su organi za sprovođenje zakona, nevladine organizacije, pravni stručnjaci koji mogu da im daju savet i ustanove za socijalno staranje.

7. Deca koja su žrtve trgovine ljudima ne treba da budu vraćena ni u jednu državu ako, nakon procene rizika i bezbednosti, postoji indicija da takav povratak ne bi bio u najboljem interesu deteta.

## **Član 17.**

### **Ravnopravnost polova**

Svaka strana ugovornica treba, primenjujući mere iz ovog poglavlja, da teži da unapredi ravnopravnost polova, kao i da koristi učešće polova u razvoju primene i ocenjivanja navedenih mera.

## **Glava IV – Materijalno krivično pravo**

### **Član 18.**

#### **Kriminalizacija trgovine ljudima**

Svaka strana ugovornica treba da usvoji zakonodavne i druge mere koje su potrebne da se propišu kao krivična dela postupanja, sadržana u članu 4. ove konvencije, kada su učinjena sa umišljajem.

### **Član 19.**

#### **Kriminalizacija korišćenja usluga žrtve**

Svaka strana ugovornica treba da razmotri usvajanja zakonodavnih i drugih mera koje su potrebne da se propišu kao krivična dela u njenom unutrašnjem pravu korišćenje usluga koje su predmet iskorišćavanja u smislu člana 4. tačke a) ove konvencije, uz saznanje da je to lice žrtva trgovine ljudima.

### **Član 20.**

#### **Kriminalizacija dela koja se odnose na putne ili lične isprave**

Svaka strana ugovornica treba da usvoji zakonodavne i druge mere koje su potrebne da se propišu kao krivična dela, sledeći postupci, kada su izvršeni umišljajno i u cilju omogućavanja trgovine ljudima:

- a) falsifikovanje putne ili lične isprave;
- b) pribavljanje ili izrada takve isprave;
- v) zadržavanje, oduzimanje, skrivanje, oštećenje ili uništavanje putne ili lične isprave drugog lica.

### **Član 21.**

#### **Pokušaj i pomaganje ili podsticanje**

1. Svaka strana ugovornica treba da usvoji zakonodavne i druge mere koje su potrebne da se propišu kao krivična dela, kada su izvršena umišljajno, pružanje pomoći ili podsticanja na vršenje bilo kojeg krivičnog dela utvrđenog u skladu sa čl. 18. i 20. ove konvencije.

2. Svaka strana ugovornica treba da usvoji zakonodavne i druge mere koje su potrebne da se propišu kao krivična dela, kada su izvršena umišljajno, pokušaj izvršenja krivičnih dela utvrđenih u skladu sa članovima 18. i 20. tačka a) ove konvencije.

### **Član 22.**

#### **Odgovornost pravnog lica**

1. Svaka strana ugovornica treba da usvoji zakonodavne i druge mere koje su potrebne da se obezbedi da pravno lice može da bude odgovorno za krivično delo predviđeno ovom konvencijom, ako ga je izvršilo bilo koje fizičko lice u korist tog pravnog lica, bilo da je postupalo samostalno ili kao deo nekog organa tog pravnog lica, ako se nalazi na rukovodećem položaju u okviru tog pravnog lica, na osnovu:

- a) ovlašćenja da zastupa to pravno lice;
- b) ovlašćenja da donosi odluke u ime tog pravnog lica;

v) ovlašćenja da vrši nadzor u okviru tog pravnog lica.

2. Osim u slučajevima iz stava 1. svaka strana ugovornica treba da preduzme potrebne mere kako bi obezbedila da pravno lice može da bude odgovorno kada je odsustvo nadzora ili kontrole od strane fizičkog lica iz stava 1. omogućilo izvršenje krivičnog dela u skladu sa ovom konvencijom od strane fizičkog lica koje postupa po ovlašćenju tog pravnog lica a u korist tog pravnog lica.

3. Zavisno od pravnih principa odnosno strane ugovornice, odgovornost pravnog lica može biti krivična, građansko-pravna ili upravna.

4. Takva odgovornost ne prejudicira krivičnu odgovornost fizičkih lica koja su počinila krivično delo.

## **Član 23.**

### **Sankcije i mere**

1. Svaka strana ugovornica treba da usvoji zakonodavne i druge mere koje su potrebne da se obezbedi da se krivična dela utvrđena u skladu sa članovima 18. do 21. kažnjavaju sankcijama koje su efikasne, srazmerne i koje odvraćaju od vršenja krivičnog dela. Takve sankcije za krivična dela iz člana 18. ako ih izvrši fizičko lice, uključuju i sankcije koje podrazumevaju lišavanje slobode koje može dovesti do izručenja.

2. Svaka strana ugovornica treba da osigura da pravna lica koja su odgovorna u skladu sa članom 22. budu podvrgnuta efikasnim, srazmernim i odvraćajućim krivičnim ili nekrivičnim sankcijama ili merama, uključujući i novčane kazne.

3. Svaka strana ugovornica treba da usvoji zakonodavne i druge mere kako bi mogla da zapleni ili na drugi način oduzme sredstva ili prihode od krivičnih dela utvrđenih u skladu sa članovima 18. i 20. tačka a) ove konvencije ili imovinu čija vrednost odgovara takvom prihodu.

4. Svaka strana ugovornica treba da usvoji zakonodavne ili druge mere koje su potrebne da se omogući privremeno ili trajno zatvaranje svakog objekta koji je korišćen za trgovinu ljudima, ne dovodeći u pitanje prava trećih lica koja su delovala u dobroj veri, ili trajno ili privremeno uskraćivanje izvršiocu krivičnog dela obavljanja delatnosti u okviru koje je izvršeno krivično delo.

## **Član 24.**

### **Otežavajuće okolnosti**

Svaka strana ugovornica treba da osigura da se sledeće okolnosti smatraju otežavajućim okolnostima kod određivanja kazne za krivična dela utvrđena u skladu sa članom 18. ove konvencije:

a) krivično delo kojim se svesno ili zbog teškog nemara ugrožava život žrtve;

b) krivično delo učinjeno protiv deteta;

v) krivično delo koje je izvršio državni funkcioner u vršenju svojih dužnosti;

g) krivično delo izvršeno u okviru zločinačke organizacije.

## **Član 25.**

### **Prethodne osude**

Svaka strana ugovornica treba da usvoji zakonodavne i druge mere koje će da omoguće da se prilikom izricanja kazne u obzir uzmu konačne presude koje je izrekla neka druga strana ugovornica, a odnose se na krivična dela predviđena ovom konvencijom.

## **Član 26.**

### **Odredba o nekažnjavanju**

Svaka strana treba, u skladu sa osnovnim principima svog pravnog sistema, da predvidi mogućnost da se kazne ne izriču žrtvama za njihovo učešće u nezakonitim aktivnostima, u onoj meri u kojoj su one bile prisiljene na to.

## **Glava V – Istraga, krivično gonjenje i procesno pravo**

## **Član 27.**

### **Podnesci stranaka i podnesci po službenoj dužnosti**

1. Svaka strana ugovornica treba da osigura da istrage ili krivično gonjenje za krivična dela iz ove konvencije ne zavise od prijave ili optužbe žrtve, barem onda kada je krivično delo u celini ili delimično izvršeno na njenoj teritoriji.

2. Svaka strana ugovornica treba da osigura da žrtve krivičnog dela počinjenog na teritoriji strane ugovornice koja nije država u kojoj borave mogu podneti tužbu nadležnim organima u državi u kojoj imaju boravak. Nadležni organ kome se podnese prijava, ukoliko nema nadležnost za takve slučajeve, dostaviće je, bez odlaganja, nadležnom organu strane ugovornice na čijoj teritoriji je izvršeno krivično delo. Po prijavi će se rešavati u skladu s unutrašnjim pravom strane ugovornice u kojoj je krivično delo izvršeno.

3. Svaka strana ugovornica treba da osigura putem zakonodavnih ili drugih mera i u skladu sa uslovima koji su propisani njenim unutrašnjim pravom, da svaka grupa, fondacija, udruženje ili nevladine organizacije, koje imaju za cilj suzbijanje trgovine ljudima ili zaštitu ljudskih prava, imaju mogućnost da pružaju pomoć ili podršku žrtvi uz njenu saglasnost tokom krivičnog postupka koji se vodi zbog krivičnog dela utvrđenog u skladu sa članom 18. ove konvencije.

## **Član 28.**

### **Zaštita žrtava, svedoka i lica koja sarađuju sa sudskim organima**

1. Svaka strana ugovornica treba da usvoji zakonodavne ili druge mere koje su potrebne da bi se obezbedila efikasna i odgovarajuća zaštita od moguće odmazde ili zastrašivanja, posebno u toku i posle istrage i krivičnog gonjenja izvršilaca, i to:

- a) za žrtve;
- b) po potrebi, za one koji prijave krivično delo utvrđeno u skladu sa članom 18. ove konvencije ili koji na neki drugi način sarađuju sa istražnim organima i tužilaštvom;
- v) za svedoke koji svedoče o krivičnim delima utvrđenim u skladu sa članom 18. ove konvencije;
- g) po potrebi, za članove porodice lica iz tačke a) i v).

2. Svaka strana ugovornica treba da usvoji zakonodavne ili druge mere koje su potrebne da bi se omogućile i ponudile različite vrste zaštite. To bi moglo da obuhvati fizičku zaštitu, preseljenje, promenu identiteta i pomoć u pronalaženju poslova.

3. Dete žrtva trgovine ljudima dobiće posebne mere zaštite koje će voditi računa o njegovim najboljim interesima.

4. Svaka strana ugovornica treba da usvoji zakonodavne ili druge mere koje su potrebne kako bi se, ukoliko je neophodno, pružila odgovarajuća zaštita od moguće odmazde ili zastrašivanja, posebno tokom i nakon istrage i krivičnog gonjenja izvršilaca, za članove grupa, fondacija, udruženja ili nevladinih organizacija koje obavljaju aktivnosti iz člana 27. stav 3.

5. Svaka strana ugovornica treba da razmotri mogućnost da zaključi ugovore ili sporazume s drugim državama u cilju primene ovog člana.

## **Član 29.**

### **Specijalizovani organi i koordinaciona tela**

1. Svaka strana ugovornica treba da usvoji mere koje su potrebne da bi se osiguralo da se određena lica ili tela specijalizuju za borbu protiv trgovine ljudima i zaštitu žrtava. Takva lica ili tela treba da imaju neophodnu samostalnost u skladu sa osnovnim principima pravnog sistema strane ugovornice, da bi mogli efikasno da vrše svoje funkcije bez bilo kakvih neprimerenih pritisaka. Ta lica ili zaposleni u tim telima treba da imaju odgovarajuću obuku i finansijska sredstva za obavljanje svojih zadataka.

2. Svaka strana ugovornica treba da usvoji potrebne mere da se obezbedi koordinacija politika i akcija resornih ministarstava i drugih javnih ustanova u borbi protiv trgovine ljudima, a po potrebi i putem osnivanja koordinacionih tela.

3. Svaka strana ugovornica treba da omogući ili ojača obuku nadležnih državnih službenika za sprečavanje i borbu protiv trgovine ljudima, uključujući i obuku iz oblasti ljudskih prava. Obuka se može organizovati samo za pojedine resore i, po potrebi se može usredsrediti na: metode koje se koriste za sprečavanje trgovine ljudima, krivično gonjenje trgovaca ljudima i zaštitu prava žrtava, uključujući i zaštitu žrtava od trgovaca ljudima.

4. Svaka strana ugovornica treba da razmotri mogućnost imenovanja nacionalnih izvestilaca ili drugih mehanizama za nadgledanje aktivnosti državnih institucija u borbi protiv trgovine ljudima i primene zahteva koje postavlja nacionalno zakonodavstvo.

## **Član 30.**

### **Sudski postupci**

U skladu sa Konvencijom za zaštitu ljudskih prava i osnovnih sloboda, posebno članom 6, svaka strana ugovornica treba da usvoji zakonodavne ili druge mere kako bi se tokom sudskih postupaka obezbedila:

- a) zaštita privatnosti žrtve i, po potrebi, njenog identiteta;
- b) bezbednost žrtve i zaštita od zastrašivanja,

u skladu sa uslovima propisanim unutrašnjim pravom i, u slučaju da su žrtve deca, poklanjanjem posebne pažnje potrebama dece i obezbeđivanjem njihovog prava na posebne mere zaštite.

## **Član 31.**

### **Nadležnost**

1. Svaka strana ugovornica treba da usvoji zakonodavne i druge mere koje su potrebne da se utvrdi nadležnost za bilo koje krivično delo predviđeno ovom konvencijom, ako je to krivično delo počinjeno:

- a) na njenoj teritoriji; ili
- b) na brodu koji plovi pod zastavom te strane ugovornice; ili
- v) u vazduhoplovu koji je registrovan po zakonima te strane ugovornice; ili
- g) od strane jednog njenog državljanina ili lica bez državljanstva koje ima uobičajeno boravište na njenoj teritoriji, ako je to krivično delo kažnjivo prema krivičnom pravu u državi u kojoj je počinjeno ili ako je krivično delo počinjeno izvan teritorijalne nadležnosti bilo koje države;
- d) protiv njenog državljanina.

2. Svaka strana ugovornica može u vreme potpisivanja ili deponovanja instrumenta o potvrđivanju, prihvatanju, odobravanju ili pristupanju u izjavi upućenoj Generalnom sekretaru Saveta Evrope, da navede da zadržava pravo da ne primenjuje, ili da primenjuje samo u određenim slučajevima ili okolnostima, pravila o nadležnosti iz stava 1. g) i d) ovog člana ili bilo kog njihovog dela.

3. Svaka strana ugovornica treba da usvoji mere koje su potrebne kako bi se utvrdila nadležnost za krivična dela iz ove konvencije u slučajevima kada se navodni izvršilac nalazi na njenoj teritoriji a ona ga ne izruči drugoj strani ugovornici isključivo na osnovu njegovog državljanstva, nakon prijema zahteva za izručenje.

4. Kada više strana ugovornica tvrdi da imaju nadležnost za navodno krivično delo predviđeno ovom konvencijom, strane ugovornice će se po potrebi konsultovati radi određivanja najpogodnije nadležnosti za krivično gonjenje.

5. Ne dovodeći u pitanje opšte norme međunarodnog prava, ova Konvencija ne isključuje bilo kakvu krivičnu nadležnost koju strana ugovornica ostvaruje u skladu sa svojim unutrašnjim pravom.

## **Glava VI – Međunarodna saradnja i saradnja sa civilnim društvom**

## **Član 32.**

### **Opšti principi i mere međunarodne saradnje**

Strane ugovornice treba međusobno da sarađuju u skladu sa odredbama ove konvencije i kroz primenu odgovarajućih međunarodnih i regionalnih instrumenata i dogovora postignutih na osnovu jedinstvenih ili recipročnih zakona i domaćeg zakonodavstva u što većoj meri u cilju:

- sprečavanja i suzbijanja trgovine ljudima;
- pružanja zaštite i pomoći;
- vršenja istraga ili postupaka koji se odnose na krivična dela utvrđena u skladu sa ovom konvencijom.

### **Član 33.**

#### **Mere koje se odnose na ugrožena ili nestala lica**

1. Kada strana ugovornica, na osnovu informacija kojima raspolaže, ima opravdane razloge da veruje da su život, sloboda ili fizički integritet lica iz člana 28. stav 1. u neposrednoj opasnosti na teritoriji druge strane ugovornice, strana ugovornica koja ima takvu informaciju, u takvom hitnom slučaju, treba bez odlaganja da prosledi tu informaciju drugoj strani kako bi ona mogla da preduzme odgovarajuće mere zaštite.

2. Strane ugovornice ove konvencije mogu da razmotre mogućnost jačanja saradnje u traganju za nestalim licima, posebno nestalom decom, ako na osnovu dostupnih informacija može da se zaključi da se radi o žrtvi trgovine ljudima. U tom cilju, strane mogu da zaključuju međusobne bilateralne ili multilateralne sporazume.

### **Član 34.**

#### **Informisanje**

1. Zamoljena strana treba odmah da obavesti stranu molilju o konačnom rezultatu mera preduzetih shodno ovom poglavlju. Zamoljena strana treba takođe da odmah obavesti stranu molilju o svim okolnostima koje onemogućavaju sprovođenje predviđenih mera, odnosno njihovo značajno odlaganje.

2. Strana ugovornica može, u granicama svog unutrašnjeg prava i bez prethodnog zahteva, da prosledi drugoj strani informacije pribavljene u okviru sprovedene istrage ako smatra da bi objavljivanje takvih informacija moglo da pomogne strani koja prima informacije u pokretanju ili sprovođenju istraga ili postupaka koji se odnose na krivična dela utvrđena u skladu sa ovom konvencijom, odnosno da dovede do zahteva za saradnju te strane ugovornice shodno ovom poglavlju.

3. Pre pružanja takvih informacija strana ugovornica koja ih dostavlja može da zatraži da se informacije drže u tajnosti ili da se koriste pod određenim uslovima. Ako strana ugovornica koja prima informacije ne može da ispuni takav zahtev, ona će o tome da obavesti stranu koja dostavlja informacije, koja će u tom slučaju da utvrdi da li informacije treba i pored toga da dostavi. Ako strana ugovornica koja prima informacije prihvati da one podležu uslovima, ti uslovi će za nju biti obavezujući.

4. Sve informacije koje se traže a odnose se na članove 13, 14. i 16. neophodne da bi se obezbedila prava koja se garantuju tim članovima, biće dostavljene bez odlaganja na zahtev odnosne strane ugovornice uz dužno poštovanje člana 11. ove konvencije.

### **Član 35.**

#### **Saradnja sa civilnim društvom**

Svaka strana ugovornica treba da podstiče državne organe i državne službenike da sarađuju sa nevladinim organizacijama, drugim nadležnim organizacijama i pripadnicima civilnog društva na ustanovljavanju strateškog partnerstva radi ostvarivanja ciljeva ove konvencije.



## **Glava VII – Mehanizam za nadgledanje**

### **Član 36.**

#### **Grupa eksperata za suzbijanje trgovine ljudima**

1. Grupa eksperata za suzbijanje trgovine ljudima (u daljem tekstu "GRETA") treba da nadgleda primenu ove konvencije od strane strana ugovornica.

2. GRETA treba da se sastoji od najmanje 10 a najviše 15 članova, vodeći računa o rodnoj i geografskoj ravnoteži, kao i o multidisciplinarnoj stručnosti. Članove treba da izabere Komitet strana ugovornica Konvencije na četiri godine, uz mogućnost jednog reizbora, a treba da se biraju iz redova državljana država strana ugovornica ove konvencije.

3. Izbor članova GRETA treba da se zasniva na sledećim principima:

a) biraju se iz redova lica visokog moralnog integriteta, koja su poznata po svojoj priznatoj stručnosti u oblasti ljudskih prava, pomoći i zaštiti žrtava i suzbijanju trgovine ljudima, koja imaju stručno iskustvo u oblastima obuhvaćenim ovom konvencijom;

b) predstavljaju sami sebe i nezavisni su i nepristrasni u vršenju svojih funkcija i treba da budu na raspolaganju za efikasno izvršavanje postavljenih zadataka;

v) bilo koja dva člana GRETA ne mogu biti državljani iste države;

g) članovi bi trebalo da predstavljaju glavne pravne sisteme.

4. Postupak izbora članova GRETA određuje Komitet ministara nakon sprovođenja konsultacija i dobijanja jednoglasne saglasnosti strana ugovornica ove konvencije u roku od godinu dana od stupanja na snagu ove konvencije. GRETA treba da usvoji poslovnik o svom radu.

### **Član 37.**

#### **Komitet strana ugovornica**

1. Komitet strana ugovornica se sastoji od predstavnika u Komitetu ministara Saveta Evrope strana ugovornica ove konvencije kao i predstavnika strana ugovornica ove konvencije koje nisu članice Saveta Evrope.

2. Komitet strana ugovornica saziva Generalni sekretar Saveta Evrope. Prvi sastanak Komiteta strana ugovornica treba da bude održan u roku od godinu dana od stupanja na snagu ove konvencije radi izbora članova GRETA. Nakon toga treba da se sastaje kad god jedna trećina strana ugovornica, predsednik GRETA ili generalni sekretar to zatraže.

3. Komitet strana ugovornica treba da usvoji poslovnik o svom radu.

### **Član 38.**

#### **Postupak**

1. Postupak ocenjivanja odnosi se na strane ugovornice ove konvencije i treba da bude podeljen na krugove, čiju dužinu određuje GRETA. Na početku svakog kruga GRETA bira konkretne odredbe na kojima će se zasnivati postupak ocenjivanja.

2. GRETA određuje najpogodniji način za ocenjivanje. GRETA može da izradi poseban upitnik za svaki krug ocenjivanja, koji može da posluži kao osnov za

ocenjivanje primene ove konvencije od strane strana ugovornica. Takav upitnik se upućuje svim stranama ugovornicama. Strane ugovornice odgovaraju na upitnik, kao i na sve druge zahteve za informacijama koje im uputi GRETA.

3. GRETA može da zatraži informacije od civilnog sektora.

4. GRETA može dopunski da organizuje posete zemljama, u saradnji sa nacionalnim organima i "kontakt osobom" koju oni odrede, i, ukoliko je neophodno, uz pomoć nezavisnih nacionalnih stručnjaka. Za vreme tih poseta, GRETA mogu pomoći stručnjaci za pojedine oblasti.

5. GRETA treba da pripremi nacrt izveštaja koji sadrži analizu primene odredbi na kojima se zasniva ocenjivanje, kao i sugestije i predloge koji se odnose na način na koji odnosna strana ugovornica može da rešava utvrđene probleme. Nacrt izveštaja dostavlja se strani ugovornici koja je predmet ocenjivanja radi stavljanja primedbi. GRETA uzima u obzir takve primedbe prilikom sačinjavanja svog izveštaja.

6. Na osnovu toga, GRETA treba da usvoji svoj izveštaj i zaključke koji se odnose na mere koje je strana ugovornica preduzela u cilju primene odredaba ove Konvencije. Taj izveštaj i zaključci treba da se dostave odnosnoj strani ugovornici i Komitetu strana ugovornica. Izveštaj i zaključci GRETA su javni od trenutka njihovog usvajanja, kao i eventualne primedbe odnosne strane ugovornice.

7. Bez obzira na postupak iz stava 1. do 6. ovoga člana, Komitet strana ugovornica može, na osnovu izveštaja i zaključaka GRETA, da usvoji preporuke upućene toj strani ugovornici (a) koje se odnose na mere koje treba preduzeti radi sprovođenja zaključaka GRETA, uz određivanje roka za podnošenje informacija o njihovoj primeni, ukoliko je neophodno i (b) u cilju unapređenja saradnje sa odnosnom stranom ugovornicom radi ispravne primene ove konvencije.

## **Glava VIII – Odnos prema drugim međunarodnim instrumentima**

### **Član 39.**

#### **Odnos prema Protokolu za sprečavanje, suzbijanje i kažnjavanje trgovine ljudima, posebno ženama i decom, kojim se dopunjuje Konvencija Ujedinjenih nacija protiv transnacionalnog organizovanog kriminala**

Ova konvencija ne utiče na prava i obaveze koji proizilaze iz odredaba Protokola za sprečavanje, suzbijanje i kažnjavanje trgovine ljudima, posebno ženama i decom, koji dopunjuje Konvenciju Ujedinjenih nacija protiv transnacionalnog organizovanog kriminala i ima za cilj jačanje zaštite predviđene Protokolom, kao i unapređenja standarda koji su u njemu sadržani.

### **Član 40.**

#### **Odnos prema drugim međunarodnim instrumentima**

1. Ova konvencija ne utiče na prava i obaveze koje proizilaze iz drugih međunarodnih instrumenata čije strane ugovornice već jesu ili će postati strane ugovornice ove konvencije, a koji sadrže odredbe o pitanjima koja regulišu ova konvencija i koji obezbeđuju veću zaštitu i pomoć žrtvama trgovine ljudima.

2. Strane ugovornice ove konvencije mogu međusobno da zaključuju bilateralne ili multilateralne sporazume o pitanjima na koja se odnosi ova konvencija u cilju dopune ili jačanja njenih odredaba ili lakše primene principa koje ona sadrži.

3. Strane ugovornice Konvencije koje su strane ugovornice Evropske unije treba da primenjuju u međusobnim odnosima pravila Zajednice i Evropske unije u onoj meri u kojoj postoje pravila Zajednice ili Evropske unije koja regulišu konkretna pitanja koja se mogu primeniti na konkretne slučajeve, bez obzira na predmet i svrhu ove konvencije, kao i njenu punu primenu kod drugih strana ugovornica.

4. Iz ove konvencije ništa neće uticati na prava, obaveze i odgovornosti država i pojedinaca prema međunarodnom pravu, uključujući međunarodno humanitarno pravo i međunarodno pravo koje se odnosi na ljudska prava, a posebno na Konvenciju iz 1951. i Protokol iz 1967. godine koji se odnose na položaj izbeglica i princip zabrane proterivanja ili vraćanja koji je u njima sadržan, tamo gde se mogu primeniti.

## **Glava IX – Izmene i dopune Konvencije**

### **Član 41.**

#### **Izmene i dopune**

1. Svaki predlog izmena i dopuna ove konvencije koji podnese neka strana ugovornica treba da se dostavi Generalnom sekretaru Saveta Evrope, koji će ga proslediti državama članicama Saveta Evrope, svim potpisnicama, svim stranama ugovornicama, Evropskoj zajednici, svim državama koje su pozvane da potpišu ovu konvenciju u skladu sa odredbama člana 42, kao i svim državama koje su pozvane da pristupe ovoj konvenciji u skladu sa odredbama člana 43.

2. Svaka izmena i dopuna koju neka strana ugovornica predloži treba da se dostavi GRETA, koja podnosi Komitetu ministara svoje mišljenje o predloženoj izmeni i dopuni.

3. Komitet ministara razmatra predloženu izmenu i dopunu, kao i mišljenje GRETA, i po obavljanju konsultacija sa stranama ugovornicama ove konvencije i pribavljanju njihove jednoglasne saglasnosti, može da usvoji izmenu i dopunu.

4. Tekst svih izmena i dopuna koje usvoji Komitet ministara u skladu sa stavom 3. ovoga člana dostavlja se stranama ugovornicama na prihvatanje.

5. Sve izmene i dopune usvojene u skladu sa stavom 3. ovoga člana stupaju na snagu prvog dana u mesecu posle isteka perioda od tri meseca nakon datuma kada su sve strane ugovornice obavestile generalnog sekretara da su prihvatile izmene i dopune.

## **Glava X – Završne odredbe**

### **Član 42.**

#### **Potpisivanje i stupanje na snagu**

1. Ova konvencija otvorena je za potpisivanje državama članicama Saveta Evrope, državama koje nisu članice a učestvovala su u njenoj izradi, kao i Evropskoj zajednici.

2. Ova konvencija podleže ratifikaciji, prihvatanju ili potvrđivanju. Ratifikacioni instrumenti, kao i instrumenti o prihvatanju ili potvrđivanju deponuju se kod generalnog sekretara Saveta Evrope.

3. Ova konvencija stupa na snagu prvoga dana u mesecu po isteku perioda od tri meseca od dana kada je 10 potpisnica, od kojih je najmanje 8 država članica Saveta Evrope, izrazilo svoju saglasnost da ih Konvencija obavezuje, shodno odredbama prethodnog stava.

4. U odnosu na svaku državu navedenu u stavu 1. ili Evropsku zajednicu, koja naknadno izrazi saglasnost da se obavezuje ovom konvencijom, Konvencija stupa na snagu prvog dana u mesecu po isteku perioda od tri meseca od dana deponovanja njenog ratifikacionog instrumenta ili instrumenta o prihvatanju ili potvrđivanju.

#### **Član 43.**

##### **Pristupanje Konvenciji**

1. Po stupanju na snagu ove konvencije, Komitet ministara Saveta Evrope može, po obavljanju konsultacija sa stranama ugovornicama ove konvencije i pribavljanja njihove jednoglasne saglasnosti, da pozove bilo koju državu koja nije članica Saveta Evrope, koja nije učestvovala u izradi Konvencije, da pristupi Konvenciji na osnovu odluke koju donese većina kako je predviđeno članom 20g. Statuta Saveta Evrope i jednoglasnom odlukom predstavnika država strana ugovornica koje imaju pravo učešća u radu Komiteta ministara.

2. U odnosu na svaku državu koja pristupa Konvenciji, Konvencija stupa na snagu prvog dana u mesecu posle isteka perioda od tri meseca nakon datuma deponovanja instrumenta o pristupanju kod generalnog sekretara Saveta Evrope.

#### **Član 44.**

##### **Teritorijalna primena**

1. Svaka država ili Evropska zajednica može, u vreme potpisivanja ili prilikom deponovanja svog ratifikacionog instrumenta ili instrumenta o prihvatanju, potvrđivanju ili pristupanju, da precizira teritoriju ili teritorije na koje se ova konvencija odnosi.

2. Svaka strana ugovornica može bilo kog kasnijeg datuma, izjavom upućenom generalnom sekretaru Saveta Evrope, da proširi primenu ove konvencije na bilo koju drugu teritoriju naznačenu u izjavi, za čije je međunarodne odnose ona odgovorna ili u čije ime je ovlašćena da preuzima obveze. U odnosu na tu teritoriju, Konvencija stupa na snagu prvog dana u mesecu posle isteka perioda od tri meseca nakon datuma kada je generalni sekretar takvo obaveštenje primio.

3. Svaka izjava data u skladu sa prethodna dva stava može da se, u odnosu na bilo koju teritoriju naznačenu u njoj, povuče na osnovu obaveštenja generalnom sekretaru Saveta Evrope. Povlačenje proizvodi dejstvo prvog dana u mesecu posle isteka perioda od tri meseca nakon datuma kada je generalni sekretar takvo obaveštenje primio.

#### **Član 45.**

##### **Rezerve**

Na bilo koju odredbu ove konvencije ne može se staviti rezerva, izuzev na član 31. stav 2.

#### **Član 46.**

##### **Otkazivanje**

1. Svaka strana ugovornica može da u bilo koje vreme otkaže ovu konvenciju slanjem obaveštenja generalnom sekretaru Saveta Evrope.

2. Takvo otkazivanje proizvodi dejstvo prvog dana u mesecu koji sledi posle isteka perioda od tri meseca nakon datuma kada je Generalni sekretar primio obaveštenje.

## **Član 47.**

### **Obaveštavanje**

Generalni sekretar Saveta Evrope obaveštava države članice Saveta Evrope, sve države potpisnice, sve države strane ugovornice, Evropsku zajednicu, sve države koje su pozvane da potpišu Konvenciju u skladu sa odredbama člana 42. i sve države koje su pozvane da pristupe ovoj konvenciji u skladu sa odredbama člana 43. o:

- a) svakom potpisivanju;
- b) deponovanju bilo kojih ratifikacionih instrumenata i instrumenata o prihvatanju, potvrđivanju ili pristupanju;
- v) svakom datumu stupanja na snagu ove konvencije u skladu sa čl. 42. i 43;
- g) svim izmenama i dopunama prihvaćenim u skladu sa članom 41. i o datumu stupanja na snagu tih izmena i dopuna;
- d) svakom otkazivanju izvršenom u skladu sa odredbama člana 46;
- đ) svakom drugom aktu, obaveštenju ili saopštenju koji se odnose na ovu konvenciju;
- e) svakoj rezervi stavljenoj u skladu sa članom 45.

U potvrdu čega su dole potpisani, za to propisno ovlašćeni, potpisali ovu konvenciju.

Sačinjeno u Varšavi, 16. maja 2005. godine, na engleskom i francuskom jeziku, pri čemu su oba teksta jednako verodostojna, u po jednom primerku koji se deponuju u arhivi Saveta Evrope. Generalni sekretar Saveta Evrope dostavlja overene kopije svakoj državi članici Saveta Evrope, državama koje nisu članice a koje su učestvovalе u izradi ove konvencije, Evropskoj zajednici i svakoj državi koja je pozvana da pristupi ovoj konvenciji.”

## **Član 3.**

O izvršavanju odredaba ovog zakona stara se ministarstvo nadležno za unutrašnje poslove, ministarstvo nadležno za pravosuđe i ministarstvo nadležno za rad, zapošljavanje i socijalnu politiku.

## **Član 4.**

Ovaj zakon stupa na snagu osmog dana od dana objavljivanja u “Službenom glasniku Republike Srbije – Međunarodni ugovori”.