

## Convention on the Rights of the Child

### ➤ An International Treaty with Virtually Worldwide Application

- The Convention on the Rights of the Child is an international treaty that recognizes the human rights of children, defined as persons up to the age of 18 years.
- It was adopted and opened for signature, ratification and accession by General Assembly resolution 20 November 1989. Entry into force 2 September 1990.
- The Convention is in force in virtually the entire community of nations (192 countries, including all the E.U. Member States)

### ➤ A New Vision of the Rights of the Child

- In 1989, world leaders decided that children needed a special convention just for them because people under 18 years of age often need special care and protection that adults do not. The leaders also wanted to make sure that the world would recognize that children have human rights too.
- By agreeing to undertake the obligations of the Convention, national governments have committed themselves to protecting and ensuring children's rights and they have agreed to hold themselves accountable for this commitment before the international community.
- It reflects a new vision of the child. Children are neither the property of their parents nor are they helpless objects of charity. They are human beings and are the subject of their own rights. The Convention offers a vision of the child as an individual and as a member of a family and community, with rights and responsibilities appropriate to his or her age and stage of development.

### ➤ Contents of the Treaty

- The four core principles of the Convention are:
  - non-discrimination;
  - devotion to the best interests of the child;
  - the right to life, survival and development;
  - and respect for the views of the child.
- It spells out the basic human rights that children everywhere have:
  - the right to survival;
  - the right to develop to the fullest;
  - the right to protection from harmful influences, abuse and exploitation; and
  - the right to participate fully in family, cultural and social life.
- Survival and development rights: These are rights to the resources, skills and contributions necessary for the survival and full development of the child. They include rights to adequate food, shelter, clean water, formal education, primary health care, leisure

and recreation, cultural activities and information about their rights. These rights require not only the existence of the means to fulfil the rights but also access to them. Specific articles address the needs of child refugees, children with disabilities and children of minority or indigenous groups.

- Protection rights : These rights include protection from all forms of child abuse, neglect, exploitation and cruelty, including the right to special protection in times of war and protection from abuse in the criminal justice system.
- Participation rights : Children are entitled to the freedom to express opinions and to have a say in matters affecting their social, economic, religious, cultural and political life. Participation rights include the right to express opinions and be heard, the right to information and freedom of association. Engaging these rights as they mature helps children bring about the realization of all their rights and prepares them for an active role in society.

➤ Monitoring

- Governments that ratify the Convention on the Rights of the Child or one of its Optional Protocols must report to the Committee on the Rights of the Child.
- The Committee is made up of 18 experts in the field of children's rights from different countries and legal systems. They are nominated and elected by States parties but act in a personal capacity, not as representatives of their countries.
- In reviewing the States' reports, the Committee looks at how well governments are setting and meeting the standards for the realization and protection of children's rights as outlined in the Convention or Optional Protocol.

➤ Two Optional Protocols.

- The Optional Protocol on the involvement of children in armed conflict establishes 18 as the minimum age for compulsory recruitment and requires States to do everything they can to prevent individuals under the age of 18 from taking a direct part in hostilities.
- The Optional Protocol on the sale of children, child prostitution and child pornography draws special attention to the criminalization of these serious violations of children's rights and emphasizes the importance of fostering increased public awareness and international cooperation in efforts to combat them.

## Framework Decision on Combating the Sexual Exploitation of Children and Child Pornography.

➤ Adopted on 22 December 2003 by the Council. Entry into force on 1 January 2004.

➤ Objective of the Framework Decision :

The purpose of the Framework Decision is to harmonise the legislative and regulatory provisions of the Member States concerning police and judicial cooperation in criminal matters with a view to combating trafficking in human beings, the sexual exploitation of children and child pornography. It introduces common European provisions to address certain issues such as the creation of offences, penalties, aggravating circumstances, jurisdiction and extradition.

➤ Sexual Exploitation

The framework decision sets out behaviour that is punishable as "offences concerning sexual exploitation of children":

- coercing a child into prostitution or into participating in pornographic performances, or profiting from or otherwise exploiting a child for such purposes;
- engaging in sexual activities with a child, where:
  - use is made of coercion, force or threats;
  - money or other forms of remuneration or consideration are given as payment in exchange for the child engaging in sexual activities;
  - abuse of trust, authority or influence over a child.

➤ Child Pornography

Each Member State shall take the necessary measures to ensure that the following intentional conduct, whether undertaken by means of a computer system or not, when committed without right is punishable:

- the production of child pornography;
- the distribution, dissemination or transmission of child pornography;
- offering or otherwise making child pornography available;
- the acquisition and possession of child pornography.

➤ Penalties

- Member States must take the necessary measures to ensure that the instigation of one of the listed offences, or an attempt to commit that offence, is punishable.
- The penalties prescribed by each Member State must be "effective, proportionate and dissuasive". Prison sentences for offences must be at least between one and three years. Sentences for certain aggravated offences must be at least between five and ten years.

## ➤ Judicial Co-Operation

To ensure that the offences do not go unpunished through conflicts of jurisdiction, the Framework Decision introduces criteria for conferring jurisdiction. A State will have jurisdiction where:

- the offence is committed within its territory (the principle of territoriality);
- the offender is one of its nationals (the active personality principle);
- the offence is committed for the benefit of a legal person established in the territory of the Member State.

## Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

The Protocol is not a stand-alone instrument. It must be read and applied together with the parent Convention (the UN Convention against Transnational Organized Crime)

It was adopted by resolution 15 November 2000 of the General Assembly of the United Nations. Entry into force: 25 December 2003. It has been ratified by more than 100 States.

The elements of the Protocol which are subject to Community competence were negotiated by the Commission, with the approval of the Council, on behalf of the Community.

### ➤ Objectives of the Protocol :

- The Protocol forms a key element of a global approach to prevent and combat transnational organised crime established by the TOC Convention.
- The purpose of the Protocol is to prevent and combat trafficking in persons, especially women and children, through a comprehensive international approach including measures to prevent trafficking, punish traffickers and protect the victims of trafficking.
- It includes a number of mandatory obligations relating to the criminalisation of conduct, the protection of victims of trafficking, the prevention of trafficking and international cooperation.

### ➤ Definition of “Trafficking in Persons”

"Trafficking in persons" is defined in the Protocol, the first time that the international community has developed and agreed to a definition. Essentially, trafficking consists of actions in which offenders gain control of victims by coercive or deceptive means or by exploiting relationships, like those between parents and children, in which one party has relatively little power or influence and is therefore vulnerable to trafficking.

### ➤ Criminalisation

- Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in the Protocol, when committed intentionally.
- Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
  - Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with the Protocol.

- Participating as an accomplice in an offence established in accordance with the Protocol; and
- Organizing or directing other persons to commit an offence established in accordance with the Protocol

➤ Protection of Victims of Trafficking in Persons.

The Protocol creates obligations for the States Parties concerning:

- Assistance to and protection of victims of trafficking in persons
- Status of victims of trafficking in persons in receiving States
- Repatriation of victims of trafficking in persons

➤ The third part of the Protocol concerns prevention, cooperation and other measures, in particular:

- States Parties shall establish comprehensive policies, programmes and other measures to prevent and combat trafficking in persons; and to protect victims of trafficking in persons, especially women and children, from re-victimization.
- States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

## The Hague Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and the protection of children

- The Convention contains rules on jurisdiction, applicable law, recognition and enforcement of decisions on parental responsibility and child protection. The scope of the Convention is very similar to that of Council Regulation 2201/2003 of 27 November 2003 ("the new Brussels II Regulation"), which applies between Member States as of 1 March 2005. It is envisaged that the Convention will apply in the relations between Member States and that States that are Contracting States to the Convention.
- The Convention was concluded in 1996 within the framework of the Hague Conference on private international law. It entered into force on 1 January 2002 and has been ratified by 13 States.
- **Bulgaria** ratified the Convention on 8 March 2006 and it will enter into force on 1 February 2007. **Croatia and Turkey** have not yet signed or ratified the Convention.
- The Convention does not allow for accession by the Community, but only by sovereign States. It is a so-called mixed agreement, i.e. the Community and the Member States share competence to conclude it. The Commission proposed on 20 November 2001 to authorise Member States to sign the Convention, exceptionally, in the interest of the Community. The decision was adopted on 19 December 2002 and the Member States signed the Convention collectively on 1 April 2003, with the exception of the Netherlands, which had signed the Convention in 1997, i.e. prior to the entry into force of the Amsterdam Treaty.
- The Commission proposed on 17 June 2003 to authorise Member States to ratify the Convention, exceptionally, in the interest of the Community. A general agreement was reached on the substance of the text in November 2003, but the adoption of the decision was blocked at the last minute due to a disagreement between the United Kingdom and Spain concerning the central authorities to be designated on Gibraltar pursuant to the Convention.
- The Commission has taken several initiatives to urge Spain and the United Kingdom to find a solution to the Gibraltar problem to the extent that it prevents the ratification of international conventions falling under Community competence, but the situation remains blocked.

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<sup>1</sup> Council Regulation (EC) No 2201/2003 of 27 November 2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, OJ L 338, 23.12.2003, p. 1.

- In the context of **enlargement**, the Commission indicated in March 2004 to the acceding States that the Council Decision on signature was applicable to all of them as of the date of accession, and that the States that had not yet signed the Convention are obliged to do so (in this case Turkey and Croatia) under the terms of the decision. The Commission recalled that those States which had not yet acceded to the Convention must refrain from doing so before a Council decision had been adopted to that effect. Despite this, Slovenia and Hungary have subsequently ratified the Convention unilaterally.
- A Special Commission of the Hague Conference on the implementation of the 1980 Convention on Child Abduction and the 1996 Convention, scheduled for October/November 2006 in which the Commission will participate.