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International Law Aspects of the Trafficking in Children

ABSTRACT

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The dissertation entitled “International Law Aspects of the Trafficking in Children” has passed a preliminary discussion at the Department Council session of the Department of Public Law Sciences on 04.07.2024. The dissertation has been admitted for presentation before a scientific jury in the following composition:

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TABLE OF CONTENTS

1. GENERAL CHARACTERISTIC OF THE DISSERTATION RESEARCH	4
1.1. Actuality of the subject	4
1.2. Subject and object of the dissertation	5
1.3. Purpose and objectives of the research	5
1.4. Methodology of the research	6
1.5. Sources of the dissertation	6
1.6. Practical significance of the scientific work	7
1.7. Scope and structure of the dissertation	7
2. CONTENT OF THE DISSERTATION	8
3. CONTRIBUTIONS	30
4. SCIENTIFIC PUBLICATIONS IN RELATION TO THE SUBJECT OF THE DISSERTATION	32

1. GENERAL CHARACTERISTIC OF THE DISSERTATION RESEARCH

1.1. Actuality of the subject

The present dissertation reviews the international law aspects of the trafficking in children. It has been the topic of discussion by the international community a long time before the adoption of the Protocol for prevention, counteraction and prosecution of the traffic of people, especially women and children, supplementing the UN Convention against the transnational organized crime (the Protocol of Palermo) in 2000. The traffic of children has a complex and long-lasting history in law. It includes a number of international treaties regarding slavery, the traffic of white women and girls and practices similar to slavery.

At present, special attention is paid to the protection of children from trafficking. The reason for this is the joining of a number of states to universal and regional international treaties. This in its turn leads to the development of their national legislation in this field. Bulgaria is also one of those states. Our country joined a number of universal and regional international treaties regulating the protection of children from trafficking. Among those are: The Palermo Protocol of 2000, the Convention of the Council of Europe on Action against Trafficking in Human Beings of 2007 and others. At the national level, attention has been paid to the Combatting Trafficking in Human Beings Act and Section IX of Chapter Two “Crimes against Personality” of the Criminal Code. The case law of the Inter-American Court of Human Rights and the European Court of Human Rights (EctHR) has also been reviewed.

Along with the legislation on protection of children from trafficking, in Bulgaria the Council of Ministers also adopted a National Programme for Prevention and Counteraction of Trafficking in Human Beings and Protection of Victims, a National Referral Mechanism for assisting the victims of trafficking

and a National Strategy for Combatting Trafficking in Human Beings (2017 – 2021), etc.

The actuality of the selected subject is determined by the fact that the international law aspects of trafficking in human beings need profound research and analysis. The reasons for that are that throughout the years, universal and regional international treaties for protection of children from trafficking have been adopted. We should also indicate the case law ruled by international courts. The increased efficiency of the work of the existing international and regional bodies for protection of children from trafficking deserves attention and the introduction of additional mechanisms for their protection is worth mentioning as well. This interest in the topic again confirms its significance and actuality.

1.2. Subject and object of the dissertation

The subject of this research is: the essence and specifics of trafficking in children and international law protection of children from trafficking.

The object of the research are the international law aspects of trafficking in children and the problems related to their protection.

1.3. Purpose and objectives of the research

The purpose of the research is through clarifying of the international law aspects of trafficking in children, to point out to the most appropriate measures for their protection at the international level. Through an analysis of the problem related to trafficking of underage children, specific omissions and discrepancies in international law rules, which also lead to controversies in the implementation of the protection of children, should be identified.

To accomplish these goals, the present dissertation research sets forth the following objectives:

- to classify the international law instruments regulating the trafficking in children;
- to study the provisions of the Protocol of Palermo and of other

international treaties regulating the protection of children from trafficking;

- to analyse the essence of the international aspects of trafficking in children and their place in international law;

- to review the existing various age limits determining the beginning and ending moments of childhood in the international treaties for the protection of children from trafficking;

- to analyse specific problems related to trafficking in children in international law;

- to present the universal, regional and national instruments for protection of the children from trafficking.

1.4. Methodology of the research

In the process of research, methods were used such as: the normative methods by means of which the meaning of legal rules is clarified, along with the formal-logical, deductive and inductive method; the comparative legal and legal-historical analysis by means of which the tendencies in the development of international law aspects in the area of trafficking in children is traced and the methods of logical relation and consistency by means of which systematization and summary of the facts related to the matter under consideration is accomplished.

The analysis performed of the case law of international courts also finds its application in the dissertation along with the critical analysis of certain theoretical views.

By means of the methods specified, consistency in the clarification of the issues raised is achieved. The need for protection of children from trafficking is justified through a summary of the facts specified and reaching well-reasoned conclusions.

1.5. Sources of the dissertation

The sources of this research are mainly Bulgarian and foreign studies. The travaux préparatoires in relation to the adoption of the Protocol of Palermo have been used, the Convention on the rights of the child (the Convention of 1989), the Second Optional Protocol to it regarding the trading in children, child prostitution and child pornography of 2002 (Second Optional Protocol), as well as universal and regional international treaties regulating the trafficking in children. The recommendations addressed to Bulgaria by the Committee on the Rights of the Child, the Group of experts on counteracting the trafficking in human beings to the Council of Europe, as well as the practice established by the ECtHR have been reviewed.

1.6. Practical significance of the scientific work

The issues reviewed in the dissertation have both theoretical significance for understanding the essence of the international law aspects of trafficking in children, and practical value.

The proposals and main conclusions of the dissertation can be used by the people working in the field of trafficking in children and their protection.

The case law of international jurisdictions analysed in the dissertation and the conclusions drawn on these grounds can be useful to law students, practicing jurists, as well to those having an interest in the problematic under review.

1.7. Scope and structure of the dissertation

The dissertation is with a scope of 207 pages including the table of contents and references.

In terms of structure, the present dissertation research includes an introduction, 3 /three/ chapters, conclusion and references. Each chapter contains individual topical headings.

2. CONTENT OF THE DISSERTATION

The introduction defines the actuality of the research, its subject, purposes, objectives and methods used in the dissertation.

Chapter one of the dissertation is devoted to the legal regulation of the issue of trafficking in children in international law. It consists of 3 /three/ parts.

In **Section 1** the historical development of international law instruments of trafficking in children has been reviewed. Among them a central place is occupied by the international acts adopted by the League of Nations (LN) and the United Nations (UN). They are grouped in chronological order in the following periods: a brief historical overview from Antiquity to the International Convention for the Suppression of the Traffic in Women and Children of 4 May 1910; from the adoption of the International Convention for the Suppression of the Traffic in Women and Children of 4 May 1910 to the adoption of the Convention for Suppression of the Traffic in Persons and Exploitation of the Prostitution of Others of 1949; from the adoption of the Convention for Suppression of the Traffic in Persons and Exploitation of the Prostitution of Others of 1949 to the Protocol of Palermo of 15 November 2000.

Along with the major international treaties for counteracting trafficking in human beings, the provisions regulating the legal frame in the area of trafficking in children have been reviewed. The obligations of the states that ratified the relevant treaties have also been considered. A legal historical overview has been provided of the development of the definition of trafficking in children from the International Convention for Suppression of White Slave Traffic of 4 May 1910 to the adoption of the Protocol of Palermo of 2000. Attention has been paid to the processes related to trading in white slaves who supported the development of the fight with the trafficking in human beings, respectively children. Among the reasons for that, the scandal that broke out in Brussels with English girls at the age of 12 – 17 who used to work in brothels in Belgium has been mentioned. The history of Louisa Hennessey has been specially taken into account, for although

it was an isolated case, it set the beginning of the origin of the modern regime of trafficking.

In the international treaties specified for review in Section 1 the evolution of the definition of trafficking in children has been investigated.

In **Section 2** the definitions of slavery, sale and trafficking in children in international law have been analysed. The dissertation has specially focused on the relation between slavery and trafficking in human beings. The reason for this is that this issue has not been sufficiently reviewed in the international law doctrine. Trafficking in human beings, including children is often defined as “slavery” or as a “modern form of slavery”. At the same time, slavery is perceived in a manner expanding its scope and referring to situations related to trafficking in human beings. Parallel to that, in scientific literature the use of sale and trafficking in children as synonyms is observed but these are actually two different crimes. In this section a comparison is also made between the definitions of slavery, sale of children and trafficking in children specified in the 1926 Slavery Convention, the Supplementary Convention on the Abolition of Slavery, Slave Trade and the Institutions and Practices similar to Slavery of 1956, the Second Optional Protocol and the Protocol of Palermo. Conclusions have been drawn in terms of the differences and common features among them.

The inclusion of slavery and practices similar to slavery in the definition of trafficking in children has been investigated as proof of an essential relation between the two concepts. Arguments that have been reviewed in this context are Convention No. 182 of the International Labour Organization of 1999 regarding the prohibition and elimination for immediate liquidation of the worst forms of child labour and the Roman Statute of the International Criminal Court.

The use and interpretation of the definitions of sale of children and trafficking in children within the large international organizations for child protection has also been analysed, including on behalf of the United Nations

Special Rapporteur on the issues of sale of children, child prostitution and child pornography, along with other materials related to sexual abuse of children.

Special attention has also been paid to the reports of the states-parties to the Second Optional Protocol. In these reports they very often comment on the implementation of the legislation on trafficking in human beings instead of that on the sale of children.

In **Section 3** of the research the definitions of “child” in the international law instruments for protection from trafficking has been reviewed. An analysis of the definition of “child” in international law has been made. The texts reviewed are those of the first international law instruments on the rights of the child, as well as those of: the International Agreement for the Suppression of the White Slave Traffic of 1910, the International Convention of 1921 for the Suppression of the Traffic in Women and Children, the Palermo Protocol of 2000, the African Charter of Human and Peoples’ Rights of 1981, the Arab Charter on Human Rights of 1969, the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, the European Convention of 1980 for Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, the European Convention on the Exercise of Children’s Rights of 1996 and the Convention on Combatting Trafficking in Human Beings.

Attention has been drawn to the fact that the international treaties adopted before the Convention of 1989 do not contain a definition of child. With this background, the preparatory materials related to the adoption of the Convention of 1989 have been examined along with the process of negotiations regarding the definition of child.

The determining of the beginning and ending moment of childhood and related various age boundaries have been emphasized. To that end, the position of the Committee on the Rights of the Child with respect to the notion of a child has been set forth according to which the principle of guaranteeing the best interests

of the child should be adhered to.

The case law of the Inter-American Court of Human Rights, the European Court of Human Rights and the Supreme Court of the USA in terms of the boundaries of childhood has also been explored.

The new dimensions of trafficking in children, which include the smuggling of embryos and surrogacy have been analysed.

The central focus in **Chapter Two** is the relation between trafficking and the Convention of 1989. The chapter consists of 3 /three/ parts. Specific problems given consideration to are those related to trafficking in children and the 1989 Convention, with an emphasis on Article 35 thereof, along with its relation to other provisions of the Convention. Attention has been paid to the trafficking in children and the Second Optional Protocol.

In **Section 1** Article 35 of the Convention of 1989 has been reviewed, which regulates the prohibition of kidnapping, sale and trade of children. The accent is on the legislation history related to the adoption of the provision specified. A comparison has also been made between the definition of trafficking in children set forth in the Palermo Protocol and the provision of Article 35 of the Convention on the Rights of the Child.

The original text of the provision of Article 35 has been analysed. In English, it includes the expression “the sale of or traffic in children”. In the version of the Convention on the Rights of the Child in Bulgarian promulgated in the State Gazette, edition 55 of 12 July 1991, Article 35 is translated as “sale or trade”. Following on from that point, the semantic meaning of and the difference between trade and sale has been explored. It has been pointed out that trade is the more general term. It includes an activity related to both purchase and sale of goods. This is also the meaning imbedded in the definition of trafficking in the Palermo Protocol. According to that definition, one of the manners of involving in trafficking is the giving and receiving of payments. That is why, it is correct that the translation of the word “sale” be related to trade and not to selling.

The conclusion reached is that the version of the translation into Bulgarian of Article 35 of the 1989 Convention should refer to the prohibition of “sale of and traffic in” and not to “sale or trade” of children.

Consideration is given to the interpretation of the concepts of “traffic in” and “sale of children”, as well as to their implementation, which is bound to the provisions of Article 3 of the Palermo Protocol and Article 2 of the Second Optional Protocol.

Last but not least, the process of adoption of the Protocol of Palermo has been reviewed. It was created as a result of the increased interest on behalf of Argentina in the problems related to the trafficking in minors. It was also provoked by the subsequent dissatisfaction of that state with the slow progress of negotiations related to the adoption of the Second Optional Protocol. Argentina lobbied for trafficking in children being regarded as part of a larger-scaled attack against transnational organized crime.

The relation of Article 35 of the Convention of 1989 to other provisions of said convention has been pointed out in **Section 2**. In terms of being the first international treaty to guarantee the rights and welfare of children, the main goal of the convention is to protect them from a wide range of violations of their rights.

The Convention of 1989 specifies four principles that are the foundation of the rights of the child and have a bearing on trafficking in children. They are: non-discrimination (Article 2), best interests of the child (Article 3), the right to life, survival and development (Article 6) and the right of the child to be heard (Article 12). Each one of these principles matters when it comes to trafficking in children. According to the Committee on the Rights of the Child, there is a connection between Article 3 and Article 12 in the cases of trafficking in children. It is expressed in their mutually supplementary role relative to each other. The first article ensures the achievement of the best interests of the child and the second one assists in the accomplishment of this goal by hearing the children express their

views. In reality, there cannot be correct implementation of Article 3 if the components of Article 12 have not been complied with.

Despite this fact, examples have been provided whereby the provision of Article 12 is applied without taking into account the children's own perceptions of what is in their best interest. It has been established that their involvement in the resolution of issues related to them should be conducted in a balanced and sensitive manner according to the principles of Article 3 and Article 12.

In addition to the four principles of the convention, the section provides an analysis of the relation between Article 35 and its relatedness to the other provisions of the convention. They include: Article 11 (referring to the illegal kidnapping of children), Article 21 (guaranteeing the right of the child to be adopted abroad in case of no possibilities in its home country), Article 32 (forbidding any kind of labour that can be dangerous and harmful for the health, physical, spiritual, moral and social development of the child), Article 34 (protecting children from all forms of sexual exploitation and abuse), Article 38 (monitoring the observance of international humanitarian law and the ban for participation of armed conflicts of children under the age of 15), Article 39 (regulating the restoration and social integration of children-victims of crime), etc.

The focus of **Section 3** is on trafficking in children and the Second Optional Protocol.

The Second Optional Protocol is among the major international instruments for protection of the rights of the child from all forms of exploitation. The reason for its adoption is the increased sexual exploitation of children as well as the fact that there is no adequate protection of children from sale, child prostitution and pornography.

In the present section the legal history of the preparation of the definition of sale of children according to the Second Optional Protocol has been examined. In the basis of the latter is the issue whether that definition should be limited to the purposes of sexual exploitation or it should also encompass other purposes as

in trafficking in children according to the Palermo Protocol. Although the focus of the protocol should be on the fighting the commercial sexual exploitation of children, its definition has been expanded beyond this narrow scope. An important argument is that Article 35 of the Convention of 1989 does not restrict the sale of children in any manner, therefore the emphasis on sexual exploitation would lead to direct conflict between the Second Optional Protocol and the Convention.

The relation between trafficking in children and the definitions specified in the Second Optional Protocol of sale of children, child prostitution and child pornography has also been underlined. Each one of the crimes has a bearing on the trafficking in children, whether as preconditions for trafficking or as a condition for its implementation. Among those, the sale of children has the widest scope and includes situations whereby children can be subject to trafficking.

In this respect, the Committee on the Rights of the Child underlines in its guidelines regarding the Second Optional Protocol that the sale of children always requires a certain form of a commercial transaction, which is not necessary in trafficking in children. In addition to that, trafficking in children should always pursue an exploitation purpose. A further difference is that the sale of children does not require a physical transfer of a child. In contrast, the separation of a child from its social environment is a key element of trafficking and a reason due to which they are especially vulnerable to becoming victims of trafficking.

The distinction between sale of children and trafficking in children is important in terms of the prosecution of the perpetrators, identification of the victims and determining the best interests of the child. Attention has been paid to the sale of children within the context of surrogacy, sports circles and child marriages and their relation to trafficking.

The connection between the text of Article 1 of The Second Optional Protocol and Convention No. 182 of ILO regarding the immediate, effective and time-bound measures to eliminate the worst forms of child labour as a matter of urgency has also been examined. According to Article 3 of the Convention, the

sale of children, trafficking in children, as well as their use for prostitution, for production of pornography and pornographic materials are among the worst forms of child labour.

The definitions of child prostitution and their relation to trafficking have been analysed as well.

The focus of **Chapter Three** of the dissertation is on the institutional system for protection of children from trafficking, as well as on the universal, regional and national instruments for their protection.

Section 1 examines universal instruments for protection of children from trafficking and the Republic of Bulgaria. Due to the transborder nature of trafficking, the efficiency of combatting the crime depends on the partnership of the states within various international organizations, including within the UN. The present section analyses the process related to the counteraction to trafficking in children in the major UN bodies. They are: the General Assembly, the Security Council and the Economic and Social Council, along with the auxiliary ones: The UN Human Rights Council, the Children's Fund of the UN (UNICEF) and the UN Office on Drugs and Crime.

The independent mechanisms of the Human Rights Council for establishing of facts and monitoring, which deal with specific situations in the country or with topical issues on all parts of the world have been reviewed. Attention has been paid to special rapporteurs related to trafficking in children. They are: the UN Special Rapporteur on issues of sale of children, child prostitution and child pornography and other materials related to sexual abuse of children and the Special Rapporteur on trafficking in persons, especially women and children.

The so-called contractual bodies for control established by virtue of individual international treaties engaged in the protection of children from trafficking have also been investigated. They are: the Committee on the Rights of the Child and the Conference of the States. The latter has been founded pursuant to Article 32, paragraph 1 of the UN Convention against transnational organized

crime. The purpose of the Conference of the States is to improve the opportunities of the states for fighting the trafficking in persons, including of children.

Along with the bodies mentioned above, a special place among the universal instruments for protection of the rights of the child has been devoted to the specialized international organizations from the UN system. To that end, the international Labour Organization and the International Migration Organization have been examined.

In **Section 2** regional instruments for protection of children from trafficking and the established practice have been focused on. In this respect, attention has been paid to the protection of the rights of the child envisaged within the African Union, the Organization of American States and the Council of Europe.

The protection of children from trafficking in Africa is performed by the African Union. In July 2001, in accordance with Article 32 of the African Charter on the Rights and Welfare of the Child of 1999 (the African Children's Charter), the African Committee of Experts on the Rights and Welfare of the Child was established. It is authorized to monitor the implementation of the African Children's Charter, as well as to encourage and protect the rights of children, including protecting them from trafficking in the region.

The next body engaged in the protection of children from trafficking is the African Court on Human and Peoples' Rights. It was established by the member-states of the African Union pursuant to Article 1 of the Protocol to the African Charter on Human and Peoples' Rights. From its establishment up to the present, the African Court has ruled on a total of 15 court decisions. Among them there are no decisions related to trafficking in children.

This section reviews the protection of children from trafficking within the Organization of American States (OAS), which is performed by the Inter-American Commission on Human Rights (the Inter-American Commission).

It is one of the two bodies of the Inter-American system assigned with functions for encouragement and protection of the human rights. It was

established under the auspices of OAS by Resolution VIII of the Fifth Consultative Meeting of Foreign Ministers in Santiago, Chile in August 1959. The Inter-American Commission has been functioning since 1960 and its purpose is to monitor the situation of human rights by visits on the spot.

The case law of the Inter-American Court on Human Rights in relation to trafficking in children pursuant to Article 6 of the American Convention on Human Rights and the related prohibition of slavery in all of its forms, as well as the sale of slaves and trafficking in women has been examined.

Section 2 includes the protection of the child from trafficking under the auspices of the Council of Europe, which is realized by a Group of Experts on Action against Trafficking in Human Beings (GRETA). It is its independent body related to monitoring of the implementation of the Convention of the Council of Europe on Action against Trafficking in Human Beings. The reports of GRETA concerning Bulgaria and the recommendations concerning the trafficking in children have also been reviewed.

To that end, Section 2 has an emphasis on the ECtHR. It was established on 21 January 1959. Its purpose is to guarantee that the states that have ratified the European Convention on Human Rights and Fundamental Freedoms adhere to their obligations under it. This is the first regional treaty putting into action and making mandatory the rights enshrined in the Universal Declaration on Human Rights. Trafficking in children has been investigated in the case law of ECtHR pursuant to Article 4 of ECHR regarding the prohibition of slavery and forced labour.

In **Section 3** of the dissertation the existing national instruments on the protection of children from trafficking and their role has been examined.

This section offers a review of the existing national instruments on protection of the children from trafficking and the role of these instruments for protection. To that end, the protection of the child in the Republic of Bulgaria, the United States of America (USA) and the Federal Republic of Germany have been

examined.

In Bulgaria, one of the bodies in charge of the protection of children from trafficking is the National Commission for Combating Trafficking in Human Beings (NCCTHB). It was established in accordance with Article 2 paragraph 1 of the Combating of Trafficking Act. It is functioning at the Council of Ministers. Its main activity is to implement the interaction between separate instrumentalities, institutions and organizations related to the problem of trafficking in persons, including children. The National Commission is working for the prevention of the crime, recovery and reintegration of the victims of trafficking.

With respect to the USA, the global task for support and coordination of the efforts for combating trafficking, in particular trafficking in children, is performed by the Federal Department of the USA. It is responsible for coordinating the efforts of the American government to combat trafficking. Within the structure specified, the Office for Monitoring and Combating Trafficking in Human Beings works in partnership with other federal agencies, international organizations and civil society. Its role is to develop effective strategies to combat trafficking in human beings and children. It also conducts the bilateral and multi-lateral diplomacy and actions to increase awareness of society concerning this crime.

The Office for Combating Trafficking has been established in accordance with the Protection of Victims of Trafficking Act of 2000. Its main priority is the prosecution of perpetrators, protection of the victims and prevention of trafficking. This is also in compliance with the purposes of the Palermo Protocol. The Office is organized in five departments: Reports and Political Issues, International Programs, Public Commitment, Inter-government Issues and Resource Management and Planning.

The Annual Report on Trafficking in Human Beings has also been presented as a major diplomatic and monitoring instrument of the US government. It is the most comprehensive worldwide source regarding the efforts of the

governments to combat trafficking, including trafficking in children and it reflects the commitment of the USA to establish itself as a global leader.

Next in the present section, the protection of children from trafficking in the Federal Republic of Germany has been included. It was conducted initially by the establishment of a Working Group on Trafficking in Women. It is functioning under the presidency of the Federal Ministry on the issues of family, senior citizens, women and youth and it has its sessions once to twice a year. In 2013, it changed its name to Working Group on Trafficking in Human Beings in order to reflect the expanded scope of its activity. This fact is explained by the complexity of the problem, which pertains to various fields of politics, addressees and levels within the federal system. The Working Group conducts its meetings every six months. Its purpose is also to control migration but parallel to that, through recognition of its importance, that victims receive adequate and timely care.

The counteraction to trafficking in children and their protection has been examined as part of the plan for action of the federal government to combat violence against women. According to that plan, a multi-disciplinary monitoring body has been established, which is a working sub-group in charge specifically of the problem of trafficking in children.

The fact that in spite of the commitment of the government in Germany, the state has not adopted a National Plan for action against trafficking in human beings, including children, has been examined. At present, the establishment of a mechanism for referral of the victims of the crime is at the stage of discussion only.

The **conclusion** has systematized the conclusions drawn from each of the three chapters the dissertation consists of.

As a result of the analysis conducted in the present exposition regarding the international law aspects of trafficking in children, the following conclusions can be drawn:

- Trading in white slaves and the processes related to it assisted in the development of the combat of child trafficking. The reasons for this are the active actions of the international community since the adoption of the International Convention for the Suppression of the Traffic in Women and Children of 4 May 1910 by the League of Nations up to finding its logical end with the adoption of the Protocol of Palermo on 15 November 2000 by the United Nations;
- After adoption of the Agreement of 1904, the international treaties in the field of trafficking expanded their scope and were directed entirely to women and girls. Later on, the adopted Convention of 1949 abandoned this gender-related feature and was applied in relation to all persons offering sexual services. Thus, gradually all forms of exploitation were criminalized in the Protocol of Palermo in 2000;
- A confirmation concerning the origin of trafficking in children from the trade in white slaves is found in Article 2 of the International Convention of 1910. There the methods of coercion such as “abuse of power”, “fraud”, “threats” and “violence” specified are pointed out for the first time. These are also the original „means” included in the definition of the Palermo Protocol of 2000, which along the other two components – “action’ and “purpose’ comprise the trafficking in human beings;
- There exists a confusion at the national levels in relation to the term “sale of children”. The states – parties to the Second Optional Protocol, when reporting in relation to its implementation, often comment on the legislation on combating the trafficking in human beings, which they have adopted within the context of the sale of children;
- Despite the certain similarity between the sale of children and trafficking in children, they are not identical. According to international law, the sale of children is expressed in the transfer of a child from one

person to another, as well as the existence of a transaction envisaging any form of remuneration or benefit. At the same time, this is not obligatory in the trafficking in children although the child can be sold to another trafficker or exploiter. The sale of children does not necessarily include as a purpose the exploitation of the child. It can be performed without the physical movement of the child, while the concept of trafficking in children always includes the element of movement;

- The sale of children and trafficking in children are included in slavery according to Convention No. 182 of the international Labour Organization of 1999 regarding the prohibition and elimination for immediate liquidation of the worst forms of child labour and the Roman Statute of the International Criminal Court;
- The trafficking in human beings, as well as trafficking in children is determined as a modern form of slavery;
- International law is in a state of uncertainty in terms of the definitions of slavery, sale of children and trafficking in children. In some cases, they are used as interchangeable, while in other cases primacy is given to one of them over the others;
- Embryo smuggling and surrogacy are among the new forms of exploitation within trafficking in human beings, respectively in children;
- In the Convention of 1989, as well as in the international and regional instruments in the field of trafficking in children, an initial moment of childhood has not been specified;
- The upper age limit in the international treaties on protection of children from trafficking is 18 years. While in the Convention of 1989 it is 18 years or earlier unless according to the national law applicable to the child full legal age comes earlier;

- The case law of the ECtHR and the Inter-American Court reviewed proves that an opportunity has been provided for the states to autonomously determine the starting point from which a person is considered a child, but with respect to coming of full legal age, it comes when the child becomes 18 years old;
- The legislation in Bulgaria regarding combating the trafficking in human beings, respectively in children and the definitions of “child” specified in it prove that they correspond to the established standards, namely, the lower limit of childhood is absent but the age of 18 is determined as its end;
- In spite of the fact that Article 1 of the Convention of 1989 does not contain a clear definition of the notion of “child”, it is of considerable importance. In the first place, it changed the usual use of the term “child” in the national legislation by replacing it with a general term with respect of all persons below the age of 18. In the second place, it established that up to reaching full physical and mental development, the social independence of human beings requires support, as well as special protection of their rights and interests from early childhood;
- With the provision of Article 35, the 1989 Convention became the first international treaty in which an explicit prohibition of trafficking in children is contained;
- Comments of the states in the legislative history of the adoption of the future text of Article 35 were later on included in the Protocol of Palermo as forms of exploitation in the trafficking in human beings, respectively in children;
- The adoption of the Protocol of Palermo occupies an important place in the protection of children from trafficking in international law. The

Protocol helps to clarify the understanding of the rights and obligations of the states with respect to trafficking un children, including pursuant to Article 35 of the Convention of 1989;

- With respect to trafficking in children, the four core principles of the Convention of 1989 are important – non-discrimination (Article 2), the best interests of the children as a primary consideration (Article 3), the right to life, survival and development (Article 6) and the child’s rights to have their views given due weight (Article 12). The situation in terms of Article 3 and Article 12 is peculiar. As a result of their application with respect to children-victims of trafficking, there exists a contradiction. The reason is that in the international law system of trafficking of minors the consent to subsequent exploitation is irrelevant;

- With respect to the provision of Article 35 of the Convention of 1989 pertaining to the prohibition of abduction, sale and trafficking, it is related to the following provisions of:

- Article 11 of the Convention of 1989 including the illegal trans-border kidnapping of children from their biological parents or relatives, and Article 35 concerning the performance of similar activities but also within the national territory by persons who are not members of their family;

- The common point of the provisions of Article 21 of the Convention of 1989 with Article 35 is that if the adoption of a child is against payment and subsequently the child has also been exploited, then it turns into a victim of trafficking. Therefore, this is one of the means by which they can be involved in the crime;

- Article 32 prohibits any labour that can be dangerous and harmful to the health, physical, mental, spiritual, moral and social

development of the child. The labour exploitation of the children is often accompanied by the consequences listed in Article 32. That is why it is one of the forms of trafficking and falls within the framework of implementation of Article 35;

- Article 34 protects children from all forms of sexual exploitation and violence. In view of this, there is a connection between Article 34 and Article 35 because in most cases the child trafficking is conducted especially for these purposes;

- Article 38 follows for the observance of international humanitarian law and the ban of direct participation in armed conflicts of persons under the age of 15. The common point with Article 35 is that poverty, starvation and despair can push children from such regions of armed actions to be trafficked to other countries and exploited;

- Article 39 regulates the recovery and social integration of children-victims of crimes. The similarity with Article 35 is the necessity of social care and reintegration of the children that have suffered from trafficking.

- Other provisions of the Convention of 1989 pertaining to Article 35 of said convention and trafficking in children are: Article 24, item 3 (removal of traditional practices, including child marriages, which violate the rights and welfare of the children); Article 26 (provision of available, accessible and quality social security to the children); Article 27 (providing of adequate living conditions to the children, which should assist in their physical, mental, spiritual, moral and social development); Article 33 (prohibition of the illegal use of drugs and psychotropic substances) and Article 36 (protecting children from all forms of exploitation);

- The Convention of 1989 provides double protection to the children from trafficking. On the one hand, a blanket rule is specified in Article 35 and on the other hand – the separate norms included pertaining to specific forms of exploitation;
- One of the strengths of the Convention of 1989 is its capacity of being used for understanding of the crime and related to it exploitation purposes in the broadest possible context. The provision of Article 35 is aimed at prevention of the sale of children and child trafficking and contains the first binding for the states legal regulation with respect the implementation of effective control of the crime;
- The absence of a definition of trafficking in the Convention of 1989 leaves the issue of its interpretation open, which creates the danger of it not being understood in all of its manifestations. Nevertheless, greater flexibility is thus provided at the national level for the preparation of a definition of the crime;
- The Second Optional Protocol and trafficking in children refers to trafficking in its preamble only. With respect to child prostitution and child pornography, they create conditions under which minors can be subject to trafficking. On the other hand, the sale of children in and of itself has a larger scope and also includes situations whereby children can be trafficked;
- Trafficking in children exists in sports environment as well, especially in professional football. Very often, young sportsmen from poor families do not enter into a written agreement or if they have one, they do not have easy access to a copy thereof, which puts them in a situation of risk from various forms of exploitation;

- Upon the distribution of pornographic materials among youths, or the so-called sexting, many risks are created, among which risks from trafficking as well;
- In cases where the children are victims of one of the crimes in the Second Optional Protocol and have sexual exploitation as a purpose, in specific situations the notions of sale, child prostitution and pornography overlap;
- The UN actively assists the fighting of child trafficking through their main and auxiliary bodies, including specialized organizations. They adopt a number of resolutions and initiatives to counteract the crime;
- An especially important role in trafficking in children has the UN Council on Human Rights and the special rapporteurs appointed by it regarding the sale and sexual exploitation of children, including child prostitution and other materials related to the sexual violence against children, as well as the one about trafficking in human beings, especially women and children;
- Bulgaria has also had its contribution to the process related to prevention of trafficking in children. Through participation of our country in the adoption of resolutions within the UN system, as well as by implementation of international projects pertaining to this problem, our country has investigated and traced the scales of the crime. On these grounds, it has been able to correct and adapt its policy to the monitored tendencies in the field of trafficking, as well as to update the legislation at the national level;
- The bodies established such as the African Committee, the African court, the Inter-American Court and GRETA conduct monitoring for the

implementation of the international treaties in the field of protection of the human rights, including the children's rights;

- Although the African Charter on the Rights of the Child contains in Article 29 the prohibition of trafficking in children, at present there are no cases with similar subject reviewed by the African Court;
- In the court decisions ruled by the Inter-American Court and the European Court of Human Rights regarding trafficking it is pointed out that regardless of the absence of explicit reference to trafficking in children in the provisions of the applicable regional treaties (Article 6, item 1 on the freedom from slavery from ECtHR and Article 4 regarding the prohibition of slavery and forced labour in American Convention of Human Rights), in both cases, an extended interpretation should be provided to the notion of slavery. This finding of both courts is a guarantee for the protection of children from trafficking within OAS and the Council of Europe;
- In Bulgaria, the protection of children from trafficking is conducted within the National Commission for Combatting the Trafficking in Human Beings. It is a body of the Council of Ministers. Each year, a National Programme for prevention and counteracting the trafficking in human beings and protection of the victims is voted and adopted. It devotes special attention to the prevention of trafficking, as well as to increasing the qualification of employees working with children and youths;
- For the US government, the participation and coordination between the offices is of exclusive importance. Among them are those in the field of criminal prosecution, public awareness, education, the economy, international development and programs, intelligence and diplomacy;

- A priority in the policy of the USA in combating the trafficking in human beings is the use of the resources of the entire government in order to seek responsibility from the perpetrators and protection of the victims;
- In the Federal Republic of Germany, the protection of children from trafficking is conducted by a specially established for the purpose Working Group for trafficking in human beings under the presidency of the Federal Ministry on the issues of family, senior citizens, women and youth;
- Therefore, we can make the conclusion that as in Bulgaria, and as in the USA and the Federal Republic of Germany, there are bodies established responsible for the protection from trafficking in human beings, including children. Although with different names – commission, office and working group, their main role is related to the inter-institutional cooperation in the direction of prevention, criminal prosecution and subsequent reintegration of the victims of the crime. Each one of them is functioning within a relevant government structure. In Bulgaria, it is the Council of Ministers, in the USA – the State Department and in the Federal Republic of Germany – the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. The purpose is to establish a common policy at the national level to combat this type of crime;
- The USA has established itself as a global leader in the fight against trafficking in human beings and children. The proof of this is the responsibility the state has assumed for the annual preparation of a Global Report on the trafficking in persons, which includes information about the situation of the problem in 187 countries. Moreover, the targeted allocation of funds for prevention of trafficking amounts to millions of dollars on an annual basis;

- With respect to Bulgaria, in spite of the available normative basis, there are challenges for the functioning of the NCCTHB;
- The government of the Federal Republic of Germany has not adopted up to the present a National Plan for fighting the trafficking in human beings, as well as trafficking in children. In addition, it has not fulfilled its obligation as a member-state of the EU to affirm officially a national mechanism for protection and referral of the victims of the crime.

3. CONTRIBUTION POINTS

The contribution of the dissertation paper is related to the preparation of scientific results, which constitute a response to both the issues set forth for review and to specific problems of international public law. Solutions can be proposed to the objectives preliminarily formulated, by means of which we hope to have succeeded in giving the following contributions:

1. In the Bulgarian legal doctrine, the issues related to the international law aspects of trafficking in children are given complete consideration to and explained and the specific problems related to it are analysed;
2. The specifics of international law aspects of trafficking in children are analysed;
3. A classification of the international law instruments regulating the trafficking in children has been performed;
4. The systematization of the sources of international law instruments in the field of trafficking in children is also point of contribution character;
5. The protection of the children from trafficking in international law has been analysed, as being conducted not only in the Palermo Protocol but also in other universal and regional international law instruments for protection of the child;
6. Specific problems in the context of child trafficking have been investigated, connected to the beginning and ending moments of childhood in the relevant international law instruments on trafficking in children;

7. The institutional system for protection of the rights of the child by means of the existing universal, regional and national instruments has been analysed;

8. The extremely actual tendency in the trafficking in children related to the embryo smuggling and the use of surrogacy as new forms of exploitation has been pointed out;

9. The dissertation has introduced a conceptual apparatus, which can be useful for the Bulgarian doctrine, as the definitions of slavery, sale and trafficking in children have been analysed and have been explicitly distinguished from each other;

10. Proposals have been made for adaptation of the Bulgarian translation of Article 35 of the Convention of 1989. It should correspond to the original text in English, which should refer to the protection of the children from „sale of and trafficking in children”, and not from „sale or trade of children”;

11. The recommendation to unify the definition of „child“ has a contribution character as well. This in its turn will be a guarantee for the child protection both at the international and at the national level. With this in mind, the pointing out of an initial limit of childhood should be enshrined in a future international treaty on the trafficking in children and later on it should be included in the national legislation of the states;

12. Proposals have been made for improvement of the protection of children from trafficking in the Republic of Bulgaria, and they are related to the greater commitment of the government to the essence of the activity of the National Commission for Combating Trafficking in Human Beings, as well as to increasing the financial resources for prevention of the crime.

4. SCIENTIFIC PUBLICATIONS IN RELATION TO THE SUBJECT OF THE DISSERTATION:

- **Ivanova, T.** “Historical Development of the International Law Instruments on Combating Child Trafficking” in volume 8, ed. 2/2021 of the journal “Law, Politics, Administration: issued by the Law and History Faculty of the South-West University “N. Rilski”, volume 8, ed 2/2021, <https://lpajournal.swu.bg/>, ISSN:2367 - 4601;
- **Ivanova, T.** The Definitions of Slavery, Sale and Trafficking in Children in International Law– In: Collection of Reports from the XII Scientific Conference of PhD Students, Postdoctoral Fellows and Young Scientists in the Field of Law Sciences, Institute for the State and the Law – Bulgarian Academy of Sciences, Sofia (accepted for publication);
- **Ivanova, T.** Traffic in Children and the UN Convention on the Rights of the Child – In: Collection of Reports from the International Scientific Conference on Occasion of 30 Years from the Establishment of the Faculty of Law of the University of Plovdiv “The Law in XXI Century – Challenges and Perspectives”, volume 2, University Publishing House, University of Plovdiv “Paisii Hilendarski”, Plovdiv, 2023, pp. 409 – 420, ISBN 978 – 619 – 202 – 904 – 3.