



HUMAN RIGHTS *advocacy*



Death sentence: International trend and Bangladesh

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OF all the punishments, death penalty occupies the most significant position in the administration of criminal justice. This is because death penalty is a punishment that extinguishes the light of life, takes away hopes and aspirations of the world, and deprives the blameless children of parental affection, love and care. This is an inhuman, degrading, cruel punishment symbolising the primitive propensity in punishing offenders. Article 35(5) of the constitution of the People's Republic of Bangladesh precisely states that no person shall be subjected to cruel, inhuman, or degrading punishment. Despite it our courts have been continuously inflicting inhuman punishment of death penalty provided by law for various offences.

Since the liberation of Bangladesh, 247 convicted criminals have been hanged to death. Not less than 1500 criminals are now death convicts. More than 950 convicts including 28 women are in the condemned cell waiting for the day of last breathing. Others (more than 500 convicts) are in hiding. This article will attempt to state whether death penalty serves the end of justice. Firstly, let's have a glimpse of the end of the administration of criminal justice.

End of Criminal Justice: The purpose of criminal justice is to punish the wrongdoer. He is punished by the state. The question arises what is the purpose of punishment or in other words, end of criminal justice. From very ancient times a number of theories have been given concerning the purpose of punishment. These theories are in brief stated below.

Deterrent Theory (Deterrent Punishment): According to this theory, the object of punishment is not only to prevent the wrongdoer from doing a wrong a second time but also to make him an example to other persons who have criminal tendencies. To quote Salmond: "Punishment is before all things deterrent and the chief end of the law of crime is to make the evil doer an example and a warning to all that are like-minded with him."

Preventive Theory (Preventive Punishment): This theory attempts to prevent the wrongdoer from committing offences again. The offenders are disabled from repeating the offences by such punishment as imprisonment, death, exile etc. Prevention seems to be the chief and only universal purpose of punishment. The law threatens certain pains, if you do certain things, intending thereby to give you a new motive for not doing them.

Reformative Theory: The object of punishment should be to bring about the moral reforms of the offenders. Even if an offender commits a crime, he does not

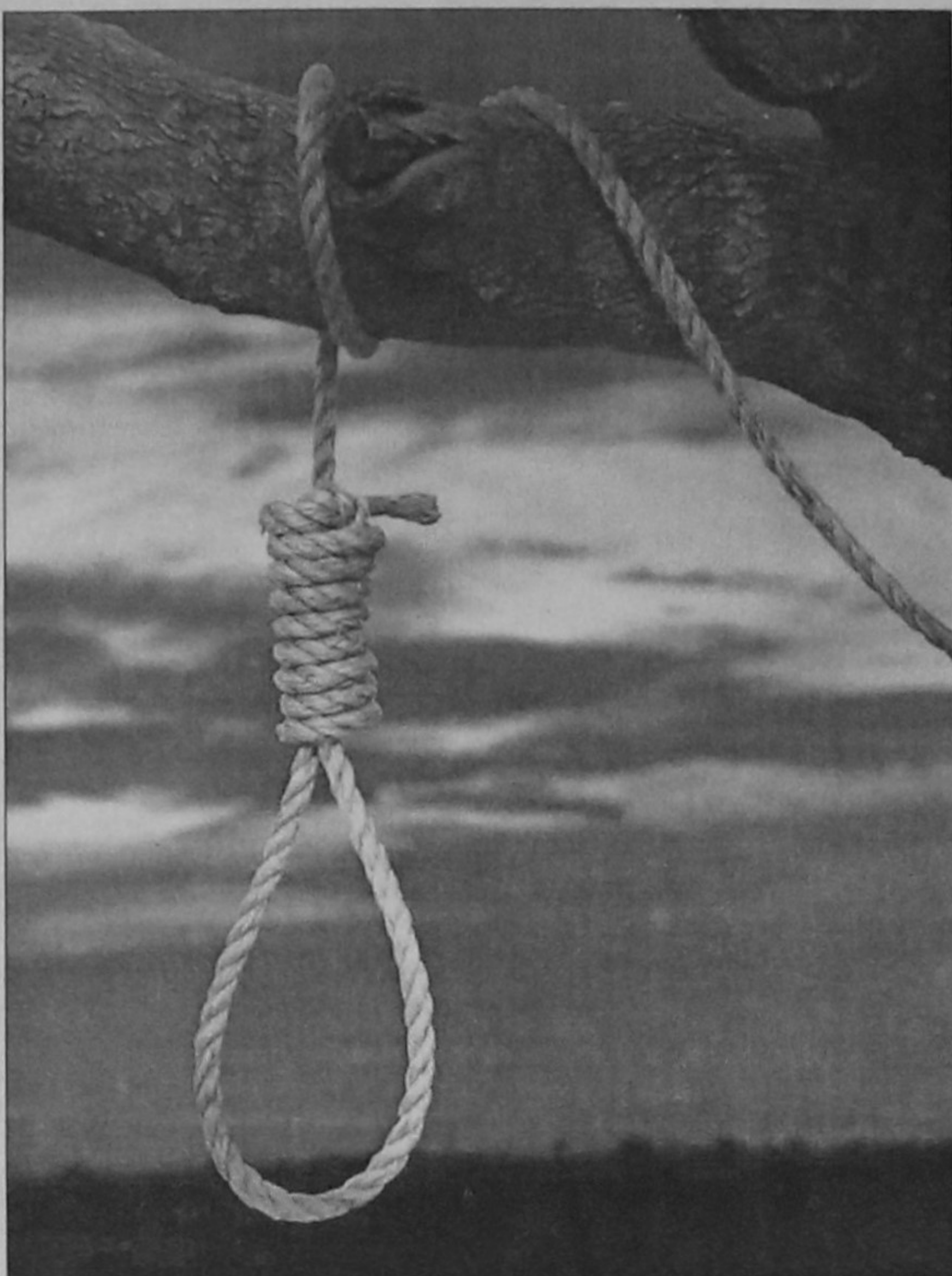
cease to be a human being. He may have committed a crime under circumstances which might never occur again. The advocates of the reformative theory contend that by a sympathetic, tactful and loving treatment of the offenders, by moral education and proper training, a revolutionary change may be brought about in their characters.

Retributive Theory: In primitive society, the person wronged was allowed to have his revenge against the wrongdoer. The principle of "an eye for an eye", "a tooth for a tooth" was recognised and followed. Plato was supporter of this theory. He wrote: "Every culpa demands expiation; the culpa is ugly, it is contrary to justice and order; the expiation is beautiful because all that is just is beautiful and to suffer for justice is also beautiful."

Comparative Study: the modern world tends to reform the offenders instead of punishing them. The reason is that modern Criminology and Penology treat the offenders as sick, subnormal human beings who may be transformed into good citizens by educative and reformative treatment to them by government.

It is contended that the deterrent theory has been proved ineffective in checking crimes. Provisions for severe punishment in Penal Code have failed to stop increasing crimes in the world. Excessive harshness of punishment tends to defeat its own purpose by arousing sympathy of the public towards those who are given cruel punishment. Deterrent punishment is likely to harden the criminal instead of creating in him the fear of law. Hardened criminals are not afraid of punishment. Punishment loses its horror once the criminal is punished. Retributive theory has also been criticized as barbaric and uncivilized form of punishment. Revenge is wild justice. It merely aggravates the mischief.

Preventive punishment may be effective in certain cases, for instance, cancellation of driving licence, dismissal of service etc but inflicting severe pains in the name of prevention ultimately results in nothing other than hardening criminals. Again the application of reformative theory runs the risk of increasing crimes in the society. If criminals are to be sent to prison to be transformed into good citizens by physical, intellectual and moral training, prisons must be turned into comfortable dwelling places. There are many incorrigible offenders who are beyond the reach of reformative influences and with whom crime is not a bad habit but an instinct and they must be left in despair. It is true that criminals generally are not normal human beings. They are mentally diseased and abnormal human beings. However if all the offenders are treated leniently, even ordinary sane people may be tempted to commit crimes in view of the lenient attitude of law towards crimes.



The perfect system of criminal justice cannot, therefore, be based on any one theory of punishment. Every theory has its own merits and every effort must be made to take the good points of all. The deterrent aspect of punishment must not be ignored. Likewise the reformative aspect must be given its due place. The personality of the offender is as important as his actions and we must not divorce his actions from his personality. The offender is not merely a criminal to be punished. He is also a patient to be treated. Punishment must be given in proportion to the gravity of the crime. It must be small for minor crimes and heavy for major crimes. The first offender should be leniently treated. Special treatment should be given to the juvenile offenders. It must not be forgotten that motive for the crime is generally lacking in the case of children. They commit petty offences on account of bad company and bad neighbours. Their cases must be handled with imagination and sympathy. While award-

ing punishment, the judge should study the character and age of the offender, his early breeding, his education and environment, the circumstances under which he committed the offence, the object with which he committed the offence and other factors.

Death Penalty: The world is divided upon the issue. In the administration of criminal justice, sentencing of offenders to death is a much talked about topic and has always occupied a significant place in discussions. In ancient times and even in the middle ages, the death penalty was a common kind of punishment and was awarded even for petty offences like shoplifting, cattle stealing, cutting down trees etc. The object was to deter others from doing the offence creating panic in the mind of like minded persons. In course of time, death penalty was proved to have failed to serve the end of justice. In United Kingdom the offence of pickpocketing was awardable with death sentence but the pickpockets were seen

busy with their activities in the crowd of people who gathered to see the execution of death sentence. So a section of lawmakers, jurists and lawyers raised their voice against death sentence and argued that death penalty did not serve the end of justice. Moreover this form of punishment is barbaric, savage and immoral institution which undermines the spirit that human beings may be reformed.

The proposals for abolition of death sentence for petty offences was brought about but there was a lot of hue and cry from lawyers, judges and parliamentarians and the so called protectors of social order. Six times the House of Commons passed the bill and six times the House of Lords rejected the same. With the passage of time, the voice for abolition of death penalty grew stronger over the world especially in Britain. However, in spite of opposition, the bill was passed and the number of cases in which capital punishment was awarded was reduced year after year and death penalty was reserved for offences like murder and treason.

Currently, in the world 133 countries have abolished capital punishment de jure or de facto. 64 countries have retained it. Bangladesh is one of them. (source: Amnesty International Website)

In UK, death penalty was abolished in 1965 except for offences of treason and certain forms of piracy and offences committed by members of the Armed Forces during wartime.

In India, the recent trend is clearly towards the abolition of death sentence. Before the amendment of Criminal Procedure Code in 1955, it was obligatory for a court to give reasons for not awarding death sentence in case of murder. Under the Criminal Procedure Code, 1973, the court has to record reasons for awarding death sentence.

A compassionate alternative of life imprisonment is gaining judicial ground in India. In a leading case of Bachan Singh v. State of Punjab (1980) 2 SCC 684, the Supreme Court held by a majority of four to one that the provisions of death sentence as an alternative punishment for murder in section 302 of Penal Code was not unreasonable and was in the public interest. The dissenting view of Justice Bhagwati was that instead of death sentence, the sentence of life imprisonment should be imposed. He put emphasis on barbarity and cruelty involved in death sentence. It is irrevocable and cannot be recalled. It extinguishes the flame of life for ever. It is destructive of the right to life which is the most precious right of all, a right without which enjoyment of no other right is possible. Justice Bhagwati rejects the view that death penalty acts as a deterrent against potential murderers. According to him, this view is a myth which has been carefully nurtured by a society which is actuated not so much by

logic or reason as by a sense of retribution.

In 1983, the Indian Supreme Court in a ruling directed to impose death penalty only in rare cases. In India, death sentence was for the last time effectuated in 2004, hanging Dhananjay to death for the offence of rape and murder of a schoolgirl belonging to minority group.

The US Supreme Court permitted death sentence in 1976. Despite this permission, 13 states including District of Columbia have ever sentenced none to death. Recently New Jersey as the first state of America has passed law abolishing death penalty. The human rights activists have warmly welcomed it terming the step as a milestone in the history of American criminal justice.

The United Nations Organisation has been working worldwide for the abolition of death penalty. On November 15, 2007, a resolution was passed in UN General Assembly regarding abolition of death penalty. 99 member countries voted for and 52 countries including United States of America against the resolution. The rest 33 countries absented themselves from voting. Notably the resolution is not binding upon the countries. But this shows that the international communities want abolition of capital punishment.

In 1977, a world conference on capital punishment was held in the capital of Sweden. Since then the voice against such a cruel punishment grew stronger worldwide. The various organisations are working over the world against death sentence. The major organisations are Amnesty International, European Union. In 2002, World Coalition against the Death Penalty (WCADP) was formed under the patronisation of EU in Rome of Italy. This coalition has been observing 10 October as the day against death penalty since 2003.

Death Penalty in Bangladesh: The legislative authority of Bangladesh has with a view to checking crimes provided a set of statutes which have empowered the courts to impose death penalty for various offences. Penal Code, 1860 has incorporated seven offences for which death sentence may be given. These are: 1. waging war against Bangladesh (s.121), 2. abetting mutiny actually committed (s.132), 3. giving or fabricating false evidence upon which an innocent person suffers death (s.194), 4. murder (s.302), 5. abetment of suicide of child or insane person (s.305), 6. attempt to murder by life-convicts (s.307) and 7. dacoity with murder (s.396).

The Special Powers Act, 1974 has provided death penalty for the offences of sabotage (s.15), counterfeiting currency notes and Government stamps (s.25A), smuggling (s.25B), and adulteration of, or sale adulterated food, drink drugs or cosmetics (s.25C).

Nari o' Shishu Nirjatan Daman Ain 2000 has incorporated death as punish-

ment for the offences committed by combustible and likely other substances (s.4), for women trafficking etc (s.5), for children trafficking (s.6), for ransom (s.7), for ravishing any woman or child who dies consequently (s.9(2)), causing death for dowry (s.11), maiming or mutilation of children for begging (s.12).

The courts and tribunals of Bangladesh are frequently imposing death penalty under various enactments. During the rule of four-party alliance a good number of criminals were sentenced to death, especially after the constitution of Monitoring Cell. During the last seven years almost 30 death sentences were executed. Now the question arises: has the death penalty reduced the incidents of crimes? Has it been able to prevent the offences or to act as a deterrent? In our republic a number of persons depend for maintenance upon the income of a single adult person. What happens to these dependants when the state takes away the life of that person for offences committed by him in the heat of passion and on the spur of moment? Is it not injustice to them without taking any step for their maintenance, care and good environment which are essential for their mental and physical growth as good citizens of the republic? The state cannot deprive any child of its father's love and affection. The state can not do injustice in the name of checking crimes.

It has been pledged in the preamble of the republic's constitution that equality and justice will be secured for all citizens. The liberation heroes had dedicated their lives with a view to establishing a welfare state in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed. Protection against cruel, inhuman, or degrading punishment is a fundamental right under art.35 (4) of the constitution. So time has come to reconsider death sentence as a means of punishment. The world's trend is precisely towards the correction of the offenders in lieu of inflicting cruel, inhuman and degrading punishment. Bangladesh as a democratic country cannot lag behind.

The state is undergoing cumulative increase of crimes owing to a great deal of factors such as lack of good governance, absence of rule of law, corruption, patronisation of terrorists, wide gap between the haves and have-nots, confrontational politics and so on. Instead of giving emphasis on removing these factors, we are wrongly attempting to check crimes by inflicting exemplary punishment.

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LAW *campaign*

Convention on action against trafficking in human beings enters into force

THE Council of Europe's Convention on Action against Trafficking in Human Beings (CETS n° 197) enters into force on 1 February 2008. The Convention aims to prevent trafficking, protect the human rights of victims and prosecute traffickers. It applies to all victims of trafficking: women, men and children alike; to all forms of exploitation (sexual exploitation, forced labour, servitude, removal of organs etc.) and it covers all forms of trafficking: national and transnational, related or not to organised crime.

The treaty enters into force on 1 February 2008 with regard to the first ten countries which ratified the Convention: Albania, Austria, Bulgaria, Croatia, Cyprus, Denmark, Georgia, Moldova, Romania and Slovakia. It will enter into force with regard to Bosnia and Herzegovina, France and Norway on 1 May 2008.

The Convention, which was opened for signature in Warsaw in May 2005 at the 3rd Summit of Heads of State and Government of the Council of Europe, has

been signed, but not yet ratified by 24 other member states: Andorra, Armenia, Belgium, Finland, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Luxembourg, Malta, Montenegro, Netherlands, Poland, Portugal, San Marino, Serbia, Slovenia, Sweden, "the former Yugoslav Republic of Macedonia", Ukraine and the United Kingdom. Ten member states Azerbaijan, Czech Republic, Estonia, Liechtenstein, Lithuania, Monaco, Russia, Spain, Switzerland and Turkey have not yet signed it. Non member states and the European Community can also become Party to the Convention.

This main features of the new Convention, the first European treaty in this field, include:

Awareness-raising for persons vulnerable to trafficking and actions aimed at discouraging "consumers" to prevent trafficking in human beings.

Victims of trafficking must be recognised as such in order to avoid police and public authorities treating them as illegal migrants or criminals.

Victims of trafficking will be granted physical and psychological assistance and support for their reintegration into society. Medical treatment, counselling and information as well as appropriate accommodation are all among the measures provided. Victims are also entitled to receive compensation.

Victims are entitled to a minimum of 30 days to recover and escape from the influence of the traffickers and to take a decision regarding their possible cooperation with the authorities. A renewable residence permit may be granted if their personal situation so requires or if they need to stay in order to cooperate in a criminal investigation.

Trafficking will be considered as a criminal offence: traffickers and their accomplices will therefore be prosecuted.

The private life and the safety of victims of trafficking will be protected throughout the course of judicial proceedings.

Possibility to criminalise those who use the services of a victim if they are aware that the person is a victim of trafficking in

human beings.

The Convention provides the possibility of not imposing penalties on victims for their involvement in unlawful activities, if they were compelled to do so by their situation.

The Convention provides for the setting up of an independent monitoring body capable of controlling the obligations contained in it. To this end, within one year of the entry into force, the Council of Europe will set up the Group of Experts on Action Against Trafficking in Human Beings (GRETA), formed by ten to fifteen experts.

Trafficking in human beings is a worldwide phenomenon often linked to organised crime. According to the International Labour Organisation, up to 2.45 million people throughout the world are victims of human trafficking every year. The illicit profits of this trade amount to 33 billion dollars annually, making it the third most profitable criminal activity after illegal drugs and arms trafficking.

Source: Council of Europe Press Division.

