

Human Trafficking in The Courts: The Importance of Victim's Rights And Protection

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Abstract

The “4P” paradigm – prevention, protection, prosecution and partnership – serves as the fundamental international framework to counter human trafficking and modern slavery. While organizations not always operate in partnership, which is a tremendous gap in counter-trafficking strategies, protection and prosecution are interdependent pillars. One enhances the likelihood of the other to be successful. Therefore, victim's protection is of outmost relevance to evidence collection and effectiveness of prosecution of human trafficking cases. Based on victimological research, this paper briefly reviews the origins of victims' rights and protection programs while bringing to the reader's attention, relevant international, regional and national (Turkish) documents and law in the fields of victim's support and protection to victims of human trafficking. It further elaborates on the connection between victim's identification and cooperation with the criminal justice system – reporting, providing evidence and following court cases – provided that victims are protected and have their rights guaranteed. Finally, it demonstrates that the further protection is granted to human trafficking victims, the more they collaborate with criminal prosecution of cases, enhancing likelihood of convictions and solution of cases, revealing traffickers and dismantling human trafficking networks. It is at the core of this paper to demonstrate that victims' collaboration is key for prosecuting and countering human trafficking, highlighting that collaboration might only be enhanced through provision of adequate support and protection.

Keywords: *protection, victim's support, prosecution, court cases, evidence, victim's participation in court*

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Mahkemelerde İnsan Ticareti: Mağdur Haklarının Önemi ve Korunması

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Öz

“4P” paradigması – Temel olarak Uluslararası Çerçeve de önleme, koruma, kovuşturma ve ortaklık - insan ticareti ve modern köleliğe karşı mücadelede görevlerini görmektedir. Kuruluşlar her zaman ortaklık içinde faaliyet göstermezler ki bu insan ticareti ile mücadele stratejilerinde çok büyük bir boşluktur; koruma ve kovuşturma birbirine bağlı direklerdir. Biri diğeri için başarılı olma olasılığını artırır. Bu nedenle mağdurun korunması, insan ticareti davalarının kovuşturulmasının, kanıt toplama açısından yakından ilgilidir. Mağdurolojik araştırmalara dayanan bu makale, insan ticareti mağdurlarına destek ile birlikte uluslararası koruma alanlarındaki ,bölgesel ve, hukuki okuyucuların dikkatine sunmaktadır. Mağdurların hakları ve Koruma programlarının kökenlerini de gözden geçirmektedir. Mağdurların korunması ve haklarının güvence altına alınması koşulu ile mağdurların kimlik tespiti ve ceza adaleti sistemiyle işbirliği - raporlama, kanıt sağlama ve davaları takip etme - arasındaki bağlantıyı ayrıntılı olarak açıklamaktadır. Son olarak, insan ticareti mağdurlarına daha fazla koruma sağlandığını, davaların cezai kovuşturulmasında işbirliği yaptıklarını, davaların çözümlerini arttırdığını, insan tacirlerini açığa çıkarıldığını, insan kaçakçılığı ağlarını ortadan kaldırdığını ve mahkûmiyet olasılığını arttırdığını göstermektedir. Mağdur işbirliklerinin, insan ticaretini kovuşturmak, mücadele edilmesinden en önemli yapı taşlarından birisini oluşturmaktadır. İş birliğinin yalnızca; yeterli destek ve koruma sağlanmasıyla daha da geliştirilebileceği makalemizin ana temasıdır.

Anahtar kelimeler: koruma, mağdurun desteği, kovuşturma, mahkeme davaları, kanıt, mağdurun mahkemeye katılımı.

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Victims' Rights And The Right To Protection And Participation In Criminal Proceedings

Short after the Second World War, criminologists such as Von Henting (1948), Mendelsohn (1956) and Wolfgang (1958) started to study the role of the victim in the criminal conflict with a view to understand its contribution to it. Years later, in the sixties, the victim became a subject of interest not only because of his/her potential contribution to crime, but mostly because of the relevance to provide protection to those human beings which had been victimized by crime, turning point of the criminal justice in systems throughout the world. (Pedra J. B., 2010, p. 9). The need to provide to the victim a place or space within the criminal justice systems arose in addition to the need of the criminal justice systems to reach more victims that would report crimes and support with investigation. It turned out that the alienation of the victim from the criminal justice system. Consequently, low reporting rates¹ resulted in lose-lose for all.

Thus, a new method to reach out to victims that were hidden from the criminal justice systems and to count crime was designed: the Crime Victim Surveys (CVS). The CVS is a household survey that measures crime. It asks households if they were victimized in a certain period (usually the last five years), which kind of offenses and whether they had reported to the police. It was because of CVSs results that criminal justice system realized that crime rates registered by the police were significantly lower than the actual victimization rates since there are usually more victims than crimes reported. Victims do not report for reasons such as fear of reprisals, mistrust in the police, lack of protection from governmental/law enforcement authorities and little to gain if they decide to contribute (Shapland,

¹ "The Crime Victims Surveys were introduced in the United States (US) in the 1960s in order to measure the prevalence of criminal events which went unreported. As the name explains, it aims to identify the number of people who were victimized in a certain period (usually the last five years) and which kind of offenses they had been through. In 1973 the US government decided to run victim surveys every year together with the Federal Bureau of Investigation statistics and those became a permanent source of statistics. Worldwide, the method was recognized as appropriate to measure crime or "count victims." Thus, with the support of the United Nations Office on Drugs and Crime (UNODC), the United Nations Interregional Crime and Justice Research (UNICRI) and Universities Institutes (such as UNIL) organizations around the world began to conduct Crime Victimization Surveys." (Pedra J. B., 2008, p. 167). For more on ICVS see Killias (2001), Aebi (2006), Lehnen and Skogan (1981). For the latest results of the ICVS, see Van Dijk, Van Kesteren and Smit (2007), Mayhew & Van Dijk (2014).

Duff & Willmore, 1985; Waller, 1990). "Reporting rates were therefore only *apparent* criminality whereas crimes which were not reported would continue to be hidden under the so-called *black cifer*"(Aebi, 2006).

The CVSs also revealed that victims were not coming to the attention of the criminal justice system because, among other reasons, they felt they would not be supported, confirming feelings of lack of confidence in the system. As a result of that, victim support programs started to be established and providing assistance and protection to crime victims.

During the first wave of the victim's movement (Van Dijk, 1988) - 1965 to 1975 – mostly services for children victims of violence and survivors of concentration camps were established. Meanwhile, the first victims' compensation schemas were implemented in New Zealand and England (Van Dijk, 1988; Maguire, 1991). Victim-witness assistance programs were also established, particularly in the United States, to support and encourage victims to report the crime and to collaborate with the investigation (Maguire, 1991) in exchange of protection from intimidation and retaliation.

The second wave of the victim's movement was mostly focused on violence against women, mostly partner violence and sexual violence, leaded by the feminist movements worldwide, which started to create women shelters (Van Dijk, 1988).

The third wave of the victim's movement was a call for justice. It was at this point of the history of victimology that law and order, civil rights and grass-root groups raised the need for specific legislation concerning victims' rights, considering victims' needs that were being neglected by the criminal justice system and the governments (Maguire, 1991; Pedra J. B., 2010). Crime control, punishment of the offender and reestablishment of the order or social harmony - classic responses of the criminal justice system in case of crime - were no longer sufficient (Pedra J. B., 2010).

In 1985, the General Assembly of the United Nations (UN) adopted the first international declaration on victims' rights - Resolution n° 40/34 or the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (UN General Assembly, 1985), which, inter alia, states

that victims have the right to information on the proceedings, have the right to present their views to the judicial authorities; are entitled to (free) legal aid and have the right to see their privacy/identity protected.

Following the UN Declaration on Victim's Rights, most of the countries in the European Union and Switzerland introduced in their criminal justice systems specific legal framework providing rights to crime victims, as well as established protection programs (Pedra J. B., 2008; 2010).

Thus far, there was no legal definition of human trafficking, although it was occurring in most societies of the world. There was the definition of slavery since 1926, meaning "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised" (League of Nations, 1926) as well as the definition of concepts which are very familiar to human trafficking, such as debt bondage, "that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined" and serfdom, "that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status." (United Nations, 1956).

There were also no special provision concerning the rights of victims of human trafficking, which were firstly acknowledged as victims of such transnational crime under the Palermo Protocol, or the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted by General Assembly Resolution 55/25 of 15 November 2000.

The Palermo Protocol was, therefore, a milestone during the fourth wave of the victim's movement - the specialization of rights – since it provides rights to the victims of human trafficking according to their needs. For example, it recommends signatory states to "protect the privacy and

identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.” (UN General Assembly, 2000). Confidentiality in trafficking cases might be essential in order to protect victims’ physical integrity. Human trafficking networks are known to have connections with organised crime networks which might endanger or put victims at risk, once it comes to their attention that they are cooperating with the criminal justice system.

It also recommends states to “provide for physical, psychological and social recovery of victims of trafficking in persons; appropriate housing; counselling and information, in particular as regards their legal rights; medical, psychological material assistance, employment, educational and training opportunities.” (UN General Assembly, 2000).

Support programs should aim for social inclusion and integration and care for a variety of rights that are related to that such as provision of reflection period – according to which the victim has the right for temporary residence permit while reflecting on his/her interest to contribute with the criminal justice system; residence and work permit; voluntary repatriation or return to country of origin.

The Council of Europe Convention on Action against Trafficking in Human Beings has gone beyond the Palermo Protocol and is even more specific in terms of provision of rights to human trafficking victims, to the point of having as its core purpose, under its first article “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.” The Convention is clearly victim-centred and oriented to the provision of rights, with a view to enhance protection and participation of human trafficking victims in the criminal proceedings. For example, the Convention recommends Member States signatories to ensure victim’s representation in court (article 27); “to protect victims from potential retaliation or intimidation, in particular during and after investigation and prosecution of perpetrators” (article 28, 1); “to provide for physical protection, relocation, identity change and assistance in obtaining jobs” (article 28, 2).

Turkish Law is also in line with the Palermo Protocol and Council of Europe Convention, providing for victim's rights, as it will be demonstrated in the following.

Victims' Rights - And Human Trafficking Victims' Rights - In Turkey

Turkey has a comprehensive framework providing for victims' rights, both ruled by the Regulation on Combating Human Trafficking and Protection of Victims and the Turkish Criminal Procedure Code.

As per Regulation, human trafficking victims have the right to: legal counseling, safe accommodation, social and psychological support and representation of lawyer during interviews.

Besides those above listed rights, according to the Regulation on Combating Human Trafficking and Protection of Victims, victims who are foreign persons have the right not to be deported. Indeed, the fear of deportation leads to the decision not to report: some trafficked persons do not want to turn back to their countries of origin because of different reasons, such as fear of retaliation, feelings of shame and guilt and stigmatization (Goodey, 2003; Anti-Slavery International, 2002; Pedra J. B., 2008, 2010). Besides, other factors such as racial, ethnic and gender discrimination, domestic violence, poverty, unemployment, precarious or scarce employment opportunities, low education levels, environmental disasters, armed conflict, war and social exclusion, and which "pushed" those people away from countries of origin also prevent victims to turn back.

However, as many States worldwide (Herz, 2006; Anti-Slavery International, 2002; Goodey; 2003; Kloplic, 2004) in case there is no cooperation with authorities and no provision of information to the criminal case, victims might be sent back to their countries of origin, meaning that some of those rights are dependent upon their cooperation with the criminal justice system.

Meanwhile, as per Regulation, victims of human trafficking or individuals strongly suspected to be victims of human trafficking shall be granted a residence permit of 30 days. Such residence permit corresponds

to the reflection or recovery period, in which the victim may decide whether to cooperate with the officials with his/her free will. It is supposed to serve the victim to be freed from the negative impacts of the crime, recover from trauma and remain safe from the traffickers, at least sufficiently to decide whether he/she is willing to contribute to the criminal justice system with information concerning her/his case. It serves the victim to make informed decisions about “whether to take legal action against the trafficker and to pursue legal proceedings regarding compensation claims. Since such decisions have serious and far-reaching consequences for both the life of the person concerned and for the safety of the family members in the country of origin, the trafficked person needs to have time to weigh all the possible consequences of their choice.” (UNODC, 2008, p. 305).

Last and most important, potential victims have the right to be informed about their rights, previously to the interview with relevant authorities.

Adding to the Regulation, the Turkish Criminal Procedure Code – articles 58, 234, 236 and 237 – also provides for victims’ rights. Victims have right to participation in the criminal procedure – e.g. request court to collect evidence or to investigate, right to representation or to demand the appointment of a lawyer on his behalf by the Bar Association, right to appeal/use legal remedies against decisions that end the lawsuit. They also have the right to demand information from the public prosecutor, review the documents of investigation, right to be notified about the main trial. The victim has also the right to be heard only one time in relation to the investigation or prosecution of the committed crime, in order to avoid more psychological damages; and to ask for an expert of the fields of psychology, psychiatry, medicine or education to be present during his/her statement. Finally, the right to secrecy of his/her identity in case there is fear of grave danger to him/her and relatives, in case the crime has be committed within the activities of an organized crime gang.

Like in the Regulation, at any time of the investigation/prosecution, the victim has the right to learn or to be informed about his/her rights.

Victims' Identification And Cooperation With The Criminal Justice System

Despite those legal provisions and some improvements in the last decades concerning victims' rights and participation in the criminal justice system, the disregard to victims' needs while dealing with criminal justice agencies remains. In effect, since the roots of the criminal justice system, victims are disregarded and mistreated, as Christie (1977) and Hulsman (1997) perfectly explain: criminal justice systems were established in order to control crime, not to support crime victims. "As soon as the crime comes to the attention of law enforcement authorities, the victim loses the ownership of (Christie, 1977; Hulsman & Célis, 1997) and the control over the case" (Pedra J. B., 2010, p. 9). The conflict is taken away from the victim and the "criminal proceeding becomes a symbolic and bilateral formal conflict between the state and the criminal." (Pedra J. B., 2010, p. 9).

The scenario is not different for trafficked persons, who likewise other crime victims, most often suffer secondary victimization while in contact with the criminal justice system, once they decide to cooperate, as a result of the mistreatment from criminal justice and law enforcement actors – e.g. discrimination, prejudice, criminalisation. "In far too many cases, victims are not only exploited by their traffickers, they are then subsequently discriminated against and disenfranchised by the civil and criminal justice systems that are supposed to exist to help them as vulnerable victims of crime." (IOM, 2007, p. 274)

Beyond any effort of police officers and prosecutors or care for victims' well-being while contributing to the criminal proceedings, victims may be worried with self-protection and survival, and thus may be naturally reluctant witnesses (Davy, 2017). The arrest and charging of traffickers, for instance, does not automatically reassure victims. In this sense, victims need to feel safe, that they will not be forcibly sent back to their countries of origin or that they will be able to return soon to their country of origin, that they will have a place to stay accommodate, and with their children, that their family in the country of origin will not be under threat, that they will not be subjected to further trauma, among other needs.

According to Davy (2017), given the trauma victims commonly suffer from situations of trafficking, combined with their fear of retaliation, their inexperience with court processes, and the searching cross-examination they must often face from defence counsel or judges, it is understandable that their evidence may suffer from shortcomings.

For that reasons, human trafficking victims require adequate support and protection in order to cooperate with the criminal justice system and investigations. Otherwise, it is less likely that they will come to the attention of law enforcement authorities or contribute to the criminal proceedings.

Appropriate support and protection of victims at all stages of the criminal justice process is essential to protect their rights as victims of crime, as well as for their safe and effective participation in the prosecution of traffickers.

It is also important to note that “victims must not be compelled to participate in the criminal justice process but be empowered to choose whether or not they wish to participate. For those victims who are willing and able to contribute to the investigation and prosecution of traffickers, special protection considerations apply.” (The Bali Process, 2015, p.).

Some research have demonstrated that the more the victim is supported and protected, the more he/she contributes to the criminal justice system as a piece of information or witness. Adequate support enhances the likelihood of recovery and therefore also enhances the chances that the victim will remember the details of the offense, contributing as a source of evidence. Victims' cooperation with the criminal authorities and provision of information enhances likelihood of convictions and solution of cases, revealing traffickers and dismantling human trafficking networks. Victims' collaboration is, therefore, key for prosecuting and countering human trafficking, as it will be further discussed.

Importance Of Protection And Provision Of Rights To Human Trafficking Victims For Successful Prosecution

Victim's protection is both a human right and an important pillar that supports prosecution. Victims of human trafficking must be afforded due protection, mostly because it is a fundamental right, but also for effective par-

participation in the prosecution of traffickers, encouraging them to testify and enhancing likelihood of conviction.

Victims' participation in the criminal justice system is "essential for crime reporting and the success of prosecution (Killias, 1999; Waller, 1990; Wemmers, 1996; McSherry & Cullen, 2007). The conviction of criminals for human trafficking often depends on the number of reliable victim testimonies." (Pedra J. B., 2008). Even though the Council of Europe Convention against Trafficking in Human Beings recommends that State Parties shall ensure that investigations into or prosecution of offences "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" (article 27), many information stem from victims. "Many data stem from victims' accounts, obtained during police investigations (testimonies, informal talks, trafficking intelligence), obtained by organizations such as those which provide shelter or obtained by researcher and journalist conducting interviews with (former) victims." (Dijck, 2005, p. 11).

"While varied forms of evidence might be used in trafficking in persons cases, in many cases around the world the central piece of evidence is still victim testimony." (UNODC, 2017, 11). Oftentimes, criminal justice systems and actors "may too heavily rely on the statements of victims, where additional evidence might be available, but more difficult to gather" (UNODC, 2017, 12). Indeed, UNODC's review of 135 cases from 31 jurisdictions revealed that the most common form of evidence used to obtain trafficking in persons convictions is testimonial. "In particular, victim testimony seems to be the most relied upon source of evidence in human trafficking cases" (UNODC, 2017, 11), if not the unique source of evidence. "Trafficking cases often stand or fall on the availability/quality of victim testimony" (UNODC, 2017, p.11) which overloads substantially the psychology of the victim.

However, criminal justice actors and victims may face many drawbacks related to victim testimonies in trafficking cases. For example, inconsistencies may arise due to a range of reasons such as lack of credibility in law enforcement actors, lapses in memory, confusion about the chain

of events, traumatic reactions, fear of traffickers or feelings of loyalty to traffickers, known as the Stockholm Syndrome, indoctrination to tell a certain story (UNODC, 2017). These drawbacks may be seen as weaknesses. However, it might also reveal the level of distress and fear that the victim is suffering, as well as it might also reveal that the statement is genuine and that the victim has not been coached by traffickers or their lawyers.

Besides, short after the trafficking experience, victims may be too traumatized to complain or testify, being reluctant or even under denial. They might recall the story in bits; they might engage in surprising gestures or emotional reactions, such as laughter or anger. Even the same victim in one case may display different emotional reactions during the investigation or trial (UNODC, 2017) while being questioned by different persons. The interviewer also plays a relevant role. For example, victims might feel more comfortable to speak to civil society organisations or other - even governmental - institutions that provide assistance and protection to crime victims, instead of law enforcement actors.

These kinds of inconsistencies or behavior may lead to an assumption that such victims are not credible but those may be explained by the trauma suffered or fear of retaliation or the extreme vulnerability that human trafficking victims are caught in. Therefore, support and protection are essential for gathering reliable, consistent and complete information from the victim. "Research shows that some countries which fared better in prosecuting and convicting traffickers from various crimes were the ones - e.g. Belgium, Italy, the Netherlands, United States, Germany - which also had the most comprehensive measures for assisting victims, including reflection delay and temporary residency permits for those prepared to testify against their traffickers." (Pedra J. B., 2008, p. 172).

Beyond a human right, victim support is essential if the criminal justice system wants him/her to contribute and to make an informed decision to testify against the trafficker. "Besides, if psychological needs are neglected it becomes more difficult for trafficked victims to contribute to criminal proceedings because, they do not remember everything at once, lack trust against others and experience confusion and inconsistency in

their discourses as consequence of the trauma.” (Pedra J. B., 2008, p. 170).

It is evident that as a result of trauma, human trafficking victims need time to reflect and consider available options, such as voluntary repatriation, temporary residence permit, shelter, legal advice, counseling and medical care. Such period allows the victim to recover from trauma and to decide whether or not she/he is willing to contribute with the criminal justice or to return to her/his country of origin. Counseling during this period is essential too, to introduce to the victim his/her options and rights and to empower the victim through psychological support.

In Belgium and The Netherlands “those who are granted the reflection delay are more likely to press charges against their traffickers.” (Anti-Slavery, 2002, 42). However, it was observed that law enforcement officials seem unwilling to inform possible victims about their right to a reflection delay, because they fear it will prolong the investigations or they simply do not recognize those people as trafficked persons. For that reason, most of the victims prefer to return to their countries of origin as opposed to immediate and, to them, premature participation in criminal proceedings. Indeed, “the government reported difficulties in encouraging foreign victims to cooperate in prosecutions as most preferred immediate voluntarily repatriation.” (US Department of State, 2019, p. 469).

Trafficked victims may also be granted a residence permit for temporary stay, in case they agree to contribute to the criminal proceedings. Likewise Turkey, countries such as Belgium, the Netherlands, Poland and United Kingdom allow those victims who are willing to assist with investigations and prosecutions the right to temporary stay.

In extreme cases, this right is even extended to his/her family which may reunite with the victim in the country of destination. For example, in Germany, deportation measures were commenced against 55% of victims whereas only 13% were given temporary residence permits and 5% participate in court proceedings as witnesses. (Herz, 2006).

In Turkey, most of the identified trafficked persons are immediately returned back to their country of origin, after the investigation process has started (ICMPD, 2013). The 2019 US Department of State TIP Report re-

corded that government of Turkey is still likely to deport or inappropriately detain some trafficking victims due to inadequate identification, demonstrating that there is still need to invest more efforts in training officials on human trafficking indicators. This practice has a negative impact on the prosecution phase of the process. (ICMPD, 2013)

Even if residence permits are issued by States, those are limited to the length of investigations or judicial proceedings. (UNODC, 2008). As a result, victims may not testify against traffickers fearing reprisals once they are returned to the home country after proceedings are concluded. (Pedra J. B., 2008). Protection is actually even more important in case of return to the country of origin, where risk of reprisal is higher. Indeed, the UN Special Rapporteur calls attention to the massive return of persons who have been denied right for international protection and the risk of retaliation. "It is alarming that States or regional institutions lack clear guidelines in relation to the forced returns of potential victims of trafficking that they might have failed to identify, considering also the rapidity and inadequacy of identification during large mixed migration movements." (Special Rapporteur on trafficking in persons, especially women and children, 2018).

Victim's protection is an extreme relevant measure and it might boost victim's cooperation during criminal proceeding. In Germany, frequency of convictions for charges of trafficking proved to be higher if victims, who were taken care of by specialized relief organizations, contributed to the criminal justice system (Herz, 2006). It has also been observed that protection measures may impact upon the availability and quality of victim testimony, but little research has been conducted on that (UNODC, 2017).

Finally, the Special Rapporteur on Trafficking in persons, especially Women and Children (2018) highlights that "collaboration between assistance organizations and prosecution offices, through exchanges including public hearings" is a good practice since it can raise the level of awareness of the judiciary, increasing sensitiveness to human trafficking indicators.

Turkey has also shown improvements in this regard. "Observers reported that the government consistently provided legal representation and assistance to victims." (US Department of State, 2019). Besides, there is

regulation on “legal interview rooms,” which provides privacy to victims who are willing to testify and reduces the chances of secondary victimization.

In summary, although legislation was amended, practice does not necessarily consider the needs of the trafficked victims. Moreover, as a result of the mixed migration flows, the chances of identifying human trafficking victims and prosecuting traffickers are even decreasing, as highlights the UN Special Rapporteur on Trafficking in Persons, especially Women and Children: “State efforts to govern international migration are often disconnected from the legal obligation to identify victims of trafficking in human beings, creating negative consequences for their protection and for the prosecution of traffickers. Unfortunately, the international political agenda, which is focused on the prevention of irregular migration, and the populist and xenophobic anti-migration movements in certain countries and regions, are further encouraging a response to management of migration flows from a crime prevention perspective, which does not place human rights protection at the centre.” (Special Rapporteur on Trafficking in Persons, especially Women and Children, 2018).

Conclusion and Recommendations

There are numerous steps that States should take to ensure that victims’ rights are respected during criminal justice processes and that victims are protected. These steps include the provision of legal aid and assistance to victims of human trafficking.

On the one hand, prosecution of traffickers is one of the pillars of the counter trafficking policies as well as it is also a matter of “justice” for the victims. On the other hand, it is most often the weaker. Criminal justice responses to human trafficking, as far as it concerns prosecution of cases versus conviction of traffickers, are not being effective worldwide; it has been the weaker side of counter-trafficking policies, according to official and available statistics on the number of prosecutions and convictions (UNODC, 2018; US Department of State, 2019).

In Turkey, in 2014, 804 persons were prosecuted for trafficking in persons, among which 39 were convicted, number which accounts for less

than 5%. In 2015 there was some improvement: 364 persons were prosecuted among which 56 were convicted. (UNODC, 2018).

In 2017, there were 41 new trafficking cases with 291 defendants, only in the first three quarters, which shows again an increase at least in the number of persons prosecuted, whereas in 2018, numbers again decreased: 198 defendants in 43 new cases in the first three quarters. Courts convicted 37 traffickers in the first three quarters of 2018, meaning that there were less cases prosecuted that year, but more convictions. (US Department of State, 2019).

More developed countries have shown better rates. For example, in Belgium, in 2014, 389 persons were prosecuted for trafficking in persons, among which 102 were convicted, which account for one fourth; in 2015, 461 were prosecuted for trafficking in persons, among which 99 were convicted. In the United Kingdom of Great Britain and Northern Ireland, in 2014, 98 persons were prosecuted and 40 were convicted. In 2015, 117 persons were prosecuted and 33 were convicted (UNODC, 2018), which shows a higher ratio.

Reasons for those gaps between number of persons prosecuted and convicted in the same year, besides the fact that cases most often do not close in one calendar year, are probably lack of evidence. In this regard, as discussed previously in this paper, victim's cooperation is essential and one of the most often employed source of evidence.

Therefore, in order to reach a more effective criminal justice response to human trafficking, besides specialist law enforcement agencies to investigate cases, constant trainings with updates on new trends and techniques, both to law enforcement and judicial actors, and systems and processes that enable effective international and judicial cooperation in trafficking cases, victims should be promptly identified and protected, including in terms of responses to their trauma and vulnerability.

Agreeing with McSherry and Cullen (2007, p. 219), "criminal prosecutions are more often successful where human rights are taken into account through comprehensive victim support programmes. Successful prosecutions rely heavily on the testimony of victims and such evidence

is more forthcoming in an environment in which victims feel supported. If too much emphasis is placed on trafficking in persons as a criminal justice problem, there is a danger that the victim will be seen purely as a witness for the prosecution.”

That is to say, independently from collaboration with law enforcement agencies, the protection of the fundamental rights of victims of human trafficking should be seen as more relevant than the outcomes of the criminal lawsuits or the ‘success’ of the criminal justice system. Meanwhile, adequate assistance, protection and therefore, respect to the fundamental rights of victims of human trafficking, enhances likelihood of their participation and contribution to proceedings, which also enhances likelihood of success of the criminal justice system, meaning gain-gain, for both the victim and the societies fighting against human trafficking.

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