



**HORIZONTAL FACILITY
FOR THE WESTERN
BALKANS AND TURKEY
2019-2022**

*FOR YOUR RIGHTS:
TOWARDS
EUROPEAN STANDARDS*

Gap analysis of the investigation and prosecution of human trafficking cases in Türkiye

Funded
by the European Union
and the Council of Europe



EUROPEAN UNION

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Implemented
by the Council of Europe

Gap analysis of the investigation and prosecution of human trafficking cases in Türkiye

December 2022

Council of Europe

***Gap analysis of the investigation and
prosecution of human trafficking cases in
Türkiye***

This publication was produced with the financial support of the European Union and the Council of Europe. The views expressed herein can in no way be taken to reflect the official opinion of either party.

The reproduction of extracts (*up to 500 words*) is authorised, except for commercial purposes as long as the integrity of the text is preserved, the excerpt is not used out of context, does not provide incomplete information or does not otherwise mislead the reader as to the nature, scope or content of the text. The source text must always be acknowledged as follows "© Council of Europe, 2022". All other requests concerning the reproduction/translation of all or part of the document, should be addressed to the Directorate of Communications, Council of Europe (F-67075 Strasbourg Cedex or publishing@coe.int).

All other correspondence concerning this publication should be addressed to the Directorate of Human Dignity, Equality and Governance,
Avenue de l'Europe
F-67075 Strasbourg Cedex, France,
Tel. +33 (0)3 88 41 20 00 23
E-mail: horizontal.facility@coe.int.

Print:

Matbuu Printing and Internet Services

All photos:

www.shutterstock.com/1199308930

© Council of Europe, September 2022.
All rights reserved. Licensed to the
European Union under conditions.

Table of contents

1. INTRODUCTION	5
2. INTERNATIONAL STANDARDS ON THE INVESTIGATION AND PROSECUTION OF HUMAN TRAFFICKING CASES	6
2.1 THE DUTY TO CRIMINALISE TRAFFICKING IN HUMAN BEINGS AND TO INVESTIGATE AND PROSECUTE PERPETRATORS	6
2.2 POSITIVE OBLIGATIONS WITH RESPECT TO THE INVESTIGATION AND PROSECUTION UNDER THE EUROPEAN CONVENTION OF HUMAN RIGHTS	9
2.3 THE DUTY TO IDENTIFY VICTIMS OF HUMAN TRAFFICKING	11
3. IMPLEMENTING A MULTI-AGENCY AND HUMAN RIGHTS-BASED APPROACH ON INVESTIGATING HUMAN TRAFFICKING OFFENCES	13
3.1. COMPREHENSIVE APPROACH TO INVESTIGATING HUMAN TRAFFICKING OFFENCES	13
3.2. SPECIAL INVESTIGATIVE TECHNIQUES	14
3.3. MUTUAL LEGAL ASSISTANCE	15
4. THE OFFENCE OF TRAFFICKING IN HUMAN BEINGS IN TURKISH LAW	17
4.1 ELEMENTS OF THE OFFENCE	17
4.2 AGGRAVATING CIRCUMSTANCES	22
4.3 USE OF SERVICES OF A VICTIM OF TRAFFICKING	23
4.4 CORPORATE LIABILITY	24
4.5 HUMAN TRAFFICKING AND RELATED OFFENCES	24
5. INVESTIGATION AND PROSECUTION OF HUMAN TRAFFICKING OFFENCES IN TÜRKİYE	26
6. SANCTIONS FOR TRAFFICKING IN HUMAN BEINGS IN TURKISH LAW	29
7. RIGHTS OF VICTIMS OF HUMAN TRAFFICKING IN CRIMINAL PROCEEDINGS	31
7.1 ACCESS TO LEGAL AID	32
7.2 PROTECTION OF WITNESSES	33
7.3 HEARING OF WITNESSES	34
7.4 RIGHT TO USE INTERPRETATION SERVICES	35
7.5 INTERVENING IN CRIMINAL PROCEEDINGS	36
7.6 NON-PUNISHMENT OF VICTIMS OF TRAFFICKING IN HUMAN BEINGS	37
8. CONCLUSIONS AND SUGGESTIONS FOR ACTION	39
8.1 THE OFFENCE OF TRAFFICKING IN HUMAN BEINGS IN TURKISH LAW	41
8.2 INVESTIGATION AND PROSECUTION OF HUMAN TRAFFICKING OFFENCES IN TÜRKİYE	41
8.3 SANCTIONS FOR TRAFFICKING IN HUMAN BEINGS IN TURKISH LAW	42
8.4 RIGHTS OF VICTIMS OF HUMAN TRAFFICKING IN CRIMINAL PROCEEDINGS	42



1. Introduction

This report was prepared within the framework of the project HF30 “Action on Strengthening the Human Rights Protection of Migrants and Victims of Human Trafficking in Turkey”, undertaken under the Horizontal Facility for the Western Balkans and Turkey (HF II), a joint co-operation initiative of the Council of Europe (CoE) and the European Union (EU). It provides an analysis of the legislation, investigation and prosecution of human trafficking cases in Türkiye, with the aim of identifying gaps in law and practice.

The framing of the international context on the subject constitutes a necessary introduction to the identification of gaps in the national context and the prerequisite for conclusions and suggestions for action.

The research is based on a desk study and structured interviews conducted with relevant actors engaged in anti-trafficking work in Türkiye. For the purposes of the desk review, the relevant national legal provisions were identified and analysed pursuant to international standards. Subsequently, a questionnaire was developed focusing on identified problematic areas. A total of 50 interviews were conducted with relevant actors, including those taking part in investigations and prosecutions, as well as management specialists, judges, prosecutors, law enforcement officers, lawyers and representatives of non-governmental organisations (NGOs).

Since the project HF30 aims to improve anti-trafficking measures in Türkiye through strengthened implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, the relevant analysis and recommendations made in the report on Türkiye’s implementation of the Convention by Group of Experts on Action against Trafficking in Human Beings (GRETA)¹ were extensively used in the research.

¹ GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Turkey, GRETA(2019)11, published on 8 October 2019.



2. International standards on the investigation and prosecution of human trafficking cases

2.1 The duty to criminalise trafficking in human beings and to investigate and prosecute perpetrators

The duty to criminalise trafficking in human beings (THB) is enshrined in several international instruments. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime (hereafter, “Palermo Protocol”) imposes an obligation on States to criminalise trafficking in persons, including: attempting to commit a trafficking offence, participating as an accomplice, and organising or directing other persons to commit an offence.²

At regional level, the international legal framework is complemented by the CoE Convention on Action Against Trafficking in Human Beings, whose purpose is, *inter alia*, to ensure the effective investigation and prosecution of the crime of trafficking in human beings.³ Under Article 18, State Parties are required to criminalise trafficking in human beings as defined in Article 4, whether by means of a single criminal offence, or by combining several offences,

² Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime (2000), vol 2237, UNTS 319, Article 5.

³ Council of Europe’s Convention on Action against Trafficking in Human Beings (2005), CETS No. 197, Article 1(1)(b).

covering, at a minimum, all conduct capable of falling within the international definition of the crime.

The international definition of trafficking set forth in the Palermo Protocol and the CoE Anti-Trafficking Convention is comprised of three components: (i) an action (“the recruitment, transportation, transfer, harbouring or receipt of persons”); (ii) the means (“threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person”); (iii) and the purpose of exploitation (“at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”). The definition of child trafficking is comprised of only the acts and the purpose; the use of the means remains irrelevant.

Further, at the level of the European Union, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA,⁴ obliges EU Member States to criminalise trafficking in human beings as defined in Article 2 of the Directive, and to ensure effective investigations and prosecutions of the offence (Article 9).

In addition, pursuant to UNTOC and the CoE Anti-Trafficking Convention, States Parties are required to:

- criminalise the laundering of the proceeds of crime (Article 6 of UNTOC);
- provide for corporate liability (Article 22 of the CoE Convention);
- provide for tracing, freezing and confiscation of the proceeds of trafficking offences (Articles 12-14 UNTOC; Article 23 of the CoE Convention);
- provide other States Parties with mutual legal assistance in the investigation, prosecution and adjudication of trafficking offences (Article 18 of UNTOC);
- criminalise the obstruction of justice (Article 23 of UNTOC);
- protect victims and witnesses from potential retaliation or intimidation (Articles 28 and 30 of the CoE Convention; Articles 24-25 of UNTOC);
- take appropriate measures to encourage those involved in organised criminal groups to cooperate with or assist national authorities (Article 26 of UNTOC);
- engage international co-operation in relation to the investigation on trafficking cases (Article 27 of UNTOC; Article 32 of the CoE Convention).

States have a responsibility under international law to act with due diligence to effectively investigate, prosecute and adjudicate trafficking, including its constituent elements and related conduct, whether committed by governmental or by non-State actors.⁵ Human rights due diligence also requires States to undertake effective investigations and prosecutions to combat impunity and deter the crime of trafficking.

Investigating the crime of human trafficking involves different investigative approaches: reactive, proactive or disruptive, usually used in combination. It is a time and resource-intensive process that often requires co-operation between different agencies within a country, as well as internationally.

⁴ OJ European Union, L101/1, 15 April 2011.

⁵ See Report of the United National Special Rapporteur on trafficking in persons, especially women and children (2015), UN Doc A/70/260; Office of the High Commissioner for Human Rights (OHCHR), Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002), Principle 13; UN General Assembly Resolution 63/156, preamble; UN General Assembly Resolution 61/180, preamble.

The use of financial investigations, the seizure of assets and the confiscation of the proceeds of crime, special investigative techniques⁶ and forensic investigations are important elements of effective investigations into human trafficking cases. These investigative approaches are strengthened when applied systematically by joint and specialised investigative teams.⁷ The establishment of relevant specialised institutions,⁸ such as specialised units within the judiciary, prosecution and police units, is required to ensure the effectiveness of States' actions to investigate human trafficking offences, prosecute and secure convictions. Combined with such institutional developments, the implementation of proactive investigative techniques is essential to limit over-reliance on victims' testimonies and avoid the re-victimisation of trafficked persons during the criminal process.⁹

Regardless of the choice of methods, the investigation and prosecution of trafficking offences must not be dependent upon a complaint by a victim. Investigations must be proactively initiated by the State authorities.¹⁰ The testimony of victims can, however, play a critical role, and a human rights based approach to combating trafficking requires ensuring that victims are given the opportunity to participate in any judicial or administrative proceeding related to the offence, either directly or through their representatives.¹¹ State Parties to the CoE Convention are also required to ensure that non-governmental organisations (NGOs) can assist and support victims during criminal proceedings.¹² In this context, it is important to acknowledge that the victim protection provisions of the CoE Convention not only serve to support and rehabilitate victims, but also serve to foster effective investigations, prosecutions and convictions by facilitating victim co-operation.

The issuance of a residence permit is critical for allowing non-national victims to remain in the country in order to participate in criminal proceedings.¹³ If a victim has already been returned to his/her country of origin, a judge may order that victim or witness testimony be heard through a video link, or other means. The statement of a victim or a witness taken before a judge during the pre-trial phase may also be admitted as evidence.¹⁴

Given the seriousness of the crime of human trafficking, States should prioritise proactive investigations to be able to present the evidence necessary for establishing the three constituent elements of trafficking, in order to prosecute the crime of trafficking in persons, rather than prosecuting other offences, which carrying lighter penalties.¹⁵ Prosecutorial discretion must be respected, and be free from political interference.¹⁶ Prosecutions must also comply with human rights due diligence obligations.¹⁷

⁶ UNTOC (Article 20).

⁷ United Nations Office on Drugs and Crime (UNODC), Toolkit to Combat Trafficking in Persons (2008) 173.

⁸ Council of Europe Anti-Trafficking Convention, Article 29.

⁹ UNODC, International Framework for Action to Implement the Trafficking in Persons Protocol (2009) 10; CoE Anti-Trafficking Convention, Article 30; OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, Guideline 5(3); UNODC, Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking (2010), 19.

¹⁰ CoE Anti-Trafficking Convention, Article 27.

¹¹ Model Law against Trafficking in Persons (UNODC 2009), Article 24.

¹² CoE Anti-Trafficking Convention, Articles 27 and 35; Explanatory Report to the CoE Anti-Trafficking Convention, paras 279, 352–353.

¹³ CoE Anti-Trafficking Convention, Article 14.

¹⁴ UNODC, Model Law against Trafficking in Persons, Article 23.

¹⁵ UNODC, International Framework for Action to Implement the Trafficking in Persons Protocol, 10.

¹⁶ UNODC, Toolkit to Combat Trafficking in Persons, 227.

¹⁷ Report of the UN Special Rapporteur on trafficking in persons, especially women and children (2015), UN Doc A/70/260, paragraph 32.

2.2 Positive obligations with respect to the investigation and prosecution under the European Convention of Human Rights

The European Court of Human Rights (hereafter “the Court”) has found violations of the European Convention on Human Rights (ECHR) with respect to the positive obligation to carry out an effective investigation in a number of cases, including, *inter alia*: *Rantsev v. Cyprus and Russia*, *L.E. v Greece*, *T.I. and Others v. Greece*, *Chowdury and Others v Greece*, *M. and Others v. Italy and Bulgaria*, *S.M. v. Croatia*, and *V.C.L. and A.N. v. the United Kingdom*.

In *Rantsev v Cyprus and Russia*,¹⁸ the Court held that Article 4 of the ECHR entails a positive obligation to put into place an appropriate legislative and administrative framework, to ensure the application of protective measures for victims, and to investigate, penalise and prosecute effectively any act contributing to placing a person in a situation of slavery, servitude or forced or compulsory labour. The Court confirmed that the **obligation to investigate does not depend on a complaint filed by the victim** or a next-of-kin.¹⁹

The standard established by the Court for determining whether a violation of the positive obligation to take operational measures has taking place requires a demonstration that the State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being trafficked.²⁰

The Court recognised that trafficking is an offence which entails a complex set of dynamics, involving **both overt and more subtle forms of coercion** as the means. In order to determine whether the credible suspicion is established, an understanding of the many subtle ways an individual can fall under the control of another is required to comply with the procedural limb of Article 4.²¹

The Court has noted that for an investigation to be considered as effective, it must be undertaken independently from those implicated in the events and capable of leading to the establishment of the facts and the identification and punishment of those responsible. It is an obligation of means rather than of result. The obligation is discharged where **all reasonable steps are taken to collect evidence** and elucidate the circumstances of the case. In particular, the investigation’s conclusions must be based on a **thorough, objective and impartial analysis** of all relevant elements.²² In addition, the investigation must be **prompt and reasonably expedited**, and when it is possible to remove the individual concerned from a harmful situation, the investigation must be carried out as a matter of urgency.²³ Regarding the scope of obligations for international co-operation, the Court has held that States are subject to a duty, in cross-border trafficking cases, to **cooperate effectively** with the relevant authorities of other States concerned in the investigation of events, which occurred outside their jurisdiction.²⁴

¹⁸ *Rantsev v Cyprus and Russia*, No. 25965/04 (European Court of Human Rights, 7 January 2010).

¹⁹ *Ibid.*, para 288.

²⁰ *Ibidem*. See also *CN v the United Kingdom*, application No. 4239/08 (European Court of Human Rights 13 November 2012).

²¹ *C.N. v the United Kingdom*, para 80.

²² *S.M. v. Croatia*, application No. 60561/14, para 316 (European Court of Human Rights, 25 June 2020).

²³ *Rantsev v. Cyprus and Russia*, para 288.

²⁴ *Ibid.*, para 289.

In *L.E. v. Greece*,²⁵ the Court found a violation of Article 4 of the ECHR on the basis of a number of **omissions and shortcomings in the investigation**. In particular, there was a nine-month time lapse between L.E.'s complaint and her formal recognition as a victim of human trafficking. The Court further noted that the authorities did not take sufficient steps to identify, locate and bring the perpetrator to justice, as the police did not, *inter alia*, search a number of the addresses provided by L.E. which could have located the perpetrator, nor did it try to gather additional information.²⁶

Similarly, in *T.I. and Others v. Greece*,²⁷ the Court highlighted the **unreasonable length of time** that had elapsed between the complaint to the police in December 2003 and the closing of the criminal proceedings in March 2013.²⁸ Although the Court recognised that the case presented a certain degree of complexity, it found that the lengthy duration of the preliminary phase, as well as of the proceedings before the Court of Appeal, violated the due diligence requirements under Article 4 of the ECHR.²⁹

In *Chowdury and Others v. Greece*,³⁰ the Court held that the obligation to investigate effectively is binding on the law-enforcement and judicial authorities.³¹ The case involved complaints relating to human trafficking and forced labour that were not effectively investigated.³² The Court also found a violation of Article 4(2) of the ECHR based on the very narrow interpretation of the crime of human trafficking as interpreted by domestic courts, as well as the failure of the State to fulfil its **procedural obligation to guarantee an effective investigation and judicial procedure**.³³ These failures included the refusal of the Court of Cassation to hear an appeal of the case on points of law, challenging an Assise Court acquittal. Regarding the compensation awarded for grievous bodily harm, the Assise Court had ordered a payment of compensation in the amount of EUR 1,500, (EUR 43 per injured worker). The Court found the amount to be inadequate, noting the requirements of Article 15 of the CoE Anti-Trafficking Convention.

In *S.M. v. Croatia*,³⁴ the Court concluded that although the prosecuting authorities had reacted promptly to the applicant's allegations, there were several shortcomings in the investigation. These included a **failure to investigate contacts made through social media and to interview key witnesses**.³⁵

In *M. and Others v. Italy and Bulgaria*,³⁶ the Court noted that the duty to protect individuals from violations of Article 3 of the ECHR applies in cases in which the perpetrator is the victim's partner. The Court underlined the absence of an investigation into the crime of trafficking, which should have been triggered based on the facts as reported by the applicants, namely, their entry into Italy based on the promise of a job, being subjected to ill-treatment and threats

²⁵ *L.E. v. Greece*, application No. 71545/12 (European Court of Human Rights, 21 January 2016).

²⁶ *Ibid.*, paras 82–85.

²⁷ *T.I. and Others v. Greece*, application No. 40311/10 (European Court of Human Rights, 18 July 2019).

²⁸ *Ibid.*, paras 159–163.

²⁹ *Ibid.*, para 157.

³⁰ *Chowdury and Others v. Greece*, application No. 21884/15 (Court of Human Rights, 30 March 2017).

³¹ *Ibid.*, para 116.

³² *Ibid.*, para 120.

³³ *Ibid.*, para 123.

³⁴ *S.M. v. Croatia*, application No. 60561/14 (European Court of Human Rights, 19 July 2018).

³⁵ *Ibid.*, para 336.

³⁶ *M. and Others v. Italy and Bulgaria*, application No. 40020/03 (European Court of Human Rights, 31 July 2012).

and the compulsion to commit theft. The Court made its finding based on the positive obligation requirements of Article 3 of the ECHR.

In *V.C.L. and A.N. v. the United Kingdom*,³⁷ the Court examined for the first time the compatibility of the prosecution of victims of trafficking with Articles 4 and 6 of the ECHR. Although it ruled that such prosecution would not *per se* violate Article 4 of the Convention, the Court found that the U.K. authorities had failed to present clear reasons consistent with the definition of trafficking, contained in the European Anti-Trafficking Convention, to continue the criminal proceedings against the victim applicants. Given that the appeals stage proceedings did not cure the fair trial violations that occurred at the first instance, the Court found that the applicants **did not receive a fair trial**, in violation of Article 6§1 of the Convention. It awarded the applicants 25,000€ each for non-pecuniary damages, and 20,000€ each to cover costs and expenses.

2.3 The duty to identify victims of human trafficking

The identification of presumed victims of THB is a precondition for any good investigation and the prosecution of traffickers.

The CoE Anti-Trafficking Convention imposes a **positive duty on States Parties to identify victims** of trafficking.³⁸ As the Explanatory Report to the Convention highlights, the failure to identify a trafficking victim may limit the effectiveness of a prosecution.³⁹ The commentary to the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking stresses the importance of victim identification to the investigation and the prosecution.⁴⁰ Further, the UNODC Toolkit to Combat Trafficking in Persons recognises the importance of early identification of trafficked persons, within and outside of the context of criminal proceedings.⁴¹ The identification process must be undertaken irrespective of any criminal proceedings.⁴² Conversely, a criminal conviction is unnecessary for either initiating or completing the identification process.⁴³

Given that identification is often undertaken by law enforcement officers in the context of mixed migration flows, whose primary task is to differentiate between migrants in need of protection and those who should be returned to their countries of origin, very few presumed victims of trafficking are identified at an early stage. Law enforcement inability to identify vulnerabilities and recognise protection needs often results in victims of trafficking being placed in detention centres and subjected to collective expulsions without a proper assessment of their individual circumstances. Unified vulnerability assessment criteria should be adopted, which includes psycho-social aspects alongside law enforcement and health care considerations. Proactive approaches should be regarded as key when it comes to the identification of victims of trafficking in mixed migration flows.

³⁷ *V.C.L. and A.N. v. the United Kingdom*, applications Nos. 77587/12 and 74603/12, (European Court of Human Rights, 16 February 2021).

³⁸ CoE Anti-Trafficking Convention, Article 10 (c).

³⁹ CoE Anti-Trafficking Convention, Explanatory Report, para 127.

⁴⁰ OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, 195.

⁴¹ UNODC, Toolkit to Combat Trafficking in Persons, 251.

⁴² CoE Anti-Trafficking Convention, Explanatory Report, para 134.

⁴³ CoE Anti-Trafficking Convention, Article 27.

An anti-trafficking stakeholders often wrongly assume that victims will ultimately come forward and identify themselves, constituting another identification challenge. Regrettably, though understandably, this is not the case.

Improved identification of victims of trafficking can be achieved by shifting the focus from a law enforcement perspective towards a more human rights-based, victim-centred approach. Frontline professionals should be sensitised to and trained in early detection indicators of human trafficking. Indicators should be developed and periodically updated in order to reflect changing trends in trafficking and in the *modus operandi* of traffickers. They should cover all *de facto* forms of exploitation. Proper referral protocols should be in place, facilitating inter-agency information-sharing and referrals to ensure that identified or presumed victims are provided with the support and assistance to which they have a right.

The chances of successfully identifying a victim of trafficking are considerably increased when multiple stakeholders are involved in victim identification. Developing such an approach requires the establishment of a National Referral Mechanism (NRM),⁴⁴ setting forth a clear division of the roles and responsibilities of stakeholders at central and local levels, and thus optimising the allocation of financial resources.

The utility of multi-agency co-operation between law enforcement and civil society⁴⁵ extends beyond the realm of identification. Indeed, all anti-trafficking interventions across contexts and sectors require the establishment of a multi-agency co-ordination mechanism which would:

- ensure sufficient capacity and expertise to identify THB cases;
- detect specific vulnerabilities and needs, with appropriate safeguards in place, and facilitate information sharing on presumed victims of trafficking among stakeholders, and in co-operation with other States in transnational THB cases;
- be regulated by formalised protocols and guidelines at both central and local levels, to ensure the effective implementation of multi-agency co-operation and standard operating procedures;
- clearly define the roles and responsibilities of all relevant actors.

In order to properly identify and prosecute instances of trafficking in human beings, it is necessary that all stakeholders involved in the processes of identification, investigation and prosecution receive appropriate training. Both the Palermo Protocol and the CoE Anti-Trafficking Convention provide that States Parties shall **provide or strengthen training** for law enforcement, immigration and other relevant officials,⁴⁶ to ensure that all those responsible for the investigation and prosecution of trafficking offences are **specialised in the fight against trafficking and the protection of victims**.⁴⁷

⁴⁴ The concept arises from *National Referral Mechanisms - Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook*, OSCE 13 May 2004.

⁴⁵ CoE Anti-Trafficking Convention, Article 35.

⁴⁶ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, Article 10.

⁴⁷ CoE Anti-Trafficking Convention, Article 29.



3. Implementing a multi-agency and human rights-based approach on investigating human trafficking offences

3.1. Comprehensive approach to investigating human trafficking offences

Complying with the duty to effectively investigate and prosecute human trafficking cases requires the implementation of technical tools and good practices, as well as regulations and guidance.

Training prosecutors, law enforcement officers and other front-line professionals to recognise indicators of human trafficking should be a key priority. Innovative, **integrated and multi-professional training** allows relevant professionals to obtain the knowledge necessary to tackle complex and constantly evolving criminal phenomena.

Given that trafficking for the purpose of labour exploitation is less frequently detected and prosecuted in comparison with THB for sexual exploitation, it is important to ensure the training of **labour inspectors** and to involve them in the detection and investigation of THB.

A critical component in the effective detection, investigation and prosecution of trafficking is the willingness of trafficked persons to assist in investigations and prosecutions. This willingness is correlated to the protection of their safety and privacy, the provision of multi-sectoral services, including health and psycho-social assistance, legal aid and interpretation, and their treatment by actors across the justice chain: police, prosecutors and judges.

Assistance and protection are crucial for trafficked persons to be able to effectively exercise their rights. Pursuant to Articles 10 and 12 of the CoE Anti-Trafficking Convention, presumed victims of THB should be provided with assistance and support as soon as there is a "*reasonable-grounds indication*" for believing that s/he may have been subjected to trafficking.

Furthermore, Article 13 of the CoE Anti-Trafficking Convention requires that presumed victims benefit from a recovery and reflection period to enable them to make an informed choice as to whether to co-operate with law enforcement authorities.

Assistance and protection are to be provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings. Support services must be provided on a consensual and informed basis.

Preventing the secondary victimisation of trafficking victims is required to protect their human rights in criminal proceedings, but also serves to foster their cooperation with law enforcement, enabling the latter to obtain testimonies from victims to prosecute and convict traffickers. States should avoid unnecessary repetitions of interviews with victims, prevent visual contact between victims and defendants in the courtroom and the giving of evidence in open court sessions, as well as unnecessary questioning of the victim about her or his private life. Obtaining victim statements before the trial for use during trial is a good practice.

3.2. Special investigative techniques

Proactive law enforcement strategies and the use of special investigative techniques should be used when investigating THB cases, given the complex nature of this offence, often committed by transnational organised criminal groups.

Special investigation techniques include:

- electronic and other forms of surveillance;
- undercover operations;
- use of informants;
- controlled delivery (although for ethical reasons and the concern of the safety of victims and other people involved, controlled delivery might be not appropriate in cases of THB).

Electronic surveillance is a way to obtain evidence from any electronic device, intercepting conversations and other communications. Given its intrusiveness, electronic surveillance is generally subject to strict judicial control to prevent abuse. Investigators should always bear in mind that traffickers are often aware of surveillance techniques so such operations must be conducted with a high level of professionalism.

Surveillance techniques include, for example:

- telephone data records;
- telephone and environmental wiretaps;
- computers and email wiretaps;
- video recordings;
- GPS surveys.

Information and Communication Technology (ICT) can be used by traffickers to recruit, transfer, manage and exploit victims, and to transfer money all over the world. The use of ICT grows more sophisticated in conjunction with the complexity of the criminal organisation. Thus, making use of ICT should be a key priority for human trafficking investigations.⁴⁸

Digital investigation refers to legalised computer intrusion to obtain information related to trafficking cases. Digital spyware is a software inserted inside the operating system of a device

⁴⁸ This was the focus of the 19th Alliance against Trafficking in Persons Conference, entitled "*Using technology to combat trafficking of human beings*", OSCE, Vienna, 8 - 9 April 2019.

(laptop, PC, smartphone...) that is able to take possession of that system, including the ability to control audio/video functions. They can thus engage in classic wiretapping, as well as localisation and tracking, and the acquisition of documents, photos, web navigation, emails or private social network messages.

Undercover operations may be used when it is possible for a law enforcement agent to infiltrate a criminal organisation in order to gather evidence. Undercover operations should only be carried out by supervised and properly trained staff. Ensuring the safety of undercover agents is of paramount importance in planning and conducting undercover operations. The purpose of undercover policing is to:

- determine the nature and extent of criminal activities;
- identify the people involved (victims and traffickers);
- obtain evidence to prosecute offenders.

Parallel financial investigation plays a crucial role in the successful investigation of THB cases. Financial investigation is designed to identify the amount and location of assets derived from the crime. Early contact should be established with financial investigation units, in order to incorporate them into counter-trafficking response.

It is possible to co-ordinate investigations in order to synchronise the arrest of traffickers with the seizure of their assets. The capacity of law enforcement agencies to identify, investigate, seize and confiscate criminal assets is fundamental for breaking the model of human trafficking as a high-profit, low-risk crime.

Financial investigations should not be limited to movements of money and assets through financial corporations, banks and other money transfer agencies, but also cover unofficial channels. The widespread use of parallel or illegal banking systems is a technique for transferring money and services from one place to another without moving goods, merchandise or cash. Solid police and judicial cooperation are essential for successful financial investigations, especially those involving transnational criminal groups.

3.3. Mutual legal assistance

Police and judicial co-operation are crucial for both internal and transnational cases of human trafficking. With respect to transnational cases, both the Palermo Protocol and the CoE Anti-Trafficking Convention provide that State Parties shall **strengthen mutual legal assistance** to the widest extent possible for the purpose of preventing trafficking, protecting victims and prosecuting traffickers.⁴⁹ The Explanatory Report to the CoE Anti-Trafficking Convention clarifies that the provisions on **international co-operation** are not limited to judicial co-operation in criminal matters, but are also concerned with **co-operation in prevention and victim protection and assistance**.⁵⁰

States should ensure co-operation in investigations and judicial processes relating to trafficking and related offences, which should include, *inter alia*, assistance in identifying and interviewing witnesses, as well as identifying, obtaining and preserving evidence.⁵¹ It is also essential to ensure that the crime of trafficking and related offences constitute **extraditable offences**

⁴⁹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, Articles 2 and 10; CoE Anti-Trafficking Convention, Article 32.

⁵⁰ Explanatory Report to the CoE Anti-Trafficking Convention, para 335.

⁵¹ OHCHR, Guideline 11(8).

under national law. States are required to cooperate to ensure that the appropriate extradition procedures are followed in accordance with international law.⁵²

Instruments of **mutual legal assistance** have been established over the years with the purpose of facilitating direct co-operation among prosecutors, beginning in the region with the European Convention on Criminal Mutual Assistance, signed in Strasbourg on 20 April 1959.⁵³

In the context of the European Union, the role of **Eurojust** is of crucial importance for assisting prosecutors, supporting the organisation of co-ordination meetings and creation of co-ordination centres, information and data exchange and the establishment and financing of **Joint Investigation Teams (JITs)**.⁵⁴ Eurojust also facilitates co-operation between EU and non-EU States.

JITs are an international co-operation tool based on an agreement between the competent authorities (judges, prosecutors, investigative judges, law enforcement officials) of two or more States. They are established for a limited duration and for a specific purpose: to carry out criminal investigations in one or more of the involved States. JITs constitute an efficient and effective co-operation tool that facilitates the co-ordination of investigations and prosecutions conducted in parallel in several States or in cases with a cross-border dimension.

The EU recently introduced a new instrument of judicial co-operation, the **European Investigative Order**.⁵⁵ It is based on the principle of the mutual recognition of judicial decisions, a principle that forms the basis of a series of EU directives, including on the European Arrest Warrant.⁵⁶ The European Investigation Order was designed in line with the aim towards investigative effectiveness that inspired the EU Convention on Mutual Assistance in Criminal Matters,⁵⁷ which supplements the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters and its 1978 Protocol.

⁵² Ibid., Principle 14.

⁵³ Council of Europe, European Treaty Series - No. 30.

⁵⁴ Council Framework Decision of 13 June 2002 on joint investigation teams (2002/465/JHA) OJ EU 162/1.

⁵⁵ Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, OJ EU L 130/1.

⁵⁶ Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA), OJ EU L 190.

⁵⁷ EU Council Act (2000/C 197/01), OJ EU 197/1.



4. The offence of trafficking in human beings in Turkish law

4.1 Elements of the offence

Trafficking in human beings is criminalised under Article 80 of the Turkish Criminal Code (CC) No. 5237 of 26 September 2004, in the Chapter entitled "International offences." It states:

"(1) Any person who procures, kidnaps, harbours or transports a person from one place to another or brings a person into the country or takes a person out of the country, by the use of threat, pressure, force or violence, employing deceit, abuse of influence, or (4) obtaining consent by exploiting control over another or the desperation of such other, for the purpose of forcing them into prostitution or to work, provide a service, harvest their organs or subject them to slavery shall be sentenced to imprisonment for a term of eight to 12 years and a judicial fine of up to ten thousand days.

(2) Where an act is undertaken for the purposes referred to in paragraph one and such an act constitutes an offence, the consent of the victim shall be presumed to be invalid.

(3) Where a person under 18 years of age is procured, kidnapped, harboured or transported from one place to another for the purposes described in paragraph one, the offender shall be sentenced to the penalty described in paragraph one, notwithstanding the fact that no means instrumental to the offence has been resorted to.

(4) Security measures shall be imposed upon legal entities in respect of the aforementioned offences."⁵⁸

⁵⁸ Unofficial translation.

The Turkish legal definition of human trafficking three the three constituent elements set forth in the international definition (**action, means and purpose of exploitation**) as applied to **adult victims**.

Pursuant to paragraph 3 of Article 80 of the Turkish CC, trafficking in **children** (persons under the age of 18) is comprised of **only two elements: acts and purpose**. The crime is thus committed irrespective of whether any means were used, in line with the international definition.

With regard to the **acts** element of the crime, Article 80 of the CC does not refer to “transfer”⁵⁹ and “receipt”, which form part of the international definition of human trafficking.⁶⁰ GRETA has stressed that the inclusion of these acts in the CC provision on trafficking is necessary to ensure conformity with the international definition of human trafficking.

Further, the act of “bringing in or taking out of the country a person” is not included in paragraph 3 of Article 80 of the CC on trafficking in children. Differences between the acts pertaining to adult versus child victims were introduced when Article 80 of the CC was amended by Law No. 5560. This discrepancy should be eliminated.

The meaning attributed to the terms employed for the acts element of the crime contained in Article 80 of the Turkish CC are analysed within the context of the theory and practice in Türkiye in the table, below.

Comparison of the acts in the Palermo Protocol/CoE Convention and Art. 80 of the Turkish CC		
Protocol/Convention	Art. 80 of CC	Explanation
Recruitment	Recruitment (procurement)	
Transportation	Transportation	
Transfer	-	No direct equivalent available but may be interpreted similar to “transports”
Harbouring	Harbouring	
Receipt	-	No equivalent in the CC
-	Bringing in or taking out of the country	“Transportation” covers these two actions.
-	Kidnapping (abduction)	Included within the “means” element in the Palermo Protocol/CoE Convention.

In its first report on Türkiye, GRETA noted that not all of the **means** contained in the international definition of trafficking are specifically mentioned in paragraph 1 of Article 80 of the Turkish CC.

⁶⁰ See GRETA’s first report on Turkey, paragraph 51.

In particular, the means of “giving or receiving of payments or benefits to achieve the consent of a person having control over another person” is not included in Article 80 of the CC. Instead, the means of “obtaining consent by exploiting control over another” is included, which does not fully correspond to the international definition. The Palermo Protocol and the CoE Anti-Trafficking Convention included this language to cover situations in which benefits are provided to achieve the consent of parents, guardians or other persons having the authority of supervision and control over the victim. The means as set forth in Article 80 of the CC are not in conformance with the Palermo Protocol and the CoE Convention. Particularly in the context of the recruitment of children for forced begging, the consent of family members who have control over the children is achieved in return for financial benefit.

The case-law of the Court of Cassation’s 18th Criminal Chamber has interpreted the term “abuse of desperation” in Article 80 of the CC as encompassing the term “abuse of a position of vulnerability,” given that it covers, *inter alia*, situations involving the difficult economic circumstances of the victims.⁶¹

The meaning attributed to the terms used in the means element of the crime as set forth in Article 80 of the Turkish CC are analysed in the context of the theory and practice in Türkiye, and presented in the table, below.

Comparison of the “means” in the Palermo Protocol/CoE Convention and Art. 80 of the Turkish CC			
No.	Palermo Protocol/CoE Convention	Art. 80 of CC	Explanation
1.	Threat	Threat	
2.	Use of force	Violence	
3.	Coercion	Coercion	
4.	Abduction	Kidnapping	Included as one of the “acts” in Art. 80 of the Turkish CC
5.	Fraud	Deception	It is interpreted in a way that deception also covers fraud.
6.	Deception		
7.	Abuse of power	Abuse of power	
8.	Abuse of a position of vulnerability	Abuse of desperation	
9.	Giving or receiving of payments or benefits to achieve the consent of a person having control over another person	-	No equivalent in the Turkish definition.

⁶¹ Court of Cassation, 18th Criminal Chamber, E. 2016/15853, K. 2016/18706, 06.12.2016.

With respect to the **purposes of exploitation**, GRETA noted that Article 80 of the CC refers to the exploitation of prostitution, but not to other forms of sexual exploitation. In order to bring the Turkish definition of human trafficking into conformity with the international definition, GRETA stressed that "other forms of sexual exploitation" must be added to the list of forms of exploitation.

Further, Article 80 refers to "slavery or any similar practice," but does not specifically mention "servitude". In this respect, it should be noted that in *Siliadin v. France*,⁶² the European Court of Human Rights found that the concept of "servitude" in Article 4 of the ECHR prohibits "a particularly serious form of denial of freedom". It includes, "in addition to the obligation to provide certain services to another ... the obligation on the 'serf' to live on the other's property and the impossibility of changing his status".⁶³ The Court found that the French Criminal Code did not provide "practical and effective protection" against treatment contrary to Article 4 of the ECHR, given that the domestic law prohibition of exploitation through labour and subjection to working and living conditions incompatible with human dignity was insufficient to meet the State's positive obligations under Article 4.

The Court reiterated this finding in the more recent cases *C.N. and V. v. France*⁶⁴ and *C.N. v. U.K.*⁶⁵ In *C.N. v. UK*, the Court recognised "domestic servitude" as a specific offence, "which involves a complex set of dynamics, involving both overt and more subtle forms of coercion, to force compliance". Due to the absence of a specific offence of servitude in domestic law, the Court found that the authorities were unable to give sufficient weight to these factors and to meet their obligation under Article 4 of the ECHR to carry out an effective investigation into C.N.'s complaints. Drawing on this case law, GRETA noted that the absence of a specific criminal offence of "servitude" in Turkish law may lead to difficulties in complying with the State's positive obligations under Article 4 of the ECHR, to prevent, investigate and prosecute servitude, including trafficking for the purpose of servitude. GRETA urged the Turkish authorities to bring the definition of THB into conformity with Article 4 of the Convention by adding "servitude" to the list of forms of exploitation.

"Any similar practice" was included in an earlier definition of the offence of trafficking in human beings, but was deemed to be against the principle of legal certainty and removed from the text of the law in 2006 (Law No. 5560).

The international definition of trafficking in human beings includes among the purposes of exploitation the removal of organs, but the removal of tissues is not referenced. Law No. 2238 on the Harvesting, Storage, Grafting and Transplantation of Organs and Tissues makes reference to the terms organs and tissue. However, the difference between these two terms is not explained in the Law. The offence of "organ or tissue trafficking" is proscribed under Article 91 of the Turkish CC and covers both organ and tissue trafficking. Although the provisions in the Palermo Protocol and the CoE Anti-Trafficking Convention cover only the term "organs", the term "tissues" should be added to Article 80 of the Turkish CC for the purpose of internal legal consistency.

⁶² *Siliadin v. France*, application no. 73316/01, (ECtHR judgment of 26 July 2005).

⁶³ *Ibid.*, paragraph 123.

⁶⁴ *C.N. and V. v. France*, Application No. 67724/09, (ECtHR judgment of 11 October 2012).

⁶⁵ *C.N. v. U.K.*, Application No. 4239/08, (ECtHR judgment of 13 November 2012).

Comparison of the purposes in the Palermo Protocol/CoE Convention and Art. 80 of the Turkish CC

No.	Palermo Protocol/CoE Convention	Art. 80 of the CC	Explanations
1.	Exploitation of the prostitution of others	Forcing into prostitution	
2.	Other forms of sexual exploitation	-	No equivalent available. It should be added to the wording of Art. 80 of the CC so as to ensure compliance with the Palermo Protocol/CoE Convention.
3.	Forced labour	Forced labour	
4.	Forced services	Forced services	
5.	Slavery or practices similar to slavery	Slavery	The term " <i>practices similar to slavery</i> " was removed from the definition of trafficking under the Art. 80 of the CC in 2006.
6.	Servitude	-	No equivalent available. It should be added to the wording of Art. 80 of the CC so as to ensure compliance with the Palermo Protocol/CoE Convention.
7.	Removal of organs	Removal of organs	The term "tissues" should be added for internal legal consistency.

Article 80, paragraph 2, of the CC, explicitly states that the **consent of a victim of trafficking** to exploitation is irrelevant, when any of the means are used. This is consistent with Article 3(b) of the Palermo Protocol and Article 4(b) of the CoE Anti-Trafficking Convention. Even if it is evident that the means listed in Article 80, paragraph 1, of the CC invalidate lawful consent, there are benefits in an explicit legislative provision that consent is irrelevant and cannot be raised as a defense. GRETA has observed that an explicit provision facilitates its use by investigators, prosecutors and judges when addressing cases of human trafficking and fosters a more consistent approach. Indeed, despite the clarity of international standards, victim consent remains a live issue at different stages of national criminal proceedings. For example, victims often refuse to self-identify believing that they consented to the exploitation; and it continues to be inappropriately considered by authorities in determinations whether to investigate and prosecute a case in which the victim apparently consented to exploitation and when deciding on the penalty for offenders when the defense asserts victim consent.⁶⁶

⁶⁶ See UNODC Issue Paper, The Role of Consent in the Trafficking in Persons Protocol, United Nations, Vienna, 2014. Available at: www.unodc.org/documents/human-trafficking/2014/UNODC_2014_Issue_Paper_Consent.pdf.

Article 80 is placed in the chapter of the Turkish CC entitled “International offences”. Although the crime of trafficking can be committed domestically and transnationally, in Türkiye it is largely perceived to be an international crime. Proposals have been made to place the offence of trafficking in human beings in the chapter on offences against personal liberty. The fact that Article 80 is regulated within the scope of international offences is important in the context of the exercise of judiciary power. The jurisdiction of the Republic of Türkiye is specified according to the place of commission of the offence and the nationality of the perpetrator or victim. Yet, for international crimes, international jurisdiction is exercised. In the event that the offence of human trafficking is committed outside the borders of Türkiye, even if the perpetrator or victims are not Turkish nationals and Türkiye does not have any interests, the proceedings can be carried out in Türkiye upon the request of the Minister of Justice.

In Turkish law, trafficking in human beings constitutes a crime of intent, and its multiple forms and constituent elements render it unique in the national legal framework. The complexity of the definition makes it challenging for national practitioners to comprehend the offence. This fact was frequently emphasized in stakeholder interviews conducted for the purpose of this research. One interviewee stated: *“It’s like a ZIP file. It’s all compressed. It contains the elements of several offences”*. Training for practitioners is essential to familiarise them with the elements of the crime.

4.2 Aggravating circumstances

Article 80 of the CC does not contain the aggravating circumstances required by Article 24 of the CoE Anti-Trafficking Convention.

Despite the fact that trafficking in human beings is not necessarily a multi-perpetrator offence, it is frequently committed within a criminal organisation. The previous definition of trafficking under Article 201(b)(4) of the abrogated Criminal Code No. 765 provided as an aggravating circumstance the commission of the offence by participating in an organised criminal group. This aggravating circumstance was eliminated from the current definition of trafficking in Article 80 of the CC in force. Forming, managing and being a member of a criminal organisation is prescribed as a separate offence under Article 220 of the CC, and can be simultaneously alleged against perpetrators along with Article 80.

Stakeholder interviews revealed differing views as to whether the addition of an aggravating circumstance for participation in a criminal organisation remains necessary. A minority group of practitioners stated that the scope of Article 220 of the CC is comprehensive enough and that no additional aggravating circumstance is required. In contrast, the majority of the interviewed practitioners indicated that an aggravated circumstance for participation in an organised criminal group, similar to that foreseen in Article 79(3) of the CC, which criminalises migrant smuggling, should be added to Article 80 of the CC. Overall, it is thus considered necessary to include an additional provision under Article 80 of the CC, reading: *“in the event that the offence is committed within the framework of the activities of an organisation, the punishment to be imposed shall be increased by half.”*

Article 24 of the CoE Anti-Trafficking Convention and Article 4(3) of the EU Directive require an aggravated circumstance to foresee when the offence is committed by a public servant in the performance of his/her duties. Article 266 of the CC foresees an aggravated circumstance for the commission of the crime by a public servant, utilising the equipment and instruments available in the performance of his/her duty.⁶⁷ For instance, a public servant who arranges the entry of a foreign national for the purpose of exploitation of prostitution utilising boats belonging to the coast guard, which is a law enforcement unit, will face increased punishment. Considering the limited scope of the Article 266 of the CC, a paragraph should be added to Article 80 of the CC that reads: *"The penalty shall increase in cases where the offence is committed by a public official in the performance of, or, due to his/her duties."*

A third gap with respect to aggravating circumstance applies to when the offence is committed deliberately or by gross negligence endangering the life of the victim. Despite the existence of a separate offence for causing a serious injury, Article 87 of the CC, an additional paragraph should be added to Article 80 of the CC, reading as follows: *"In cases where coercion or violence resorted in trafficking in human beings causes aggravated forms of felonious injury, the provisions concerning the offence of felonious injury shall apply as well."*

The CoE Convention against Trafficking also requires the application of an aggravated circumstance to be applied to sentences for child trafficking. Article 80 of the CC foresees the same range of penalties for both adult and child victims. An amendment to Article 80, paragraph 3 of the CC should be made to ensure that **the penalty is increased for child trafficking**.

4.3 Use of services of a victim of trafficking

Article 19 of the CoE Anti-Trafficking Convention provides that *"Each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation as referred to in Article 4, paragraph (a), of this Convention, with the knowledge that the person is a victim of trafficking in human beings"*.

Türkiye does not establish a legal offence for the use of services of a victim of human trafficking, with the knowledge that the person concerned is a victim.

In the stakeholder interviews, three differing opinions were expressed as to whether those who knowingly make use of the services provided by victims of human trafficking should be criminalised, and if so, whether the existing legal framework is sufficient. One group of interviewees stated that a partial benefit could be achieved from the establishment of such an offence. The predominant opinion among stakeholders favoured the criminalisation of those knowingly making use of the services provided by trafficking victims. Some of the interviewees who stated that those making use of the services provided by victims should be punished were of the view that the existing provisions within the Criminal Code are sufficient to achieve this purpose. For instance, those who knowingly make use of the sexual services provided by a victim of trafficking in human beings may be punished pursuant to Articles 102 or 103 of the CC as the consent given for the sexual services in question cannot be one that is legally valid. Likewise, those who knowingly benefit from this supply of labour may be punished pursuant

⁶⁷ Article 266 of the CC states: "(1) Provided that being a public servant is not taken into account essentially in the definition of the relevant offence, then where a public officer utilizes the tools and equipment which he/she holds as a result of his/her duty, during the commission of an offence, the penalty to be imposed shall be increased by one-third." (unofficial translation)

to Articles 109 or 117 of the CC given that the supply of labour is not based on consent. The second group opined that the existing legal framework may not be sufficient to cover cases where the victim has given his/her consent to exploitation and the user of services from the victim believes in the existence of consent, while also being aware of the exploitation.

In order to bring the Turkish Criminal Code into closer conformance with Article 19 of the CoE Anti-Trafficking Convention, a paragraph should be added to Article 80 of the CC that reads: *"Those who knowingly benefit from the exploitation specified under the first paragraph shall be punished in accordance with the types of offence regulated in this Law"*.⁶⁸

4.4 Corporate liability

Article 22 of the CoE Anti-Trafficking Convention encompasses provisions concerning the responsibility of legal entities.⁶⁹ Under Turkish law, legal entities may not be criminalised as perpetrators of intentional crimes based on the premise that the intentional wrongdoing can only be committed by natural persons. At the same time, Articles 20 and 60 of the Turkish CC envisage **security measures to be imposed on legal entities**, where there has been a conviction for an intentional offence committed for the benefit of a legal entity through misuse of the permission conferred by its license and through the participation of the organs or representatives of the legal entity. The security measures envisaged include cancellation of the license to operate and the seizure of property. In order for security measures to be taken against legal entities, the applicable criminal provision must be explicitly provide for the application of security measure against legal entities. Within this limited scope and the framework of the legal entities' activities, a natural person holding decision-making authority within the entity can be held criminally liable.

In addition, in cases in which the legal entity engages in activities on the basis of a permit granted by a public institution and such permission is misused for the commission of the offence, the official permits granted to the legal entity can be revoked. In cases in which the legal entity generates revenue from the offence, such revenue and the instruments used in the commission of the offence can be confiscated. While it is possible to confiscate the proceeds of crime, it remains necessary to establish the portion of the revenues generated through the offence of human trafficking. Meeting these evidentiary burdens requires a well-structured, proactive investigation and extensive information exchange between criminal justice actors. Despite the limited scope of liability and the evidentiary barriers, it can be argued that the Turkish legal framework meets the requirements of the CoE Anti-Trafficking Convention with respect to the responsibility of legal entities.

4.5 Human trafficking and related offences

The offence of trafficking in human beings may be confused with other offences regulated in the Turkish CC given that they contain common, overlapping constituent elements. In particular the following crimes are often confused with trafficking by practitioners:

⁶⁸ Legal Framework on the Fight Against Trafficking in Human Beings in the National and International Field and the Protection of Victims, p. 125.

⁶⁹ Corporate liability is envisaged for a person who holds the authority to represent, decide on and control the legal entity within the framework of the legal entity's activities related to criminal responsibility due. The legal entity can be held responsible in cases in which the offence is committed within the framework of the legal entity's activities. The legal entity's liability may be of a criminal or administrative quality. Finally, the legal entity's liability does not preclude the criminal responsibility of natural persons.

- migrant smuggling (Article 79)
- violation of the freedom to work and labour (Article 117)
- prostitution (Article 227)⁷⁰
- begging (Article 229)
- intentional injury and aggravate injury on account of its consequences (Articles 86 – 87)
- threat (Article 106)
- deprivation of liberty (Article 109)
- trafficking of organ or tissue (Article 91)⁷¹
- obscenity (Article 226)
- torment (Article 96)
- sexual assault (Article 102)
- child molestation (Article 103).

In its first report on Türkiye, GRETA noted that there are practical difficulties in adjudicating human trafficking cases, in terms of distinguishing it from related offences, and from prostitution (Article 227 of the CC)⁷² in particular. Law enforcement officers indicated that they investigate cases of prostitution on the basis of both Articles 80 and 227 of the CC, as well as Article 220 (organised criminal groups). Representatives of the judiciary indicated that cases initiated as trafficking are sometimes re-qualified at the trial stage to other, lesser offences, usually prostitution (Article 227), which carry reduced penalties.

Given the overlap of the constituent elements of the offence of human trafficking and prostitution (Article 227 of the CC), especially with respect to child trafficking, the two offences could both be charged on the same set of facts. In accordance with the joinder of offences/conceptual aggregation (Article 44 of the CC), in such situation the sentence must reflect the more serious offence, trafficking in human beings.

161 (2)161

There are also overlaps between the constituent elements of human trafficking for the purpose of labour exploitation and violations freedom of work and labour (Article 117 of the CC), resulting in a confusion among members of the judiciary and other practitioners.

With respect to the crime of migrant smuggling (Article 79 of the CC), the overlapping acts involving transporting non-national migrants generate confusion with transnational trafficking. Essentially, the difference between the two offences is that trafficking is for the purpose of exploitation.

Since the offence of human trafficking continues to be confused with the above-listed offences above, the law should be amended where necessary. Where the confusion does not stem from the law, practitioners must implement the law with due diligence.

⁷⁰ The terms “procure or harbour” in Article 227(1) of CC and the acts listed in Article 80 of the CC overlap, causing confusion between the two offences and variations in their application. A perpetrator who procures or harbours a child to exploit his/her prostitution is prosecuted alternatively under Article 227(1) and Article 80. Thus, the terms “procure or harbour” as appearing in Article 227 should be deleted in order to eliminate the current confusion among practitioners..

⁷¹ As noted above, only the term “organ” is referenced in the Palermo Protocol and CoE Anti-Trafficking Convention. Although this is also the case in Article 80 of the CC, adding the term “tissue” to the provision is recommended.

⁷² GRETA’s first report on Turkey, para 224.



5. Investigation and prosecution of human trafficking offences in Türkiye

The investigation and prosecution of human trafficking does not depend on the filing of a complaint by the victim, but should be undertaken *ex officio*. Given that the exploitation may occur after a non-national victim has entered Türkiye, creates challenges for investigation and prosecution. The easiest means of obtaining evidence related to the offence of human trafficking, which is latent by nature, is victim reporting to law enforcement forces. As a source of evidence for the investigation and prosecution authorities, the victim assumes an important role in the process of the investigation and prosecution of the offence. This victim-reliant approach to investigations requires a victim-centred approach, ensuring both protection and services.

In addition to law enforcement confusion between human trafficking for the exploitation of prostitution and the crime of prostitution, which penalises pandering, its general treatment of prostituted women as engaging in illegal behaviour, although prostitution is not itself illegal, hampers their ability to identify them as victims of human trafficking. This treatment impedes efforts to combat human trafficking, prevents the elimination of exploitation and renders impossible the provision of support and assistance to victims. Ultimately, the poor treatment of victims renders it impossible to obtain evidence at the investigation phase, during which the statements of victims are not taken and recorded.

Law enforcement officials' failure to identify human trafficking among sexually exploited women due to their inaccurately being deemed to be involved in the criminal action, results in the failure to refer possible victims of trafficking to the Presidency of Migration Management,

which perform the formal victim identification. This violates Article 17 of the Regulation on Combating Human Trafficking and the Protection of Victims, according to which *"law enforcement officials shall contact the Presidency of Migration Management in cases that may fall under the scope of human trafficking such as forced labour, forced prostitution, forced service, forced marriage, removal of organs and tissues, child labour, abuse of children for criminal purposes, forced beggary, and giving children up for adoption."*

The victim identification process is further challenged by perceptions by law enforcement officials that the offence is complicated. This is attributed to the multiple recognised purposes for exploitation. Awareness raising and training on human trafficking can help law enforcement officials to fulfil their obligations to identify victims of the offence.

In order to file an indictment, sufficient evidence must be collected during the investigation phase in the exercise of the overall evidence collection authority of the public prosecutor, as set forth in Article 160(2) of Criminal Procedure Code (CPC). The evidence must be collected in conformance with the procedures outlining the protective measures to be granted to victims.

The search and seizure of proceeds of crime can be undertaken during the investigation phase as detailed in the CPC (Article 116 et seq.). For cases of human trafficking committed by an organised criminal group, proceeds of crime can be seized in accordance with Article 128 of CPC. It is of vital importance that in such cases the proceeds of the crime are seized, depriving the criminal organisation of its capacity to commit offences. In order to seize the proceeds of crime within the scope of Article 128 of CPC, and to confiscate them upon conviction, it is necessary to collect evidence at the investigation phase, establishing the relationship between the proceeds and the crime. Failure to do so will render confiscation impossible. The Financial Crimes Investigation Board, as the financial investigation unit designated to carry out said financial investigations, is authorised to do so by Law No. 5549 on the Prevention of Laundering Proceeds of Crime. No legal gap exists in this respect.

Seizure of the proceeds obtained by the criminal organisation through the exploitation of the victim for forced labour or forced prostitution can and should be refunded to the victims. Despite the absence of any ruling on this matter in cases involving trafficking in human beings, judicial authorities have implemented the relevant provisions as applied to other offences pursuant to Article 55(1) of the CC. Pursuant to Article 55 of the CC, pecuniary benefits obtained through commission of offence, or constituting the subject of the offence, or secured for the commission of the offence and the economic gains recorded as a result of assessment or conversion of these benefits can be confiscated provided that reimbursement of pecuniary benefits to the aggrieved part is not possible. For example, in cases in which an organised criminal group generates profits through the exploitation of forced labour, the payment in return for his services can be refunded to the victim.

Article 135 of the CPC, entitled "Detection, listening and recording of correspondence" at the investigation phase; Article 139 of the CPC, entitled "Commissioning of the undercover investigator" for organised crime; and Article 140 of the CPC, entitled "surveillance with technical devices," can all be applied to investigate the offence of trafficking in human beings.

In the absence of other proactive investigative tactics, hearing and recording the statement of the victim of exploitation can constitute the most significant source of evidence at the investigation phase. Victims of exploitation, especially children, often experience trauma during their trafficking experience. To prevent retraumatisation, they should be heard only once, without prejudice to the exceptions specified in law, at the investigation and prosecution phase of the related offence (Article 236(2) of the CPC). An expert in the fields of psychology,

psychiatry, medicine or education must be present during the hearing of these persons (Article 236(3) of the CPC). Another in-court protection measure to prevent retraumatisation involves impeding visual contact between the victim and the perpetrator, and taking the statements and testimonies of the child and/or victim in a private environment with the assistance of experts (Article 236(4) of the CPC).

With regard to the hearing of the victims of human trafficking at the investigation phase, the provisions laid down in Article 52(3) of CPC should be applied, taking into consideration that it might be the last contact with the victims. Audio and video recording can thus be made of the statement of victims/witnesses, and used in the later proceedings in the event that it is not possible for the victims to be brought before the court.

Particularly in the context of labour exploitation, it is of paramount importance to ensure that labour and social security inspectors working in the field take part in the investigation process. Ensuring their involvement in the identification of victims of trafficking among undocumented and other workers and the reporting suspicious cases to the prosecutor's office is an effective, if not essential, measure in combating the offence of trafficking for the purpose of labour exploitation.



6. Sanctions for trafficking in human beings in Turkish law

Article 80 of the Turkish CC, penalising human trafficking, prescribes both imprisonment and a judicial fine. Imprisonment ranges from eight years to 12 years, regardless of whether the victim is a child or an adult. No lower limit is given for the judicial fine, with the higher limit being set as 10,000 days which amounts to a fine ranging from 200.000 TRY to 1.000.000 TRY in practice. As per Article 52(1) of the CC, the lower limit shall apply as 5 days (100 TRY to 500 TRY).

A judgment can also be rendered to confiscate the proceeds of crime.

Since the offence of trafficking in human beings may involve the exploitation of several victims, the punishment is to be imposed per victim.

In addition to the criminal penalties imposed on those committing the offence of human trafficking, additional sanctions may be imposed as a result of a conviction, including:

- Prohibition or revocation of a permit for the carrying or possession of firearms and ammunition is given.
- Prohibition on the granting of a permit to establish of a private employment agency, denying their capacity as person(s) duly authorised to represent and bind.
- Prohibition of the granting of licenses issued by the Ministry of Transport and Infrastructure, which grants work permits to natural persons, public legal entities and companies to carry out activities on the national railway infrastructure network.
- Prohibition on the granting of a seaman's certificate of competence.

- Prohibition on taking the radio operator examinations to become a radio operator, responsible for communication and use of the radio stations in all vessels within and outside the scope of global maritime distress safety systems (GMDSS)..
- Prohibition on the issuance of a license by the Ministry of Transport and Infrastructure, which grants work permits to natural persons and legal entities to shall carry out road transport activities.
- Prohibition on the issuance of a license by the Ministry of Transport and Infrastructure, which grants work permits to transport organisers to carry out road, rail, maritime or air transport and/or combined transport activities.

Stakeholder interviewed for the purpose of this study indicated that challenges in determining a punishment in accordance with the severity of the crime, particularly when the punishment is to be applied separately for each victim, drive judicial authorities to requalify the offence.

In terms of sanctions, a distinction must be made in sentencing when the victim is a child. Second, the sentence should reflect the use of means and the purpose of the exploitation. Third, aggravating circumstances should be introduced into the framework of Article 80.

In the event that the offence of trafficking in human beings is committed for the benefit of a legal person, security measures should be applied (see section above on corporate liability). In cases in which the legal person undertakes operations based on permission granted by a public institution, and the offence of trafficking in human beings is committed by means of abusing such authorisation, the permission for operation should be revoked. Furthermore, the revenues generated for the benefit of the legal person by the commission of the offence, as well as the instrumentalities of the legal person utilised in the commission of the offence, should be confiscated.



7. Rights of victims of human trafficking in criminal proceedings

Article 3(n) of the Regulation on Combating Human Trafficking and the Protection of Victims provides that victims of human trafficking are “natural persons who have been or are strongly suspected to have been subjected to the crime of human trafficking.” It is noteworthy that this definition covers not only identified victims, but also persons who are presumed to be victims of trafficking.

The Regulation on Combating Human Trafficking and the Protection of Victims contains detailed provisions concerning the identification of victims of trafficking.⁷³ According to Article 17 of the Regulation, the formal identification of victims falls within the competence of the Presidency of Migration Management (PMM). Practitioners interviewed for the purpose of this report indicated that problems arise in practice due to the fact that victims referred to the PMM by law enforcement agencies lack of personal identity documents. Delays in the provision of an interpreter for victims who do not speak Turkish was also frequently cited as a problem. Victims’ unwillingness to co-operate with the authorities due to being under the influence of perpetrators poses another challenge. The effective implementation of the Regulation thus constitutes the principle problem, rather than gaps in the Regulation itself.

Pursuant to Article 18 of the Regulation, the identification of a victim of human trafficking constitutes an administrative act, to be undertaken without reference to the initiation of a criminal investigation or the victims’ cooperation.

The rights of victims of criminal offences throughout the stages of the criminal procedure are provided for in Article 234 of the CPC.⁷⁴ In accordance with Article 234(3), these rights must

⁷⁴ These rights include, *inter alia*: During the investigation phase: the right to request the collection of evidence, to request copies of documents from the public prosecutor, provided that the confidentiality and purpose of the investigation are not violated, and in the absence of a representative, in crimes

be explained to the victim and be confirmed in writing. Although not explicitly stated, this provision should be interpreted as a requirement for law enforcement officials and public prosecutors to explain these rights to victims during the investigation and prosecution stages, in line with international standards. Further, according to Article 236(3) of the CPC, victims whose psychological condition is affected as a consequence of victimisation have the right to receive support from experts in the field of psychology, psychiatry, medicine or education while testifying in court.

Child victims have additional rights pursuant to the CPC. They may be called to testify only once (Article 236(2)), and a psychologist or psychiatrist must be present during their testimony (Article 236(3)). Legal representation must be assigned automatically as a matter of right (Articles 234 and 239). The suspicion that a child is a victim of a sexual crime constitutes a reasonable ground for the arrest of the suspect (Article 100). Pursuant to the Child Protection Law No. 5395, a child who is in need of protection is defined as “*a child whose physical, mental, moral, social and emotional development and individual safety are in danger, who is neglected or abused or who is a victim of a crime*”. Protective and supportive measures for children in need of protection are to be taken by the juvenile judge upon request or *ex officio*.

Pursuant to Articles 237-243 of the CPC, the involvement (intervention) of the victim as **a party to the criminal proceedings** provides victims with the right to demand the collection of evidence, to call witnesses and to examine them. It also provides victims the right to make a final statement at trial, the right to be informed of the judgment and to file an appeal, including to challenge an acquittal and to request an increase in the sentence. In practice, however, trafficked persons do not exercise their rights for various reasons. First, victims are often informed about their rights only at the prosecution stage, thus receiving their right to information too late to exercise their additional rights. Second, the majority of non-national victims are deported or voluntarily return to their countries of origin soon after identification, usually within a few weeks. In the event that non-national victims do not have the opportunity to ensure their legal representation after leaving the country, they are unable to contribute evidence to, or exercise their rights at, trial. Third, criminal proceedings are often protracted and result in acquittals.

7.1 Access to legal aid

With the aim of establishing an effective, sustainable and accessible victim support system to assist victims and particularly vulnerable groups in judicial procedures, the Department of Judicial Support and Victim Services was established as a separate unit under the Ministry of Justice. Directorates of Judicial Support and Victim Services (ADMs) were established court houses in 2020. At ADMs, all victims of crime are informed about the judicial process and their legal rights and obligations. In addition, Support Offices for Vulnerable Groups have been

requiring imprisonment for more than five years and for the crime of sexual assault, the right to request the appointment of a lawyer by the bar association; to have the investigation documents and other evidence examined by his/her attorney, in compliance with Article 153 of the CPC; exercising the right to appeal against decisions of the public prosecutor, in accordance with the procedure written in the law. During the prosecution phase: the right to be informed about the hearing, to participate in the public trial, to request extracts from the minutes and documents; the right to call witnesses, to request the appointment of a lawyer, to request legal remedies against the judicial decisions, provided that they participated in the case.

established within the ADMs. Victims of trafficking in human beings are listed among the vulnerable groups as in need of special assistance and support in the relevant regulation.⁷⁵

In accordance with Articles 234(1)(a)(3) and 234(1)(b)(5) of the CPC, victims having no legal representative have the right "to request the Bar Association to assign a legal representative in cases of sexual assault and offences for which the minimum threshold of imprisonment is five years." Since the lower limit of imprisonment provided for the offence of human trafficking under Article 80 of the CC is eight years, victims of trafficking can request legal representation. Importantly, this right is not automatic and can only be exercised if requested by the victim.

Pursuant to Article 234(2) of the CPC, in cases in which the victim is a minor, is deaf or mute, or has an developmental disability and thus cannot defend his/her interests, a lawyer must be appointed *ex officio*.

In accordance with Article 17/3 of the Regulation on Combating Human Trafficking and the Protection of Victims, a lawyer should be assigned by the Bar Association to presumed victims and shall be present during the interviews to be conducted by law enforcement officers. In contrast with the CPC, the Regulation implies that the appointment of a lawyer is mandatory. However, as GRETA has observed, in practice, lawyers are not assigned to presumed victims due to the absence of this mandate in the CPC, and also because identified non-national victims of trafficking are usually placed in removal centres, and thus have to request a lawyer.⁷⁶ Therefore, the assignment of a legal representative/attorney to presumed victims of trafficking must be made mandatory by legal amendment in order to safeguard the rights of victims.

Legal aid services in criminal proceedings are provided through the CPC Enforcement Services established by Bar Associations. Lawyers seeking to serve within the CPC Enforcement Services are required to take a short-term training on the CPC, but no specialised trainings are provided on specific crimes. Lawyers registered in the CPC Enforcement Services are assigned to cases, and do not have the option to choose to represent specific victims or to choose specific cases. (However, they have the right to refuse to be assigned a case). Likewise, victims cannot request a specific lawyer through the CPC Enforcement Services. Consequently, victims are unlikely to be represented by a lawyer with any specialisation in trafficking in human beings. There is a limited number of lawyers that are knowledgeable about human trafficking. One of the decisions of the meeting of the Coordination Commission for Combating Human Trafficking dated 19 November 2019 was "the formation of specific lawyer groups within the Bar Associations to follow the cases of victims."⁷⁷ The decision was communicated to the Bar Associations by the Union of Turkish Bar Associations (UTBA) on 24 February 2020.⁷⁸ However, the decision is not binding, and no changes in practice have been observed.

7.2 Protection of witnesses

In criminal proceedings against perpetrators of human trafficking, victims participating in the capacity of a witness can benefit from the provisions on witness protection. The Law on

⁷⁵ Ministry of Justice, Department of Judicial Support and Victim Services, <https://magdur.adalet.gov.tr/Home/SayfaDetay/adm-nedir> (Date accessed: 20.11.2021).

⁷⁶ GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Turkey, GRETA(2019)11, para. 137, <https://rm.coe.int/report-concerning-the-implementation-of-the-council-of-europe-conventi/1680981563> (Date accessed:31.08.2020).

⁷⁷ PMM, Combating Human Trafficking Coordination Commission (İnsan Ticaretiyle Mücadele Koordinasyon Komisyonu), Agenda and Decisions of the Meeting No. 2019/1 dated 19.11.2019.

⁷⁸ UTBA, https://d.barobirlik.org.tr/2020/tbb_20200302111622.pdf (Date accessed:31.08.2020).

Witness Protection was enacted for the protection of persons whose life, bodily integrity or property, or the same belonging to their relatives, face the threat of grave and serious danger due to their participation as witness in criminal proceedings.⁷⁹ Since the lower limit for the punishment prescribed under Article 80 of the CC is eight years of imprisonment, the witness protection measures envisaged by the Law do not apply to witnesses in human trafficking cases pursuant to Article 3(1)(a) of the Law on Witness Protection. When the case involves an organised criminal group, however, where the punishment exceeds two years, according to the Article 3(1)(b) of the Law on Witness Protection, the witness protection measures foreseen in the law can be applied. Some of the witness protection measures specified under Article 5 of the Law on Witness Protection are applied by public prosecutor's offices during the investigation stage and by courts during the prosecution stage, while others are determined by the Witness Protection Board.⁸⁰

According to Article 17 of the Law on Witness Protection, foreign witnesses can benefit from witness protection measures as foreseen by bilateral or multilateral international agreements to which Türkiye is a party or, in the absence of such agreement, according to the principle of reciprocity. The costs shall be met by the country requesting such measures unless a provision to the contrary exists in the bilateral or multilateral agreements, or in relevant international treaties.

Furthermore, in a provision focusing on the prevention of secondary victimisation, Article 5(1) of Presidential Decree No. 63 provides, "*[i]n cases in which there is a possibility that the victim or members of his/her family may be assaulted, necessary measures shall be taken by law enforcement units upon application by said persons for the prevention of the repetition of the offence or the commission of another offence.*" Since the testimony of non-national victims of human trafficking contributes to securing convictions, the provision protective measures are essential for victim safety and their cooperation with judicial bodies.

Despite the existence of a series of provisions foreseeing the protection of victims during criminal proceedings, it remains unclear whether these provisions are in practice applied to protect victims of human trafficking.⁸¹ Even where possible, their application would be limited given that most of the victims are returned to their countries of origin.

7.3 Victim / witness statements

Article 18(6) of the Regulation on Combating Human Trafficking and the Protection of Victims and Article 52(3) of the CPC foresee the taking of victims' statements, and their video and audio recording, during the investigation and prosecution stages. Audio and video recording is obligatory when the victim is a child, and in cases in which it will impossible for the witnesses to be brought before the court and the testimony is essential to truth seeking.

Given that most victim/witnesses are sent back to their country of origin soon after the offence is detected, the importance of securing temporary residency permits along with taking his/her statement during the investigation stage with as much content and detail as possible should be emphasised.

⁷⁹ Law on Witness Protection (No. 5726), Official Gazette No. 26747, dated 05.01.2008.

⁸⁰ For witness protection measures to be taken within the scope of the criminal legal system, see also: Regulation on the Principles and Procedures Concerning Witness Protection Measures to be Taken by Chief Public Prosecutor's Offices and Courts, Official Gazette Issue 27051 dated 11.11.2008.

⁸¹ GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Turkey, GRETA(2019)11, para. 233, <https://rm.coe.int/report-concerning-the-implementation-of-the-council-of-europe-conventi/1680981563>

Article 58 of the CPC provides that the witnesses shall be protected in cases in which the relevant persons fear the revelation of their identity due to their testimony, or cases in which the testimony would jeopardise the safety of the victim. In offences committed within the scope of the activities of a criminal organisation, if the exposure of identity of the witnesses would pose a grave danger to themselves or their relatives, necessary measures must be taken to protect their identities. To prevent the witness' identity from being revealed, identifying information pertaining to the witness shall be kept by the Chief Public Prosecutor, the judge and the court. The CPC also envisages audio and video transmission of witness testimony when there is a grave danger for the witness to appear in person, and no other means of mitigating the risk is available.

According to Article 180(1) of CPC, when it is not possible for the witness to be present at trial due to illness, disability or other cause for an extended time period, the court may decide that the witness shall be heard in the presence of a public defender or through rogatory. Article 180(2) of the CPC applies this provision to the hearing of witnesses whose in-person testimony is not possible due to their residence being located outside of the jurisdiction of the competent court. Judicial assistance agreements exist between Türkiye and several of the countries of origin of the victims of human trafficking, which contemplate the hearing of non-national victims.

Article 61 of CPC provides that in cases in which persons who testify must travel in order to be present at trial, travel expenses, including meals and accommodation, shall be met. A large percentage of identified victims of human trafficking are non-nationals, most of whom return to their countries of origin and reside abroad. Yet, it remains unclear whether Article 61 applies to the travel expenses that would be occasioned by their entry into and exit from Türkiye.

7.4 Right to use interpretation services

The fact that non-national victims of human trafficking often do not speak Turkish may generate bottlenecks in investigation and prosecution processes. Article 202 of the CPC provides that in the event that the accused or victim of an offence does not speak Turkish, the essential points of the accusation and the defence shall be translated by an interpreter appointed by the judge or public prosecutor. Article 324(5) of the CPC indicates that interpretation expenses shall be borne by the state treasury.

Article 18(10) of the Regulation on Human Trafficking further provides for an interpreter, upon the request of the victim or *ex officio* by the Provincial Directorate of Migration Management, throughout the victim identification process. It indicates that a female interpreter shall be assigned when the victim is a woman, if possible. However, there are many problems with the provision of interpretation services in practice. The main criticism raised during interviews conducted with lawyers and NGOs is the absence of standards established for interpreters. The quality of interpretation is characterised as inadequate and services by trained interpreters are not ensured. Furthermore, interpreters working for the PMM reportedly do not communicate detailed information and do not adequately inform the victims and defendants of their rights. It is therefore essential to adopt legal standards for interpretation services, and to guarantee that interpreters are assigned in strict compliance with these standards.

7.5 Intervening in criminal proceedings

Intervening in criminal proceedings is foreseen by Article 237 of the CPC, which reads as follows: *"The victim, natural persons and legal entities, who suffered damages caused by the crime, as well as the individuals liable for pecuniary compensation, are entitled to intervene during the prosecution phase at the court of the first instance at any stage, until the judgment has been rendered, announcing that they are putting forward their claim."* The request to intervene in criminal proceedings must be submitted in writing or orally and the judge must accept the request.

A person who has occasioned damages from a crime can intervene in the proceedings only at the prosecution stage, upon meeting a number of conditions. First, there must be a pending criminal case. Intervention is not permitted at the investigation stage. The person seeking intervention must have directly occasioned the damages. This condition has been narrowly interpreted by the Court of Cassation. Indirect damages, such as those suffered by NGOs and no damages will not give rise to the right to intervention. In this respect, a clear legislative amendment that paves the way for NGOs working in the field of combating human trafficking and supporting victims to intervene in criminal cases is of utmost necessity.

Article 161(2)(j)(2) of Presidential Decree No 4 grants the Office of Legal Counsellor of the PMM the possibility *"if deemed necessary, to intervene in lawsuits and ex-parte proceedings against victims of human trafficking"*. This regulation is of paramount importance given that intervention in criminal pending cases is not permitted for NGOs. Nevertheless, no information pertaining to interventions by Office of Legal Counsellor of the PMM was identified as occurring in practice, nor on, the effect of any such the intervention.

7.6 Non-punishment of victims of trafficking in human beings

Pursuant to Article 26 of the CoE Anti-Trafficking Convention, Parties shall provide for the possibility of not imposing penalties on victims of trafficking for their involvement in unlawful activities, to the extent that they have been compelled to do so. Turkish legislation does not contain a specific non-punishment provision in respect of victims of trafficking. The Criminal Code does contain general provisions on exculpating or mitigating criminal liability which include legitimate defence and necessity (Article 25),⁸² and force, violence, menace and threat (Article 28),⁸³ leaving the final decision to the judge's discretion. Further, Article 147 of the CC stipulates that where theft was committed as a result of an urgent and serious need, the penalty to be imposed may either be reduced or waived altogether, taking into account the circumstances of the situation.⁸⁴

In theory, the above-mentioned provisions prevent the victims of human trafficking from being punished for the offences committed under threat, coercion and force, despite the application higher evidentiary standards placed on victims in establishing necessity and/or duress. Moreover, the existing criminal law provisions do not directly apply to the administrative sanctions that often arise out of human trafficking cases, such as expired visas, unauthorised employment or engaging in prostitution without being registered. Given that the purpose of these exculpatory provisions is to protect persons from being punished for the acts they performed under compulsion, the non-punishment principle should apply to administrative sanctions. Article 3 of the Law on Misdemeanours prescribes that the general provisions of the Law shall apply to all acts requiring the sanction of an administrative fine. Article 12 of the Law on Misdemeanours, in cases where there is no contrary provision in the Law, the provisions of the Turkish CC concerning exculpation from guilt also applies to misdemeanours. Accordingly, administrative fines imposed on victims of trafficking in human beings must be annulled.

GRETA recommends the adoption of a specific legal provision providing for the non-punishment of victims of trafficking, and the development of guidance on its implementation for law enforcement officials and prosecutors. Any sanctions imposed on victims of trafficking should be repealed and fines paid by them should be compensated or reimbursed.

⁸² Article 25 states: "(1) No penalty shall be imposed upon an offender in respect of acts which were necessary to repel an unjust assault which is directed, carried out, certain to be carried out or to be repeated against a right to which he, or another, was entitled, provided such acts were proportionate to the assault, taking into account the situation and circumstances prevailing at the time. (2) No penalty shall be imposed upon an offender in respect of acts which were committed out of necessity, in order to protect against a serious and certain danger which he has not knowingly caused which was directed at a right to which he, or another, was entitled and where there was no other means of protection, provided that the means used were proportionate to the gravity and subject of the danger" (unofficial translation).

⁸³ Article 28 states: "No penalty shall be imposed upon a person who commits a criminal offence as a result of intolerable or inevitable violence, or serious menace or gross threat. In such cases, the person involved in the use of force, violence, menace or threat shall be deemed to be the offender" (unofficial translation).

⁸⁴ This provision could be applied to victims of THB only for the purposes of forced criminality, involving theft.

Interviews with stakeholders indicated that the principle of non-punishment of victims is sometimes violated and that victims are treated as perpetrators and subjected to investigation and prosecution prior to their punishment. It is necessary, therefore, to adopt clear instructions for all law enforcement, prosecution and judicial actors to ensure abidance to the non-punishment principle, explaining their duties and responsibilities, in order to ensure consistent implementation of the principle.



8. Conclusions and suggestions for action

The primary reference point for this study was GRETA's first report concerning the implementation of the CoE Anti-Trafficking Convention by Türkiye, published on 8 October 2019. It highlighted gaps in the implementation of the Convention, and suggested action to be taken in respect of the legislation, victims' rights, investigations and prosecutions. It is necessary to stress that there can be no efficient investigation and prosecution without an adequate system for victim identification, assistance and protection.

Legislative framework

The CoE Anti-Trafficking Convention has a very limited direct applicability in Turkish law and many of the provisions contained in the Convention need to be separately adopted into domestic law. The national legal framework on trafficking in human beings—the Criminal Code, Criminal Procedure Code, Law on Witness Protection, Child Protection Law, Law on Foreigners and International Protection, and the Presidential Decree on Providing Support to Victims of Crime and Regulation on the Fight Against Human Trafficking and Protection of Victims—meet international obligations to a significant degree. That being said, it is also evident that the existing legal framework is rather disjointed, scattered across multiple laws. Bringing them together in a single piece of legislation dedicated to combating human trafficking would be beneficial.

Training and awareness-raising

There is an apparent need for increased awareness raising on the issue of human trafficking both among the general public and among relevant professionals. To this end, relevant

international standards and case-law should be translated into Turkish and shared with practitioners.

Activities focusing on raising the awareness of law enforcement units on the offence of trafficking in human beings and developing their capacity should be incorporated into ongoing in-service and pre-service training. Such training should stress the importance of preventing the application of stereotypes and implicit bias towards victims of human trafficking, ensuring enjoyment of their rights, observing the principle of non-punishment of victims for unlawful acts committed while being trafficked, and proactive evidence gathering during the investigation process with greater care.

Policies and strategies

In the fight against trafficking in human beings, it is important that national policies and strategies are developed aiming at the prevention. The legislation must be supported by policies and programmes that place human rights at the centre of all actions and interventions. After the national anti-trafficking action plans adopted in 2003 and 2009, a new action plan has not been developed in a protracted delay. It is of utmost importance that an action plan containing the recommendations made in the GRETA report be urgently adopted and implemented. Likewise, in the new strategic plan of PMM, to become effective after 2021, specific and concrete targets should be formulated in lieu of the generalized objectives currently envisaged in the Strategic Plan covering the 2017-2021 period.

Co-operation with civil society

The existing problematic situation concerning co-operation between the public authorities and NGOs appears to extend to the fight against human trafficking. There exists no regular and consistent co-operation with any NGO in this respect. The provisions of the legislation vest in the administrative agencies a broad discretionary power in terms of co-operation with NGOs, but contain no explicit obligation to cooperate. There is a marked need for legislative changes that ensure the participation of NGOs in efforts to combat human trafficking and to protect and provide services for victims. This applies to participation in the relevant decision-making processes and in the provision of support and assistance to victims of human trafficking. Changes to the regulatory framework should be established in a manner that ensures the pluralistic representation of NGOs.

International co-operation

As the focus of the current report is on investigating and prosecuting transnational cases of trafficking in human beings, it must underscore the need to strengthen international co-operation at law enforcement and judicial levels, as well as between governmental and non-governmental actors in countries of origin, transit and destination, with a view to providing victims with assistance and safe referral and preventing (re)trafficking. The national authorities should improve capacity and the legal framework with respect to information exchange and evidence collection in cases of human trafficking, in order to foster effective operational co-operation during an investigation.

The Turkish authorities should reinforce their commitment to engage in all existing legal mechanisms provided by the Council of Europe Convention on Mutual Legal Assistance in Criminal Matters.

Concluding bilateral co-operation agreements with States that have not yet signed such agreements with Türkiye by taking into account the victims' countries of origin, as well as ensuring the functionality of the existing agreements, are of paramount importance. Such agreements should involve co-operation across the justice chain.

8.1 The offence of trafficking in human beings in Turkish law

While the definition of the offence of trafficking in human beings in Turkish law is largely in line with the international definition, some important discrepancies need to be addressed. Firstly, the actions “transfer” and “receipt” should be included as acts within Article 80 of the CC. Discrepancies in the acts pertaining to adult and child victims should be eliminated. Article 80 does not include several of the “means” set forth in the international definition. These include: “giving or receiving of payments or benefits to achieve the consent of a person having control over another person,” “other forms of sexual exploitation,” “servitude” and “coercion”—all of which should be included in said article.

As the complexity of the definition of trafficking in human beings renders its implementation challenging for practitioners, an extensive integrated and multi-agency training programme should be designed and offered continuously. The training could be offered in various formats, based on interactive methodologies, analysis of case studies, and live simulation.⁸⁵ Multi-agency training is necessary to open minds, change cultural perception of the phenomena, remove some widespread prejudices, including that trafficking is always connected to the cross-border movement of persons.

Article 80 of the CC does not incorporate the aggravating circumstances envisaged in Article 24 of the CoE Anti-Trafficking Convention, namely: the commission of the offence by participating in an organised criminal group; by a public authority; when committed by gross negligence endangering the life of the victim; and in cases in which the victim is a child. These aggravating circumstances should be added to said article.

The use of services of a victim of human trafficking with the knowledge that the person is a victim should be established as a criminal offence under Turkish law, in accordance with Article 19 of the CoE Anti-Trafficking Convention.

Since the offence of human trafficking is likely to be confused with other offences, such as migrant smuggling, prostitution or the violation of the freedom to work and labour, legislation should be amended where necessary. Where confusion is not generated from the legislation, it must be ensured that practitioners are trained to implement the related provisions of the law with due diligence.

8.2 Investigation and prosecution of human trafficking offences in Türkiye

The research found that investigation and prosecution powers authorised by Turkish CPC are sufficient overall in the fight against human trafficking, while some concerns relate to existing practice. Comparing the numbers of suspects tried for the offence of human trafficking and the number of convictions, the rate of conviction is rather low; the number of perpetrators sentenced to imprisonment is even lower. The primary reasons for high levels of attrition include: limited evidence collection and the swift deportation of victims or victims voluntary

⁸⁵ See the ongoing experience since 2016 of the OSCE live simulation training, *Combating human trafficking along migration (and Mediterranean) routes*, on <https://www.osce.org/projects/cthblix>.

return to their countries of origin due to security concerns, rendering it impossible for them to testify as witnesses at trial.

Despite the largely sufficient legislative framework covering investigation and prosecution procedures, measures need to be taken to overcome the challenges faced in practice. Given the importance of the victim of trafficking in human beings in the investigation and prosecution of the offence, serving as a source of evidence, properly victim identification and protection in the taking of their statements and evidence collection, including precluding their deportation, are essential. Delays in trial times should also be minimised.

The seizure and confiscation of the proceeds of crime should be mandatory when a link with the crime of trafficking is established. Cooperation and dialogue between general law enforcement units, financial crimes units and prosecutor's offices, particularly in the confiscation of the proceeds of crime generated by criminal organisations, should be continuously improved. Adequate resources and specialised training must be provided to financial investigation units as a permanent element of trafficking investigations.

Finally, the capacity of labour inspectors should be strengthened to enable their active engagement in the prevention and detection of trafficking in human beings for the purpose of labour exploitation. Labour inspectors should be provided with sufficient resources and training to enable them to carry out inspections in all locations where work is performed, including in private households. The authorities should consider their involvement as a regularised element of multi-agency teams, in order to identify potential victims and to co-operate with other specialised law enforcement agencies during the investigations.

8.3 Sanctions for trafficking in human beings in Turkish law

The existing sanctions for trafficking in human beings in Turkish law—imprisonment ranging from eight to 12 years and a judicial fine—can be seen as commensurate with the offence, excepting at the lower level of the fine scale. However, given the tendency to requalify cases of trafficking into offences carrying lighter sentences, training activities should be provided to members of the judiciary. The establishment of aggravating circumstances within Article 80 of the CC would also foster proportionate and dissuasive sentencing.

8.4 Rights of victims of human trafficking in criminal proceedings

Despite substantial improvements to efforts ensuring victims' rights in Türkiye in recent years, the research demonstrated the need for and importance of putting these legal improvements into practice, including by effectively informing victims of their rights in a timely manner. The empowerment of victims is of vital importance for the success of investigations and prosecutions. Victims' willingness to co-operate with law enforcement is strongly correlated to the protection of their safety and their right to privacy, the availability of psychosocial assistance, legal aid and interpretation. Trafficked persons should be placed at the centre of all anti-trafficking actions.

The research found that trafficked persons do not access and exercise their rights set forth in the relevant legislation for various reasons. Victims are often informed about their rights only at the prosecution stage, too late to enable their meaningful exercise. The majority of victims return to their countries of origin or residence or are deported soon after identification. Without legal representation, they are unable to play a role in criminal proceedings, which are usually protracted and result in acquittals.

Interviews with practitioners highlighted the importance of the application of witness protection measures, which are provided for in the Criminal Procedure Code and the Witness Protection Law. Witness statements must be taken properly and in accordance with the law. Accurate information and legal assistance should be provided to victims/witnesses by specifically trained professionals, in a language that the victim understands, as soon as there are reasonable ground to believe that a person may be a victim of human trafficking,

Access to legal aid

Victims of human trafficking have the right to be properly informed of their rights and to be duly represented in administrative and criminal proceedings by a lawyer. Even though victims of trafficking are entitled by law to be assigned a lawyer upon their identification, in practice, they are not referred for legal assistance during the investigation and prosecution procedures. Although the legislation prescribes that such referrals for legal representation should be filed by the law enforcement units, prosecutor's offices and courts, legislative amendment to mandate the assignment of a legal representative/attorney is necessary. Bar Associations should assign attorneys who have received specialised training on trafficking, and the offence of human trafficking should be included the training provided to legal aid attorneys.

Protection of witnesses

The application of protection measures to victims who act as witnesses during the investigation and court proceedings, as specified by the CPC and the Law on Witness Protection, must be ensured in practice. The witness protection measures envisaged in Article 3(1)(a) of the Law on Witness Protection do not apply to the offence of trafficking in human beings unless the offence of human trafficking is committed within the framework of a criminal organisation. There is thus a clear need to amend said provision to encompass victims of human trafficking. The reciprocity principle referred in Article 17 of said law should be removed.

Hearing of witnesses

While the existing legal provisions pertaining to in-court witness protection can be considered as sufficient, it is important they be applied effectively to victims of human trafficking. The rights and empowerment of victims, and their protection entail the prevention of secondary victimisation, including by: avoiding unnecessary repeated interviews, preventing visual contact between victims and defendants in the courtroom, providing alternatives to giving evidence in open court hearings and preventing unnecessary questioning of the victim about her or his private life. Questioning should not be aggressive or threatening, including on cross-examination. To this end, specific training should be provided to law enforcement officials, prosecutors and members of the judiciary.

Right to interpretation

Although the legislation provides for free-of-charge interpretation both during the victim identification procedure and criminal proceedings, there are many problems with regard to interpretation services in practice. The findings of the study point to the need to develop legal standards for interpretation services (certification), and to guarantee that interpreters are assigned in strict compliance with these standards. Interpreters working for PMM should be sensitised about the issue of human trafficking and the rights and needs of victims of trafficking.

Intervening in criminal proceedings

Turkish law sets forth the right for victims to intervene in criminal proceedings. However, considering the long-standing case law of the judicial bodies, it is not possible for those who have been indirectly damaged by the crime (including NGOs) or who have not occasioned damages to intervene in the criminal proceedings. The research highlighted the importance of making it possible for NGOs to participate in proceedings to support victims or to represent them in their absence. The provisions on intervening in criminal proceedings that prevent NGOs from participating as an intervening party should be amended.

Furthermore, the power of intervention vested in the PMM by Article 161(2)(g)(2) of Presidential Decree No. 4 should be proactively exercised by said institution.

Non-punishment of victims of trafficking in human beings

The non-punishment principle constitutes critical protection for victims, ensuring an appropriate and just criminal response. Victims of trafficking in human beings should not be held liable under criminal, civil or administrative laws for unlawful acts they were compelled to commit while trafficked. Non-punishment should be understood and applied as a compulsory tool by all the domestic authorities across the justice chain, including the police, immigration and border officials, labour inspectorate and any other law enforcement agency or official.

The relevant articles of the Turkish CC on exculpating or mitigating criminal liability can be applied, but impose a higher evidentiary burden, failing to give meaningful effect to the non-punishment principle. The absence of a specific provision on the non-punishment of victims of trafficking entails a high risk of variations in treatment, depending on the prosecutor in charge of the case. In line with the recommendations of GRETA and the findings of the research, a specific legal provision should be adopted to apply the non-punishment principle in national law, and guidance should be developed for law enforcement officials, prosecutors and judges on the scope and application of the non-punishment provision. The non-punishment principle should also be applied to administrative liability in accordance with the Articles 3 and 12 of the Law on Misdemeanours.

This publication was produced with the financial support of the European Union and the Council of Europe.

The views expressed herein can in no way be taken to reflect the official opinion of either party.

The Member States of the European Union have decided to link together their know-how, resources and destinies. Together, they have built a zone of stability, democracy and sustainable development whilst maintaining cultural diversity, tolerance and individual freedoms. The European Union is committed to sharing its achievements and its values with countries and peoples beyond its borders.

The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

Funded
by the European Union
and the Council of Europe



COUNCIL OF EUROPE



Implemented
by the Council of Europe