

COMBATING HUMAN TRAFFICKING IN TURKEY

As a form of modern slavery, human trafficking violates human rights and dignity by abusing victims for commercial gains. The volume of human trafficking has considerably increased throughout the years. Although there are several push and pull factors that trigger the crime, political conflicts and civil wars have become the primary push factors, specifically leading to the vulnerability of women and children. In addition to providing an overview of international efforts against human trafficking, this article highlights the risks Turkey faces as a transit and target country, and its efforts in combating human trafficking.

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Historically speaking, slavery dates back to 4000 BC in Mesopotamia, becoming more visible with the Atlantic slave trade between the 15th and 19th centuries. Today, slavery has morphed into “modern slavery”, of which human trafficking has become a crucial facet. While we know that the concept of human trafficking emerged as a result of the teachings of modern human rights theory, its origins are still not fully known.

The phenomenon of human rights — which forms the basis of every socio-cultural discussion — is undoubtedly at the core of human trafficking as well. The commodification of individuals, essentially by the pursuit of commercial gain, makes this crime one of the most severe of all human rights violations. Human trafficking is a crime against human rights and liberties. The human will is disregarded as the individual becomes the subject of a bargain. This objectification violates the concepts of freedom, equality, and human dignity on which modern human rights theory is built. Smuggling victims into target countries through illegal routes and/or document fraud have negative effects in terms of public order and security in the target country. Victims face problems with finding employment, are more vulnerable to sexual exploitation, and are more likely to engage in criminal activity. Smuggling humans also involves serious threats against public health, as it increases the risk of spreading infectious diseases.

Slavery or human trafficking is a result of the commodification of human beings, allowing them to be bought and sold, handed over, exchanged, and used as a source of profit. This phenomenon started to develop through the trade of women and children in the late 19th century. Especially influenced by the feminist movement in Europe and the US, the expression “white slave” was put forward to describe women who were brought from Europe, Latin America, and Asia for prostitution. Subjecting women to prostitution had started to ignite discussions on equality in the international arena. At the beginning of the 20th century, the discussion initiated by the feminist movement further intensified, and thus, international agreements were signed with the initiatives of countries to prevent such a form of slavery. It was later observed that this was a socio-economic phenomenon and could harm anyone regardless of gender or race.

The most widely accepted definition of human trafficking was set forth by the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (hereinafter referred to as the Palermo Protocol) signed by 175 countries. This definition was incorporated into Turkey’s national law with the adoption of Law No. 4804 and the approval of the Grand National Assembly on 30 January 2003. According to Article 3 of the Palermo Protocol titled “Definitions”:

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- (a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the 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, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.
- (c) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article.
- (d) “Child” shall mean any person under eighteen years of age.

Defining the crime of human trafficking through the Palermo Protocol had important implications for international law. First of all, the gender profile of victims expanded by lifting the gender emphasis, which was specific to and associated with the sexual exploitation of women and girls. Secondly, forms of exploitation were diversified to include forced labor, servicing, slavery and slavery-like practices, and organ trade. Most importantly, in line with the dynamic nature of human trafficking, the forms of exploitation were not limited — thus allowing the criminalization of any new form of exploitation to emerge.

Human trafficking’s cross-border nature, rather than its perpetration process, has always been the focus. For this reason, it is still considered a natural consequence of migration today, and is often confused with migrant smuggling. However, these two crimes have quite different characteristics. First, the most important element that differentiates the two is consent. In cases of migrant smuggling, the person agrees with the migrant smuggler to go to another country with their own free will; this is not the case with human trafficking. Second, migrant smuggling violates the state's sovereign rights due to illegal border cross-

ings, therefore, it is a crime against the state. Human trafficking, on the other hand, is a crime against individual rights and freedom. Third, while migrant smuggling's cross-border nature is one of its most important facilitators, human trafficking activities are not always of cross-border nature. Human trafficking can also be committed within one country. Lastly, while the victim-trafficker relationship is continuous in human trafficking, as exploitation continues until an operation or foreign intervention occurs, it is the contrary in migrant smuggling. After the irregular migrant pays their debt to the smuggler, the relationship ends.

Human trafficking cannot be described independently of socio-economic and cultural characteristics of societies. This crime is committed implicitly by taking advantage of the cultural structure of societies and its own vague nature (victims not knowing what constitutes a crime and what does not, which authority should be notified in the event that the crime is disclosed, as well as feelings of shame, fear, and anxiety, etc.) It is influenced by economic, social, and cultural structures of societies, and often perpetrated differently from country to country. While some are cultural and socio-economic structures that are specific to one country, other reasons exist concurrently in many regions of the world. In order to better understand and analyze human trafficking, it is important to examine the elements that facilitate it. In the literature, these factors are generally referred to as "pull" and "push" factors.

Push factors are the negative environmental conditions, which include geographical, socio-economic, cultural, and individual factors that make people vulnerable to abuse. Other primary push factors are the unfair distribution of natural and human resources, political and economic structural problems in countries with a colonial past, wars, and political internal conflicts. Pull factors, on the other hand, can be defined as factors that can eliminate the negative environmental conditions mentioned above. Main pull factors are social and economic welfare, abundant employment opportunities, and educational resources.

Today, the most common causes of human trafficking are political conflicts and conditions created by civil wars. When these conditions are combined with gender inequality, women especially become more vulnerable to trafficking, and specifically face difficulties in accessing education and the labor market. In fact, in some patriarchal societies, women are forced into marriage in adolescence because they are seen as a burden on the family. Political conflicts and the conditions created by civil wars make children vulnerable to this crime as well. The separation of families under these circumstances cause abandoned children to become vulnerable, leading to unique forms of exploitation such as attempts to recruit children as soldiers.

Communication means such as television, e-mail, social media, online games, and mobile phones also instigate human trafficking. One's efforts to find a job, desire to access educational opportunities, and even their eagerness to travel can result in rather negative consequences, as these media tools are also used by ill-intentioned people. It is known that many people today are victimized by dummy recruitment agencies and marriage sites through ever-developing communication channels.

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While methods of trafficking may change according to socio-economic developments, victimized individuals may vary depending on time and place. Sexual exploitation and labor exploitation are among the most common forms of this crime across the world. Child selling for various reasons (e.g., adoption, religious rituals, domestic services), as well as forced marriage, child soldiers, and surrogacy are also among the cases that can be considered within the scope of human trafficking.

The Crime of Human Trafficking in Turkish Law

Turkey's geographical location at the intersection between Asia, Middle East, and Europe, its political borders with many countries, and its long coastline along with the threat posed by cross-border organized crimes constitute the double risk of Turkey becoming both a transit and a target country for human trafficking. Bordering a region where conflicts and instability exists, Turkey, a financially and politically stable country in the region, has been seriously affected by regular and irregular migration flows since the end of the Cold War and the start of globalization. Besides being a transit point for migration and human trafficking movements especially toward more developed European countries, demand for Turkey as a target country continues to increase. This is partly due to Turkey's geographical location and the EU's strict border policies to control migration movements.

The combat against human trafficking gained influence in the international arena in the 2000s. Turkey, as an active contributor to international efforts, was one of the first countries that signed the Palermo Protocol. Many provisions of the repealed Turkish Penal Code No. 765 could be interpreted as attempts to classify human trafficking as a punishable action. However, taking into account the importance of the issue, Turkey fulfilled its responsibility of being a signatory of the Protocol by defining the crime of human trafficking as a separate entity in the penal code. The crime of human trafficking was also regulated in Article

80 of the Turkish Penal Code No. 5237, which came into effect on 1 June 2005. Prior to this regulation, actions were only punishable when it coincided with other crimes. With the regulation, however, human trafficking was identified as a separate crime in line with the Palermo Protocol. Turkey has made many efforts to combat human trafficking within its borders, particularly after becoming a party to the Protocol.

In order to maximize the efficiency of these efforts, the training of authorized actors in the field and legislation other than the Penal Code were amended and renewed. However, a legal definition by itself is not sufficient to combat this crime. A holistic approach is needed to achieve this goal; thus, legislation on migration, healthcare, child protection, and labor were revised.

Human trafficking was also regulated in other areas of Turkish law, especially in relevant articles of the Constitution.¹ These amendments were primarily in the areas of guaranteeing personal rights and liberties, determining the standards of support services to be provided to victims, and preventing the crime itself. As a result, combat efforts were shifted from the judicial field to the preventive field. With these initiatives, Turkey became one of the countries that approached efforts to prevent human trafficking proactively instead of reactively.

Combating Human Trafficking in Turkey

Turkey, aligned with international efforts, carries out actions against human trafficking in four main areas. These are prevention, protection, prosecution, and cooperation. Due to the wide range of combating efforts, support of all public institutions and organizations as well as NGOs, specific professional groups, and international organizations in the private sector is essential.

¹ Human trafficking legislation in Turkey are as follows:

Constitution of the Turkish Republic

- Article 17 Immunity, material and moral integrity of the person
- Article 18 Prohibition of forced labor
- Article 19 Freedom and Security of People
- Article 20 Privacy of private life
- Article 50 Right to rest

Laws

- Turkish Penal Code (Article 80)
- Law on Foreigners and International Protection (Article 48-49, Article 55)
- International Labor Law (Article 16)
- Law on Fees (Article 88)
- Turkish Citizenship Law (Article 16)

Regulations

- Implementing Regulation of the Law on Work Permits of Foreigners (Article 7)
- Road Transport Regulation (Article 82)
- Implementing Regulation of Turkish Citizenship Law (Article 72)
- Regulation on Combating Human Trafficking and Protection of Victims

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In order to ensure coordination between all institutions and organizations working toward combating human trafficking, Turkey established a National Task Force for Combating Trafficking in Human Beings in October 2002 under the leadership of the Ministry of Foreign Affairs. The Task Force brought together line ministries, law enforcement agencies, relevant public institutions, civil society organizations, and representatives of international organizations in Turkey. As part of its work, the Task Force reviewed developments and drafted forward-looking guidelines at its periodic meetings. As a result of these efforts, the National Action Plan on Combating Trafficking in Human Beings entered into force. The Task Force held its 20th and final meeting in December 2014.

Subsequently, with the adoption of Law No. 6458 on Foreigners and International Protection, the Directorate General of Migration Management (DGMM) became the institution responsible for coordinating other institutions in the combat against human trafficking. The mandates and responsibilities of the National Task Force against Human Trafficking were taken over by the Coordination Commission on Combating Human Trafficking. The Commission, which held its first meeting on 1 March 2017, is chaired by the Deputy Minister of the Interior. As part of its work, the Commission makes policy recommendations based on country-specific assessments. Training the staff of relevant institutions, enhancing awareness-raising activities, and incorporating human trafficking into college curriculums are some of the primary focuses of the Commission. Representatives from NGOs, international organizations, and municipalities are also invited to the Commission’s meetings.

Prevention

In the context of human trafficking, prevention efforts include raising awareness among occupational groups that are likely to encounter victims of human trafficking, and taking measures to reduce the demand for trafficking. All institutional resources must be mobilized for a coordinated effort toward prevention. One example is DGMM’s collaboration with the Ministry of Family, Labor and Social Services to identify and protect victims who are Turkish citizens.

Turkey implements increasingly effective measures by ensuring cooperation between the public and private sectors. In order to increase efficiency in the combat against human

trafficking, trainings are organized for public staff who work in the field of prevention, protection, investigation, and prosecution. As a result, 3,001 public servants participated in human trafficking trainings in 2019. In addition, 297 individuals including students, civil society members, and private sector employees received awareness-raising trainings. Moreover, a documentary on human trafficking and two public spotlight videos about sexual and child exploitation were created and broadcasted on national channels in order to raise awareness among the public. Written materials were distributed to relevant organizations, NGOs, and public institutions as well.

Protection

Work and procedures to be carried out in the field of protection begin with defining and identifying victims. The identification process is the most important part of protection efforts. In Turkey, DGMM is the authorized agency for identifying victims of trafficking. According to the provisions of the Regulation on Combating Human Trafficking and Protection of Victims, individuals who are strongly suspected to be, or who may become, victims of human trafficking are defined as “victims” through administrative action. Immediate action is to be taken in these cases, even if investigation or prosecution proceedings have not been concluded yet.

Identification procedures are carried out by the provincial directorates of migration managements, regardless of whether the individual in question is a Turkish citizen or not. These procedures are reported immediately to the relevant law enforcement units and public prosecutors. In 2019, approximately 4,500 potential victims were interviewed, of which 215 were identified as victims of human trafficking. The distribution of the identified victims in the first five nationalities was as follows: Uzbekistan (44), Syria (37), Kyrgyzstan (32), Morocco (28), and Afghanistan (14).

Three institutions play an active role in the protection of identified victims of trafficking. The duties of these institutions were determined within the framework of the Regulation on Combating Human Trafficking and Protection of Victims. According to this regulation, while identified victims with foreign citizenship are transferred to shelters run by the DGMM, Turkish citizens and child victims are protected by the Ministry of Family, Labor and Social Services. The legal rights that the victim can benefit from during the prosecution process are provided under the auspices of the Ministry of Justice.

Victims whose identification procedures are completed are immediately transferred to shelters where safe accommodation is provided. The shelters are managed by the provincial directorate of migration management where they are located. The principle of confidentiality is adhered for the safety and security of the accommodated. Currently, there are three shelters allocated for foreign victims, which include child-friendly areas as

well. One shelter is in Ankara, has a capacity of 30 people, and accommodates female victims. The other one is in Kırıkkale, has a capacity of 12 people, and accommodates male victims. As for the third one, it is in Aydın and is currently being refurbished.

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Victim support services that are provided free of charge at the shelters are as follows:

- In-kind and cash assistance is provided to victims.
- Accompanying children are enrolled in schools proper to their age and education level.
- As part of the Accelerated Vaccination Program, all vaccinations of children staying in shelters are monitored.
- Support from psychiatry clinics is provided for victims under severe trauma.
- Victims with infectious diseases are treated through isolation measures.
- Regular trainings in basic health care, first aid, and sexual health in cooperation with relevant institutions are provided.
- Access to legal aid and training programs on migration law is encouraged.
- Participation in various vocational courses is supported.
- Social activities such as movies, theater, picnics, and birthday celebrations are regularly planned.
- Support services for social integration is provided.

Voluntary and safe return is another important aspect of the protection efforts. Among the provisions of the Regulation on Combating Human Trafficking and Protection of Victims, there are also ones that regulate voluntary and safe returns. With the coordination of the DGMM, the victim can be sent back to their country or a third country within the scope of the voluntary and safe return program. The victim's departure process from Turkey is completed by checking the available documentation without taking the victim to the passport control point. Thereby, the victim is then taken directly to board their transportation. The authorities in the victim's home country are informed of the victim's return date and their case. This is done with the informed consent of the victim.

Voluntary and safe return programs are also implemented in cooperation with the IOM. Within the scope of this program, all travel expenses of the victim are covered.

To ensure a safe departure from Turkey, airport transfers, escort services, and transportation to the victim's place of residence are provided. The program provides cash and/or in-kind assistance to the victim to readapt to their country as well.

Prosecution and Cooperation

Prosecution constitutes the most important pillar in the fight against human trafficking. The trafficking offense is stipulated in Article 80 of the Turkish Penal Code. The criminal sanction for human trafficking offenses is 8 to 12 years of imprisonment and up to 10,000 days of judicial fines. High penal courts are responsible for the prosecution of this crime. Human trafficking in Turkey is prosecuted *ex officio*, and its penalty is one of the heaviest in the world.

Turkey's fight against human trafficking is conducted on both national and international levels. Internationally, special attention is paid to efforts under the Palermo Protocol and the Council of Europe Convention on Action against Human Trafficking. Nationally, coordination is carried out between judicial authorities during the investigation and prosecution of cases, and between public institutions, agencies, and NGOs that provide support for the protection of victims.

While the coordination of national action in combating human trafficking and protecting victims is carried out by the DGMM, international efforts are carried out with the Ministry of Foreign Affairs. Turkey has so far established five cooperation agreements with Belarus, Georgia, Kyrgyzstan, Moldova, and Ukraine. Turkey has also signed security cooperation agreements with more than 100 countries. All of these agreements include provisions for establishing partnerships in efforts against illegal migration and human trafficking.

Notification mechanisms are another important aspect of cooperation affairs. An important indicator of the cooperation between the state and citizens/foreigners are the notifications made to call centers. "Alo 157", which was established in May 2005 as an emergency call line to help victims of human trafficking, began operating under the name of Foreigners Communication Center (YIMER 157) on 20 August 2015 after it was taken over by the DGMM. YIMER 157 is still active today; it continues to receive calls from potential victims of trafficking, which are reported to law enforcement agencies. The phone line, which provided services in four languages (Turkish, Arabic, English, and Russian) in its early days, provides 24/7 uninterrupted service in seven languages (Turkish, German, Arabic, Persian, English, Pashto, and Russian) as of 1 January 2020.

Conclusion

Turkey takes the necessary measures to combat human trafficking through legal and administrative arrangements around the country. However, it is an undeniable fact that despite all the training and awareness-raising activities carried out in the field of prevention, further progress is needed. In terms of cooperation, the most important problem is the reluctance of civil society toward working in this area, particularly due to security concerns. However, the support of civil society is essential to efficiently combat trafficking in human beings. It should be emphasized that the contribution of NGOs and municipalities to victim support services is very valuable. We care about the support of the NGOs and municipalities in Izmir and Istanbul, especially in the operation of shelters.

It should also be noted that foreigners are not the only ones who are susceptible to trafficking activities; citizens of one's country can also become victims of this crime. Although there are a number of Turkish citizens who have been subjected to human trafficking, it is far less compared to the number of foreign victims identified in Turkey. The Turkish citizens identified are mainly victims of cultural practices such as underage marriage.

The combat against human trafficking in Turkey is considered a "rights-based" humanitarian and moral issue, and actions are prioritized accordingly. Combating this crime cannot be achieved with solely the efforts of individuals, some institutions, or some nations; it is an issue that every person, every institution, and every nation must work to eliminate.