

Trafficking of Women for Sexual Exploitation in Europe: Prosecution, trials and their impact

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Abstract

The importance of criminal proceedings against traffickers in the fight against human trafficking is clear. However, this paper illustrates that investigations, prosecutions and trials are often extremely long with mixed influences on the victims themselves. The study draws on fieldwork conducted in five European countries: Albania, Bosnia Herzegovina, Bulgaria, Serbia and the Netherlands. A total of 40 interviews were conducted—with 7 trafficked persons and 33 service providers who are in direct contact with victims. Based on these interviews, some general themes were identified for analysis: (1) length of the criminal justice process, (2) secondary victimisation, (3) need for specialist training and interviewing skills for all individuals in contact with trafficked persons, (4) information and trust, (5) protection from intimidation, (6) not just conviction but financial compensation, and finally, (7) the label ‘victim’ and the wish to testify. Each theme is discussed in detail.

Keywords: sexual exploitation, criminal trials, compensation, Balkans

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Trata de mujeres para explotación sexual en Europa: procesamiento, juicios e impacto.

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Resumen

La importancia de los procesamientos criminales contra los tratantes en la lucha contra la trata de personas es clara. Sin embargo, este artículo demuestra que las investigaciones, los procesamientos y los juicios a menudo son extremadamente largos con un impacto diverso en las propias víctimas. El estudio se basa en trabajos de campo que se han llevado a cabo en cinco países europeos: Albania, Bosnia Herzegovina, Bulgaria, Serbia y los Países Bajos. Se han realizado un total de 40 entrevistas (7 con personas objeto de trata y 33 con proveedores de servicios que están en contacto directo con víctimas). En base a estas entrevistas, se han identificado algunos temas generales para el análisis: (1) duración del proceso criminal, (2) victimización secundaria, (3) la necesidad de formación especializada dirigida a quienes están en contacto con personas objeto de trata y el desarrollo de sus habilidades para la realización de entrevistas, (4) información y confianza, (5) protección contra la intimidación, (6) no sólo condena sino también recompensa económica y, por último, (7) la etiqueta de “víctima” y el deseo de testificar. En este artículo cada tema es discutido en detalle.

Palabras clave: explotación sexual, procesos penales, recompensa y Balcanes.

Introduction

Often, according to the law it's possible, but in practice it's impossible. —Police official, Serbia¹

¹ Interview, Police official, Belgrade, 30 October 2014.

The introduction of anti-trafficking legislation at international and national levels has been heralded by academics, politicians, lawmakers and practitioners alike as a major step forward in the fight against human trafficking. In fact, the definition of human trafficking, as presented in the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (from here on the Trafficking Protocol), is by itself already a major step forward in the fight against human trafficking. From 2000 when the Protocol was introduced, until the present day, legislation from the international level, using the definition as a starting point, has, in many countries, slowly trickled down to the national level and has thus given to people on the ground the tools to battle this phenomenon.

While an undeniable step forward, much remains to be done. In an attempt to evaluate the effectiveness of criminal justice responses to trafficking in the US, Farrell et al.,² gathered data from 140 cases of human trafficking in 12 US counties, and conducted interviews with individuals from law enforcement, prosecutorial bodies and service providers. They concluded that failures of state and federal authorities in the US to effectively prosecute trafficking cases is due to 'legal, institutional, and attitudinal challenges' when using anti-trafficking laws.³ Spohn places legislative reforms in regard to human trafficking in the same line as reforms that were introduced to improve prosecution and conviction rates in areas of sexual assault and domestic violence cases. These latter failed, as great emphasis is placed on the testimony of a 'genuine' victim, who is beyond any moral reproach as in human trafficking cases.⁴ Goodey looks at prosecution of trafficking cases in the European Union and notes inadequate witness protection programmes as a legislative limitation.⁵ Goodey goes further to recommend that traffickers should be prosecuted under legislation other than that specifically introduced for trafficking, for instance, for charges such as money laundering. Such prosecutions will also lessen the burden placed on the victim throughout these processes.

Thus, the following questions arise: what are some of the issues that come up when implementing human trafficking legislation in practice? What can we learn from the experience of the professionals in the field, and trafficked persons themselves? Finally, and most importantly, what can be done to increase the benefits of such laws for the victims, or at least to make sure that they are not harmed by the implementation? This paper will answer these questions, in the European context, by focussing on Albania, Bosnia Herzegovina, Bulgaria, Serbia and the Netherlands. The focus of this paper is on female trafficking for sexual exploitation as one of the most prevalent and severe types of trafficking in the noted countries.

Methodology

For the purpose of this paper, a selection of European countries was made on the basis of the progress they have made in introducing anti-trafficking legislation, as well as the prevalence of the issue of trafficking in the same locations. Countries from Eastern and Southeastern Europe (Albania, Bosnia Herzegovina, Bulgaria, Serbia) as well as Western Europe (the Netherlands) were selected. The countries chosen for the study are, with the exception of the Netherlands, principally countries of origin of victims. There were several reasons behind this aspect of the selection process. First, it is in countries of origin that victims and service providers are often most available for interview. Although trafficking cases may be identified in countries of destination, the trafficked person may often want to return to the country of origin immediately after identification. Additionally, the trafficker may also return to the country of origin, which may be his/her country of origin as well. Second, prosecutions—not least for internal trafficking—do take place in countries of origin. And third, as noted above, research to date has generally focussed on countries of destination, and thus, an overview of the same processes in countries of origin seems to be lacking.

The main part of this paper focusses on the issues that arise when speaking to professionals in direct contact with victims, as well as those most intimately affected—the trafficked persons themselves. For this purpose, seven interviews with trafficked persons were conducted. Additionally, 33 interviews were conducted with service providers from the target countries (six from the Netherlands, nine from Albania, five from Bosnia Herzegovina, five from Bulgaria and eight from Serbia). These included programme managers, social workers, psychologists, psychotherapists, police officials, lawyers, directors of anti-trafficking NGOs, shelter coordinators and crisis hotline operators. Data was gathered through semi-structured interviews with follow up probes. Victims were asked if they

² A Farrell, C Owens and J McDevitt, 'New Laws but Few Cases: Understanding the challenges to the investigation and prosecution of human trafficking cases', *Crime Law and Social Change*, vol. 61, 2014, p. 139. See also this issue A Farrell, M J DeLateur, C Owens and S Fahy, 'The Prosecution of State-Level Human Trafficking Cases in the United States', *Anti-Trafficking Review*, issue 6, 2016, pp. 48–70, with analysis which estimates case factors that predict prosecutors' decisions to pursue criminal charges.

³ Farrell et al., 'New Laws but Few Cases: Understanding the challenges to the investigation and prosecution of human trafficking cases', p. 161.

⁴ C Spohn, 'The Non-prosecution of Human Trafficking Cases: An illustration of the challenges of implementing legal reforms', *Crime Law and Social Change*, vol. 61, 2014, p. 175.

⁵ J Goodey, 'Sex Trafficking in Women from Central and East European Countries: Promoting a victim-centered and woman-centered approach to criminal justice intervention', *Feminist Review*, no. 76, 2004, p. 6.

have participated in the criminal proceedings against their trafficker, and what that meant for them. Victims were also asked about their life prior to the trafficking experience. They were asked to talk about the trafficking experience if they so wished, and finally, about their current situation. In regard to their current situation, victim respondents were asked about their economic standing, physical and psychological well-being as well as social life. Service providers were asked about their contact with victims, identification and needs from the initial period of communication until their last communication with victims, as well as what they consider successful and not so successful cases of recovery and reintegration. Within this process, service providers were asked for their view on the impact of criminal proceedings on the victims. Service providers were also asked about their and others' attitudes towards sex work and prostitution, as well as their personal feelings towards their job. All interviewees were asked if they would like to give additional comments on issues not mentioned or touched upon throughout the interview, but related to the topics of discussion. Conversations lasted from thirty minutes to two hours, and were held at offices, cafes or private homes depending on the wishes of the interviewee. The interview protocols were reviewed and approved by the Ethics Committee of the Faculty of Psychology of Maastricht University. Respondents did not receive any payment for the granted interviews.

The analysis of the interviews has brought to the surface certain themes for analysis: (1) length of criminal justice process, (2) secondary victimisation, (3) specialist training and interviewing skills, (4) information and trust, (5) protection from intimidation, (6) not just conviction but financial compensation, and finally, (7) the label 'victim' and the wish to testify. These are discussed in detail below. They are issues related to criminal proceedings that, if addressed appropriately, can contribute towards the better recovery and reintegration of trafficking victims. Trafficking for the purpose of sexual exploitation is among the most severe types of trafficking, as well as a form of trafficking the impact of which service providers are most familiar with and as such has been chosen as the main focus of this paper. As trafficking for the purpose of sexual exploitation predominantly affects women and girls, female victims of trafficking for sexual exploitation are the main target group of this research. Although men are also victims of trafficking for sexual exploitation, there can be significant gender based differences in experiences related to prosecution of the trafficker. Thus, focus on male victims is outside of the scope of this paper.

The Practice of the Law: The stories of trafficked women and service providers

Trafficked persons are the primary source of information when it comes to understanding the impact of criminal proceedings and of prosecution of traffickers on the identified victims themselves. Additionally, service providers that work with trafficked persons, such as lawyers, social workers, psychologists, psychiatrists, programme managers, crisis hotline operators, leaders of anti-trafficking NGOs, shelter coordinators as well as police officials, often have extensive experience and knowledge from which many lessons can be learnt. Professionals in the field are also a valuable source of recommendations: of what to do, what not to do, what works and what does not. Additionally, as the stories of trafficked persons contain many characteristics that are indicative of issues raised by practitioners in the field, each thematic section will begin with the re-telling of the personal experiences of the victims interviewed for this study.

Length of the Criminal Justice Process

Those trials were...come and go every time the government changed, the chief of the police was changed...We got really frustrated...ten years following the court...Tension ...The psychological tension was big...Such a psychological pressure. The guy, after ten years after changes of government and so on, he got the decision of court for seven years in prison, but it was never served. —Trafficked person, Albania⁶

Throughout the interviews with service providers from the Balkan countries, it was often mentioned that criminal proceedings against traffickers can last up to ten years. Various explanations for such a drawn-out timeframe were given, such as change of governments, change of judges and change of court. In certain cases, so much time has elapsed between the criminal and the civil procedure, through which victims ask for financial compensation, that, due to the short sentences imposed on traffickers (recruiters and exploiters, which in certain cases are the same person), the perpetrator is already out of jail and fails to appear for the civil procedure. It should also be noted that during the civil procedure for compensation (a procedure that must be initiated and funded by the victim), the burden of proof is on the victim, not the defendant. And civil proceedings—which effectively require everything to be done over again—may last just as long as the criminal procedure.

Although interviewees from the Netherlands also note that criminal investigations as well as criminal proceedings can last a long time, there is one stark difference between that country and the others studied in terms of the impact

⁶ Interview, Trafficked person, Albania, 29 November 2013.

of such prolongation on the well-being of the victim: At the end of a trial in the Netherlands that results in conviction, victims will most likely be financially compensated as part of that process. In addition, foreign victims residing in the Netherlands for the duration of a trial that lasts beyond five years are entitled to request Dutch citizenship and thus are not compelled to return to their country of origin unless they desire to do so.

Secondary Victimization

I was a bit nervous, when they called me to the police to talk the first time. Whenever I see there is something from the police, I am afraid. I know that I shouldn't be afraid. I said, I'm afraid, I don't know why, maybe it's my habit...— Trafficked person, Bosnia Herzegovina⁷

Giving one detailed statement of the trafficking experience is a severely traumatic event for a trafficking victim. Unfortunately, it often happens that multiple statements must be provided throughout a long time period, each going into great detail.

A social worker from Serbia describes the atmosphere before a victim of trafficking has to testify in court:

We always try to go with them, to be their support, in case it's necessary, even if the psychologist prepares them for the testimony. Because they often feel a big fear, and are very upset, especially before the testimony, and it's important to be there for them, and to explain to them what the trial means, and what it may bring for them. Because of course there have been situations when they wanted to exit from all of that, to retreat, there are also cases when the trial has been postponed, because of the inability of the victim to face, not only the trafficker but to say what happened, in public, because of the big fear they feel. —Social worker, Serbia⁸

A psychologist, also from Serbia, notes the following about the criminal process:

This is very traumatic for women, because they have to again and again appear at the trial, to give statements, to meet the perpetrator. And that makes the recovery hard, and it brings back some of the traumatic experiences that she had, while she was trafficked. So, in that period, we have the most intensive communication with the women. After the end of the trial, then slowly, they also put a 'period' at the end of the experience. —Psychologist, Serbia⁹

This situation of telling and re-telling the trafficking experience in such detail is particularly troubling when taking into consideration that one of the ways in which women manage to move forward is through leaving the past behind. That aspect is captured well in the words of another psychologist:

When they come to the shelter, they say 'I want to change, and not mention again what has happened in the past.' —Social worker, Albania¹⁰

In fact, it is the practice of shelter staff interviewed throughout the countries studied to not ask anything about the past, and only work with what the women themselves decide to share. Victim testimonies during trials, in often intimidating and sometimes hostile court environments, can hinder the recovery and reintegration process of victims. A more friendly environment may be one in which the prosecutor is more familiar with the victim.

Some of the interviewed service providers mentioned the possibility of using video to provide testimony. However, it is also noted that even when this is available, it does not make a significant difference on the mental well-being of the victim.

A Serbian police official interviewed for this paper emphasised that victim testimony was not their primary concern, but rather victim protection was:

We identify victims of trafficking independently of the acceptance to participate in criminal proceedings. We don't care about that, we don't care, if a victim is participating in trial, that is relevant to the prosecution. We want to protect the human rights of the victims of trafficking, and it's not important if that person has accepted to testify in criminal proceedings. — Police official, Serbia¹¹

A Dutch police official noted that there are different ways in which an investigation may be started and that not all involve an immediate statement from the victim.¹² When the investigation is initiated following a direct complaint by

⁷ Interview, Trafficked person, Bosnia Herzegovina, 1 October 2015.

⁸ Interview, Social worker, Belgrade, 10 October 2014.

⁹ Interview, Psychologist, Belgrade, 22 October 2014.

¹⁰ Interview, Social worker, Elbasan, 27 November 2013.

¹¹ Interview, Police official, Belgrade, 30 October 2014.

the victim, which may at some point translate into a testimony given in court, the police first check if the person is indeed a victim of human trafficking. If it is a case of human trafficking, the victim is given a ‘reflection period’ of up to three months, by which time she decides if she wants to press charges and testify against the traffickers.

In some instances, progression of the case may not require the victim to testify in court. Rather, the victim is invited to provide a ‘witness statement’ to the police or the court. According to the Dutch police interviewee, this is often ‘less [hard] for the victim’. However, although the case may be initiated based on a ‘witness statement’, this may not be sufficient and the victim may still be invited by the judge to give a testimony in court.

There are also situations in the Netherlands where the investigation is initiated on the basis of an anonymous tip or information that is gathered through another investigation. In that regard an interviewee noted: ‘The legal system in Holland makes it possible to control the prostitution business, both legal and illegal. These kinds of controls also provide information with which you can start an investigation.’

Victim testimony must, in any case, be supplemented by additional evidence. Primarily, according to a police official, the statement of the victim is always checked, to make sure it is truthful. In cases where victims arrive in the Netherlands by plane, passenger lists are checked. Internet, social media and cell phones are also checked for locations mentioned in the statement. Other persons who may be able to confirm the statement or investigation information are identified. Finally, as stated by the police official ‘we follow the money’. Calculation of the victim’s costs and pay benefits are made and double checked against administration documents in brothels. All additional evidence is important, and in cases where it is lacking, a decision often comes down to the statement of the victim against the statement of the suspect.

A Dutch lawyer¹³ and the police official quoted above,¹⁴ both emphasised that there are cases when the police do not want to ask the victim to testify at all. According to the police official:

Sometimes we see a victim who is so mentally unstable that we think her statement will not stand during investigation/trial. Sometimes because she is emotionally harmed but sometimes because of her mental capacities. We also evaluate these questions together with the social workers and psychiatrist if a statement will cause damage to her treatment/recovery. If necessary we will drop the case.

However, an exception may be made:

if there are more victims harmed or in danger by the same group/suspect...these are hard decisions as you will understand...sometimes it is a tactical decision: if we think a statement will reduce the chances of successful prosecution because a defense lawyer will be likely to cause doubt in a judge during interrogation.

Specialist Training and Interviewing Skills

They (the police) told me, you didn’t do anything bad. These people did something bad, they are bad, don’t go with them again. When I really saw what they did, I was sick, I wanted to hang myself, God saved me....I’m not afraid anymore. — Trafficked person, Bosnia Herzegovina¹⁵

The initial contacts with the victim after identification are crucial. It is in these times of fear and low trust that those in touch with the victim must take special care to assure victims that they are not to be blamed for what happened, that they are the ones whose rights have been violated.

Law enforcement officials interviewed for this study placed great emphasis on the need for specialist education and training of police, prosecutors and judges. A Dutch police official pointed out:

You need, to do that part of the job, you need extra certification, extra diploma. And in Holland, this training is 256 hours of study for the detectives, and within this course there are three exams, and one third of all the participants fail the exams. So, we are trying to raise quality in investigation of human trafficking. — Police official, Netherlands¹⁶

A police official from Serbia noted the following:

¹² Interview, Police official, Amsterdam, 4 November 2013.

¹³ Interview, Lawyer, Amsterdam, 14 March 2014.

¹⁴ Interview, Police official, Amsterdam, 4 November 2013.

¹⁵ Interview, Trafficked person, Bosnia Herzegovina, 1 October 2015.

¹⁶ Interview, Police official, Amsterdam, 4 November 2013.

We in Serbia have a specialized police, working with human trafficking, sensitized about human trafficking issues...in 27 prosecutors offices, there are 27 contact points who have gone through the education. They are appointed by the state prosecutor, and are responsible about issues of human trafficking. Those prosecutors, have gone through three sessions of education. —Police official, Serbia¹⁷

However, not all professionals who come in contact with victims of trafficking have received such training. The head of a crisis centre in Sofia stated:

It's a huge difference, if the police official says, leave her, she is a whore, it's another thing if the police official treats them as victims. —Head of crisis centre, Sofia, Bulgaria¹⁸

A shelter coordinator from Albania pointed out that judges and prosecutors sometimes treat victims of trafficking as any other person who comes into their courtroom:

The judges and court are, they say that they are independent. So they are a little bit cold about the victims. —Shelter coordinator, Albania¹⁹

According to the shelter coordinator, a possible reason for this behaviour could be persistent misunderstanding about what trafficking is, as well as what the victims have gone through. Thus, prosecutors are sometimes more sensitive toward victims, precisely because they have had contact with them, while judges have not.

Finally, examples were provided of professionals being abusive to victims. A case manager from Belgrade expressed the view that everything that happens in the courts 'is a demonstration of power'.²⁰ According to the same person, there have been cases of judges who, when entering the courtroom, greet the trafficker who is on trial, and say, 'Hey, X (name of trafficker), how are you?' Another judge, asked a victim of trafficking how much money they took when they migrated for work abroad (and were subsequently trafficked). Upon hearing the answer of 50 euro, the judge stated, 'Ha, I don't even go to the market with only 50 euro!'²¹

Information and Trust

He is still free at the moment. I just came back now, in September, from Spain. He was in Bulgaria in September. He was renewing his ID. When they checked the three names that he is using, it came out on the computer that with one of those names, he had applied for renewal of his ID. How did he pass the borders? I don't know. I know he was here in September, then I don't know. I don't know how they cannot find him. How did he enter Bulgaria? How could he pass the borders? He could have passed through Romania, Serbia, Greece, but how could he enter Bulgaria again? I cannot explain that. And how could he go to the police to renew his ID? I don't have any hope that he will be captured. Especially here in Bulgaria. I don't have one ounce of trust in the police. —Trafficked person, Bulgaria²²

Trust in the professionals with whom they interact, as well as trust in the system itself are crucial factors that determine if the participation in the criminal process has a positive impact on the recovery of the victim.

Respondents noted that it is essential that victims receive information about their rights and obligations, as well as progress of their case, throughout the criminal proceedings.²³ Too often victims do not know what will happen next; are fearful of testifying; and are stressed by the suspense that a case brings. A psychologist notes:

Fear of the suspense is big. So we try to explain, which are the institutions that are included in the process, who cares about them. We explain that we, as the shelter, as an institution, as well as the police and other institutions, we all care about them. They gain some courage. And when these people contact them, when they visit and tell them something, that gives them courage. —Psychologist, Bosnia Herzegovina²⁴

Keeping them informed is the only way to keep fears in check. A case worker stated:

The victims don't understand. They think that in many cases they are the ones being prosecuted, because of the uncomfortable situation. They have already given a statement to the centre for protection. They have already given a statement to the investigative court. They don't

¹⁷ Interview, Police official, Belgrade, 30 October 2014.

¹⁸ Interview, Head of crisis centre, Sofia, 13 October 2015.

¹⁹ Interview, Shelter coordinator, 23 October 2015.

²⁰ Interview, Case worker, Belgrade, 2 November 2015.

²¹ Interview, Case worker, Belgrade, 2 November 2015.

²² Interview, Trafficked person, Bulgaria, 15 October 2015.

²³ Interview, Lawyer, Vlora, 23 October 2015.

²⁴ Interview, Psychologist, Zenica, 1 October 2015.

understand why they have to testify again. You have to explain to them why it's so complicated and hard. And then, they understand that it's them prosecuting the person. But it's not them, it's the state, and it's not their responsibility, but that of the state.' —Case worker, Serbia²⁵

Another challenge for professionals throughout the prosecution procedure is gaining the trust of the victim. Such trust is often only secured through transparency and action. According to a lawyer from Vlora, Albania:

*They create this trust, because we inform them continuously, so they see the progress that is being made. Being informed continuously, so they start to build this trust with us. And the link that we make with the police or with the prosecution, they are present and they hear with their own ears, as we accompany them into these institutions.*²⁶ —Lawyer, Albania

A psychologist from Bulgaria notes the importance of the outcome of the criminal process to a victim's state of mind:

When there is the trial and conviction, they feel vindicated, like something that has been wrong with society has been made right. The idea of jail, is not so much about punishment, but re-education. So, when someone does go to jail, they feel vindicated. —Psychologist, Bulgaria²⁷

Prolongation of the criminal proceedings and failure to make an arrest and conviction of the trafficker are ways in which trust is lost and eroded. The very least to be done in these situations is once again to keep the victim informed:

Because of the slowness the victims lose the wish and willingness to testify. They don't have the hope that the traffickers will be punished. —Social worker, Bosnia Herzegovina²⁸

There are many questions that are always on their mind—how long will it last, will the traffickers stay in jail, for how long. When they hear that someone is convicted, then they believe in the state, they believe in the institutions, and the power of those institutions. When the police say that we will protect you, but the trafficker is not captured yet, then there is doubt in the power of the police. When they hear that the person is arrested, then it's a big encouragement. —Psychologist, Bosnia Herzegovina²⁹

Legal processes—they tend to be prolonged, and this influences the issue of the beneficiary's trust. Trust in the justice system, in these institutions. In some cases they regret having made this denunciation and having had trust in these institutions. In these cases we have even post-traumatic stress disorder...mainly because of the delays. —Psychologist, Albania³⁰

Protection from Intimidation

His family came, and they put pressure on her, offered her money in order to withdraw the report, but how can she withdraw the report, otherwise she could be punished by the law so you know, it was a real war.... We were obsessed. When somebody was coming and knocked at the door, policeman or the policeman of the periphery.... We were obsessed. That is why I said, let's move from here, because we will die.... And we are really calm here.... —Trafficked person, Albania³¹

Interviewees mentioned on numerous occasions that traffickers are not part of complex organised crime networks, but often individuals who act on their own or in small groups. It may be that the trafficker and his family live in the same city or village as the victim. In these situations, the victim should receive protection not only from actual physical danger but also from 'soft' methods of pressure that can be applied in these contexts.

Unfortunately, threats and pressure are not only aimed towards the victim, but also towards judges and prosecutors. According to a case worker who has often accompanied victims to court:

The trafficker has the main word. He threatens the judge, says, I know your wife, I know your son. He says, if the judge proposes to take away his assets, he will put his house on fire.... The courthouses are so small, everybody is cuddled together, the trafficker threatens the victim.... It's rare to say, oh, I wish every court process was like this. —Case worker, Serbia³²

²⁵ Interview, Case worker, Belgrade, 2 November 2015.

²⁶ Interview, Lawyer, Vlora, 23 October 2015.

²⁷ Interview, Psychologist, Pernik, 16 October 2015.

²⁸ Interview, Social worker, Zenica, 29 September 2015.

²⁹ Interview, Psychologist, Zenica, 1 October 2015.

³⁰ Interview, Psychologist, Vlora, 23 October 2015.

³¹ Interview, Trafficked person, Albania, 29 November 2013.

³² Interview, Case worker, Belgrade, 2 November 2015.

There is no information as to what impact, if any, such intimidation can have on the criminal justice process.

Not just Conviction, but Financial Compensation

The government is not being... is not taking the payback from the traffickers.... So she never received any penny. And there is another big gap here; the law, that in order to get some money back, she has to pay in advance 5% of this amount requested to the government.... Ok, I will get 20 million lek, that means 50 thousand dollars and I can pay 1%, 2%.... Maybe I am wrong with 5% but it is a percentage.... But how can I pay this percentage when I am just me? When I have felt in this kind of situation, you know. I am a victim. I don't have...otherwise I wouldn't ask. So how can I pay? This is the ridiculous part of it. —Trafficked person, Albania³³

Interviewees emphasised the importance of not only conviction of the perpetrator for crimes of trafficking, but also financial compensation for unpaid wages as well as personal trauma and suffering. As one interviewee explained, financial compensation is a ‘recognition that something happened to you, and that what happened was not ok’.³⁴

Very few cases of victims receiving financial compensation were uncovered in the Balkans. Reasons for this could vary: victims may not be aware of the possibility for financial compensation; victims may not have the resources to finance civil action; they may be psychologically unable to participate in criminal proceedings (in situations where prosecution is a prerequisite to action for remedies).

Do you think they even know what compensation is? They just say, I just want him to return my mobile, and my things, that he took from me. Overall, they don't want anything from him. —Case worker, Serbia³⁵

Often the State will refuse to use confiscated funds to compensate victims and there may be no alternative source of compensation such as a special fund. It was noted that another important change would be to tie the process for financial compensation to the criminal proceedings, instead of requiring a separate trial:

They didn't want to go through the process again, it was traumatic enough up to that point. It would have been useful if that process for compensation was also part of the criminal process, so they don't have to continue. When they have the information, ok, the trafficker is convicted, but now, for financial compensation I have to go further, they rarely want to go on. Even if they are severely poor. It would help if that procedure for the criminal act, also has a decision on compensation. —Psychologist, Serbia³⁶

The Netherlands provides an example of good practice on this point. Under recent legislative changes victims may be compensated by the state as part of the criminal proceedings against their exploiter. Thereafter, it is the state that attempts to recuperate the funds from confiscated assets of the trafficker.³⁷ Thus, with this new possibility, lawyers are tracking down old victims, now eligible for such compensations, to come and claim their money. Those working with victims have noted that financial guidance should be part of this package—so that victims can receive help on managing funds they receive as compensation.

The Label ‘Victim’ and the Wish to Testify

The police came to the house, asked her information; and she said, she has information, because she knows the people. Said ‘yes, I know’. And they asked her if she wants to ‘say information’. And she said, of course, I want to say. And I don't speak with anybody. I need to speak. Because I was sick. I was ‘banged’, I was hit. So, I need to speak. Because I was closed in the house. Very long time.... I go outside, because I cannot sit here. —Trafficked person, Netherlands³⁸

I lived through it. I want him to get what he deserves. For however much is the law, he should be in jail, not a day less not a day more. I want an effective judgment for him. But if he is sentenced here in Bulgaria, that will not be respected. —Trafficked person, Bulgaria³⁹

In all countries, there must generally be some identification of a person who has been trafficked as a ‘victim’ for them to be eligible to access protection and recovery and reintegration services. However, this is not always an easy and smooth process. As some interviewees mention, their clients may not always want to be identified as victims. In certain cases, it takes years for someone who has been coming to a service centre to finally admit that they are a victim of trafficking. Victim reluctance may be connected to their trafficking experience. For example, in cases

³³ Interview, Trafficked person, Albania, 29 November 2013.

³⁴ Interview, Social worker, Amsterdam, 28 March 2014.

³⁵ Interview, Case worker, Belgrade, 2 November 2015.

³⁶ Interview, Psychologist, Belgrade, 3 November 2015.

³⁷ Criminal Code of the Netherlands (Wetboek van Strafrecht), Section 36f, Subsection (6).

³⁸ Interview, Trafficked person, Netherlands. 3 August 2015.

³⁹ Interview, Trafficked person, Bulgaria, 15 October 2015.

where women had some knowledge of the situations they were entering, they may not want to be labelled as victims, and ‘saved’, but simply be provided with another job and better working conditions. Also, if the trafficker is a family member, they may not be willing to be labelled as ‘victims’ nor press charges, due to the emotional ties.

However, there are also cases where victims find it very important to be identified as such: to testify, to secure justice for themselves, and to prevent their exploiters from inflicting harm on anybody else.

We had that amazing person saying ‘now I will tell you, word by word how it happened. How he destroyed my life knowingly. Knowingly he eliminated me as a person. I will tell you everything, and then you see what you do with that information, and what kind of a decision you will take.’ That was... she showed such courage. The sentence was one of the longest sentences. She told them everything. She told them that she knows, that it’s not her fault, it’s not her fault the trial. She said, ‘what you do with this, it’s on you, don’t blame me, for how long the sentence will be’...because in Serbia, they don’t have any additional proof for the case, except for the testimony of the woman. They say, now it will be different, but I don’t see how. —Case worker, Serbia⁴⁰

She was a hero for me, the way she answered, nobody disturbed her, she was courageous, calm. The lawyer was provoking her, saying: you know Serbian, why do you want a translator? And she said: I have a right to answer in my mother tongue, do you maybe want to take it away? She was right next to the trafficker, and was answering...She wanted justice to be satisfied, to put them in jail for what they did wrong. And then, she had a little girl at home, and went away to make money for her, and they tried to abuse her. So, she didn’t want them to get away with that. —Psychologist, Serbia⁴¹

Conclusion

Testimonies of trafficked persons as well as of service providers who are in direct contact with them on a daily basis give valuable insight into the issues that arise throughout the prosecution process. Certainly criminal proceedings are not only of importance for the justice system, but have a direct influence on the recovery and reintegration of the victims themselves. But there are many problems. Trials usually last a long time and require victims to testify on numerous occasions. Each testimony is stressful for the victim and may present a possible secondary victimisation. Sharing information with the victim on progress or lack of progress in the case is crucial in order to build trust and ease their participation in criminal proceedings. Insensitivities on the part of criminal justice officials are not uncommon. Specialist training for criminal justice professionals is therefore crucial. Throughout proceedings, victims are often not only in possible physical danger but may experience verbal pressure not to testify from the traffickers or their family members. This must be recognised, and victims must receive the appropriate protection. Although financial compensation is often a legal possibility, it is a road rarely taken in certain countries. One reason for this may be the law itself, which, in Balkan countries, requires financial compensation to be pursued through a separate legal process that can only follow a conviction of the trafficker. Finally, this paper has found that there are cases when victims are not only willing but eager to testify, in order to gain justice for themselves as well as prevent those who have hurt them from hurting other women in similar situations. These findings point to the importance of valuing victim involvement in the criminal justice process for its own sake.

Recommendations

The following recommendations emerge from the information presented above. First, serious attempts should be made to shorten the time of investigation and collection of evidence, as well as to expedite trials. Criminal justice processes that last up to ten years are unacceptable. In order for this to occur, better knowledge of the phenomenon of trafficking by police, prosecutors and judges is crucial. This would make it possible that cases are not solely based on victim testimony but other supporting evidence as well, and quicken the procedure overall. The criminal justice system itself must also reform so as to make sure cases do not get ‘stuck’—for example when key officials such as the judge are moved on mid-stream. Given the impact on victims, consideration could be given to imposing a maximum timeframe, beyond which a criminal case of trafficking may not last. Finally, the criminal process should include measures for compensation or otherwise be tied to civil proceedings so as to expedite the payment of damages.

Second, measures should be put in place to minimise victim exposure in court. Ideally, victims should not be required to testify repeatedly and should be given options that protect them from further harm—such as, speaking,

⁴⁰ Interview, Case worker, Belgrade, 2 November 2015.

⁴¹ Interview, Psychologist, Belgrade, 2 November 2015.

writing, talking to a video camera, talking from a different room adjacent to the courtroom, etc. As far as possible, subsequent investigations and trials should use this material and not demand additional testimony. Corroborative evidence should be used as much as possible in trafficking trials to lessen the burden on the victim.

Third, victims should be kept informed of the progress of their case by their lawyers and case managers. The establishment of a relationship of trust between the victim and relevant criminal justice officials (investigators and prosecutors) is important. If necessary, they should meet with police officials in charge of collection of evidence, as well as prosecutors in charge of the case, so as to make them more familiar and hopefully build trust. Social workers, psychologists and lawyers who already know the victim well should always be present at these meetings for emotional support. In addition, at regular intervals the same service providers should request such meetings where the victim will be officially informed of progress in the case.

Fourth, it is crucial that every single person from the state system and the criminal justice system, and every service provider that may come in contact with a trafficked person has the proper training to handle such situations, and communicate with victims in a way that protects her best interests and prevents further trauma.

Fifth, protection of victims throughout the trial process should be tailored to the particular situation. For example, protection needs might change depending on whether the victim is in physical danger, or under psychological pressure, or both. Primarily, the trafficker and all family members should be prevented and restrained from speaking to the victim or the family of the victim, in all cases. In situations where there is danger to the life of the victim or her family, witness protection should always be possible, not only within the country of origin but also with the possibility of settling the victim anonymously abroad. In cases where the traffickers are not yet arrested, the victim should be regularly informed by the police of any progress in the case, including any information on the possible whereabouts of her alleged exploiter.

Sixth, conviction of the trafficker as well as financial compensation for the victim have strong significance for the recovery and reintegration of victims. As already noted, the Netherlands has made significant progress in this area by obligating the state to ensure compensation of the victim, regardless of whether or not the funds have been confiscated from the trafficker. Other countries should follow this lead. In practice, victims should be advised by their lawyers of the possibility of financial compensation, which would be more likely if ensured by the state, and not solely dependent on confiscated funds of the trafficker.

Finally, while acknowledging that victim status determination is usually essential to the provision of services and entitlements and indeed to commencement of legal action against traffickers, it is important to find ways so persons who have been trafficked are not further victimised by the 'trafficked person' label. Many victims find it difficult to identify as such, and they should be left to come to this term by themselves, in their own time, if they so desire. They should have the freedom to see themselves as 'victims' or 'survivors' or whichever label they prefer, if any at all. Irrespective of that choice, all should feel that the grave harm done to them is recognised, and that they are not to blame. Victims who wish to participate in the prosecution of their exploiters should be given every support possible throughout the process by their case manager, psychologist or lawyer. They can serve as an inspiration not only for other victims but also for the service providers who are with them every day, and are re-energised by the exhibition of such courage and strength from their beneficiaries.

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