

Administrative Attempts of Turkey against the Trafficking in Human Beings: A Chronological Evaluation

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Abstract: Turkey's administrative steps against human trafficking, which was started after 1997 were seriously accelerated by Justice and Development Party Government after 2002. The main reasons of this acceleration are the Government's legal and administrative plans in terms of full membership of the European Union and increasing awareness of international community for the human trafficking crime. In this regard, Turkey has prepared national action plans and established task forces. Despite their lack of functionality at the beginning, these elements have constituted the basis of plans formulated and units established within the framework of Law on Foreigners and International Protection. This study chronologically analysed the transformed elements of Turkey's administrative approach to the problem of trafficking in human beings and these elements' deficiencies. Within this context, this study covered some of the U.S. Department of States' annual human trafficking reports and EU's regular and progress reports related to Turkey in order to provide multi-dimensional perspective. In addition, to evaluate the further steps used by different sources, this study examined some of the practices of European Court of Human Rights.

Key words: Human Trafficking, Law on Foreigners and International Protection, Department of Protection of Victims of Human Trafficking

JEL Codes: K14, K33, K38, K42.

Türkiye'nin İnsan Ticaretine Karşı İdari Çabaları: Kronolojik Bir Değerlendirme

Öz: Türkiye'nin 1997'den sonra insan ticaretiyle ilgili olarak atmaya başladığı idari anlamdaki adımları özellikle 2002'de AK Parti Hükümetinin iktidara gelmesiyle ciddi manada ivme kazanmıştır. Bu ivmenin temel sebepleri başta hükümetin AB üyeliği bağlamındaki yasal ve idari dönüşüm planları ve daha sonrada uluslararası toplumun insan ticareti suçuna karşı geliştirmeye başladığı farkındalıktır. Bu doğrultuda, Türkiye ulusal eylem planları ve görev güçleri kurmuştur. Her ne kadar başta işlevsellik kazanamamaları da bu kurulan öğeler Yabancılar ve Uluslararası Koruma Kanunu kapsamında günümüzde insan kaçakçılığına karşı kurulan ve tasarlanan birimlerin temellerini oluşturmuştur. Bu çalışmada, Türkiye'nin insan kaçakçılığı suçuna karşı atmış olduğu idari adımları kronolojik olarak değerlendirilip akabinde bu adımların eksikliklerini analiz edilmiştir. Bu doğrultuda, çalışmaya çok yönlülük katabilmek için Birleşik Devletlerin yıllık insan kaçakçılığı raporları ve Avrupa Birliği'nin yıllık ilerleme raporlarından faydalanılmış olup daha sonra atılan adımları daha ileriye taşıyan adımları değerlendirmek için Avrupa İnsan Hakları Mahkemesi'nin çeşitli kararları incelenmiştir.

Anahtar Kelimeler: İnsan Ticareti, Yabancılar ve Uluslararası Koruma Kanunu, İnsan Ticareti Mağdurlarını Koruma Dairesi Başkanlığı

JEL Kodları: K14, K33, K38, K42.

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1. INTRODUCTION

Trafficking in human beings is a multi-purpose and multi-dimensional crime. It needs a comprehensive and multi-disciplinary approach that focuses on victims' rights rather than a one that identifies trafficking purposes or means defined by Article 3, paragraph (a) of the UNs' Protocol to Prevent, Suppress and Punish Trafficking in Persons defines Trafficking in Persons (UN, 2000). To produce effective solutions against the complex problems raised by human trafficking, states need to activate their all related bodies. For instance, to provide deterrence and to prosecute the perpetrators / those who aid and abet them, states need to use law-making bodies. In addition, to support legal regulations/policy tools, states need to promote policy tools/legal regulations. Administrative regulations defined as the mechanism that controls governmental power given to administrative branches that "gives legitimacy and authority to state actions" (Harrington and Carter, 2009; 27). In this regard, Kim describes the relationship between law and public policy as a 'hand in glove' one (Kim, 2014; 137).

Turkey's political aspirations for being a EU member are the main triggers of this transformation in the human trafficking agenda after 2002 under AKP Governments. In this regard, Turkey has taken further steps on various issues such as migrant smuggling, organized crime, and human trafficking. Despite these steps, EU Progress Reports continue to criticize Turkey because of its failures to enforce the enacted laws.

This study analyses Turkey's administrative responses starting from the establishment of the Illegal Migration Office in the Bureau for Foreigners, Borders, and Asylum in 1997 and the Unit for Combating Illegal Immigration in 2001 to today. Besides the evaluations related to Turkey's domestic efforts, this study highlights their reflections in the U.S. Department of States' Annual Trafficking in Persons Reports and the EU's regular and progress reports. Later parts of the study concentrate on more comprehensive administrative efforts and analyse their deficiencies as a victim-oriented anti-trafficking policy.

2. ADMINISTRATIVE RESPONSES OF TURKEY TO PRODUCE SOLUTION AGAINST HUMAN TRAFFICKING

Turkey had implemented programs such as a new anti-trafficking criminal article and further law enforcement efforts (including strengthening immigration laws), which were made within a relatively short period of time after its first anti-trafficking policy tools were put into practice. However, it is stressed that the government's progress had been slow in the past years,

particularly in the areas of prevention and protection. In addition to these evaluations, the TIP (Trafficking in Persons) report underlined that the government did not have a system for victim identification and protection (TIP Report, 2003:152). Further, the 2003 EU Report recognised the foundation of an inter-ministerial task force established in October 2002 (under the coordination of the Ministry of Foreign Affairs) as a positive step towards combating human trafficking (EU Regular Reports on Turkey's Progress towards Accession, 2003:9,36 and 60). These are the first administrative efforts of Turkey's anti-trafficking agenda.

2.1. National Coordinator Mechanism and Turkey

The National Referral Mechanism (NRM) is a governance tool that has been developed on the basis of existing best-practice models throughout Europe. The core components of the NRM include identification procedures for victims, and the elaboration and implementation of cooperation models between law enforcement agencies and civil society (OSCE/ODIHR, 2004:31).

The institutional framework of the National Referral Mechanism provides a forum for coordination and cooperation among relevant state authorities and non-governmental organisations (Kartusch vd.,2006:10). The main aims of the institutional framework are to coordinate anti-trafficking work on the national level, monitor the implementation of the national anti-trafficking strategy, and to review and adapt the national anti-trafficking strategy (OSCE/ODIHR, 2004:47).

Under the auspices of the Ministry of Foreign Affairs, a National Coordinator for international cooperation and national coordination has been appointed. The National Coordinator and National Task Force continuously shape and review their anti-trafficking strategies. They meet regularly in different circumstances, which may include bi-lateral meetings or ad hoc working groups, in order to examine acute topical issues (Kartusch et.al.,2006:10). The National Task Force is comprised of experts from various ministries and non-governmental organisations, which was established and convened for the first time in October 2002 (Turkish MFA).

The Head of the General Directorate for Consular Affairs (within the Turkish Ministry of Foreign Affairs) is appointed by the National Coordinator. Together with the Ministry's Department for Asylum and Migration, the National Coordinator organises the meetings of the National Task Force. The Turkish Ministry of the Interior plays a crucial role in coordinating operational issues with regard to identification, referral of victims, and investigation of

traffickers. The Turkish National Police and the Gendarmerie work closely together with non-governmental and international organisations.

2.2. National Task Force to Combat Trafficking in Human Beings

The National Task Force to Combat Trafficking in Human Beings is a multi-disciplinary and cross-sector forum, which monitors and reviews the implementation of anti-trafficking action in Turkey. It meets twice a year (Kartusch et.al.,2006:11). The main purposes of this group are to understand the contents of this multi-disciplinary and cross-sector crime, to find effective and preventative methods, and to monitor and review the implementation of anti-trafficking measures in Turkey (Turkish MFA). Despite the fact that the task force does not meet regularly, it prepared a National Action Plan on 3 March 2003. The action plan was approved by the Office of the Prime Minister in April 2003 (TIP Report, 2003:152). Despite the implementation related deficiencies of the task force's purposes, it has significant role as a being first trafficking related step from Turkey.

2.3. National Action Plan

The Action Plan consists of eleven points of action to prevent and combat trafficking in human beings.² Despite major changes, especially in the legislative field, the Action Plan was not amended until the Turkish National Action Plan of 2009. The 2015 TIP report emphasized this weakness and recommended that Turkey provided comprehensive law enforcement statistics to demonstrate such efforts against trafficking (TIP Report, 2015:341). It is important to note that the 2003 Action Plan has covered some important parts of the referral mechanism, such as shelters, training programs for law enforcement officials, and awareness rising. However, these efforts could not cover all the relevant referral mechanism tools because of the complex and ever-changing nature of the crime of human trafficking (Kartusch et.al.,2006:15).

It could be argued that such a plan, having no timeline or budget, has had little effect. The countries taking steps in this arena recently acted more effectively. For example, the Government of Turkmenistan launched its 'National Action Plan – Comprehensive Approach to Combat Human Trafficking' on 23 March 2016 (IOM, 2016: Hasanov, 2016). There are two significant points of this plan. First, it covers the strategic steps between 2016 and 2018. This

² These points are: shelters; safe return; a 'hotline'; citizenship; training projects; witness protection; work permits; cooperation with NGOs; monitoring, treatment and rehabilitation of victims; financial support; and public awareness campaigns.

time limitation makes the plan more realistic and achievable. Second, it emphasizes the collective efforts of the Turkmen ministries, departments, local bodies, and NGOs. Another recent example is Bangladesh, which has launched its ‘National Action Plan for Combating Human Trafficking 2015-17’. This plan also contains a timeline to make its aspirations more viable (BBC Monitoring South Asia, 2015). To solve the problem with a single plan is not a rational way to combat human trafficking. Turkey should have formulated an action plan in a systematic way. This action plan has shown that proposed aims such as shelters, safe return, a ‘hotline’, citizenship, and training projects require a suitable, organized, and priority-driven planning process, alongside a budget for further plan(s). In this regard, I argue that one of the main problems of Turkey’s approach is the implementation of its plans and projects against human trafficking.

2.4. Circular No. 74 and its Directory for Combating Trafficking in Human Beings

In 2006 the Ministry of the Interior distributed Circular no. 74 (which concerns measures against human trafficking), in order to raise awareness amongst public officials who work in central and provincial organizations. This circular mentioned the detection and protection of trafficked victims, their rehabilitation, social support processes, and the investigation and prosecution of trafficking crimes (Sever,et.al., 2012).

Circular 74 gives advice on detecting and identifying trafficked victims, especially with regards to trafficking in human beings for sexual exploitation which is the most prevalent mode of human trafficking in Turkey. To detect potential victims, it suggests that it is important to evaluate the presence of foreigners carefully. Investigation and prosecution processes should begin without the victims’ complaint, following the identification of potential victims. Law enforcement agencies also provide trafficked victims with one month of reflection time to obtain their testimony, in order to aid the prosecution process. The National Action Plan and this circular are signs of a comprehensive domestic strategy. Both can be considered as a first step by the Minister of Interior’s Directorate General for Migration Management and the Law of Foreigners and International Protection.³ In addition to these initiatives, the Turkish National Police (TNP) prepared a Directory to Combat Trafficking in Human Beings in 2006. This directory contains three sections that emphasize the rules to be followed by law enforcement

³ The Law of Foreigners and International Protection (Law no. 6458) entered into force on 11 April 2013

agencies. These are ‘Detecting the victim’, ‘Detailed investigation’, and ‘Communication with the victims’.

‘Detecting the victims’ addresses the specific clues that signify a potential victim, such as age, gender, or nationality. The main objective of observing these details is to provide a victim profile to aid in a successful detection. In addition, this section outlines the qualifications of the officials who should conduct interviews with potential victims. According to this, officials should have a detailed knowledge of human trafficking and know how to listen to – and show empathy with and respect towards – victims. Officials should also be familiar with the culture of a victims’ hometown, be able to appropriately analyse the information they obtain, and be patient, responsive, and good observers (Turkish National Police (a), 2006: 17-19).

The Directory stipulates the crucial questions for victims in order to identify them as actual victims of trafficking.⁴ The answers to these questions, it is hoped, will help officials to identify whether the person is a victim or not. In some cases, potential victims refrain from establishing communication with officials, in which case the Directory recommends that officials establish contact via NGOs. This is because, during the rehabilitation process offered by NGOs, victims may change their minds and choose to cooperate with law enforcement agencies (Turkish National Police (a), 2006: 19).

The section entitled ‘Communication with the victims’ draws attention and empathy to the possible psychological conditions of victims, and requires that the officials who conduct interviews should be sensitive and attentive to the victims’ psychological standing. Before an interview, the officer should inform the victim about their rights and attempt to instil them with confidence. The Directory lists ten basic principles,⁵ which have been drafted by psychology

⁴ How does the first contact between traffickers and a potential victim occur? How has the victim been brought to Turkey? What kind of job opportunity has been offered to the victim? Who paid the travel costs? Was the victim’s passport kept? Who had the victim met when they passed the border? How much time did the victim spend between their first arrival and being exploited? How has the trafficker forced the victim into the commercial sex industry/forced labour? Has the victim earned any money during this period? Is there any debt bondage contract established between the trafficker and the victim? How are the working conditions of the victim?

⁵ The officers should avoid any potential for harm to victims through the questioning; should evaluate risk; guide the victim; work with an experienced interpreter and investigation team; protect the victims’ identity and privacy; obtain the consent of the victim in all operations to be performed; provide respect for the self-evaluation of the victims; avoid traumatic questions; work with emergency services regarding any hazardous situations; and collect data to combat trafficked victims in the future.

experts on trauma and human behaviour, and by NGOs, in order to aid the officers assigned to identification (Sever, vd., 2012:47).

The Directory is one of the most important regulations in the fight against trafficking. Both the Circular and the Directory have developed a holistic approach to identify, protect, and support victims (both socially and psychologically). It is important to emphasize that both documents had humanitarian origins. In this regard, they were early examples of contemporary investigation, interrogation, and prosecution tools. The problem is with the implementation of these two tools. Even today, despite these ambitious aims, law enforcement officials still have problems, particularly in investigation and identification. For example, in contrast to the Directory's aims, it is almost impossible to find any official records which show training programs for law enforcement officials aimed at helping them understand the processes. Turkey still encounters problems related to the early stages of the process in respect of identification. In addition, law enforcement officials clearly have problems in communicating with the victims of trafficking.

2.5. National Action Plan for Enhancing Institutional Capacity against Trafficking in Human Beings

Trafficking in Human Beings action plan was prepared within the context of 'The Project of Strengthening Institutions in the Fight against Trafficking in Human Beings'. The Ministry of the Interior executed this project since January 2006, under the 2003 EU-Turkey Financial Assistance Programme (Kartusch et.al.,2006:15).

The National Action Plan for Enhancing Institutional Capacity was published on 18 June 2009. The plan formulated 'short term', 'medium term', and 'long term' plans for enhancing institutional capacity. In addition, the plan regulates the role of NGOs in psychological and social support processes for victims.

Like the 2003 Action Plan, the Turkish Ministry of the Interior has been the main organ for coordinating operational issues. The main aims of the action plan are to provide a map for complying with minimum standards for the elimination of trafficking, to enhance the capacity for inter-institutional cooperation, and to formulate anti-trafficking strategies (Turkish National Police (b), 2009).

Despite its comprehensive and victim-oriented approach, Turkey is still criticized for failing to fully comply with the minimum standards for the elimination of trafficking (TIP Report,

2015:340). In this regard, the 2014 EU Progress Report stressed that enhanced coordination was particularly necessary in the fight against human trafficking (European Commission, 2014: 67). In the course of Turkey's transformation process, there have been some serious responses to human trafficking. However, these efforts remain distant to the target. Today, in 2016, Turkey continues to be subjected to criticism for failing to achieve targets and to apply strategies that were implemented and prioritised almost a decade ago by the U.S. Trafficking reports and EU reports. I would argue that Turkey's action plans and anti-trafficking strategies have been largely implemented as an obvious consequence of Turkey's political aspirations. Turkey needs to concentrate on the violations of human rights committed in the course of human trafficking, if it is to not only realise its political aspirations (which mainly concern membership of the EU), but also achieve a serious reduction in the numbers of victims.

2.6. The Foreigners and International Protection Law

Turkey's Law on Foreigners and International Protection plays a significant role in combating human trafficking. It is an accumulative legal provision for all efforts against human trafficking. In this regard, we can say that Article 80 of the Turkish Criminal Law constitutes the normative frame. However, this law forms a systematic structure to regulate policies surrounding the victims of trafficking. From the victim-oriented viewpoint, this law fills the gaps in victim protection issues that cannot be rectified by the criminal law, criminal procedural law, or administrative efforts. In this regard, the main aim of the law in accordance with trafficking related duties is;

The Foreigners and International Protection Law makes some plans true to combatting trafficking in human beings. For instance, it evaluates victim protection as a focal point and establishes an institution in order to collect all duties in one hand. (Interview with Migration Expert, 2015).

Articles 48, 49, 55, and 108 of the Foreigners and International Protection Law play significant role in regulating victim protection provisions.⁶ On this point, Articles 48 and 49 show a devoted effort to protect victims and provide them with real recovery and reflection time. Under these articles, a residence permit is valid for thirty days. In cases where the victims' health or

⁶ Article 48 (Residence permits for victims of human trafficking); Article 49 (Renewal and cancelation of residence permits for victims of human trafficking); Article 55(d) (Exemption from removal decision); Article 108(c) duties of the Department of Protection of Victims of Human Trafficking

safety are at risk (or special circumstances are present), such residence permits may be renewed for a period of six months at a time (although the total duration of residence cannot exceed three years). Contrary to the EU Council Directive (2004/81/EC), the recovery and reflection period in the Foreigners and International Protection Law prioritizes victims' health and safety, rather than their cooperation with the competent authorities. Article 55 also adopts a humane approach, by protecting victims from the distress of removal decisions. It highlights that removal decisions shall not be issued to victims of human trafficking until the end of their recovery and reflection periods. It is important that the significance of recovery and reflection periods is considered by the law. However, the problem is the implementation of the law related to removal decisions, which are far from being victim-oriented. Instead of making a removal decision, the courts may implement a temporary or permanent resident permit or non-refoulement statute for the identified victims, in order to protect them from re-victimization, social and legal pressures in their home countries. In this respect, the European Court of Human Rights in *L.R. v. the United Kingdom* decided to strike the application out of its list of cases. In accordance with Article 37 (striking out applications) of the Convention, as it found that the applicant and her daughter had been granted refugee status in the United Kingdom and that there was no longer any risk that they would be removed to Albania (*ECtHR, L.R. v. the United Kingdom 2011- O.G.O. v. the United Kingdom 2014*).⁷ In the case of *D.H. v. Finland*, the Court struck the application out of its list of cases as it noted that the applicant had been granted a continuous residence permit in Finland and that he was no longer subject to an expulsion order. (*ECtHR D.H. v. Finland Application, 2011*).

The Law establishes the Department of Protection of Victims of Human Trafficking in article 108 (c), which consolidates all duties relating to the prevention of the crime and protection of the victims within a single organization.

In addition to purposes and duties listed under this article, the Director General took over the responsibility of the 157 Helpline from Ministry of Foreign Affairs. Furthermore, the Director General assembled the National Task Force to provide co-ordination among relevant institution in 2014. (Interview with Migration Expert, 2015).

⁷ *L.R. v. the United Kingdom Application no. 49113/09 (ECHR 14 June 2011) ; O.G.O. v. the United Kingdom Application no. 13950/12 (ECHR 18 February 2014)*. In this case, the Court again decided to strike the application out of its list of cases, in accordance with Article 37 (striking out applications) of the Convention, noting that the applicant was no longer at risk of being removed as she had been granted refugee status and an indefinite leave to remain in the United Kingdom. Moreover, the United Kingdom authorities had accepted that she had been a victim of trafficking.

According to the Article 108, the Department is responsible for carrying out activities and actions related to combating human trafficking and protecting victims of trafficking. This means that Turkey, finally, has established an institution to accumulate all duties in one place. This provides not only a greater operational control, but also an active institutional structure. In this respect, the 2015 EU Report highlights the importance of the Department and emphasizes its effectiveness with regard to regulatory and institutional matters (European Commission, 2015: 70). The Department also needs to implement projects related to combating human trafficking and protecting victims of trafficking. With regard to this duty, it is hard to maintain that the Department performs its responsibilities. International and regional cooperation, training programs, and monitoring mechanisms are the key elements of an active anti-trafficking strategy (Haynes, 2004: 253-271). Although these are responsibilities of the Department, it is unrealistic to consolidate these duties under its jurisdiction. In this regard, interviewee also highlights the Department's inadequate efforts in international cooperation and training programs (Interview with Migration Expert, 2015).

The Foreigners and International Protection Law systematizes victims' residence permits, their renewal and cancellation procedures. It should provide exemptions from deportation, without prejudice to visa and residence permit fees for a leave permit. The Department of Protection of Victims of Human Trafficking has become the new actor of the National Referral Mechanism. Despite this, the Department needs to implement its duties in order to establish a preventative and victim-oriented link among actors of the national referral mechanism, and build up bilateral and multilateral partnerships. It needs to develop projects to raise awareness about human trafficking, not only amongst the public but also amongst law enforcement officials.

3. CONCLUSION

Human trafficking is a multi-faceted problem. Instead of a one-dimensional approach, an effective anti-trafficking tool requires a multi-disciplinary and coordinated policy among all actors involved, including governments, NGOs, judicial and law enforcement personnel, civil society groups, and labour organizations (Amiel, 2006: 38). In this regard, the Turkish Government has taken many legal and administrative steps to prevent this crime, to prosecute offenders and to protect victims in line with its international, regional, and bilateral responsibilities. However, it is hard to say that Turkey pays sufficient attention to the problem of human trafficking, particularly female trafficking, or to the condemnation expressed in the

EU and TIP Reports on the subject. According to the 2016 EU Turkey report, 122 victims of human trafficking were detected in 2016, compared with 108 in 2015. The number of victims staying in special shelters increased from nine in 2013 to 107 in September 2016 (European Commission, 2016: 84). These figures reflect the increasing numbers of trafficked victims.

Since 2002, the government's approaches, accompanied by political and practical support from many organizations, have led to a huge transformation in anti-trafficking legislation and policies in Turkey. Across every area of the anti-trafficking issue in terms of the 3P (prevention, prosecution and protection) model produced by U.S Department of States, Turkey has implemented significant changes in order to satisfy the requirements of membership in the international community.⁸ However, unless Turkey puts all of its present legal and administrative efforts into practice, it is doomed to suffer from trafficking in human beings, especially in women. For instance, Turkey ignores Syrian refugee girls and women. Particularly in south-eastern Turkey, early, child, and forced marriages have become one of the main sociological problems. Turkey's efforts concentrate merely on following international trends (Yıldız, 2017;50).

Despite all these aforementioned efforts, Turkey needs to come up with more solution-oriented administrative efforts in order to deal with systematic problems.⁹ Turkey's efforts for prosecution and protection are better, relatively speaking, than its prevention, partnership, and perception-related practices. Awareness raising campaigns and training for law enforcement officials are the key elements for prevention and perception. Turkey ignores the importance of these actions. For instance, there has been no public awareness campaign since 2006 and there is no regular training program for law enforcement officials. In addition to these deficiencies, Turkey evaluates its partnerships at the international, regional, and bilateral levels as a box-ticking process for its main political desires. Turkey should change its motivations, while taking further steps to combat trafficking. The ratification of international treaties and conventions could serve as an appropriate opportunity to implement new approaches towards the current

⁸ According to the U.S. TIP Reports, Turkey was considered a Tier 3 country between 2001 and 2003, and in 2004 was assessed under a watch list. In 2005, because of the progression made on anti-trafficking measures, Turkey was promoted to a Tier 2 country.

⁹ These problems could be listed as: Lack of consistency for task force and action plans; deficiencies in training for law enforcement officials for effective identification and investigation processes; failures for creating social and governmental awarenesses; lack of inter-institutional capacity; functionality of the Department of Protection of Victims of Human Trafficking remains in migration and refugee problems' shadow.

anti-trafficking strategy, rather than mere box-ticking in pursuit of political motivations towards harmonization. Recent promising steps, such as the addition of the Foreign and International Protection Law and the Department of Protection of Victims of Human Trafficking, have taken into account the human rights violations occurring around human trafficking.

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