



Fight against Trafficking in Human Beings and Organised Crime – Phase 2 (THB/IFS/2)

Overview of the National Legislative and Institutional Framework for Assistance and Protection of Victims of Human Trafficking in Turkey

This project is funded by the European Union and implemented by an international consortium led by the International Centre for Migration Policy Development (ICMPD) in partnership with:



This publication has been elaborated in the framework of the project “Fight against Trafficking in Human Beings and Organized Crime – Phase 2” funded by the European Commission and implemented by ICMPD in cooperation with EF and FIIAPP

The contents of this publication are the sole responsibility of the authors and can in no way be taken to reflect the views of the European Union or ICMPD.

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Acronyms

CoE	Council of Europe
DGMM	Directorate General of Migration Management
EC	European Commission
EF	Expertise France
FIIAPP	Fundación Internacional y para Iberoamérica de Administración y Políticas Públicas (International Foundation of Administration and Public Policies of Spain)
ICMPD	International Centre for Migration Policy Development
ILO	International Labour Organisation
THB	Trafficking in Human Beings

I. Legislative Framework

Turkey signed the United Nations Convention against Transnational Organised Crime and its supplementary Protocols on Trafficking in Persons and Smuggling of Migrants in December 2000.¹ Since then a number of legal and institutional anti-trafficking measures were adopted to comply with international standards.

In 2002, Turkey criminalized human trafficking under Article 201/b of the previous Criminal Code (No. 765). Article 80 of the revised Criminal Code, which came into force in 2005, defines human trafficking as follows:

1. Those who recruit, abduct, transport or transfer or harbour persons for the purpose of subjecting to forced labour or service, prostitution, enslavement or for removal of body organs, by getting their consent by means of threat, oppression, coercion or using violence, of abusing influence, of deceit or of abusing their control over or the vulnerabilities of these persons shall be sentenced to imprisonment up to eight to twelve years and a fine corresponding to 10,000 days.
2. The consent of the victim shall be irrelevant in cases where the acts that constitute a crime are attempted with the intentions described in Paragraph 1.
3. In cases where minors below the age of eighteen are procured, abducted, transported or transferred or harboured with the intentions specified in paragraph one, the penalties foreseen in paragraph 1 shall still be applied to the perpetrator, even when no intermediary actions relating to the crime are committed
4. (Legal entities shall also be subject to security measures for such crimes' (Criminal Code, 2004).

Article 229 stipulates a prison sentence of one to three years for those 'who uses children or persons lack of corporal or spiritual ability in beggary' (Criminal Code, 2004). Procurement for prostitution is specified as a crime under Article 227. Forced prostitution has also been included in the scope of human trafficking with an amendment to the Criminal Code in 2006.² In 2006, the Ministry of Interior adopted the Circular No.74 on Fighting Against Human Trafficking, which covered a wide array of counter-trafficking issues including investigation of

¹ Turkey ratified the Convention and the two Protocols in March 2003.

² Prostitution is not defined as a crime in the Criminal Code. Prostitution is regulated through a secondary legislation 'By-law on Provisions Regarding Prostitutes and Brothels and Fight against STDs Transmitted Due to Prostitution' (1961).

trafficking crimes, identification of trafficked persons, protection and support for victims, reflection period and temporary resident permits for victims, training of law enforcement officers, collaboration with NGOs and international organisations, safe and voluntary return for foreign victims of trafficking (ICMPD 2013, 20). Some other legal developments relevant to anti-trafficking are as follows.

In order to address irregular labour migration and labour exploitation, new legislation was introduced in 2003 to facilitate legal employment opportunities for foreigners, increasing penalties for unregistered employment and centralising the system under the Ministry of Labour and Social Security (Law on Work Permit for Foreigners, 2003). Under the Criminal Code (Article 117), violation of freedom of work and labour 'by using violence or threat or performing an act contrary to law' is also subject to imprisonment from six months to two years (Criminal Code, 2004).

In relation to early and forced marriages, the new Civil Code that came into force in 2002 set the minimum age for marriage for both sexes as 17 years (Article 124) and marriage requires the consent of both parties (Article 142) (Civil Code, 2001). The Code also gives women and girls who have been forced into marriage the right to file a criminal complaint or file an annulment within the first five years of marriage (Articles 149-152). Under the Civil Code, religious marriages cannot take place without demonstrating the relevant civil marriage document (Article 143). An amendment to the Law on Citizenship introduced a requirement of a three-year probation period before the acquisition of Turkish citizenship through marriage in order to prevent 'marriages of convenience' (Citizenship Law, 2009). The 2005 Criminal Code criminalizes polygamous and fraudulent marriages. It also sets out a prison sentence from two to six months for those who hold a religious ceremony without contracting a civil marriage (Article 230).

Concerning the legal framework for child protection, Turkey participated to the International Programme for the Elimination of Child Labour (IPEC) in 1992 and ratified the 1989 United Nations Convention on the Rights of the Child (CRC) in 1995. In 2000, the country ratified the Optional Protocols to the CRC on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict. Turkey also ratified the Council of European Convention on the Exercise of Children's Rights in 2002 and the 1999

ILO Convention no. 182 on Worst Forms of Child Labour (Ministry of Foreign Affairs, 2011). Employment of children under 15 is prohibited (Labour Law, 2003).³ In 2005, the Turkish Child Protection Law entered into force, which aims to incorporate international standards into the procedures and principles regarding children in need of protection, including special arrangements for the sensitive treatment and protection of child victims of crime, an increase in the number of children's courts, and provision of protection for children by civil society organisations (Child Protection Law, 2005). The same year, Turkey also adopted the National Bound Policy and Programme Framework (TBPPF) to eliminate the worst forms of child labour with the support of ILO.⁴ In coordination with relevant NGOs, the General Directorate for Child Services under the Ministry of Family and Social Policies has developed Turkey's first Strategy Document on the Rights of the Child, covering the period 2012 to 2016.⁵ In relation to women's rights, Turkey ratified the 1979 UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1985 and the Optional Protocol "recognising the competency of the Committee on the Elimination of All Forms of Discrimination Against Women" which was signed in 2000 and ratified in October 2002. In order to improve the legal framework concerning violence against women, the 'Law to Protect Family and Prevent Violence Against Women' (No 6284) was adopted in 2012.

In 2013, Turkey adopted its first single-body immigration law, the 'Law on Foreigners and International Protection' (came into force in 2014). The law creates a comprehensive legal and institutional framework for the management of entry rules, visa regulations, work and residence permits concerning foreigners (Law on Foreigners and International Protection, 2013). It also expands the protection framework for those in need of international protection and as well as foreign victims of trafficking, issues that were previously regulated by secondary legislation. Concerning victims of trafficking, for instance, the law introduces a special type of residence permit for trafficking victims that can be renewed for up to three years (Article 48-49). As will be discussed below, the law established a new civil migration

³ The law allows for the employment of children who have completed the full age of 14 and primary education in light work that does not harm their physical, mental and moral development. See Article 71, Turkish Labour Law.

⁴ For further information about TBPPF, see ILO Turkey website. Available at: http://www.ilo.org/ankara/projects/WCMS_373426/lang--en/index.htm, accessed 15.05.2016.

⁵ For further information about child rights in Turkey, see UNICEF Turkey website. Available at: <http://www.unicef.org.tr/sayfa.aspx?id=24&dil=en&d=1>, accessed 15.05.2016.

authority under the Ministry of Interior, Directorate General of Migration Management (DGMM), which is also responsible of carrying out activities and actions for the protection of victims of human trafficking (Article 104/1d). For the implementation of principles and procedures enshrined in the law, as stipulated in its Article 121, the Regulation on Combatting Human Trafficking and Protection of Victims (hereafter Regulation) came into force in March 2016. The regulation also attempts to align Turkish domestic law with the Council of Europe Convention on Action against Trafficking in Human Beings. Turkey signed the Convention in March 2009 and ratified it on 2 May 2016 (CoE, 2016).

II. Institutional Framework

The major national agencies involved in counter-trafficking activities are the Ministry of Interior (General Directorate of Security, General Command of Gendarmerie, Turkish Coast Guard Command, DGMM), Ministry of Foreign Affairs, Ministry of Justice, Ministry of Labour and Social Security, Ministry of Family and Social Policies (Directorate General of Child Protection Services and Directorate General for Women's Status), Ministry of Health, and their related provincial directorates. Following the establishment of a National Task Force on Combating Trafficking in Human Beings under the chairmanship of the Turkish Ministry of Foreign Affairs, two National Action Plans were adopted in 2003 (completed in 2006) and 2008.⁶ The national action plans comprise the basis of 'Protection, Prevention and Prosecution' programs and policies to combat and prevent trafficking in persons (Sever et al., 2012). Following the implementation of the national action plans on trafficking, three shelters for trafficked people were established in Istanbul (2004), Ankara (2005) and later in Antalya (2009). These shelters are run in cooperation with the three main national NGO partners of the Ministry of Interior, namely the Human Resource Development Foundation (HRDF) in Istanbul, the Foundation for Women's Solidarity (FWS) in Ankara and Antalya Family Counsellors Association (AFCA) in Antalya. While law enforcement agencies are responsible for identifying victims of trafficking, the NGOs running the shelters deal with identified victims

⁶ The 2008 National Action Plan has been carried out within the framework of 'The Project of Strengthening Institutions in the Fight Against Trafficking in Human Beings', under the context of EU-Turkey Financial Assistance of 2003 Program. Available at: <http://www.mfa.gov.tr/turkey-on-trafficking-in-human-beings.en.mfa>, accessed 15.05.2016.

of trafficking who have been granted access to assistance and protection (ICMPD, 2013). An emergency helpline (157) was set up in 2005 initially reachable only from Turkey, which later became internationally operational in 2007. This emergency helpline 157 is now called 'Communication Centre for Foreigners' and it provides assistance to foreigners also on other migration-related issues.

As stated above, the 2013 Law on Foreigners and International Protection has transferred the management of migration and international protection to the DGMM. While DGMM's central administration became operational in 2014, its provincial organisation in all 81 provinces became fully functional in May 2015. The DGMM has also undertaken the role of carrying out functions and actions related to the protection of victims of human trafficking. It has a new service unit called 'the Department of the Protection of Victims of Human Trafficking'. Through this crucial institutional change, some of the major responsibilities of the security forces concerning trafficking in persons are transferred to the central and provincial organisations of DGMM. These responsibilities mainly include victim-related services, such as identification and protection processes. According to the Law on Foreigners and International Protection, the Department of the Protection of Victims of Human Trafficking is in charge of: '(1) carry out activities and actions related to combating human trafficking and protecting victims of trafficking; (2) implement projects related to combating human trafficking and protecting victims of trafficking; (3) establish, operate or outsource the operation of hotlines for victims of human trafficking; (4) carry out task assigned by the Director General' (Article 108/1c).

The most recent institutional development came with the Regulation, which establishes a commission to work on developing policies and strategies against human trafficking, preparing action plans, and providing coordination among public institutions, international organisations and NGOs (Article 5/1). The Regulation describes the commission as 'the national coordination unit for the fight against human trafficking', chaired by an appointed undersecretary from the Ministry of Interior (who also becomes the national coordinator) (Article 5/2). The commission consists of representatives from the Supreme Court of Appeals, Ministry of Justice, Ministry of Family and Social Policies, Ministry of EU Affairs, Ministry of Labour and Social Security, Ministry of National Education, Ministry of Culture and Tourism, Ministry of Foreign Affairs, Ministry of Customs and Trade, Ministry of Health, National

Human Rights Institution, General Directorate of Turkish Employment Agency, General Directorate of Health for Border and Coasts, National Intelligence Organization, the Coast Guard Command, the Turkish Bar Association, General Directorate of Security, General Command of Gendarmerie, Turkish Coast Guard Command, DGMM, and General Directorate of Local Administrations (Article 5/2). In provinces where deemed necessary, the DGMM would also establish provincial-level commissions comprised of local representatives involved in counter-trafficking activities (Article 9).

III. The Regulation on Combatting Human Trafficking and Protection of Victims

The protection framework of the Regulation covers both foreign and Turkish victims of human trafficking (Article 1). The Regulation elaborates further the rules and procedures concerning identification of trafficking victims, victim support programs (including accommodation of victims), voluntary and safe return programs, and residency permits for foreign victims. It affirms that the definition and criminalization of human trafficking used in the Regulation is based on Article 80 of the Criminal Code (Article 3/i). However, a broader scope of purposes for trafficking is described especially concerning children (see below Article 17).

In terms of first point of notification or contact for victims of trafficking, anyone who claims to be a victim or aware of such a case can verbally, orally or electronically report it to the emergency helpline, to the law enforcement units or to the chief public prosecutor's office. Similarly, when encountered with potential victims of human trafficking or receive denunciations/complaints from third parties, public institutions and NGOs would contact the emergency helpline, provincial DGMM, law enforcement units or the chief public prosecutor's office (Article 16/1-7).

The regulation asserts that the law enforcement units would contact provincial DGMM offices when encountered in their operations particular circumstances of forced labour, prostitution, forced servitude, organ trafficking, **child labour, use of children in criminal activities, begging of children, adoption of children** that may pertain to trafficking in persons (Article 17/1). After the law enforcement officers complete the initial procedures of first identification, they refer the potential victims to the provincial DGMM officers, who are responsible of conducting interviews and carrying out the victim identification process. Provincial DGMM

officers register those individuals identified as victims of trafficking and issue a 'victim of human trafficking identification document' (Article 17/10).

During the administrative process of victim identification, those individuals who are strongly suspected of being victims of human trafficking would be identified as victims regardless of their complainant status and they would be granted victim status without waiting for the outcome of the investigation or prosecution of the judicial process (Article 18/1). And if deemed necessary, potential victims would be provided with psychosocial support during victim identification process (Article 18/2).

Foreign victims of human trafficking are initially granted a residency permit valid for 30 days with the purpose of recovery and reflection (Article 20/1), which could be extended up to maximum three years (Article 21/2). For Turkish national victims of human trafficking, once the victim identification process is complete, subsequent procedures are carried out in accordance with the 'Law to Protect Family and Prevent Violence against Women'. A protocol with the Ministry of Family and Social Policies would set the details of the support programmes involving Turkish victims (including child victims) (Article 23/1-2). For identified child victims of trafficking, procedures are carried out in line with the Turkish Child Protection Law and they are referred to the relevant units of the Ministry of Family and Social Policies (Article 24/1-2). Ministry of National Education would take necessary measures to provide schooling for child victims of trafficking and as well as for dependent minors of adult victims of trafficking (Article 24/4).

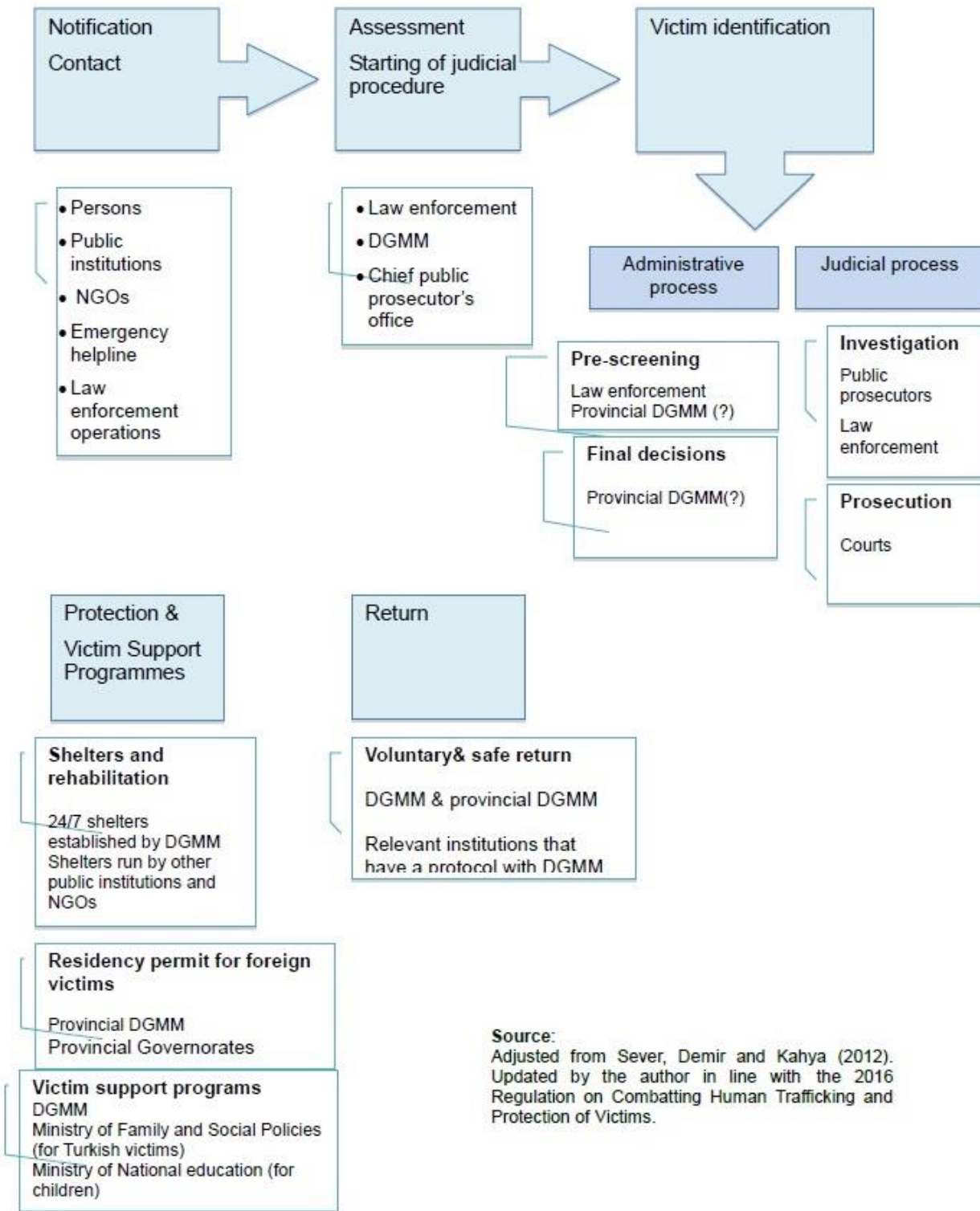
Concerning protection, accommodation and support services for victims, central DGMM is responsible of opening and operating (or outsourcing its operation through a protocol with a third party) shelters (Article 25/1). If the DGMM-run shelters are unable to accommodate potential or identified victims, they would be given a place in similar shelters run by other public institutions or NGOs (Article 25/2). Depending on the victim's consent, there are support program available following the reflection period, and during and after the investigation and prosecution periods (Article 28/1). Victim support programs involves in minimum:

- Accommodation in a shelter or a safe place,
- Access to health services
- Psychosocial support

- Access to social services and social aid
- Access to legal services, counseling on rights of the victims and access to information
- Guidance on education services
- Access to vocational training and support for access to the labour market
- Guidance on temporary financial aid to meet basic needs
- Access to counseling services provided by relevant NGOs, international organisations and IGOs,
- Interpretation services
- Based on victim's consent, sharing of information with the embassy or consulate of the victim's country of origin, providing victim the opportunity to meet the officers from the embassy or the consulate
- Support for obtaining identification and travel documents
- And other services deemed appropriate by the central DGMM (Article 28).

Under the Regulation, foreign victims of trafficking are also able to opt for a safe and voluntary return program, either before, during or after participating in the victim support program (Article 30/1). Provincial DGMM offices are in charge of safe and voluntary return program under the coordination of central DGMM (Article 30/1). Transfer and other related fees are either met by the provincial DGMM or third parties, which have a protocol with the DGMM authorities (Article 30/5).

Figure 1. National Referral Mechanism in Turkey



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