

VICTIM SUPPORT FROM IN-HOUSE COOPERATION AMONGST COURTS TO EFFECTIVE INVESTIGATION AND COMPENSATION: THE SPANISH PERSPECTIVE

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One of the most serious crimes in the world

A serious human rights violation

TRAFFICKING IN HUMAN BEINGS

The modern slavery

A very lucrative activity of organized crime. It is the second most lucrative criminal activity after weapons trafficking and before drugs trafficking.

Is THB one of the most serious manifestations of violence against women ?

Very complex crime

Difficulties to investigate

Difficulties to obtain evidence:
it is necessary many different
investigation techniques

Legal technical difficulties

The special position of the
victim

The interest of
the State to
punish and give
a strong answer

INTERESTS

The interest of
the victim to be
protected

ALWAYS THE VICTIM'S PROTECTION

DIGNITY

A 3D illustration featuring a white, stylized human figure sitting on a large, red, three-dimensional question mark. To the right of the figure, a red cube is shown in a slightly tilted position. The background is a plain, light gray surface.

REASONS TO PROTECT VICTIMS OF THB

HUMANITARIAN REASONS

➤ WHY?

- Vulnerable persons (some times they are unaccompanied minors)
- Foreigners .
- They are alone or in charge of babies or small children.
- Not speaking the language of the country.
- They don't trust in justice or in any person who tries to approach them.
- No money, no studies, no training to get a job in a short time.
- Difficulties to integrate into society by themselves.

➤ HOW CAN WE PROTECT THEM?

- Giving them the maximum facilities for exercising their rights.
- Reduction of unnecessary procedures that involves the second victimization.
- Granting them effective information: guidance on the rights and services.
- Giving them the possibility of being accompanied by the person that they designate in all their paperwork.

➤ WHO CAN PROTECT THEM?

- Public institutions
- Law enforcements
- NGO's
- Civil Society

JUDICIAL REASONS

➤ WHY?

- They are special witnesses.
- Traffickers will try to influence their testimonies.
- Traffickers will have an extra effort to discrediting them, maintaining all types of threats, direct or veiled coercion to them or their families wherever they are.

➤ HOW CAN WE PROTECT THEM?

- With special laws to protect witnesses.
- Avoiding visual confrontation with the traffickers.
- Using voice distorters.
- Avoiding the formulation of questions that are completely inappropriate.
- To be accompanied during the trial and in their statements with someone they trust.
- Using the right interpreters.

➤ WHO CAN PROTECT THEM?

- Prosecutors.
- The criminal inquiry judge.
- Court Magistrates.

POWERFUL JUDICIAL REASON IN SPAIN

- ✓ Victims statement is the most important evidence for the Tribunal.
- ✓ Magistrates want to listen to them directly to conform their conviction about the facts.
- ✓ For Magistrates, although there are other evidents, normally their sentence will be based on the testimony of the victim.

THE THB VICTIM'S PROTECTION IN SPAIN

A preliminary issue

To be considered a victim it is necessary to be identified as such and also be declared as such in an administrative procedure.


This procedure will be resolved by an administrative authority depending on the government.

During this process the victim is an alleged victim and law enforcements should give them the same protection as other victims.



Critics

1º If the Prosecutor is the authority in charge of the protection according to our regulation, and who must coordinate all the people who deal with them, it is not reasonable that this important decision is beyond the control of the prosecutor.

2º The administrative decision can not be appealed. It is not possible a jurisdictional revision  VIOLATION OF THE RIGHT TO EFFECTIVE JUDICIAL PROTECTION THAT EVERYONE HAS.



THE LEGAL FRAMEWORK



1. THE INTERNATIONAL FRAMEWORK

UNITED NATIONS

Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children

Officially Published the 11.12.2003. It is not directly applicable.

COUNCIL OF EUROPE

The Convention on Action against THB

Officially Published the 10.11.2009 and entered into force the 9.08.2009

EUROPEAN UNION

Directive 2001/36/EU on preventing and combating THB and protecting its victims. This Directive introduces the THB crime in the Spanish Criminal Code (2010)

Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims crime.



2. THE NATIONAL FRAMEWORK

General normative

Arts 109 – 122 Criminal Code. They contain the regulation of the right to have a civil liability inside the penal process, when someone has been harmed by a crime. Normally it is a monetary compensation.

Organic Law 19/1994. Protection of witnesses and experts. This law should be deeply revised

Law 2/2015 on the standing of victims of crime. This law is a consequence of the Directive 2012/29/EU. This law establishes all the judicial measures that can be applied to a victim whatever the crime they have supported

Specific normative

Art. 59 bis Organic Law 4/2000 Foreigners Law. Here we can find the legislation about the reflection and recovery period.

Art. 177 bis 11 Criminal Code. Exception of criminal liability when victims have committed offences while they were suffering exploitation

Arts. 140 – 146 RD 577/2011 (Foreigners Rules). We can find the regulation of the proceedings to recognized officialy a victim of THB

Asylum Law 12/2009, recognized the specific needs and protection of THB's victims that are also asylum seekers. The problem is that this Law has not been developed by the government.

Conclusion...



Although there are specific laws in Spain to protect certain victims

- Law 35/1995 of help and assistance for victims of violent offenses and against sexual freedom
- Organic Act 1/2004 of Protection Measures against Gender Violence.
- Law 29/2011 of Comprehensive Recognition and Protection of Victims of Terrorism.

THERE IS NOT A SPECIFIC LAW FOR THE PROTECTION OF THE VICTIM OF THB.



3. THE SPANISH PROTOCOL FOR THE PROTECTION OF VICTIMS IN THB (2011)

<http://www.msssi.gob.es/va/ssi/violenciaGenero/tratadeMujeres/ProtocoloMarco/DOC/ProtocoloTrataEN.pdf>

PRELIMINARY TOPICS

1. It was a result of the work of the High Foreign Prosecutor in 2011.
2. It was created to provide victims an holistic protection.
3. The importance of the document is undeniable because it was signed by many Ministries (Justice, Home Office, Labour, Social Security, Health, Social Service and Equality, The Judicial Power and The General Public Prosecutor's Office).
4. This Protocol has to be completed by the Protocol for Unaccompanied Minors (2014) that has previsions for the protection of these kind of victims.
5. The document is only a Protocol. IT IS NOT A SOURCE OF RIGHT.
6. The Protocol place the Prosecutor as the ultimate responsible for all actions by all the agents involved. It is a consequence of the competences and functions that the Prosecutor has in Spain.



Object

- To establish operational guidelines for detection, identification, support and protection victims of THB.
- Foster coordination among the institutions involved.
- To define the mechanisms for the relationship among authorities with responsibilities in the field



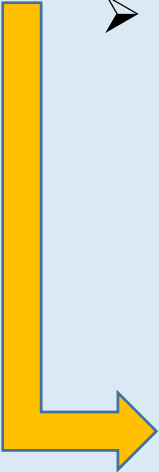
Give Guidelines for

- Detection and identification: who? Police, Labour Inspection; Social Services and NGO's, Bordering law enforcements, Responsibilities at the migrant detention centers.
- Evaluation of the risks that the victims are exposed to.
- Information about their rights.
- Protection measures as victim and as witness.
- Reflection and recovery period: exemption of administrative liability in case of a foreign victim and assisted return.

A 3D white figure stands on the right side of the image, leaning its right hand on the top of a tall stack of gold coins. The figure is positioned next to several other stacks of gold coins of varying heights, arranged in a row from left to right. The background is a plain, light gray gradient. The text "Financing Protection" is centered over the stacks of coins.

Financing Protection

- The assistance and the protection will be given by specialized NGO's but also by the public institutions.
- As there is no comprehensive law against trafficking in human beings, there is no economic memory for its development.
- But a budget is necessary.



We can find it in The National Action Plan to combat THB 2015 - 2018

Priority 1	Strengthen, prevention and detection of victims	5.727.551,48 €
Priority 2	Identification, protection and assistance of victims	19.253.154,24 €
Priority 3	Analisis of THB the purpose of Sexual Exploitation	2.867.648,00 €
Priority 4	Prosecution of traffickers	55.359.804,00 €
Priority 5	Coordination and participation of civil society	20.903.000,00 €

An illustration featuring two stylized human figures and two stacks of gold coins. On the left, a blue figure stands upright. In the center, there are two stacks of gold coins; the left stack is taller than the right one. On the right, a pink figure is kneeling and resting its head on its hand in a contemplative or distressed pose. The background is a soft, light blue gradient.

THE RIGHT OF THE VICTIM TO A FINANCIAL COMPENSATION

BY THE
TRAFFICKERS OR
OTHERS
PERPETRATORS

conditions

- ➔ There must be a sentence that condemns the payment of that responsibility
- ➔ The cooperation of the victim is necessary
- ➔ The victim must show interest in that compensation
- ➔ To calculate it, it is advisable to have a report from a specialist in forensic medicine (an independent doctor).
- ➔ To guarantee the right, a patrimonial investigation would be necessary
- ➔ Confiscation of assets and seizure are necessary

BY THE STATE

- ➔ There is no right of the victim to receive an economic benefit from the State. For other victims, such as crimes of sexual violence or gender, the right is recognized



THANKS FOR YOUR ATTENTION