

Il traffico di esseri umani a fini di sfruttamento criminale secondo la prospettiva delle vittime e degli operatori

La traite des êtres humains à des fins d'exploitation criminelle du point de vue des victimes et des professionnels

Trafficking in Human Beings for criminal exploitation from the perspective of victims and professionals

*Carolina Villacampa**

Riassunto

In accordo con la politica relativa al traffico di esseri umani centrata sui diritti umani e sulle vittime, il rispetto dei diritti di queste ultime vittime deve diventare una priorità. Tuttavia, l'applicazione di questo approccio può diventare difficoltoso con riferimento a quelle forme di traffico poco conosciute, ad esempio il traffico mirato allo sfruttamento criminale delle vittime. In questo lavoro, sono stati utilizzati 10 colloqui in profondità effettuati con vittime anonime di questo tipo di traffico – selezione fra 45 donne detenute intervistate – e 37 con operatori del settore della giustizia penale e dell'ambito dell'assistenza alle vittime al fine di analizzare sia le cause che portano le vittime a non essere identificate che gli effetti che questa mancanza di identificazione producono quando esse entrano nel circuito della giustizia penale. In questo articolo vengono avanzate alcune proposte al fine di modificare tale situazione, focalizzandosi su differenti misure per incoraggiare lo sviluppo di politiche più centrate sulle vittime in quanto esse rappresentano un modo per contribuire alla promozione di una società più giusta ed inclusiva.

Résumé

Conformément à une politique en matière de traite des êtres humains afférent aux droits de l'homme ou aux victimes, le respect des droits de ces dernières doit devenir une priorité. Toutefois, l'adoption de cette approche peut résulter difficile en ce qui concerne lesdites formes de trafic peu connues, notamment celles visant l'exploitation criminelle des victimes. Dans cet article, 10 entretiens libres auprès des victimes de ce type de trafic non identifiées – choisies parmi 45 femmes incarcérées interviewées – et 37 avec des professionnels exerçant dans le domaine de la justice pénale et de l'assistance aux victimes ont été utilisés afin d'analyser les causes menant les victimes à ne pas être identifiées. Ces entretiens ont été employés aussi afin d'étudier les effets que ce manque d'identification ont sur les victimes lorsqu'elles sont portées devant le système de justice pénale.

Les propositions formulées afin de renverser cette situation incluent différentes mesures visant à encourager le développement d'une politique plus centrée sur les victimes, qui permettrait de contribuer à la promotion d'une société plus juste et inclusive.

Abstract

According to a human rights or victim-centred policy on human trafficking, respect for victims' rights must become a priority. However, this approach may become difficult to adopt in little-known forms of trafficking, such as trafficking aimed at the criminal exploitation of victims. In this work, 10 in-depth interviews with unidentified victims of this type of trafficking – selected from 45 imprisoned women interviewed – and 37 with professionals active in the criminal justice system and in the area of victim assistance have been used to analyse the causes that lead to victims not being identified, as well as the effects that this lack of identification produces when they pass through the criminal justice system. Different measures to encourage the development of a more victim-centred policy in this area as a way to contribute to the promotion of a more just and inclusive society are among the proposals formulated to reverse this situation.

Key words: trafficking in human beings; criminal exploitation; qualitative research; victims; professionals.

* Full Professor of Criminal Law and Director of the Department of Public Law and the Inter-University Master's Degree on "Criminal Justice System" at the University of Lleida (Spain). She is member of the Spanish Society of Criminology, where she acts as the coordinator of the Victimology Group, and of the Working Group on Victimology of the European Society of Criminology.

1. Introduction.

Trafficking in human beings for criminal exploitation is perhaps the least known manifestation of the process leading to the enslavement of persons. It is identified with the purpose of exploiting victims in performing both illegal or anti-regulatory activities and those of direct criminal relevance – such as the use of people for drug trafficking or property crime on the streets, among others¹. Thus, it consists of the conduct of recruiting, transporting, transferring, harbouring, receiving, exchanging or transferring control over a person using the means of coercive (violence or intimidation), fraudulent (deception) or abusive trafficking (taking advantage of the victim's situation of vulnerability or power over the victim) with the aim of exploitation by engaging them in criminal activities.

Offences related to this type of trafficking include crimes committed by victims during the process of being trafficked (e.g. crimes related to the illegal crossing of borders) and those which are not directly related to the enslavement process, but which victims have been forced to commit as a consequence of the restrictions on free will involved in the exploitation phase of trafficking, which are those that can reach a wider range of behaviours.

The relative lack of awareness of this form of trafficking can be explained by the fact that, although it was considered a form of trafficking for labour exploitation implicitly embedded in the broad concept of forced services embodied in the international definition of trafficking in art. 3 of the

Palermo Protocol², it was not until the adoption of the Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting Victims that it was specifically listed by a supranational regulatory tool as a form of trafficking (art. 2.3 Directive). As a direct result of this provision, it has been specifically criminalized in some criminal codes in force in European countries, such as Spain, where it was incorporated into art. 177 bis.1.c) in 2015.

Despite the widespread lack of knowledge about this form of trafficking, its inclusion in technical reports issued on the subject has increased over time. It was not reflected in the United Nations report on trafficking in human beings until 2014, when it was included among the 'other' forms of trafficking affecting 7% of victims, while trafficking for sexual exploitation was said to represent 53% of cases, labour exploitation 40% and organ removal 0.3%³. In the most recent global report on trafficking in persons published by UNODC, which contains data collected up to 2016, this type of trafficking continued to be included within the category of "trafficking for other purposes"⁴. The same is true for the reports issued by Eurostat on the issue, in which trafficking for criminal exploitation is also referred to as one of the 'other' forms of exploitation⁵. In fact, in the Eurostat

¹ OSCE-Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Policy and Legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking*, 2013. Retrieved from: <https://www.osce.org/secretariat/101002>

² Malloch M., "Criminalising Victims of Human Trafficking. State Responses and Punitive Practices", in *Human Trafficking. The Complexities of Exploitation*, Edinburgh, Edinburgh University Press, 2016, pp. 175-193; Villacampa C., *El delito de trata de seres humanos. Una incriminación dictada desde el Derecho Internacional*, Cizur Menor, Thomson Reuters-Aranzadi, 2011.

³ UNODC, *Global report on trafficking in persons*, 2014. Retrieved from: <http://www.unodc.org/unodc/en/data-and-analysis/glotip.html>

⁴ UNODC, *Global report on trafficking in persons*, 2018. Retrieved from: <http://www.unodc.org/unodc/en/data-and-analysis/glotip.html>

⁵ Eurostat-European Commission, *Trafficking in human beings. 2013 edition*, 2013. Retrieved from: <http://ec.europa.eu/eurostat/web/products-statistical-working-papers/-/KS-RA-13-005>; Eurostat-European Commission,

report of 2015, which contains data provided by 22 European Union countries in 2010, 2011 and 2012 on the type of exploitation to which victims of trafficking had been subjected, the highest percentage was sexual exploitation (average 68%), followed by cases of trafficking for labour exploitation (on average 19%) and trafficking for other forms of exploitation (12%)⁶, similarly with what is stated by the European Commission data collection on trafficking in Human beings in the EU⁷ containing information from 2014, 2015 and 2016. The latest report issued by Europol on this subject does not provide data, but indicates that the majority of victims of trafficking for forced criminality are recruited for the purpose of committing crimes against property, drug production or drug trafficking and that the majority of them are minors⁸.

Although it is still a little-known manifestation of trafficking in human beings, as systematic revision on human trafficking literature shows⁹, some studies specifically aimed at analysing trafficking for criminal exploitation in Europe have shown examples of victims undetected by the system. These have included women being imprisoned in the UK for crimes such as illegal entry into the

country¹⁰ and in Spain for committing property crimes or for acting as “mules” carrying drugs¹¹. In 2014, the European project report Response Against Criminal Exploitation (RACE) provided evidence of the existence of this type of trafficking in the UK, Ireland, Czech Republic and the Netherlands in relation to the commission of offences such as the illegal cultivation of cannabis or property-related street crime¹². In this report, prepared by a team coordinated by Anti-Slavery International, it is estimated that of the 2,225 victims of human trafficking identified in 2012, 362 had been trafficked for criminal exploitation, mainly consisting of two types: Vietnamese nationals trafficked for forced labour in cannabis cultivation and Eastern European citizens forced to beg and commit petty theft.

A common characteristic of the aforementioned studies is that they all reveal how the victims of this form of trafficking are doubly victimized. This because not only have they already been victimized directly by the process leading to their enslavement, but also because they have not been detected as victims by the system, which labelled them as offenders and made them legally and criminally liable for the acts committed in the exploitation phase of the trafficking process.

Since criminal exploitation is a still little-known manifestation of trafficking, it is advisable to

Trafficking in human beings. 2015 edition, 2015. Retrieved from: https://ec.europa.eu/anti-trafficking/publications/trafficking-human-beings-eurostat-2015-edition_en

⁶ Eurostat-European Commission, *Trafficking in human beings. 2015 edition*, 2015. Retrieved from: https://ec.europa.eu/anti-trafficking/publications/trafficking-human-beings-eurostat-2015-edition_en

⁷ European Commission, *Data collection on trafficking in human beings in the EU*, 2018. Retrieved from: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20181204_data-collection-study.pdf

⁸ Europol, *Situation report. Trafficking in human beings in the EU*, 2016. Retrieved from: <https://www.europol.europa.eu/publications-documents/trafficking-in-human-beings-in-eu>

⁹ Russell A., “Human Trafficking: A Research Synthesis on Human-Trafficking Literature in Academic Journals from 2000-2014”, *Journal of Human Trafficking*, 2018, vol. 4, n. 2, pp. 114-136.

¹⁰ Hales L., Gelsthorpe L., *The criminalisation of migrant women*, Cambridge, Institute of Criminology, University of Cambridge, 2012.

¹¹ Villacampa C., Torres N., “Mujeres víctimas de trata en prisión en España”, *Revista de Derecho Penal y Criminología*, 2012, 8, pp. 411-494; Villacampa C., Torres N., “Trafficked women in prison: the problem of double victimization”, *European Journal on Criminal Policy and Research*, 2014, vol. 20, n. 1, pp. 1-19. DOI: 10.1007/s10610-014-9240-z.

¹² Anti-Slavery International, *Trafficking for forced criminal activities and begging in Europe. Exploratory Study and Good Practice Examples (RACE in Europe project research and guidance report)*, 2014. Retrieved from: <https://www.antislavery.org/reports-and-resources/research-reports/human-trafficking-reports/>

undertake empirical analyses that not only confirm the existence of this phenomenon, but also the dynamics of the commission and effects on victims, as well as the way in which victims interact with the authorities, in order to build a basis on which to suggest measures that should be adopted to make the victim-centred approach effective in this form of trafficking as well. To this end, the methodologies and results of two empirical investigations carried out with victims and professionals on this specific form of trafficking in human beings in Spain are presented here.

2. Aims, methods and samples used in the two investigations conducted in Spain.

2.1 Aims, method and sample of the investigation with undetected victims

Even before the publication of the results of the RACE project, Spanish researchers were considering the possibility that victims of trafficking for criminal exploitation might be passing unnoticed in this European country. It was suspected that they might be subjected to a process of institutional victimization to the highest degree in those cases in which they have not only been through the process of enslavement, but have also, rather than being conveniently identified by the system as victims, been convicted for the commission of a crime during the exploitation phase of the trafficking process¹³.

This possibility was considered on the basis of previous studies on women in prison in Spain in the 1990s and early 2000s that warned of the exploitation that some Latin American “mules” might be enduring, although without yet identifying this situation as trafficking in human beings¹⁴, as

later has been also established by research carried out with mules imprisoned in Ecuador¹⁵. On this basis, a qualitative study was carried out in two Catalan prisons – Brians and Ponent – with the objectives, firstly, of detecting inmates in Spanish prisons who had been victims of this form of trafficking and had not been identified by the system, and, secondly, of understanding the dynamics of trafficking for criminal exploitation processes, the effects they produced on victims and the interactions they had with institutions.

Qualitative methodology was used because it was considered that this was a better match for the objectives of the research, enabling a deeper understanding to the analyzed reality¹⁶. An intentional sampling system was used to select the persons to be interviewed, prioritizing interviews with foreign women and, when a process of selection was necessary, choosing those who were imprisoned for the commission of crimes that a priori might be more compatible to being committed by victims of trafficking for criminal purposes during the exploitation phase (thus, drug trafficking, crimes related to prostitution, crimes

2005; Almeda E., *Mujeres encarceladas*, Barcelona, Ariel, 2003.

¹⁵ Fleetwood J., *Drug Mules. Women in the International Cocaine Trade*, Hampshire-New York, Pallgrave Macmillan, 2015.

¹⁶ Corbin J., Strauss A., *Basics of Qualitative Research*, 3rd edition, Los Angeles-London-New Delhi-Singapore, Sage Publications, 2008; Marshall C., Rossman G.B., *Designing qualitative research*, Thousand Oaks-London-New Delhi, Sage Publications, 2006; May K.A., “Conocimiento abstracto: un caso a favor de la magia en el método”, in *Asuntos críticos en los métodos de investigación cualitativa*, Alicante, Publicaciones Universidad de Alicante, 2005, pp. 121-141; Denzin N.K., Lincoln Y.S., “Introduction. The Discipline and Practice of Qualitative Research”, in *The Sage Handbook of Qualitative Research*, 3rd. edition, Thousand Oaks-London-New Delhi, Sage Publications, 2002, pp. 1-41; Lincoln Y.S., “Institutional review boards and methodological conservatism. The Challenge to and from Phenomenological Paradigms”, in *The Sage Handbook of Qualitative Research*, 3rd. edition, Thousand Oaks-London-New Delhi, Sage Publications, 2002, pp. 165-181.

¹³ Villacampa C., Torres N., *op. cit.*, 2012.

¹⁴ Ribas N., Almeda E., Bodelón E., *Rastreado lo invisible: mujeres extranjeras en las cárceles*, Barcelona, Anthropos,

against property or crimes against intellectual and industrial property).

The method of data collection consisted of unstructured in-depth interviews, with the aim of allowing information to emerge spontaneously. A script was drawn up with the issues that were intended to discuss, and which, in cases where these did not emerge naturally during the interviews, the interviewees were asked about. The topics included in the interview referred to the background information about their arrival in Spain, the conditions and circumstances in which the trip or transit took place, their situation when they arrived and the institutional treatment received in this country, including their time in prison. The interviews lasted between 30 and 90 minutes and took place in the aforementioned prisons between June and November 2011.

The sample consisted of 45 foreign imprisoned women. Of these, 18 were European (from Germany, Belgium, Portugal, Bulgaria, Croatia, Lithuania, Romania and Russia), 3 African (from Morocco and Nigeria), 22 Latin American (from Aruba, Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Honduras, Mexico, Paraguay, Peru, the Dominican Republic and Venezuela) and finally 2 Asian (from China). As regards their personal situation, 73% of them had dependent children. With reference to their imprisonment, 34 had been convicted and 11 had been remanded in custody, mostly for drug trafficking, although also for property crimes, and to a much lesser extent for injuries, illegal detentions, human trafficking and road traffic offences.

On the basis of the international concept of trafficking in human beings included in art. 3 of the Palermo Protocol, the aim was to observe whether the three elements that constitute trafficking (i.e.

action, means of commission and the purpose of exploitation) were present in the stories the inmates expressed about their process of migration. Once the interviews were transcribed and the information contained in them was categorized, each case was analysed to judge whether these three elements could be identified in the stories the women had recounted, in order to decide which of them could be considered trafficking victims.

2.2. Aims, method and sample of research with professionals

After carrying out research with victims and, in view of the existence of undetected women victims of human trafficking for criminal exploitation who were serving sentences in Spanish prisons for crimes committed precisely in the exploitation phase of a trafficking process, it was decided to carry out a study with professionals who might eventually come into contact with this kind of victim both within the criminal justice system and the field of victim assistance¹⁷. Given that studies on knowledge of the phenomenon of trafficking by professionals have so far focused on their understanding of trafficking in general or specifically on better-known forms of human trafficking¹⁸ – for sexual or labour exploitation –

¹⁷ Villacampa C., Torres N., “Human trafficking for criminal exploitation: the failure to identify victims”, *European Journal on Criminal Policy and Research*, 2017, vol. 23, n. 3, pp. 393-408. DOI: 10.1007/s10610-017-9343-4; Villacampa C., Torres N., “Human trafficking for criminal exploitation: effects suffered by victims in their passage through the criminal justice system”, *International Review of Victimology*, 2019, vol. 25, n. 1, pp. 3-18. <https://doi.org/10.1177/0269758018766161>.

¹⁸ Farrell A., Pfeffer R., Bright K., “Police perceptions of human trafficking”, *Journal of Crime and Justice*, 2015, vol. 38, n. 3, pp. 315-333. <https://doi.org/10.1080/0735648X.2014.995412>; Farrell A., “Environmental and Institutional Influences on Police Agency Responses to Human Trafficking”, *Police Quarterly*, 2014, vol. 17, n. 1, pp. 3-29. DOI: 10.1177/1098611113495050; Farrell A., Owens C., McDevitt J., “New laws but few cases: understanding the challenges to the investigation and prosecution of human trafficking cases”. *Crime, Law and Social Change*, 2014, 61, pp. 139-

this is the first research conducted with professionals specifically aimed at analysing their degree of awareness of trafficking for criminal exploitation.

The objectives of this second qualitative investigation consisted, on the one hand, of determining the causes of the failure to detect victims of trafficking for criminal exploitation by these professionals and, on the other hand, of understanding the effects of this failure in the treatment given to victims as they passed through the criminal justice system.

A qualitative methodology was also implemented in this case. An intentional sampling system was used, which was based on the possibility that various professionals in the criminal justice system or in the area of victim assistance might come into contact with victims of trafficking for criminal exploitation. The sample consisted of 37 professionals. Of these, 28 came from the criminal justice system (9 police officers, 6 members of the Public Prosecutor's Office, 2 judges, 4 lawyers and 7 prison officers) and 9 from victim assistance services (5 staff members of NGOs specialising in assistance to victims of trafficking and 4 professionals from victim assistance services). Of the interviewees, 16 were specialists in human trafficking and 21 non-specialists in this crime.

The methodology consisted of in-depth and semi-structured face-to-face interviews lasting between 30 and 90 minutes. Two models of interviews were designed, consisting of different points that were intended to be addressed depending on whether the interviewee was a professional acting in the criminal justice system or in victim assistance. The two

interview models also shared one section, which aimed to judge the interviewees' degree of familiarity both with the phenomenon of trafficking and its different manifestations and the existing normative instruments to protect victims, as well as their views on training and coordination schemes and on victim assistance services. The two interview models differed in the middle section, which concerned the ways in which professionals had acted in cases where they had come into contact with victims of trafficking for criminal exploitation, in which the questions posed to those active in the criminal justice system and those in the field of victim assistance diverged.

The interviews were conducted between February and June 2014 in Madrid, Barcelona, Tarragona and Lleida (Spain), recorded and then transcribed in their entirety. The data were analysed using the thematic analysis methodology.

3. Results of both qualitative investigations.

3.1. Results of the research with victims

Of the 45 women interviewed, 10 were classified as unquestionable victims of human trafficking. The accounts given by 2 other women also contained strong indicators of human trafficking, but the data were not considered sufficient to classify them definitively as trafficking victims. In addition, 2 women had been trafficked earlier in life, but had not been imprisoned for committing a crime during the exploitation phase of a trafficking process. The remaining inmates interviewed (n=31) were found to have committed the crime without being trafficked¹⁹.

Of the 10 women identified as victims of trafficking for criminal exploitation, 2 were European (from

168. DOI: 10.1007/s10611-013-9442-1; Farrell A., Pfeffer R., "Policing Human Trafficking: Cultural Blinders and Organizational Barriers", *The Annals of the American Academy of Political and Social Science*, 2014, 653, pp. 46-64. <https://doi.org/10.1177/0002716213515835>.

¹⁹ Villacampa C., Torres N., "Mujeres víctimas de trata en prisión en España", *Revista de Derecho Penal y Criminología*, 2012, 8, pp. 411-494.

Belgium and Romania), 7 were Latin American (from Mexico, Ecuador, Aruba, the Dominican Republic, Venezuela and Brazil) and 1 was Asian. With regard to their penitentiary status, 9 were convicted and only 1 was on remand, 8 of them for drug trafficking and 2 for property crimes.

These women were doubly victimized, first because they had been victims of a trafficking process and forced to commit crimes by their captors, then because the system had failed to detect them, had consistently treated them as criminals and had imprisoned them.

In relation to the kind of victimization these women had suffered, examples of abusive trafficking were found (the abuse of a victim's position of necessity or vulnerability, taking advantage of a situation of absolute economic dependence, or manufacturing such a situation by offering them a loan to turn them into debtors), which also includes the use of the "lover boy" method. In at least 5 cases, the recruiters were women who were able to build a kind of relationship of trust with the victim, either as relatives or as supposed friends of the victim. Also examples of fraudulent trafficking surfaced, using deception to recruit victims by telling them that they would be transporting money or electrical components while they were in fact carrying drugs, or informing them that they were travelling to Spain to work in a legal shop or business while they were in fact intended to be exploited in the commission of crimes once in Spain. Finally, even examples of coercive trafficking were identified, since some women were kidnapped (when the target was not the victim herself, it was a member of her immediate family, forcing her to travel in exchange for the release of the kidnapped relative), and violence (sometimes sexual violence) was used directly on others.

In all cases, the victim's position of dependence became more evident as the journey progressed. Documents were often retained (in 7 of the 10 cases) and the trafficker changed, so that the person who had recruited the victim and with whom she had developed a certain relationship of trust disappeared during the process of migration.

When victims arrived in Spain, someone would wait for them at the exit of the airport to take them to a hotel, which was revealed to be the usual procedure in cases of drug trafficking, or to house them residentially, especially in cases in which the trafficker had a close relationship with the victim and when the exploitation was intended to consist in the commission of crimes against property.

The fear of what would happen to them or their families was the most prevalent feeling experienced by these women during their transfer to Spain. However, the sense of powerlessness to control the situation also surfaced in the interviews.

With regard to the exploitation phase, which in this type of trafficking consists of the stage in which victims are forced to commit crimes, the investigation revealed the dynamics of exploitation. In cases in which this consisted of the commission of the crime of drug trafficking, since 80% of the women identified as victims were employed for the commission of such a crime and that after an initial trip to Spain they were already arrested and imprisoned, the exploitation and the transfer phase of the process overlapped. In all cases, with the exception of one woman who had travelled to Spain several times carrying drugs and was arrested after multiple transits, the victims were arrested on the first occasion they travelled to the country. When the exploitation consisted of forcing the victims to commit patrimonial crimes, as happened in 2 of the cases, the exploitation phase could be clearly

identified and separated from the previous phases of recruitment and transfer.

With respect to the exploitation phase of the trafficking process, it was possible to differentiate between very diverse situations that can basically be systematized according to whether women were used to commit drug trafficking or property crimes. In cases of drug trafficking in which women transported toxic substances, leading to their apprehension upon arrival in Spain, the stories showed a diversity of procedures used. In some cases, the interviewees had carried the substance hidden in a suitcase that was checked in the departure airport and which they had to collect on arrival at their destination. In others, the drug was hidden in small handbags that the carriers did not need to check, which allowed them not to lose sight of the transported goods. A third way the victims had to transport the substances was by carrying them upon or inside of their own body: on the outside (attached to the body, between their skin and clothes), or on the inside (by means of previous ingestion or by insertion into a body cavity). In these latter cases, victims not only underwent the risk of being arrested and deprived of their liberty if the toxic substances they carried were detected, but also experienced a violation of their physical integrity that could constitute a clear risk to their health and also to their lives. Even in cases where the substance was glued to their bodies with adhesive tape, some interviewees were detected on arrival at the airport because of the difficulties they had in walking, crossing their legs, etc. In the case of patrimonial crimes, the exploitation phase was longer than that usually detected in drug trafficking cases: victims operated together with other people and strictly followed the guidelines given to them by the traffickers, generally without the possibility of

choosing the *modus operandi* they implemented to offend.

Despite the importance that the various international normative texts in this field give to the identification of victims, none of the 10 inmates who were classified as victims of trafficking here had been identified as such by the system. One of the questions that the interviewees were specifically asked about was whether any police officer or the judge themselves had asked them about their personal situation.

The interaction of the inmates with the different institutional representatives varied according to the cases and the personal circumstances of each of them. Although 3 of them had never explained the situation in which they had been living and the circumstances in which the process of their migration took place at any stage of their police, judicial or penitentiary process, the majority of the trafficked women had tried to inform either the police or the prosecutor or judge of the situation in which the commission of the crime had taken place. It is clear that on 5 of the occasions they tried hard to make the reality of their situation known, either at the time of the arrest or during the trial, albeit with little success. In one of the cases, one of the interviewees stated that she had tried to report her situation of exploitation in the country of origin, although she was ignored. Those interviewees who tried to report their situation in Spain often did so at the time of their arrest, especially at the point when they were intercepted carrying drugs at the airport, having been told by the traffickers that someone would wait for them or contact them as soon as they left the airport. The victims sometimes expressed to the acting officers that someone would be waiting for them at the terminal, indicating that they were at their disposal to identify the people

waiting for them outside. However, victims generally had very little information about the traffickers' identities, and often knew no more about them than their first names, so could do little more than offer themselves as lures to help the police to catch the person waiting for them in Spain to pick up the drug.

However, in one of the cases, the motive that had led the victim to carry drugs to Spain, which was to safeguard the life of a family member, which emerged during the criminal procedure launched against her, and even led to the conviction being appealed to the Spanish Supreme Court. However, according to the interviewee, bringing such circumstances to the attention of the judicial authority was not a mitigating factor of her criminal responsibility. Not even at the Supreme Court, where new evidence was provided in the form of the police report filed by her relative in the country of origin, claiming that he had been first kidnapped and then shot by traffickers as revenge for the arrest of the mule in Spain, did this have any effect on mitigating the victim's criminal responsibility for drug trafficking.

In general, therefore, interaction with the authorities was scarce. There is little evidence that interviewees were asked about their personal circumstances by the police or other legal practitioners. In general, in cases in which information was requested from the women, this was only for the purpose of identifying further offenders of crimes of drug trafficking, within the framework of the police or judicial investigation, rather than being concerned with the personal circumstances of the interviewees. Only in one case did one of the prison officers show any concern for the reasons that led the woman to commit a crime.

3.2. Results of the research with professionals

The presentation of this second investigation results will be structured according to the following order: first, those related to the causes of the failure to identify the victims, concerning both the knowledge of trafficking in general and, in particular, of this type of trafficking in human beings by professionals, and the difficulties detected in the identification of them. Secondly, the effects of this failure on victims, focusing on the treatment they receive within the criminal justice system, will be discussed.

A) Reasons for the failure to identify victims of trafficking in human beings for criminal exploitation by professionals

Since the first objective of this research was to determine the reasons for the failure to identify victims of trafficking for criminal exploitation, the first question addressed in the interview was the level of knowledge professionals had, both of trafficking in human beings in general and of this particular form of trafficking. In order to analyse this topic, interviewees were questioned on the following four points: a) their knowledge of the trafficking process in general; b) their knowledge of existing types of trafficking; c) their knowledge of existing regulations on trafficking; and d) whether they considered the training they had received to be sufficient, since the degree of knowledge of this reality depends to a large extent on training.

With respect to the professionals' knowledge of the phenomenon of trafficking in general, 9 interviewees (24%), mostly belonging to the criminal justice system, resorted to the characterization of the crime of trafficking as defined in the Spanish criminal code, without adding anything personal to characterize the phenomenon, demonstrating their adherence to the

legal definition without expanding on it. However, in other cases, some made an effort to identify the essence of the phenomenon outside normative provisions. Thus, trafficking was most often identified with reification or slavery and with the violation of human rights (16 interviewees, 43%), followed by its identification with the exploitation of a person or with profit (10 interviewees, 27%), as well as with prostitution (6 interviewees, 16%).

The identification between types of trafficking and prostitution emerged clearly when professionals were asked about the second issue, which concerned the forms of trafficking with which they were familiar. Of these, the best known was trafficking for sexual exploitation. Of the 37 interviews conducted, only in one case did the professional not refer to trafficking for sexual exploitation; therefore, 97% of those interviewed identified this form of trafficking. It is worth noting the widespread conviction that trafficking for sexual exploitation is more prevalent than any other form. Trafficking for labour exploitation was lesser known; although 24 of the interviewees (64%) referred to it, most qualified this with the assertion that there were fewer legal actions in this area than in sexual exploitation, so there are hardly any cases. Finally, trafficking for criminal exploitation was only clearly identified in 15 of the interviews that were carried out (40%); in another 6 cases (16%), when asked by the interviewer, some kind of reference was made to this type of trafficking by the interviewee, but without further details.

With regard to the degree of awareness of this type of trafficking, a notable difference was observed between professionals working within the criminal justice system and those carrying out victim assistance services. The former, although specialists in this area, were generally unaware of this reality

and, if anything, when describing cases of trafficking for criminal exploitation, linked them invariably to sexual exploitation, identifying as such the cases in which sex workers were used by pimps to offer drugs to clients or to commit patrimonial crimes against them (n=3). Only the specialized agents of the Catalan police – who did not then deal with trafficking for criminal exploitation as a form of trafficking – and the prison officers (6 of the 7) – who, despite not being specialists, were familiar with trafficking for criminal exploitation because they worked in the prisons where research with unidentified victims had been previously carried out – escaped this general trend. This confirms what other professional investigations have revealed, in relation to the fact that the lack of identification of victims may be due to a lack of knowledge and training of professionals²⁰. The professionals working in victim assistance services, on the other hand, were more conscious of this reality: the most clearly sensitized were those integrated in non-governmental organizations that assisted victims of trafficking (n=5) and the lawyers of these organizations (n=3). Not so familiar, however, were the professionals from the public Victim Assistance Offices.

As for the third point on which the professionals were questioned, their degree of knowledge of the legislation and regulations applicable to this reality, 26 interviewees (70%) said they were aware of the existing regulations, which was confirmed in discussion. The remaining 11 (30%) either gave very imprecise information on the applicable provisions

²⁰ Renzetti C.M., Bush A., Castellanos M., Hunt G., “Does training make a difference? An evaluation of a specialized human trafficking training module for law enforcement officers”, *Journal of Crime and Justice*, 2015, vol. 38, n. 3, pp. 1-17. <https://doi.org/10.1080/0735648X.2014.997913>; Farrell A., Pfeffer R., “Policing Human Trafficking: Cultural Blindness and Organizational Barriers”, *The Annals of the American Academy of Political and Social Science*, 2014, 653, pp. 46-64. <https://doi.org/10.1177/0002716213515835>

or directly stated that they did not know what was established by law. The professional group in which a lack of normative knowledge was most evident, among those acting in the criminal justice system, was that of prison officials.

Therefore, it can be said that most of the interviewees were familiar with the existing normative tools on trafficking in human beings in general terms, and specialized professionals to a greater extent. However, when asked specifically about the Spanish Framework Protocol for the Protection of Victims of Trafficking in Human Beings of 2011, interviewees demonstrated a lower level of knowledge. When asked about how much they knew about the Protocol, 3 of the 26 professionals who had clear notions of the legal provisions stated that they were not aware of it. In this regard, it was shocking that some professionals active in Victim Assistance Offices showed that they were unfamiliar with such legal instruments.

The fourth issue assessed was whether the interviewees considered that they had received sufficient training on trafficking in human beings. Of the 37 members of the sample, only 7 (20%) admitted without hesitation that there was information on the subject, while 17 (48%) stated categorically that there was no training or that it was very limited. The rest of those who addressed the issue (n=11, 32%) admitted the existence of some training, while recognizing its clear deficiencies and limitations.

Regarding the existing training, the most satisfied among the groups of professionals were those active in the field of the criminal justice system, except in the group of prison officers, in which a majority referred clearly to a lack of training. Professionals in the field of victim assistance were the most critical with regard to training obligations

not being fulfilled. In relation to the type of trafficking analysed here, it is curious that it is precisely those who are familiar with more types of trafficking, specifically those who were aware of the existence of cases of trafficking for criminal exploitation, who were the most critical of the training offered to professionals.

Among forensic professionals, prosecutors were the most satisfied with their professional training. It also appeared that police officers generally considered that it had been adequate, although they recognized that this was too oriented towards trafficking for sexual exploitation and focused on specialized units, with none provided to non-specialist police officers. For judges, the lack of training on this subject was not only recognized by this group themselves, but was also denounced by other professional groups, as emerged in the investigation. It was generally considered that this professional group was not interested in the issue.

The lawyers, critical of the existing level of training, disapproved of how the question depended on the sensitivity of each bar association, on whether or not it had assembled a group of specialists in trafficking, with resulting opportunities for training. Along with the lack of in-depth knowledge of the trafficking process in general and of trafficking in human beings for criminal exploitation in particular, the investigation with professionals enabled to provide some other objective determining factors that made it difficult to identify the victims²¹.

The first of these negative factors had to do with the fact that police strategies were not aimed at identifying victims of this type of trafficking. The lack of knowledge of trafficking in human beings

²¹ Villacampa C., Torres N., "Human trafficking for criminal exploitation: the failure to identify victims", *European Journal on Criminal Policy and Research*, 2017, vol. 23, n. 3, pp. 393-408. DOI: 10.1007/s10610-017-9343-4.

for criminal exploitation among professionals, the lack of its knowledge in particular among specialized police officers who, according to the Protocol, are responsible for the identification of victims, meant that the strategies developed concerning police investigations in trafficking cases were not oriented towards the search for victims of this phenomenon, but almost exclusively towards those of trafficking for sexual exploitation. In addition to the agents, other professionals in the criminal justice system (n=9) directed their efforts towards identifying victims of trafficking for sexual exploitation, so that they detected victims of the type of trafficking analysed here only when prostitutes were forced to commit crimes, in cases of multiple exploitation.

Secondly, stereotypes were identified among professionals about who might be considered victims of trafficking. Since most of them identified trafficking with the purpose of sexual exploitation, the constructed image of the victim was linked to the idea of a woman, mainly foreign and in an irregular situation forced into prostitution. This “ideal victim” is far removed from the victim-criminal, from the man or woman, foreign or national, recruited and forced to commit criminal acts.

A third negative condition was the exclusive attribution of the competence to identify victims to the specialized police officers established by the Spanish Protocol for the protection of victims of trafficking. It was observed that this circumstance resulted in the almost exclusive transfer of responsibility for the identification to these professionals from the rest of them. Up to 9 professionals from outside the police force stated that the identification of the victim was not their responsibility, adding that, if victims had not been

identified when they arrived at them, they did not feel concerned with identifying them as such at a later point. The representatives of non-governmental organizations interviewed voiced strong criticisms on precisely this point: how the competence for identification had been entirely assigned to the police.

Fourthly, it was found that the very framework in which the identification of the victim is carried out makes such an operation difficult. The identification takes place in the context of an interview with the victim in which the professional collects the information and determines his or her status as such. But the first contact usually takes place in a police station, an environment that is not conducive to providing information. The officers themselves recognized that under such conditions the victims were reluctant to provide information and the lawyers, prison staff and professionals from non-governmental organizations (n=10) indicated that identification should not be limited to a simple interview, but should be seen as a process in which the victim's trust was gradually gained by professionals.

Fifth, it was observed that some of the signs that professionals admitted to taking into account to assess the condition of victims might lead to misunderstandings. A narrative of personal trajectory is one of the main extremes from which professionals infer a victim status. But professionals such as prosecutors, lawyers, and staff from non-governmental organizations highlighted the amount of inconsistencies often contained in the narratives of trafficking victims. It was pointed out that the pressure to which they had been subjected and the process of dehumanization they had undergone had an impact on lapses and fragmentation in their story. Ignorance of this circumstance or assessing it

inadequately might lead responsible agents to failure to identify persons who should have been protected and assisted as victims. Some professionals stated that a person's status as a victim was intuited more by the non-verbal language they used than by their narrative. Another factor that many professionals took into account for the purpose of identifying victims was fear (n=12), but in the case of victims of trafficking for criminal exploitation this was twofold: in addition to traffickers, they also feared criminal justice system professionals, since their access to the system was usually as an offender.

Finally, one of the difficulties most commonly mentioned by professionals (n=10) for the identification of victims is that they did not identify themselves as such. The lack of self-awareness of their status as victims is accentuated in the case of individuals forced to commit crimes. They perceive themselves as offenders, either because they know they have committed a crime, or because traffickers exploit this idea to make it difficult for them to collaborate with the authorities. Consequently, in such cases the professionals need to act as mirrors reflecting what victims say back to them, in such a way that they might be able to see that they have been used by their captors and accept the reality of having been victimized.

B) Treatment of victims of trafficking in human beings for criminal exploitation in their passage through the criminal justice system

Any victim of trafficking – even if identified – is treated primarily as a source of evidence when confronted with the criminal justice system. The victim does not matter as a person, but as a conduit for the information she or he can provide about the trafficker. Since this is generally the case across all

forms of trafficking²², it has been decided here to specifically address only the issues that determine the precise course of victims of trafficking for criminal exploitation when interacting with the criminal justice system. In particular, their treatment as offenders will be addressed, since the institutional blame to which all victims of trafficking are subjected is more pronounced in trafficking for criminal exploitation cases, as victims have also committed crimes. A particular manifestation of this blame may be the poor recognition and application of the principle of non-punishment to victims for crimes committed during the trafficking process, so this issue is also addressed here.

Victims of human trafficking who have committed a crime are generally treated as offenders from the moment of their arrest and throughout their journey through the criminal justice system, as could be observed in the research conducted with professionals whose results are presented here. They do not fit the stereotype of the ideal victim, except in the case of being trafficked for sexual exploitation and forced into crime, where they are treated as victims²³.

Specifically, in the investigation with professionals that was carried out, it was observed that, in terms of the interaction of the victims with the police, the intervention was focused on securing the victim's collaboration in the police investigation. From the interviews, it was sometimes clear that recognition of their status as a victim was linked to their

²² Atak I., Simenon J.C., "Human Trafficking. Mapping the Legal Boundaries of International Refugee Law and Criminal Justice", *Journal of International Criminal Justice*, vol. 12, n. 5, 2014, pp. 1019-1038; Decker S.H., "Introduction. Human trafficking: contexts and connections to conventional crime", *Journal of Crime and Justice*, vol. 38, n. 3, 2015, pp. 291-295.

²³ Villacampa C., Torres N., "Human trafficking for criminal exploitation: effects suffered by victims in their passage through the criminal justice system", *International Review of Victimology*, 2019, vol. 25, n. 1, pp. 3-18. <https://doi.org/10.1177/0269758018766161>.

collaboration with the police officers. The interest that these people aroused in the early stages of their passage through the criminal justice system was fundamentally as offenders, as members of a criminal structure. In this first stage of the process, some assistance organizations and specialists from Victim Assistance Offices were very critical of the fact that recognition of their status as victims and their rights operated as compensation for their collaboration with the criminal justice system. A paradigmatic case that served to exemplify the treatment given to victims of trafficking for criminal exploitation during the police investigation was that of mules who were arrested at the airport and who were invariably seen as offenders. The agents found various arguments to defend that their actions were not forced, that they did it for money, to return a pending debt, or that they knew what they were coming for.

Once the criminal process had reached the judicial stage, if the victim had concluded the police investigation without having been detected as such, the rest of the professionals in the criminal justice system understood that the case was already judicialized and that it should follow the usual criminal procedure. Thus, prosecutors were reluctant to consider mules as victims, generally appealing to difficulties in admitting that there had been exploitation, as well as to the seriousness of the crime. Lawyers indicated that when mules are involved, there is always a tendency to use them as sources of information about other drug traffickers. When they do not have additional information to offer or are not willing to cooperate, they stated, the possibility of being treated as victims is further removed.

Following with the phases of the criminal procedure, at the prison level, it was observed that

prison officials received victims once they had been remanded in custody or convicted in the criminal procedure, so that the existence of a conviction seemed sufficiently definitive for them to question the condition of the person who entered prison. They considered her to be the author of the crime for which she was convicted, not the victim of the traffickers. However, some professionals were receptive to the possibility that during the imprisonment the victim might gain the necessary confidence to reveal the situation experienced. Nevertheless, far from prompting these officials to independently suggest that the sentences be reviewed, this information was entered into the prisoners' criminal records for classification purposes, or to evaluate their participation in specific treatment programs.

One issue that reflects the treatment of victims as they pass through the criminal justice system relates to the application of the principle of non-punishment to victims for crimes committed during the trafficking process. It is considered a manifestation of the victim-centred approach to trafficking not to hold victims responsible for the crimes they have been forced to commit by traffickers during the trafficking process²⁴. In the Warsaw Convention this circumstance is contemplated as a non-punishment clause and in the Directive 2011/36/EU not only as such, but also directly as a non-prosecution clause. Article 177

²⁴ Piotrowicz R., *The Non-Punishment Principle in International Law*, 2014. Retrieved from the Council of Europe website: www.coe.int/t/dghl/monitoring/trafficking/Docs/SeminarsConf/Presentations_workshop/Presertation_RWP.asp ; OSCE-Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Policy and Legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking*, 2013. Retrieved from: <https://www.osce.org/secretariat/101002> ; Cherneva I., "Human trafficking for begging". *Buffalo Human Rights Law Review*, 17, 2011, pp. 25-73.

of the Spanish Criminal Code contemplates a non-punishment clause for these cases whose nature is discussed (Fiscalía General del Estado 2011; Villacampa 2011). Additionally, Spanish criminal law requires proportionality between the criminal act committed and any situation of violence, intimidation, deceit or abuse to which the victim has been subjected, as well as that the crime committed is a direct consequence of this situation, in order to apply the clause.

In the investigation carried out, it was understood that analysing the degree of awareness of professionals about the existence of this principle, the exemption clause that embodies it and the limits of its application served to assess the treatment given to victims of trafficking for criminal exploitation in their passage through the criminal justice system. This, considering that a low level of respect and application of this principle might reinforce the conclusions that these victims are treated as offenders, given that the degree of the institutional blame victims endure could be considered inversely proportional to the degree of knowledge and application of this principle.

In the research carried out with professionals, asking the interviewees about this principle directly was not originally planned. This issue was expected to emerge spontaneously, by asking interviewees about the effects that the identification of victims should have on the criminal process; among them, it was expected that professionals would refer to the acquittal or reduction of sentences for victims. However, as the issue did not surface spontaneously, it came up only in response to direct questions from the interviewers. As a consequence, 64% of the interviewees referred to this topic (24), although 36% of them (13) did not address it at all.

It was addressed at length in only 5 interviews (13%).

What seems more revealing is that of these 13 interviews in which the issue was not addressed at all, 7 concerned professionals operating in the criminal justice system who should be well aware of the existence of this principle of non-punishment. That is, at least one sector of professionals whose role lay precisely in the effective recognition of this principle did not even know of the existence of the non-punishment clause contained in Spanish criminal law.

As for the 24 interviews in which the non-punishment of victims was addressed, the issues discussed had to do with the nature of the clause and the limits of its applicability. In relation to the nature of the clause, although the Spanish Criminal Code contemplates it as an exemption once the prosecution has taken place, 10 of the interviewees considered that the status of trafficking victim should be used to prevent the prosecution itself. In some cases, professionals referred to what had happened in cases in which they intervened, indicating that it had been decided not to accuse victims of trafficking for sexual exploitation who had been forced to commit crimes, while in others they referred to the desirability of not prosecuting these victims directly. The prosecutors, probably influenced by the instruction of the same Spanish Public Prosecutor's Office, stated that they were unclear about the nature of the exemption.

With reference to the limits of the application of this defence, clear differences were observed between victim assistance and criminal justice professionals. The victim assistance professionals widely held that the exemption from criminal liability should apply regardless of the seriousness of the offence committed if it can be shown that the

victim was forced to commit it. In contrast, the criminal justice professionals were, by and large, less generous with regard to the defence's applicability, repeatedly referring to the idea of proportionality, that is, to the need to balance the seriousness of the offence committed with the amount of pressure exerted on the victim to commit it. Some admitted its application only in the case of sexually exploited women eventually forced to commit crimes by pimps, but not to mules carrying larger amounts of drugs. Only a few of this second professional group had a more permissive attitude, indicating that, if it was possible to exonerate the victim who trafficked in human beings from criminal responsibility for a human trafficking crime, this should be even more so in the case of responsibility for drug trafficking.

4. Discussion and conclusions.

In the light of the results of the aforementioned investigations, especially the second one— since the first served fundamentally to confirm that trafficking in human beings for criminal exploitation was a reality also taking place in Spain that remained undetected – a series of proposals for the future can be formulated that would contribute to giving visibility to this manifestation of trafficking in human beings, still relatively unknown in most Western countries.

In this regard, it is necessary to begin by indicating that the victim-centred approach to trafficking, the recognition of the rights of the victims of this phenomenon, involves their identification as such, which is difficult in new manifestations of trafficking, such as the one we have seen here. We have been able to expose how many professionals in the criminal justice system lack the necessary underlying knowledge about this type of trafficking to enable victim identification. This, together with

other negative conditions preventing the detection and identification of victims of trafficking for criminal exploitation, such as the limitation of police strategies on trafficking to that aimed at sexual exploitation, the persistence of stereotypes about the ideal victim or the attribution of competence to identify victims exclusively to specialized police. It has also been shown how when the police investigation resulted in no identification of victims, it was considered that the person should follow the normal judicial circuit, which means being investigated and subsequently prosecuted, unless he or she fits the stereotype of the ideal victim, not being this the case with mules, to whom the principle of non-punishment is generally not applied.

In order to prevent victims of trafficking for criminal exploitation from continuing to pass unnoticed through the system, it is necessary, for the future, first and foremost, to extend the information and training offered primarily to professionals in the criminal justice system. They should be provided with a more global knowledge of trafficking that distances it from its exclusive identification with sexual exploitation, in accordance with the way this reality is conceived by professionals in the field of victim assistance.

Secondly, regulations should make it possible for victims to be identified not only by specialized police groups, but also by other professionals in the criminal justice system itself once the police investigation is complete, as well as by victim assistance personnel. Identification understood as a process is not possible in a police interview when prejudice about the type of ideal victim exists, so subsequent identification should be made possible by modifying the Spanish Protocol on trafficking in human beings.

Finally, training efforts and regulatory changes should lead to a reduction in the adverse effects that victims of all forms of trafficking in human beings suffer, in particular those exploited in the commission of criminal activities, as they pass through the criminal justice system. In particular, professionals should be made aware of the principle of non-punishment and its area of application. To conclude, at a regulatory level, while favouring for the future a less restrictive interpretation of proportionality for the applicability of the non-punishment clause, the inclusion of a non-prosecution clause for victims in the Spanish Criminal Code should also be considered.

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