



Understanding the criminal justice process in human trafficking cases in Portugal: factors associated with successful prosecutions

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Abstract

The overall number of convictions for human trafficking is still very low. In order to understand the barriers and gaps to human trafficking prosecutions and convictions, it is pertinent to analyse the criminal justice processes at different stages of the criminal procedure. This study aims to respond to that gap by identifying the cases that initiated criminal justice procedure for the crime of human trafficking in Portugal, through the analysis of 30 records of criminal cases for human trafficking elapsed in Portugal between 2007 and 2015. The results showed that the majority of cases (71%) were filled after the criminal investigation phase, and only 2% of all cases were convicted for human trafficking. The analysis allowed to identify the factors of effectiveness and ineffectiveness shaping legal outcomes and also, the relevance of the victim cooperation in the different stages of criminal justice processes (e.g., police investigation, trial).

Although human trafficking is a phenomenon that has received increasing attention from several national and international agencies, governmental and non-governmental, and despite the legislative developments about the crime, there is a lack of studies characterizing and evaluating it systematically [1–3]. In general, there is an absence of empirical quantitative studies. There has been a predominance of studies related with human trafficking for sexual exploitation [2], with a predominance of researchers analysing human trafficking based on information from governmental reports and from the media, as well as interviews with key stakeholders [4].

Specifically, studies focused on criminal justice processes of human trafficking, i.e., that tried to understand the process and the obstacles at different stages of criminal procedure since the complaint or evidence of the crime of human trafficking

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(signalling, investigation, prosecution and trial) are very recent and yet insufficient. Nevertheless, there are a set of studies performed mostly in Europe [5–15] and USA [16–19] that tried to identify factors that explain the difficulty of identifying victims, investigate this crime, and convict the human traffickers. Those studies were based on a variety of methodologies, including interviews with justice and social workers and analysis of criminal justice processes.

The analysis of international statistics also reveals that the global criminal justice response against human trafficking remains insufficient. In spite of the legislative progress in terms of human trafficking' criminalization of in many countries, the overall number of convictions for this crime is still very low, with only 4 in each 10 countries reporting 10 or more convictions per year and about 15% reporting zero convictions [20]. This has led several international organizations (e.g., Group of Experts on Action against Trafficking in Human Beings [GRETA] [21–23, 20]) to recommend the examination of the factors that contribute to the low conviction rates and to introduce greater proportionality between the seriousness of the crime and the severity of penalties.

The present research sought to address one of the recommendations of GRETA [21] to Portugal: to conduct empirical studies that help us understand the factors that explain the low rate of convictions for the crime of human trafficking. Specifically, this study sought, through a document analysis of criminal justice processes for human trafficking, to describe and understand the factors that may have contributed to the conviction for the crime of human trafficking, for its filing or for the prosecution and conviction for other crimes less severe, that did not reflect the evidence or the initial suspicions of trafficking crime (e.g., pimp). We argue it gives an important contribution to the literature to the extent that: i) it is based on an analysis of the criminal proceedings, thus using the justice system data to better understand its liabilities; ii) it specifically examines the obstacles and good practices found in each of the criminal procedure stages: investigation, prosecution and trial.

The article is structured as follows: first, we review previous studies of criminal justice processes in human trafficking that identify the main obstacles to identify, investigate prosecute and convict human trafficking cases, then we outline the studies developed on this subject in Portugal, as well as the Portuguese main legislation progresses and policy on human trafficking. Subsequently, we present the objectives and methodology of the study and finally, we outline the main findings of this study and the discussion. Finally, we conclude with specific recommendations to improve the effectiveness of the justice system of Portugal and the fight against human trafficking.

Obstacles to identify, investigate, prosecute and convict human trafficking cases

According the United Nations Office on Drugs and Crime (UNODC), in a recent report titled *Evidential Issues in Human trafficking Cases* (2017)

As in every crime, cases may succeed or fail according to the quality and adequacy of the evidence submitted. However, in human trafficking' cases, there are particularly complex evidential issues, many of which hinge upon the particular nature of this covert crime and the behaviour of victims, whose testimony is

often the central piece of evidence. Thus, an understanding of the issues and the ability to learn from actual cases in which they played a role is of the essence ([24], p.3).

There has been limited scientific research on how human trafficking cases are identified, investigated, prosecuted and convicted. For example, regarding the prosecution of these cases, there is a need to examine:

What charges are laid, what evidence is presented in court, what protections are made available to witnesses, what defences are relied upon, and case outcomes; the factors that may impact on the conduct or outcome of trafficking prosecutions; for example, jury attitudes, legal complexity or perhaps the type of ‘exploitation’ alleged; the experience of participating in a trial, either as a trafficked person giving evidence, a witness, a person accused of ‘trafficking’, or as a prosecutor or defence lawyer ([25], p. 1).

Research on those factors is especially important when new legislation is introduced since it is known that the ‘law in books’ does not entirely correspond to the ‘law in practice’. Indeed, implementation of reforms of the criminal court system often reveals attempts to resist or circumvent these legal reforms [17, 26], and especially if these require “changes in the way cases are prosecuted, affect the likelihood of successful prosecution, or impede the efficient and effective processing of cases” ([27]: 169). Implementation of legal reforms remains problematic when prosecutors maintain an “amount of unchecked discretionary power”, and beliefs about the degree of ‘convictability’ of the criminal cases, in addition to the attitudes of decision-makers, are extremely important in shaping legal outcomes ([27]:169).

Previous studies and international reports have shown that overall, identification, prosecution and conviction of human trafficking cases remains quite low ([16, 17, 20, 28]) and several countries fail to provide relevant data. Specifically, regarding the identification of human trafficking cases, a study by Farrell et al. [16] has found that less than 10% of police agencies in the USA have identified cases of human trafficking between 2000 and 2006. The authors suggest that difficulties in the identification of human trafficking might be related to the fact that the agency leaders do not perceive trafficking as a problem in their community, – i.e. there is a low prioritization of combatting human trafficking (see also [29]), as well as to a lack of training of officers to identify and investigate these cases. On the other hand, in a qualitative study, Nichols and Heil [19] identify several other challenges to the identification of human trafficking offences, including trafficking techniques such as coercion, online solicitation, hidden venues, and interstate movement, as well as issues with police reporting and investigation.

Policy essays and some empirical studies (qualitative and quantitative) have consistently identified a variety of factors and obstacles to prosecute and convict human trafficking cases, that Farrell et al. [17] have organized in three general categories: i) barriers related to an ‘uncertain legal environment’; ii) institutional barriers, related with deficiencies in the justice system institutions and iii) barriers related to attitudes of the justice professionals.

Regarding the first type of barriers – an uncertain legal environment – the analysis of the qualitative interviews with law enforcement, prosecutors and victim service

providers has highlighted factors like: untested laws and unclear legal standards, lack of guidance about how to use state anti-trafficking laws, and a lack of prosecutorial tools specific to the anti-trafficking statute, such as jury instructions or motions. State prosecutors were more likely to prosecute human trafficking cases using existing non-trafficking laws with which they (and judges) were more familiar, such as pandering, promoting prostitution or civil labour violations. Additional legal challenges to prosecuting human trafficking cases related to judge and jury misunderstanding, bias, and lack of knowledge about human trafficking [17]. These types of legal constraints to prosecuting human trafficking crimes have also been stressed by other authors, like Gallagher and Holmes [30] who propose developing clear and precise laws that incorporate internationally agreed standards, but also reflect the realities of the specific criminal justice system.

The second type of obstacle to prosecuting and convicting human trafficking crimes relates to institutional barriers. In Farrell et al. [17], three institutional deficiencies were identified: the lack of specialization among investigative and prosecutorial personnel, the lack of training and tools, and the lack of victim services. These deficiencies have also been highlighted by other studies and authors, who have suggested the need for providing more resources, better information gathering, better organization and more specialized training on human trafficking to law enforcement agents [6, 10, 11, 31, 32]. More specifically, Farrell et al. [17] observed that the identification of human trafficking cases followed a reactive approach - based for example on a tip from a community member, a victim-services organization or a hotline call. A lack of a proactive approach was also found to influence the investigation stage and the prosecution of these cases and was linked to institutional barriers such as the lack of specialized units or dedicated personnel. More recent studies in Spain [14, 15], conducted with 37 criminal justice professionals and victim service providers, tried to determine the causes of the criminal justice system's failure to identify the victims of human trafficking for criminal exploitation, in order to prevent them from remaining hidden victims and to recognize the principle of non-punishment. The main difficulties in identifying the victims were the lack of knowledge of the phenomenon amongst professionals, the stereotypes about trafficking victims, difficulties and misleading signs related to the identification process and failure to self-identify as a victim.

Another factor influencing the prosecution of human trafficking cases was the amount, as well as the diversity of evidence (human trafficking indicators) gathered during the investigation stage. This aspect is even more problematic because most human trafficking cases tend to rely exclusively on the victim/witness evidence. This dependence on victim testimony may create difficulties in the prosecution and conviction of human trafficking crimes, because getting the witnesses to collaborate with the investigation could prove quite difficult ([25, 33–35]). Indeed, there are several motives for victims of trafficking reluctance to testify, including: being unable to self-identify as a victim; lack of knowledge of services; fear of reprisals from traffickers; shame/stigma; because they see the situation as their own fault or believe that they have committed a crime; fear of deportation/arrest; fear of law enforcement acting in collusion with traffickers; learned helplessness/PTSD; cultural/language barriers; lack of transportation [25, 36]. Additionally, when victims do testify, their testimony can be affected by factors like fear, the victim's personal situation and trauma, leading to inconsistent statements that damage their credibility and produce conditions for secondary victimization [35].

This situation, in turn, can be worsened by negative attitudes of the police, prosecutors and judges toward human trafficking victims [17].

Besides specialized training of justice professionals and the creation of multi-disciplinary teams, Verhoeven et al. [12] suggest the knowledge from domestic violence studies can help us understand the ambivalent attitudes of victims towards cooperating with a criminal investigation (see also [35]). It can also help deconstructing the dual representation of victims of trafficking for sexual exploitation as either unwilling victims on the one hand, versus independent prostitutes on the other ([12, 32]). Another recommendation resulting from some of these studies is the need to provide victim/witness centred services that are sensitive to the psychological processes of victimization and respect the rights of the victims [10, 19, 37].

Criminal justice processes of human trafficking in Portugal: A unexplored field

In Portugal, there are few studies published about human trafficking (e.g., [8, 32, 37–46]) and indicating a wide diversity in terms of subject matter. An empirical study, by Matos et al. [8], based on discourses of justice professionals, examined and identified the factors that difficult the recognition of the typifying elements of the crime of human trafficking and create obstacles to the prosecution and conviction of those crimes: a) legislative advances need to be accompanied by other changes, some of a more systemic nature and others that are more specific; b) an efficient criminal procedure should include better legal clarification of the means of collecting evidences of human trafficking, that could be supported by objective instruments to be considered valid; c) the centralization of proof that the testimony of the victim has to be overcome; d) urgent specialized professional training of an ongoing nature; e) an efficient cooperation between the various law enforcement agencies at the national and international levels, with public prosecution services and magistrates; f) a superior clarification of the condition of the special vulnerability of victims; g) and an informed perspective regarding the global nature of phenomenon of human trafficking, namely regarding a centred victim approach (e.g., victims' vulnerability, illegal status, and their difficulties in terms of social and cultural integration).

Santos et al. [32] was focused on human trafficking for sexual exploitation, based in a mixed methodology that aimed to identify and characterize the contemporary dynamics of human trafficking for sexual exploitation in Portugal. In accordance with previously mentioned international studies, the authors found a significant discrepancy between the written legislation ('the law in books') and its interpretation and practical implementation ('the law in action'), the latter being subjected to the influence of stereotypes and prejudices, as well as to institutional obstacles. Some of the most important obstacles to the prosecution and conviction of crimes of human trafficking for sexual exploitation were the imprecision of the law and the overlapping of police forces. Specifically, the interviews with judicial officials (members of the CPOs and magistrates) revealed concerns regarding the dispersion of powers for criminal investigations of human trafficking among the various police forces and the lack of coordination among them. They also highlighted the importance of the Public Prosecutor in

this type of crimes and the need to improve cooperation with foreign police forces. The same study identified barriers related to the imprecision of the law, in particular difficulties in the interpretation of the legal definition of the victim, and its condition of ‘special vulnerability’. According to the authors, this lack of consistency in the interpretation of the law can lead to different choices and developments of the investigative process, depending on the perceptions of the victims of human trafficking. Here, the authors warn about the risk of applying moral criteria in the identification of victims of sexual trafficking, differentiating between ‘good and deserving’ victims and ‘bad and not deserving’ victims [32], in line also with other international studies (e.g., [12]).

The difficulties felt by the police officers to investigate and collect testimonial evidence in human trafficking cases has been discussed by Teixeira [47] in a collective work published by the Portuguese Observatory on Trafficking in Human Beings. The main difficulties identified were the linguistic barriers, the distrust of the victims regarding police authorities; the existence of ‘cover stories’, the difficulties felt by the police in deconstructing those and finally the fact the victims are looking for immediate solutions to their situation, including not only criminal solutions but social solutions (housing, health support, jobs). These obstacles are consistent with previous research in other contexts [25, 36]. Additionally, Teixeira [47] has suggested the need for specialized training of the judicial agents working with crimes of human trafficking, a recommendation that is also common to Matos et al. [8], Santos et al. [32], operationalized as a main strategic area transversal to all the four Portuguese National Plans Against the Trafficking of Human Beings that were conducted in Portugal since 2007), following also the recommendations of GRETA reports [21, 22].

Portuguese legislation and policy on human trafficking

With the amendment of the Portuguese Penal Code of 2007, the crime of human trafficking came to be looked upon, autonomously, on article 160, in the chapter on Crimes Against Personal Freedom (Decree Law 59/2007 of 4 September), chapter which also includes article 159 which criminalizes all forms of slavery. This change in classification reflected the seriousness of this type of crime.

Recently, the Decree-Law no. 60/2013 of 23 August transposes into the national Law the EU Directive no. 2011/36 of 5 April, relative to the Prevention and Combating Trafficking in Human Beings and Protection of Victims. Following several Directives and recommendations from GRETA [21], the new Penal Code includes all forms that consensually characterize human trafficking crime, adding to sexual exploitation, labour exploitation and extraction of organs, begging, slavery and other criminal activities. According to the article 160°, of Human trafficking,

- 1 - Whoever offers, delivers, entices, accepts, transports, lodges or shelters any person for the purpose of exploitation, including sexual exploitation, labour exploitation, forced begging, slavery, removal of organs or the exploitation of other criminal activities;
 - a) By violence, abduction or serious threat;
 - b) By fraudulent ruse or manipulation;

- c) With abuse of authority resulting from a relationship of hierarchical, economic, work or family dependence;
- d) By taking advantage of the psychic incapacity or situation of special vulnerability of the victim; or
- e) Through obtaining consent from the person who has control over the victim; will be punished with a prison term of from three to ten years. (Decree-Law no. 60/2013 of 23 August).

Another innovation, clearly stated in the decree and which, would previously, would only be implied is the irrelevance of the victims' consent, included in the paragraph 8 of the same article.

The Decree-Law 60/2013 of 23 August also establishes a number of amendments relating to special means to gather evidence and the loss of property resulting from criminal activity related to human trafficking: Law no. 5/2002, of January 11, relating to measures to combat organized, economic and financial crime, as amended by Law no. 9/2008 of 21 April, and the Decree-Law no. 317/2009 of 30 October and 242 / 2012, November 7, now includes the wording of article 1, paragraph n) the Human trafficking; the article 2 of Law no. 101/2001, of 25 August, which establishes the legal regime of covert actions for prevention and criminal investigation, integrates now e) Human trafficking; the article 17 of Law no. 45/2011 of 24 June, which creates, under the PJ, the office for asset recovery (GRA), now includes, in paragraph c), that the product of revenue from Human trafficking related goods, in favour of the coordinator of the PNCTSH, is designed to support actions, measures and programs of prevention of human trafficking and to provide assistance to their victims.

In parallel with the legislative changes, the PNPCTSH III (2014–2017), approved by Resolution of the Council of Ministers No. 101/2013, aimed to respond to the recommendations of the report on the implementation of the Convention of the Council of Europe on combating human trafficking and also the amendment to the Criminal Code made by Law no. 60/2013 of 23 August, which brings increased demands for the implementation of public policies related to this crime. This plan was divided in five strategic areas (with 53 measures): 1) Prevention, awareness, knowing and researching; 2) To educate, train and qualify; 3) To protect, intervene and empower; 4) Criminally investigation and 5) Cooperation, whose main objective was strengthening referral mechanisms and victim protection, deepening coordination and cooperation between public authorities and civil society organizations involved and the adaptation of the national response to the new challenges, in particular, new forms of trafficking and recruitment.

Objectives

This study sought, through a document analysis of criminal cases for human trafficking, to describe and understand the factors that may have contributed to the (in) effectiveness of the criminal proceeding related to human trafficking' cases, who led to conviction for the crime of human trafficking, for its filing or prosecution in other crimes less severe, that did not reflect the evidence or the initial suspicions of the human trafficking crime (e.g., pimp). The role of the victim in all the criminal justice process is also analysed.

Methodology

Procedure and type of data

With the aim of analysing the cases that initiated criminal procedure for the crime of human trafficking, from 2007 to 2015, several demarches were made, near several government entities (sources: Public Prosecutor's Office, Judiciary Police, Immigration and Borders Service). It was possible to identify 481 cases initiated for the crime of human trafficking, of which, according to the different listings received, 330 (69%) were filed and 151 (31%) progressed to the stage of prosecution for human trafficking or related crimes. We only identified nine cases resulting in conviction for the crime of human trafficking. Of these, four were convicted of human trafficking for labour exploitation, three for sexual exploitation, one for forced begging and one for slavery, under article 160 of the Penal Code. Subsequently, we requested permits for consultation of 164 of these proceedings, corresponding to 34% of the identified cases between 2007 and 2015, having analysed 30 cases validated for this study.¹

Instrument

Data collection was performed based on a structured grid of analysis, which provided a set of variables that allowed the researchers to intentionally collect information in all consulted cases. In order to assure the "construct validity" of this instrument, the issues have been defined and formulated based on several sources of information, including previous interviews with judicial professionals from different institutions in Portugal (Office of the Attorney General of the Republic, Centre for Judicial Studies, Judiciary Police and Foreigners and Borders Services), as well as the scientific literature on human trafficking and criminal procedure, especially previous studies that used similar methods of data collection (e.g., [10, 17]).

This grid was successively reviewed as new relevant data emerged in the cases. From the data collected through this instrument, we developed a subsequent structured and comprehensive content analysis of the consulted cases. The result of this analysis concerned both elements associated to the crimes and to the criminal proceedings. Elements associated to the crimes included its location, type of trafficking crime, presence of related crimes, identification of police institutions involved in the process of criminal investigation, number, nationality and sex of the victims and number, nationality and sex of the suspects, opening data of the criminal case, duration and conclusion of the case and, finally, *modus operandi* of the traffickers. On the other hand, this instrument allowed for the collection of data relevant to criminal proceedings, namely: relevant occurrences during the case and its illustrative transcription, conviction, reasons for conviction, acquittal or filing and illustrative transcript.

The data was analysed and grouped according the categories identified in Table 1 (factors of effectiveness) and in Table 2 (factors of ineffectiveness).

¹ We requested permission for consulting these cases in 2013 and at that time 164 cases represented 50% of the human trafficking cases registered by the Portuguese CPOs between 2007 and 2013. In November 2015 we updated the data regarding registered human trafficking cases but did not consult nor analyzed any more of these cases.

Table 1 Factors of effectiveness in criminal justice processes

Phase	Factors of effectiveness	
Criminal investigation	Proactive process	Planned, timely and opportune strategies The mobilization of a large number of operational Resource of diverse special means of evidence Quality of witnesses Testimony
	Transnational cooperation Involvement of multidisciplinary professionals (e.g., psychologists Timely Identification of victims and traffickers	
Prosecution and Trial	Clear identification of the different elements of the crime, according to article 160 of the Penal Code; Enforcement preventive measures to traffickers Validation of evidence collected in investigation stage by Magistrates and judges	
The role of the victim in Criminal proceedings	Recognition of the victim as an especial vulnerable person Victims Cooperation	Collaborative attitude and quality of the testimony

Table 2 Factors of ineffectiveness in criminal justice processes

	Factors of ineffectiveness	
Criminal investigation	Reactive Process	Late proof collection Repeated requests to postpone the deadline
	Critical incidents Failure to identify the suspects and/or the victims (whereabouts unknown) Difficulties in transnational cooperation	Omissions, flaws, lapses or errors
	“Fragile” prosecution, not sustained on evidence of human trafficking crime Non-appearance of victims and traffickers (the victims had no attended the hearings)	Collect evidence of other crimes (e.g., pimp, illegal immigration)
The role of the victim in Criminal proceedings	Lack or insufficient cooperation	Non collaborative attitude and mediocre quality of testimony Testimony insufficient Contradictory testimony Victim not located/ unknown whereabouts

Consulted cases

Although we requested permission to consult 164 cases, only 44 of these cases were allowed for consultation. Of these, five were authorized extemporaneously given the time required for consultation on the study implementation period. We consulted 39 cases that had timely authorization. Nevertheless, only 30 were analysed because seven were not inscribed in the human trafficking' crime and two of these were still in the initial phase of inquiry at that date. Throughout the study, 11 requests for consultations were rejected based on the fact that these cases were under secrecy and/or still under investigation. In short, within the course of this study, about one third of the query requests sent were attended (33.5%).

From the universe of the analysed cases ($N=30$), the majority of the cases ($n=21$) were filed during the inquiry phase, four were initiated as human trafficking crimes but reached the end of the inquiry phase with a prosecution for a related and less severe (three of them were subsequently acquitted and one awaiting trial). Three resulted in the conviction for the crime of human trafficking, **two** cases resulted in prosecution for the crime of human trafficking, but that were still awaiting trial. Table 2 provides a detailed characterization of the criminal cases analysed.

There were some cases ($n=2$) that after consultation and having realized that these were still at the inquiry phase, we decided not to include in the analysis as their informative power was fragile regarding our research questions. Finally, we consulted seven cases that although present in the available lists, did not correspond to crimes of human trafficking, but pimp and hence were eliminated from the analysis (Table 3).

The motives for the filing can be organized into three categories: motives centred on the victims (a total of 11 occurrences), where one can find indications of their lack of cooperation with justice, not having been located, or having given incoherent, non-credible or insufficient testimonies; motives centred on the suspects (in a total of 6 occurrences), namely because they were not located or identified; and motives centred in the crime itself (in a total of 4 occurrences), namely for anonymous and unsubstantiated denunciation, or for the fact that the crime was committed abroad.

Findings

Factors of effectiveness in criminal justice processes

Proactive process

Evidence of proactivity of the police agents, based in *planned, timely and opportune strategies* to identify the victims and to collect evidences, that were used to provide a clear and exhaustive statement of the existence of all typifying elements of human trafficking, according to article 160° of Portuguese Penal Code. These proactive investigation processes presented a set of characteristics, namely:

The mobilization of a large number of operational In the gathering of the means of evidence there were a large number of human resources involved:

Table 3 Characterization of the consulted cases

Cases characterization	Filled (<i>n</i> = 21)	Prosecuted for other crimes (<i>n</i> = 4)	Convicted/ awaiting trial for human trafficking (<i>n</i> = 5)
Purposes of exploitation			
Sexual	10	3	3
Labour	6	–	2
Sale of minors	5	–	–
Criminal activities	–	1	–
Number of victims			
Lower than 5	15	1	1
5 or more	6	4	4
Nationality of victims			
Portuguese	11	–	2
Foreign	8	4	3
Unknown	2	–	–
Sex of victims			
Female	13	3	1
Male	5	–	1
Both	2	1	–
Unknown	1	–	–
Number of suspects			
Lower than 5	16	3	4
5 or more	5	1	–
Nationality of suspects			
Portuguese	10	–	2
Foreign	6	3	2
Portuguese and Foreign	5	1	1
Sex of suspects			
Female	10	–	–
Male	1	2	1
Both	10	2	4

“After about three months of telephone intersections, with approximately a year of investigation, the SEF initiates an operation in downtown Lisbon with simultaneous intervention in about five different places, with more than 50 elements of Police”. (Case 2)

Resource of diverse special means of evidence The diversity of the special means of evidence constituted another important element of these cases, including the testimonial evidence, photographs, documental evidence, telephone interceptions, seizure of objects, searches and voice and image collection:

“Searches were made to boarding houses and to the residences of some of the accused, having resulted in the seizure of objects, documents (passports and other documents of the victims), large sums of money, gold, receipts of bank transfers to Romania, notes about the daily amounts earned for each victim thousands of condoms”. (Case 2)

“Evidence: Report of forensic examinations; Recognition of sites with photos; Information provided by the Spanish authorities; External diligence reporting; Records for personal recognition; Vehicle seizure report; Expert report assessing damage; Criminal record of the accused; Testimonies from the victim's mother, library clerk, and the person accompanying the suspect”. (Case 4)

“Extracts from the salaries of the suspects were collected in the Social Security database; the registrations of the vehicles were consulted; and several materials was seized during the search to the residence of the suspects, including two computers, a rifle of air pressure, two movie cameras that were in the room, plus a memory card and identification documents belonging to the victim”. (Case 7)

Quality of witnesses testimony The type and quality of collaboration by some witnesses was also highlighted:

“Following contact with the Portuguese authorities, witness X, taxi driver, went to Burgos, to get M. out of the hospital, which he did. His testimony is very demonstrative of the control exercised over people taken to work in Spain, and awareness of the dangers that ran by the Spanish authorities themselves: the witness described the police apparatus at the entrance to the hospital, and his astonishment when he learned that it was because of the medical release of M.; and the protection the Guardia Civil gave him over 100 or 150 kms from Burgos, with the express warning when they left them to only stop the car at home”. (Case 1)

Transnational cooperation

The transnational dimension of many human trafficking' cases bring special challenges to police agents during the investigation stage and is an important factor for the proper resolution of them:

“Diligences were made in order to request cooperation from the Spanish authorities to gain access to information regarding vehicles with Spanish registration (found in sites of the fairs), as well as the existence of criminal records of respective owners; in the same day the information is sent”. (Case 4)

“Cooperation of the Spanish authorities, made it possible to locate the suspect's sow at the location of his residence”. (Case 29)

Involvement of multidisciplinary professionals

The involvement of multidisciplinary teams that assessed the victims' vulnerability at psychological, social, familial and/or economic levels:

“From the social reports relating to victims in the file, one can deduce their personal condition of special need or vulnerability, in the case of people with problems that go beyond the financial (alcoholism, and even some cognitive limitations, in several cases, which was also verifiable from their statements, and with meager family support, as observable from the testimony of witnesses questioned, social reports, and even in the form how complaints have arisen). Naturally, these limitations and fragilities were instrumental to convince victims to accompany them, to bear the precarious conditions in which they were maintained (clearly evident in the photographic record of the searches made in Spain), and to not be searched hard by the family – these being persons more easily influenced and likely to believe in the promises of better conditions that of course, and according to common experience, were proposed to them”. (Case 1)

Timely identification of victims and traffickers

A proper and early identification and timeliness of actors involved in crime, victims and traffickers is a factor of effectiveness, especially given that, in most cases, they are highly organized crime networks with mobility capacity between countries:

“The group was divided into three distinct and clearly defined levels. The group was led by one of the defendants, who was in charge of distributing the different tasks and functions to other defendants (...). In the second level there were three defendants, who collected the money from prostitution, controlling every movement of the women ... In the third level, we find four defendants, who, in addition to canvass women brought from Romania to Portugal, exercised the power to repress them”. (Case 2)

Prosecution and trial

Clear identification of the different elements of the crime, according to article 160 of the penal code All evidence gathered during the investigation stage were used to substantiate in a clear and comprehensive manner, the existence of all typifying elements of human trafficking, resulting in the formulation of the charge in accordance with art. 160.

“Analysing the present case: What is at stake in the situations described in the indictment, is the crime of human trafficking for purposes of sexual exploitation (...) In fact, the defendants, working together, attempted against the personal freedom and the dignity of at least one woman as a person, enticed, transported

and lodged or accepted this woman, with the purpose of sexual exploitation – prostitution- in Portugal, and the facts have also revealed that, either at baseline or during the time when the victim was under the purview the accused, the execution means of this crime have occurred as provided for in paragraphs a) and d) of number 1 of art. 160 of the Penal Code and also of his number 6”. (Case 3)

There was an explicit rationale of classification of the crime of human trafficking, in particular:

“The objective type of adult trafficking consists in the supply, delivery, enticement, acceptance, transportation (via own agent or through a third party, but funded by the agent), harbouring or reception of a person for the purpose of sexual exploitation, exploitation of his labour or the extraction of organs ... analysing the present case ... what is in stake, in the situations described in the indictment, human trafficking for purposes of sexual exploitation”. (Case 3)

Enforcement preventive measures to traffickers Enforcement measures were applied to prevent the risk of continuation of the criminal activity:

“On 30/06/2009 the accused is brought to court from which it follows the enforcement measures term of identity and residence, ban on contacting the victim and her mother, and bail is set in the amount of 1000 euros”. (Case 4)

Validation of evidence collected in investigation stage by magistrates and judges There was also the validation of the collected evidence gathered in the criminal investigation phase. All evidence gathered during the investigation stage was used to substantiate in a clear and comprehensive manner, the existence of all the typifying elements of human trafficking, resulting in the formulation of the charge in accordance with art. 160.

“The Court formed its belief in the critical analysis of all the evidence presented, which proved sufficient for, beyond reasonable doubt, give as proven the facts. Thus, the court has taken into account, namely: Expert evidence of... documentary evidence (...). Exhibits, a DVD, transcripts of wiretaps, social reports, in addition to expert and documentary evidence mentioned above, the Court also considered the full and unreserved confession, made by all the defendants.” (Case 3)

“Several women found to be illegally in the country and engaged in prostitution activities in the boarding house, were identified and detained and, based on their statements, it was possible to gain knowledge of the way, and by whom these women were recruited, enticed, transported, and accommodated, as well as the places where they engaged in prostitution”. (Case 5)

Recognition of the victim as an especial vulnerable person The condition of special vulnerability of the victim was adequately described and validated. In two of three

cases in which there was conviction, the judgment regarding the victim's condition was vital (e.g., validation of particular vulnerability, impact, credibility):

“And whether at baseline or after the victim presence in Portugal, hosted by the defendants and into prostitution, the facts show the existence of exploitation of the situation of special vulnerability of the victim” “A significant proportion of women from Brazil were in situations of special vulnerability, given their status of full economic dependency, emotional fragility, permanent pressure being exercised on them, complete socio-cultural disintegration and limitation in movements”. (Case 3)

Factors of ineffectiveness in criminal justice processes

Reactive process

In most cases that ended in filing, the investigation process resulted from the complaint made by the victim himself, her family, or others ($n = 13$), or by an anonymous source ($n = 4$).

Late proof collection and repeated requests to postpone the deadline There was an extension of the evidence-gathering period due to delays at the beginning and throughout the investigation (e.g., repeated requests to extend the term for disease of the investigator, interruptions in the investigation for long time periods).

“On 28-03-11 (after 3 and a half months of the criminal proceeding the Public Prosecutor asks information to the Director of PJ about the state of the investigation, to which the PJ responds in 6.4.11 that “it is still in the investigation stage and the person in charge is on sick leave, so, the completion date is not foreseeable at the time” 1-3-12 ... in the DIAP again asks about the status of the investigation to PJ; on 07-03-12, PJ replied that “the inquiry is under investigation, with the person in charge in sick leave, so it is not yet predictable the date of completion”; On 21-5-12 the DIAP again asks investigation status information to PJ, having completed the investigation on 28-5-12”. (Case 22)

Critical incidents

There were several *setbacks, omissions, flaws, gaps and errors* in the criminal investigation (e.g., asking for confidential information without the authorization of the investigating judge, lack of translator; $n = 10$).

“Various difficulties arise in obtaining the identification of the holder of the IP address, including confusion about the IP number, the first request for information to the operator denied for lack of JIC craft, subsequent lapse in sending the address, followed by the sending by the operator of the phone number only, without the identity of the holder, and eventually, more than a year after the date

of the facts, the operator informs that they no longer have the internet database to access records for January 2009". (Case 28)

Failure to identify the suspects and/or the victims (whereabouts unknown)

Another reason that seems to have contributed to the filing of cases was the failure to identify the suspects (with unaccounted whereabouts)

"There was no evidence collected on the identification of suspects, determining the filing of the case under Article 277 of the # 2 Cod. Criminal proceedings.". (Case 17)

On 21-12-12, the defendant is considered to be a contumate person because he was notified by a decree and after the deadline had elapsed without his appearance, and his whereabouts are unknown, and the case is suspended until the accused is detained (Case 4)

Difficulties in transnational cooperation

The difficulty of coordination and lack of responses from international judicial entities was one of the factors identified as hindering cases of human trafficking.

Several Rogatory Letters are sent to Spain without fulfilment or response (Case 4).

"Fragile" prosecution, not sustained on evidence of human trafficking crime

The prosecution by related crimes was of a diverse nature: pimping; document forgery crime; aiding illegal immigration; crime of theft and qualified and simple theft; illegal hiring illegal work; aggravated threat crime; conspiracy; association for aiding illegal immigration; false statements; possession of illegal weapons; money laundering. In some cases, there was not enough information to support the existence of the typifying elements of human trafficking, resulting in the formulation of the charge in accordance with art. 160 of the Criminal Code.

"There were not sufficient and enough evidence collected allowing for the confirmation of suspicions that (she) has been victim of human trafficking for purposes of sexual exploitation (...) by the exposed, the filing of the case is ruled." (Case 20)

Non-appearance of victims and traffickers

In some cases, the victims and the traffickers had no attended the hearings.

"successive delays of the trial for lack of appearance of the defendant" (Case 4)

“The hearing is scheduled for 19-09-2011, but is postponed twice for lack of appearance / notification of the victim; later comes to confirm that the victim left the country to Brazil, assisted by a non-governmental organization” (Case 7)
“It was not possible to hear the accused in court for lack of response to all the notifications sent by the court, as well as to the defendant” (Case 6)

The role of victim testimony in criminal justice processes

The references to (non) cooperation of the (presumed) victims are transversal to all the cases consulted. In this way, we could verify that this factor has a preponderant role in the outcome of the cases.

In the cases where there was cooperation from some of the victims, the work of authorities in the recognition of the *modus operandi* of the traffickers was facilitated:

“Several victims have testified, namely 3 women of Nigerian nationality, 2 women of Brazilian nationality, one women of Angolan nationality, an inspector from SEF, a cleaning employee and an employee of the boarding house, the latter having confirmed the activities of prostitution and enlightened regarding the true owners of the boarding house”. (Case 5)

The attitude and the quality of the testimony of the victims were also central, namely the attitude of courage and the degree of detail:

“Regarding the witness statements, it is important first to state the following: as known, the production of direct evidence is not easy when there is a large number of witnesses, and an activity of fraudulent hiring of workers as the one at issue in the proceedings. However, during the trial of this case, some witnesses (but not the majority) did not restrain themselves from describing what was happening in Spain in the residence of the accused, some in more detail than others ... J. produced an objective and credible testimony, describing clearly the facts that were proven, and explaining it was not the only time he was in Spain to work (particularly with the defendant C., prior to the date described in the indictment, but that is not mentioned in the file”. (Case 1)

However, in a negative way, the motives for the filing or acquittal of the cases were centred on the victims (a total of 14 occurrences), related with their lack of cooperation with justice, not having been located, or having given incoherent, non-credible or insufficient testimonies.

Lack of cooperation

“Because of the difficulty experienced in collecting evidence and the fact that, due to the vulnerability arising from their connection to the suspects, most

offended fear exposing themselves and cooperate with the investigation, there is no remaining option at the moment, then the filing of the case, in view of the inconclusiveness of the investigation so far". (Case 14)

It was also observed that the testimony of the victims was not enough to prove the complaint.

"During an inspection operation, a Thai worker asked for help to one of the agents ... without anyone seeing, handing him a paper with her telephone number and email. The worker stated, in a subsequent meeting, that workers were being exploited"; The conclusion of the inquiry was that "it was not glimpsed the commission of any offense in the process of hiring, visa, travel and transport by different companies, nor any type of control". (Case 13)

The testimonies of the alleged victims contributed to the filing of the cases, namely because the witnesses have contradicted the complaint:

"When asked, the alleged victim confesses never have been held and forced against her will into prostitution, having only used this argument to get the complainant to send her money". (Case 15)

Or by contradictory depositions among the alleged victims:

"It was also possible to notify the sister of the complainant, allegedly also a victim, but she contradicted the testimony of the sister that served as a denunciation, "at no time at all were they threatened, raped, or assaulted, they came to Portugal willingly, knowing it was to practice prostitution"; faced with divergent testimony of the sister, she said that "she was subject to emotional and psychological disturbance" and was assisted in Hospital". (Case 22)

Or because the victim has not been heard due to unknown whereabouts:

"The lawsuit was filed on 17/05/2012, due to unknown whereabouts of the person appearing as a complainant of such unlawful acts and therefore the remaining option is the filing of the case, pursuant to paragraph 1 of article 277 of the CPP". (Case 10)

"Audience is set to day XX-XX-XXXX, but it is postponed twice for lack of presence/notification of the victim; subsequently it is confirmed that the victim has left the country for Brazil, aided by an NGO. The judge dispenses the witness after exhausting every effort to notify her". (Case 7)

Discussion

The purpose of this study was to understand the factors that may contribute to the successful prosecutions and conviction for human trafficking, to filing or to prosecution for other related crimes. The results allowed to identify a set of factors that could predict the effectiveness or ineffectiveness of the judicial process and document that the

cooperation of the victim remains the main indicator of success in all stages of criminal justice procedure.

In this study we had access to about 10% of the human trafficking cases which, according to the sources consulted, were initiated in Portugal between 2007 and 2015. These data are discussed in the light of the Portuguese legislation and context; however, the results and its implications are important and transferable for international settings.

Regarding the effectiveness factors in the phase of criminal investigation and judicial inquiry, there was a number of common denominators, mainly related to the capability of police agents to adopt proactive practices, i.e., with a planned, prompt and timely investigation strategy; the investigation was comprehensive in that it collected proof from a variety of evidence, duly validated by the court and in total articulation with the prosecution; several types of evidence were gathered, not dependent solely on the testimony of the victims; where more than one country was involved we observed an efficient transnational collaboration; a large number of agents were mobilized for the investigation. It was these circumstances that enabled the aggregation of all the typifying elements of the crime. Effectively, these practices had influence in all the subsequent process, once allow to collect different type of evidences, not only centred in the victims. The evidence gathered about the *modus operandi* of human trafficking networks allowed for the formulation of the charge in accordance with art. 160^o of Portuguese Penal Code.

As regards the prosecution and trial stage, it appears that the defendants were convicted in at least one human trafficking crime, among other crimes. In cases where there were victims identified, it was possible to realize the importance of their contribution to the case, with common references to the quality of their testimonies, particularly in regard to their degree of detail, the attitude of collaboration with judicial authorities and the fact that their emotional state was congruent with that of a trafficking experience. These were the characteristics that the judiciary qualified as indicative of valid and credible reports. Thus, these cases denote the ability of judges to formulate a comprehensive reading of the testimony of the victims considered in the light of their status of special vulnerability. Indeed, often the witness ability to testify is compromised by threat, fear and trauma, as recognized in many sentences, as well as by the literature [32, 37]. The consideration of the circumstances of these testimonies becomes therefore critical. Multidisciplinary teams were specifically mentioned as particularly important to an informed approach about the condition of special vulnerability of the victim.

Still, in the cases in which there was prosecution or conviction, we found no measures to serve the protection of victims of human trafficking, which may reveal a clear disregard of this dimension. Furthermore, the absence of compensation or reparation for the victims in convicted cases was also indicative of the devaluation of those same losses or damages, whose high physical, psychological and social impact has been emphasized by the literature [35, 48, 49], and in contrast to what has been observed in other countries, namely the Netherlands [10].

The factors of ineffectiveness in criminal justice procedures, with respect to the phase of criminal investigation and judicial inquiry, were related with no evidence of collected proofs for the characterization of a human trafficking crime. In the majority of cases identified the police practices were reactive to complaints from potential victims, relatives or strangers, characterized by no compliance with legal deadlines and critical incidents. One of the characteristics common to these cases lies in the delay of the evidence-gathering period, observed in repeated requests to postpone the deadline (90

to 120 days cf. CPP). Apart from an investigation that seemed more reactive than proactive, that were also observed several critical incidents in terms of criminal investigation, such as omissions, failures, lapses or errors in those cases that ended with filing. Some examples involved the request of confidential information without proper legal authorization, untranslated rogatory letters, erratic information on applications for authorization, or lack of translator for telephone intersections. Additionally, difficulties in transnational collaboration are common to many of these cases and widely referenced in the literature [30, 32, 47].

These factors may be related, as the literature has been demonstrated, to a limited number of human resources and specialized teams to investigate this type of crime (e.g., [8]), which results in absence of knowledge about human trafficking and, consequently, in inability to proactively identify potential trafficking situations (e.g., [14, 50]). These circumstances are reflected then in a more “fragile” charge, one that is not sustained by evidence and for that reason perhaps more likely to result in acquittal. As regards the trial stage, the fact that the victims did not attend the hearings was surely one of the main obstacles to conviction for human trafficking. There was no evidence on the cases of having been activated any protection mechanism for the victims. In a case that resulted in the indictment for robbery, the entire investigation was conducted to fill all the typifying elements of human trafficking but, because it was not provided at the time of the facts, the consummation of trafficking for other criminal purposes, prosecution was deduced for the referred crime.

It should be noted that the success or failure of the criminal justice processes in human trafficking should not only be imputed to the actors involved in this process. According to justice professionals [8], Portuguese legislation on human trafficking, although with potentialities, because is inclusive and comprehensive, in line with UN protocols and EU directives, is complex, demanding and redundant in relation to other crimes, namely slavery (article 159) and pimping (article 169). Thus, the demanding in procedural terms makes the process of gathering evidence in human trafficking crime too difficult due to the complex and diluted nature of the crime itself that often involves other singular offenses that are easier to prove. For this reason, this complexity may lead to a failure, most of the time, to fulfil all the conditions to typify or prove this type of crime, resulting in conviction for less severe crimes ([8, 17–19]).

Another important result from this study was the pivot role of the victim in all the criminal justice procedure stages, as concluded by other researchers internationally (e.g., [51]). Taking the testimony of the victim as central to the case, at the expense of another type of evidence, can be a significant constraint on the level of the criminal investigation. Indeed, it is often difficult to get the victims to cooperate with the investigation, either because their whereabouts are unknown, either by fear - which, ultimately, can lead to these refuting their own victimization experience - or because their account may be discredited in court. It is also important to note that, in the majority of filing or acquittal cases, the main motives identified for justice professionals were related to the victim no cooperation or to incoherent or non-credible testimonies.

Conclusion and practical implications

This study sought to answer one of the international recommendations to Portugal by GRETA [21, 22]: conduct empirical studies to understand the factors behind the low

conviction rate for human trafficking crime. Apart from the difficulty in stabilizing the universe of human trafficking cases, the long period of time necessary to obtain the permission for accessing and analysing the criminal files was another difficulty faced. The limited number of cases provided in electronic format, the extension of the cases (e.g., the number of volumes) and the time required for their consultation made this an even more challenging task. These various conditions together prevented a rigorous and comprehensive picture of the whole universe of the cases of human trafficking, giving this study an exploratory character.

There is a set of recommendations based on empirical data and conclusions of this study, which aim to improve the efficiency of the investigative action on the human trafficking crime, in order to ensure a more effective criminalization of these offenses as well as protection of its victims. In order to promote more efficient practices at the investigation and trial stages of the criminal procedure, we provide some recommendations concerning the training of the justice professionals: 1) develop training and expertise of current and future professionals of the justice system, aiming to improve their knowledge and skills necessary to identify victims of trafficking, improve practices throughout the investigation, both as regards the collection of evidence and to protecting the victim and secure the conviction of traffickers; 2) To develop guidelines on the condition of “special vulnerability” of the victims as happened at the UN level, for the refugees; 3) to debate within the ongoing training, successes and failures in terms of procedure, encouraging reflection on mistakes and lapses, as opposed to good practice; 5) to promote the specialization of police officers and judiciary regarding the investigation and prosecution of trafficking offenses, as opposed to the excessive mobility of police officers between criminal domains.

At the level of the national and international cooperation essential to an effective, prompt and timely investigative action, we recommend: 1) improving the cooperation between police organizations with jurisdiction for investigating human trafficking crime; 2) to promote greater coordination / cooperation between the police organizations, the judiciary and relevant nongovernmental organizations; 3) to promote a closer participation of the Public Prosecutor in the criminal investigation, ensuring the continuity of the same actors (prosecutors) during the development of the entire judicial procedure, in order to make it more efficient. In order to achieve this, we suggest the mobilization of multidisciplinary teams of technical assistance to the prosecutor, working under his tutelage but also supporting the police organizations in the investigative process; 4) to promote international cooperation, with regard to scientific research, police cooperation and protection and assistance to victims of human trafficking and prosecution of traffickers.

At the level of the protection of the victims/witnesses, we recommend: 1) expanding the use of mechanisms of victims’ protection, particularly in terms of a more regular (or even mandatory) participation of non-governmental members technically qualified in terms of assistance to this population (e.g., through the creation of multidisciplinary teams), specifically in police enforcement actions where it is foreseeable the identification of human trafficking crimes; 2) preventing processes of secondary victimization, which may result from scant protection afforded to victims, the absence or slowness of support answers or the ‘pressure’ exerted by police organizations for victims to actively collaborate as witnesses in criminal cases; In this sense, the performance of police organizations have to be invariably framed by an approach based on prioritizing human

rights and the victim's own needs, this should not be conceptualized as a mere witness; 3) to ensure full clarification of the victims regarding their rights in the criminal justice process, namely of the right to compensation and the respective procedures to be followed, so that they can effectively enjoy this right; 4) to implement specific protective mechanisms for victims such as: statements for future memory, concealment of witnesses seat of the judicial hearing or providing statements via videoconference.

At the level of the traffickers and the sentences, we recommend the effective implementation of legislation by the judiciary, in particular with regard to the exemplary punishment of traffickers, the confiscation of their property in order to establish greater proportionality between the seriousness of the crime and the severity of sentences imposed by judges.

Finally, there are still limitations in the understanding of the justice system in regard to the criminal justice processes of human trafficking. Thus, we recommend the implementation of empirical studies, developing projects that characterize in detail the conduct of this crime, namely: i) studies that include in their analysis a large number of cases and focus either on the characteristics of these cases (e.g. time elapsed since the complaint to the prosecution, length of cases that were prosecuted) or the analysis of inconsistencies between cases (e.g., comparing similar cases at the time of signalling, with regard to the practices during the investigation stage, the investigation stage outcome, etc.); compare the wording of the indictment to the formulation of conviction versus acquittal versus conviction for a related crime; ii) to study the factors contributing to the outcome of the criminal cases, for example, by analysing all cases prosecuted and whose charges concerned related crimes. Furthermore, it is urgent to characterize the attitudes and beliefs of police officers and magistrates on the phenomenon of human trafficking and analyse how these dimensions may influence respective practices and decisions; iii) To continue this exploratory study on criminal procedure, especially in the light of recent legislative changes are recent and the training of professionals involved is still ongoing. The continuation of this study would evaluate potential changes in speeches, but especially in the practices of those agents, enabling a better deterrence of this crime and better protection of its victims. In particular, it is important to monitor the number of convictions and increase our knowledge of the factors that influence these, continuously evaluating the quality of the procedures adopted and their impact in terms of convictions for the crime of human trafficking and the protection of respective victims; iv) Conduct studies with victims (whether in cases where there have been convictions for trafficking or other) in order to describe their perception and experience on how they were treated by the justice criminal system.

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Compliance with ethical standards

Conflict of interest The authors declare that they have no conflict of interest.

Ethical approval All procedures performed in studies involving human participants were in accordance with the ethical standards of the institutional and/or national research committee and with the 1964 Helsinki declaration and its later amendments or comparable ethical standards.

Informed consent Informed consent was obtained from all individual participants included in the study.

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