

English Abstract

There is a fervent acceptance of the need to protect victims of human trafficking, more contentious however is the principle of non-liability for trafficked persons who were compelled to commit crimes. In this PhD it is argued that despite growing reception as to the need to protect trafficked persons from secondary victimisation and thus holding them liable, the legal and social boundaries between “victim” and “criminal” are not always clearly distinguished. The work engages in debates within the sphere of human rights, European criminal law and human trafficking studies, and shows that it remains difficult to, in theory and practice, protect victims of human trafficking from being held liable. The European law and in turn its transposition, remains vague and potentially inadequate to achieve its aim of safeguarding the human rights of victims, avoiding further victimisation and encouraging victims to act as witnesses in criminal proceedings against the perpetrators. In particular, ambiguities as to the definition of what is human trafficking amplify the difficulty in granting trafficked persons the label of a victim and subsequently the relevant protection. In addition, skewed images of what a victim should look like – well explained by the ideal victim theory - further thwart the application of a principle on non-liability. Furthermore, the legal framework which seeks to protect trafficked persons from prosecution or penalisation, contained in Article 8 of the 2011 EU Directive on Human Trafficking, does not adequately reflect a victim centred approach. Nor does it sufficiently protect the trafficked persons who commit crimes. In light of this an alternative legal provision is suggested. However, before this is done we have to understand the boundaries within which the EU Legislator operates, i.e. how far can obligations in criminal law stretch.